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CLYDE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

House Bill No. 2891

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]



Passed April 9, 2005

In Effect from Passage

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

H. B. 2891

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)

[BY REQUEST OF THE EXECUTIVE]

[Passed April 9, 2005; in effect from passage]

AN ACT to repeal §5-1B-1, §5-1B-2, §5-1B-3, §5-1B-4, §5-1B-5, §5-1B-6, §5-1B-7 and §5-1B-8 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §5A-6-1, §5A-6-2, §5A-6-3, §5A-6-4, §5A-6-5, §5A-6-6, §5A-6-7 and §5A-6-8; to amend and reenact §5A-7-4 of said code; to amend and reenact §5A-8-15 of said code; to amend and reenact §5B-1-2 of said code; to amend and reenact §5B-3-4 and §5B-3-5 of said code; to amend and reenact §5F-2-1 and §5F-2-2 of said code; to amend and reenact §10-5-2; to amend said code by adding thereto a new section, designated §10-5-5a; to amend and reenact §11-10A-6 and §11-10A-7 of said code; to amend and reenact §17-16A-3 and §17-16A-10 of said code; and to amend and reenact §49-9-15 of said code, all relating to the reorganization of the executive branch of state government; transferring the Office of Technology from the Office of the Governor to the Department of Administration; providing that the Director of Information Services and Communications Division shall report to the Chief Technology Officer; providing that the Director of Information Services and Communications Division shall develop

and maintain an information systems disaster recovery system; modifying membership of the Records Management and Preservation Board to include a county sheriff and a county assessor; limiting the time period for department secretaries to transfer funds within their respective departments; requiring secretaries of departments to cooperate with the Office of the Pharmaceutical Advocate in purchasing prescription drugs; transferring the Bureau of Employment Programs to the Department of Commerce; providing that the Governor will chair the Educational Broadcasting Authority for a limited term; providing that the Governor will appoint to Executive Director of the Educational Broadcasting Authority to serve for a limited term; modifying the term of the chief administrative law judge of the Office of Tax Appeals; providing that the Governor has the authority to appoint two administrative law judges to the Office of Tax Appeals; providing for Governor to chair the West Virginia Parkways, Economic Development and Tourism Authority; authorizing the Governor to appoint an Executive Director of the Virginia Parkways, Economic Development and Tourism Authority and set salary annually; modifying membership of the Missing Children Information Clearinghouse; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §5-1B-1, §5-1B-2, §5-1B-3, §5-1B-4, §5-1B-5, §5-1B-6, §5-1B-7 and §5-1B-8 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new article, designated §5A-6-1, §5A-6-2, §5A-6-3, §5A-6-4, §5A-6-5, §5A-6-6, §5A-6-7 and §5A-6-8; that §5A-7-4 of said code be amended and reenacted; that §5A-8-15 of said code be amended and reenacted; that §5B-1-2 of said code be amended and reenacted; that §5B-3-4 and §5B-3-5 of said code be amended and reenacted; that §5F-2-1 and §5F-2-2 of said code be amended and reenacted; that §10-5-2 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §10-5-5a; that §11-10A-6 and §11-10A-7 of said code be amended and reenacted;

that §17-16A-3 and §17-16A-10 of said code be amended and reenacted; and that §49-9-15 of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 6. OFFICE OF TECHNOLOGY

§5A-6-1. Findings and purposes.

1 The Legislature finds and declares that information
 2 technology is essential to finding practical solutions to the
 3 everyday problems of government, and that the management
 4 goals and purposes of government are furthered by the develop-
 5 ment of compatible, linked information systems across govern-
 6 ment. Therefore, it is the purpose of this article to create, as an
 7 integral part of the Department of Administration, the Office of
 8 Technology with the authority to advise and make recommen-
 9 dations to all state spending units on their information systems.

§5A-6-2. Definitions.

1 As used in this article:

2 (a) "Information systems" means computer-based informa-
 3 tion equipment and related services designed for the automated
 4 transmission, storage, manipulation and retrieval of data by
 5 electronic or mechanical means;

6 (b) "Information technology" means data processing and
 7 telecommunications hardware, software, services, supplies,
 8 personnel, maintenance and training, and includes the programs
 9 and routines used to employ and control the capabilities of data
 10 processing hardware;

11 (c) "Information equipment" includes central processing
 12 units, front-end processing units, miniprocessors, microproces-
 13 sors and related peripheral equipment, including data storage
 14 devices, networking equipment, services, routers, document
 15 scanners, data entry equipment, terminal controllers, data

16 terminal equipment, computer-based word processing systems
17 other than memory typewriters;

18 (d) "Related services" include feasibility studies, systems
19 design, software development and time-sharing services
20 whether provided by state employees or others;

21 (e) "Telecommunications" means any transmission,
22 emission or reception of signs, signals, writings, images or
23 sounds of intelligence of any nature by wire, radio or other
24 electromagnetic or optical systems. The term includes all
25 facilities and equipment performing those functions that are
26 owned, leased or used by the executive agencies of state
27 government;

28 (f) "Chief Technology Officer" means the person holding
29 the position created in section three of this article and vested
30 with authority to assist state spending units in planning and
31 coordinating information systems that serve the effectiveness
32 and efficiency of the individual state spending units, and further
33 the overall management goals and purposes of government; and

34 (g) "Experimental program to stimulate competitive
35 research" (EPSCoR) means the West Virginia component of the
36 national EPSCoR program which is designed to improve the
37 competitive research and development position of selected
38 states through investments in academic research laboratories
39 and laboratory equipment. The recognized West Virginia
40 EPSCoR, which is part of the Office of Technology, is the
41 responsible organization for the coordination and submission of
42 proposals to all federal agencies participating in the EPSCoR
43 program.

**§5A-6-3. Office of Technology; Chief Technology Officer; ap-
pointment and qualifications.**

1 The Office of Technology is created within the Department
2 of Administration. A Chief Technology Officer shall be
3 appointed by and shall serve at the will and pleasure of the
4 Governor. The Chief Technology Officer shall have knowledge

5 in the field of information technology, experience in the design
6 and management of information systems and an understanding
7 of the special demands upon government with respect to
8 budgetary constraints, the protection of privacy interests and
9 federal and state standards of accountability.

§5A-6-4. Powers and duties; professional staff.

1 (a) With respect to all state spending units the Chief
2 Technology Officer may:

3 (1) Develop an organized approach to information resource
4 management for this state;

5 (2) Provide, with the assistance of the Information Services
6 and Communications Division of the Department of Adminis-
7 tration, technical assistance to the administrators of the various
8 state spending units in the design and management of informa-
9 tion systems;

10 (3) Evaluate, in conjunction with the information services
11 and communications division, the economic justification,
12 system design and suitability of information equipment and
13 related services, and review and make recommendations on the
14 purchase, lease or acquisition of information equipment and
15 contracts for related services by the state spending units;

16 (4) Develop a mechanism for identifying those instances
17 where systems of paper forms should be replaced by direct use
18 of information equipment and those instances where applicable
19 state or federal standards of accountability demand retention of
20 some paper processes;

21 (5) Develop a mechanism for identifying those instances
22 where information systems should be linked and information
23 shared, while providing for appropriate limitations on access
24 and the security of information;

25 (6) Create new technologies to be used in government,
26 convene conferences and develop incentive packages to
27 encourage the utilization of technology;

28 (7) Engage in any other activities as directed by the
29 Governor; and

30 (8) Charge a fee to the state spending units for evaluations
31 performed and technical assistance provided under the provi-
32 sions of this section. All fees collected by the Chief Technology
33 Officer shall be deposited in a special account in the state
34 treasury to be known as the "Chief Technology Officer Admin-
35 istration Fund". Expenditures from the fund shall be made by
36 the Chief Technology Officer for the purposes set forth in this
37 article and are not authorized from collections but are to be
38 made only in accordance with appropriation by the Legislature
39 and in accordance with the provisions of article three, chapter
40 twelve of this code and upon the fulfillment of the provisions
41 set forth in article two, chapter eleven-b of this code. Amounts
42 collected which are found to exceed the funds needed for
43 purposes set forth in this article may be transferred to other
44 accounts or funds and redesignated for other purposes by
45 appropriation of the Legislature.

46 (b) With respect to executive agencies, the Chief Technol-
47 ogy Officer may:

48 (1) Develop a unified and integrated structure for informa-
49 tion systems for all executive agencies;

50 (2) Establish, based on need and opportunity, priorities and
51 time lines for addressing the information technology require-
52 ments of the various executive agencies of state government;

53 (3) Exercise the authority inherent to the chief executive of
54 the state as the Governor may, by executive order, delegate, to
55 overrule and supersede decisions made by the administrators of
56 the various executive agencies of government with respect to
57 the design and management of information systems and the
58 purchase, lease or acquisition of information equipment and
59 contracts for related services;

60 (4) Draw upon staff of other executive agencies for advice
61 and assistance in the formulation and implementation of
62 administrative and operational plans and policies; and

63 (5) Recommend to the Governor transfers of equipment and
64 human resources from any executive agency and the most
65 effective and efficient uses of the fiscal resources of executive
66 agencies, to consolidate or centralize information-processing
67 operations.

68 (c) The Chief Technology Officer may employ the person-
69 nel necessary to carry out the work of the Office of Technology
70 and may approve reimbursement of costs incurred by employ-
71 ees to obtain education and training.

**§5A-6-5. Notice of request for proposals by state spending units
required to make purchases through the State
Purchasing Division.**

1 Any state spending unit that is required to submit a request
2 for proposal to the State Purchasing Division prior to purchas-
3 ing goods or services shall notify the Chief Technology Officer,
4 in writing, of any proposed purchase of goods or services
5 related to its information and telecommunication systems. The
6 notice shall contain a brief description of the goods and services
7 to be purchased. The state spending unit shall provide the notice
8 to the Chief Technology Officer at the same time it submits its
9 request for proposal to the State Purchasing Division.

**§5A-6-6. Notice of request for proposals by state spending units
exempted from submitting purchases to the State
Purchasing Division.**

1 (a) Any state spending unit that is not required to submit a
2 request for proposal to the State Purchasing Division prior to
3 purchasing goods or services shall notify the Chief Technology
4 Officer, in writing, of any proposed purchase of goods or
5 services related to its information or telecommunication
6 systems. The notice shall contain a detailed description of the
7 goods and services to be purchased. The state spending unit
8 shall provide the notice to the Chief Technology Officer a
9 minimum of ten days prior to the time it requests bids on the
10 provision of the goods or services.

11 (b) If the Chief Technology Officer evaluates the suitability
 12 of the information and telecommunication equipment and
 13 related services under the provisions of subdivision (3),
 14 subsection (a), section four of this article and determines that
 15 the goods or services to be purchased are not suitable, he or she
 16 shall, within ten days of receiving the notice from the state
 17 spending unit, notify the state spending unit, in writing, of any
 18 recommendations he or she has regarding the proposed pur-
 19 chase of the goods or services. If the state spending unit
 20 receives a written notice from the Chief Technology Officer
 21 within the time period required by this section, the state
 22 spending unit shall not put the goods or services out for bid less
 23 than fifteen days following receipt of the notice from the Chief
 24 Technology Officer.

§5A-6-7. Biannual report.

1 The Chief Technology Officer shall report biannually to the
 2 Legislative Joint Committee on Government and Finance on the
 3 activities of his or her office.

§5A-6-8. Exemptions.

1 The provisions of this article do not apply to the Legislature
 2 or the Judiciary.

**ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS
 DIVISION.**

**§5A-7-4. Powers and duties of division generally; professional
 staff; telephone service.**

1 (a) The Division is responsible for providing technical
 2 services and assistance to the various state spending units with
 3 respect to developing and improving data processing and
 4 telecommunications functions. The Division may provide
 5 training and direct data processing services to the various state
 6 agencies. The Division shall, upon request of the Chief Tech-
 7 nology Officer, provide technical assistance in evaluating the
 8 economic justification, system design and suitability of

9 equipment and systems used in state government. The Director
10 shall report to the Chief Technology Officer.

11 (b) The Director is responsible for the development of
12 personnel to carry out the technical work of the Division and
13 may approve reimbursement of costs incurred by employees to
14 obtain education and training.

15 (c) The Director may assess each state spending unit for the
16 cost of any evaluation of the economic justification, system
17 design and suitability of equipment and systems used by the
18 state spending unit or any other technical assistance that is
19 provided or performed by the Chief Technology Officer and the
20 Division under the provisions of section four, article six of this
21 chapter.

22 (d) The Director shall transfer any moneys received as a
23 result of the assessments that he or she makes under subsec-
24 tion(c) of this section to the Office of Technology. The Director
25 shall report quarterly to the Joint Committee on Government
26 and Finance on all assessments made pursuant to subsection (c)
27 of this section.

28 (e) The Director shall maintain an accounting system for all
29 telephone service to the state.

30 (f) The provisions of this article do not apply to the
31 Legislature or the Judiciary.

32 (g) In consultation with the Adjutant General, Chairman of
33 the Public Service Commission, the Superintendent of the State
34 Police and the Director of the Division of Homeland Security
35 and Emergency Management, the Director is responsible for the
36 development and maintenance of an information systems
37 disaster recovery system for the State of West Virginia with
38 sites in one or more locations isolated from reasonably per-
39 ceived threats to the primary operation of state government. The
40 Director shall develop specifications, funding mechanisms and
41 participation requirements for all executive branch agencies to
42 protect the State's essential data, information systems and

43 critical government services in times of emergency, inopera-
44 tiveness, or disaster. Each executive branch agency shall assist
45 the Director in planning for its specific needs and provide to the
46 Director any information or access to information systems or
47 equipment that may be required in carrying out this purpose. No
48 state-wide or executive branch agency procurement of disaster
49 recovery services may be initiated, let or extended without the
50 expressed consent of the Director.

**ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION
ACT.**

**§5A-8-15. Records management and preservation of county
records; alternate storage of county records;
Records Management and Preservation Board;
qualifications and appointment of members;
reimbursement of expenses; staffing; rule-making
authority; study of records management needs of
state agencies; grants to counties.**

1 The Legislature finds that the use of electronic technology
2 and other procedures to manage and preserve public records by
3 counties should be uniform throughout the state where possible.

4 (a) The governing body and the chief elected official of a
5 county, hereinafter referred to as a county government entity,
6 whether organized and existing under a charter or under general
7 law, shall promote the principles of efficient records manage-
8 ment and preservation of local records. A county governing
9 entity may, as far as practical, follow the program established
10 for the uniform management and preservation of county records
11 as set out in a rules proposed for legislative approval in
12 accordance with the provisions of article three, chapter twenty-
13 nine-a of this code as proposed by the Records Management
14 and Preservation Board.

15 (b) In the event a county government entity decides to
16 destroy or otherwise dispose of a county record, the county
17 government entity may, prior to destruction or disposal thereof,
18 offer the record to the Director of the Section of Archives and

19 History of the Division of Culture and History for preservation
20 of the record as a document of historical value. Unless autho-
21 rized by the Supreme Court of Appeals, the records of courts of
22 record and magistrate courts are not affected by the provisions
23 of this section.

24 (c)(1) A preservation duplicate of a county government
25 entity record may be stored in any format approved by the
26 Board in which the image of the original record is preserved in
27 a form, including CD-ROM and optical image storage media,
28 in which the image is incapable of erasure or alteration and
29 from which a reproduction of the stored record may be retrieved
30 that truly and accurately depicts the image of the original
31 county government record.

32 (2) Except for those formats, processes and systems used
33 for the storage of records on the effective date of this section,
34 no alternate format for the storage of county government entity
35 records described in this section is authorized for the storage of
36 county government entity records unless the particular format
37 has been approved pursuant to a legislative rule promulgated by
38 the Board in accordance with the provisions of chapter twenty-
39 nine-a of this code. The Board may prohibit the use of any
40 format, process or system used for the storage of records upon
41 its determination that the same is not reasonably adequate to
42 preserve the records from destruction, alteration or decay.

43 (3) Upon creation of a preservation duplicate that stores an
44 original county government entity record in an approved format
45 that is incapable of erasure or alteration and that may be
46 retrieved in a format that truly and accurately depicts the image
47 of the original record, the county government entity may
48 destroy or otherwise dispose of the original in accordance with
49 the provisions of section seven-c, article one, chapter fifty-
50 seven of this code.

51 (d) A Records Management and Preservation Board for
52 county government entities is continued to be composed of nine
53 members.

54 (1) Three members shall serve ex officio. One member
55 shall be the Commissioner of the Division of Culture and
56 History or designee who shall be the chair of the Board. One
57 member shall be the Administrator of the Supreme Court of
58 Appeals or designee. One member shall be the Chief Technol-
59 ogy Officer or designee.

60 (2) The Governor shall appoint eight members of the Board
61 with the advice and consent of the Senate. Not more than five
62 appointments to the Board may be from the same political party
63 and not more than three members may be appointed from the
64 same congressional district. Of the eight members appointed by
65 the Governor:

66 (i) Five appointments shall be county elected officials, one
67 of whom shall be a clerk of a county commission, one of whom
68 shall be a circuit court clerk, one of whom shall be a county
69 commissioner, one of whom shall be a county sheriff, and one
70 of whom shall be a county assessor, to be selected from a list of
71 fifteen names. The names of three clerks of county commis-
72 sions and three circuit court clerks shall be submitted to the
73 Governor by the West Virginia Association of Counties. The
74 names of three county commissioners shall be submitted to the
75 Governor jointly by the West Virginia Association of Counties
76 and the West Virginia County Commissioners Association. The
77 names of three county sheriffs shall be submitted to the
78 Governor by the West Virginia Sheriff's Association. And the
79 names of three county assessors shall be submitted to the
80 Governor by the Association of West Virginia Assessors;

81 (ii) One appointment shall be a county prosecuting attorney
82 to be selected from a list of three names submitted by the West
83 Virginia Prosecuting Attorneys Institute;

84 (iii) One appointment shall be an attorney licensed in West
85 Virginia and in good standing as a member of the West Virginia
86 State Bar with experience in real estate and mineral title
87 examination, to be selected from a list of three names submitted
88 by the State Bar; and

89 (iv) One appointment shall be a representative of a local
90 historical or genealogical society.

91 (e) The members of the Board shall serve without compen-
92 sation but shall be reimbursed for all reasonable and necessary
93 expenses actually incurred in the performance of their duties as
94 members of the Board in a manner consistent with the guide-
95 lines of the Travel Management Office of the Department of
96 Administration. In the event the expenses are paid, or are to be
97 paid, by a third party, the member shall not be reimbursed by
98 the state.

99 (f) The staff of the Board shall consist of the Director of the
100 Archives and History Section of the Division of Culture and
101 History and any additional staff as needed.

102 (g) The Board shall propose rules for legislative approval
103 in accordance with the provisions of article three, chapter
104 twenty-nine-a of this code, to establish a system of records
105 management and preservation for county governments: *Pro-*
106 *vided*, That, for the retention and disposition of records of
107 courts of record and magistrate courts, the implementation of
108 the rule is subject to action by the Supreme Court of Appeals of
109 West Virginia. The proposed rules shall include provisions for
110 establishing a program of grants to county governments for
111 making records management and preservation uniform through-
112 out the state. The Board is not authorized to propose or promul-
113 gate emergency rules under the provisions of this section.

114 (h) In addition to the fees charged by the clerk of the county
115 commission under the provisions of section ten, article one,
116 chapter fifty-nine of this code, the clerk shall charge and collect
117 an additional one-dollar fee for every document containing less
118 than ten pages filed for recording and an additional one-dollar
119 fee for each additional ten pages of document filed for record-
120 ing. At the end of each month, the clerk of the county commis-
121 sion shall deposit into the Public Records and Preservation
122 Account as established in the State Treasury all fees collected:
123 *Provided*, That the clerk may retain not more than ten percent

124 of the fees for costs associated with the collection of the fees.
125 Clerks shall be responsible for accounting for the collection and
126 deposit in the State Treasury of all fees collected by the clerk
127 under the provisions of this section.

128 (i) There is hereby created in the State Treasury a special
129 account entitled the "Public Records and Preservation Revenue
130 Account". The account shall consist of all fees collected under
131 the provisions of this section, legislative appropriations, interest
132 earned from fees, investments, gifts, grants or contributions
133 received by the Board. Expenditures from the account shall be
134 for the purposes set forth in this article and are not authorized
135 from collections but are to be made only in accordance with
136 appropriation by the Legislature and in accordance with the
137 provisions of article three, chapter twelve of this code and upon
138 the fulfillment of the provisions set forth in article two, chapter
139 eleven-b of this code.

140 (j) Subject to the above provision, the Board may expend
141 the funds in the account to implement the provisions of this
142 article. In expending funds from the account, the Board shall
143 allocate not more than fifty percent of the funds for grants to
144 counties for records management, access and preservation
145 purposes. The Board shall provide for applications, set guide-
146 lines and establish procedures for distributing grants to counties
147 including a process for appealing an adverse decision on a grant
148 application. Expenditures from the account shall be for the
149 purposes set forth in this section, including the cost of addi-
150 tional staff of the Division of Archives and History.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the Department of Commerce.

1 The Department of Commerce consists of the following
2 agencies, boards, commissions, divisions and offices, including
3 all of the allied, advisory, affiliated or related entities, which are

4 incorporated in and administered as part of the Department of
5 Commerce:

6 (1) Division of Labor provided in article one, chapter
7 twenty-one of this code, which includes:

8 (A) Occupational Safety and Health Review Commission
9 provided in article three-a, chapter twenty-one of this code; and

10 (B) Board of Manufactured Housing Construction and
11 Safety provided in article nine, chapter twenty-one of this code;

12 (2) Office of Miners' Health, Safety and Training provided
13 in article one, chapter twenty-two-a of this code. The following
14 boards are transferred to the Office of Miners' Health, Safety
15 and Training for purposes of administrative support and liaison
16 with the Office of the Governor:

17 (A) Board of Coal Mine Health and Safety and Coal Mine
18 Safety and Technical Review Committee provided in article six,
19 chapter twenty-two-a of this code;

20 (B) Board of Miner Training, Education and Certification
21 provided in article seven, chapter twenty-two-a of this code;
22 and

23 (C) Mine Inspectors' Examining Board provided in article
24 nine, chapter twenty-two-a of this code;

25 (3) The West Virginia Development Office, which includes
26 the Division of Tourism and the Tourism Commission, pro-
27 vided in article two, chapter five-b of this code;

28 (4) Division of Natural Resources and Natural Resources
29 Commission provided in article one, chapter twenty of this
30 code;

31 (5) Division of Forestry provided in article one-a, chapter
32 nineteen of this code;

33 (6) Geological and Economic Survey provided in article
34 two, chapter twenty-nine of this code; and

35 (7) The Bureau of Employment Programs provided in
36 chapter twenty-one-a of this code.

**ARTICLE 3. WEST VIRGINIA ECONOMIC DEVELOPMENT STRATEGY:
A VISION SHARED.**

**§5B-3-4. Commission review of procedural rules, interpretive
rules and existing legislative rules.**

1 (a) The Joint Commission on Economic Development may
2 review any procedural rule, interpretive rule or existing
3 legislative rule and make recommendations concerning the
4 rules to the Legislature.

5 (b) The Development Office and the Tourism Commission
6 established pursuant to article two of this chapter, the Economic
7 Development Authority established pursuant to article fifteen,
8 chapter thirty-one of this code, the Bureau of Employment
9 Programs established pursuant to article four, chapter twenty-
10 one-a of this code, the Workers' Compensation Commission
11 established pursuant to article one, chapter twenty-three of this
12 code, the Workforce Investment Commission established
13 pursuant to article two-c of this chapter, West Virginia Jobs
14 Investment Trust, regional planning and development councils,
15 West Virginia Rural Development Council, Office of Technol-
16 ogy and West Virginia Clearinghouse for Workforce Education
17 shall each file a copy of its legislative rules with the commis-
18 sion as provided for in this section. Each agency that proposes
19 legislative rules in accordance to the provisions of article three,
20 three-a or three-b, chapter twenty-nine-a of this code relating to
21 economic development or workforce development shall file the
22 rules with the Joint Commission at the time the rules are filed
23 with the Secretary of State prior to the public comment period
24 or public hearing required in said chapter.

§5B-3-5. Joint Commission on Economic Development Studies.

1 (a) The Joint Commission on Economic Development shall
2 study the following:

3 (1) The feasibility of establishing common regional
4 configurations for local workforce investment areas, regional
5 educational service agencies and for all other purposes the
6 commission considers feasible. The study should review the
7 existing levels of cooperation between state and local economic
8 developers, complete an analysis of possible regional configura-
9 tions and outline examples of other successful regional systems
10 or networks found throughout the world. If the study determines
11 that the common regional configurations are feasible, the
12 Commission shall recommend legislation establishing common
13 regional designations for all feasible purposes. In making the
14 designation of regional areas, the study shall take into consider-
15 ation, but not be limited to, the following:

16 (A) Geographic areas served by local educational agencies
17 and intermediate educational agencies;

18 (B) Geographic areas served by post-secondary educational
19 institutions and area vocational education schools;

20 (C) The extent to which the local areas are consistent with
21 labor market areas;

22 (D) The distance that individuals will need to travel to
23 receive services provided in the local areas; and

24 (E) The resources of the local areas that are available to
25 effectively administer the activities or programs;

26 (2) The effectiveness and fiscal impact of incentives for
27 attracting and growing businesses, especially technology-
28 intensive companies; and

29 (3) A comprehensive review of West Virginia's existing
30 economic and community development resources and the
31 recommendation of an organizational structure, including, but
32 not limited to, the reorganization of the Department of Com-

33 merce and the Development Office that would allow the state
34 to successfully compete in the new global economy.

35 (b) In order to effectuate in the most cost-effective and
36 efficient manner the studies required in this article, it is
37 necessary for the Joint Commission to assemble and compile a
38 tremendous amount of information. The Development Office
39 will assist the Joint Commission in the collection and analysis
40 of this information. The Tourism Commission established
41 pursuant to article two of this chapter, the Economic Develop-
42 ment Authority established pursuant to article fifteen, chapter
43 thirty-one of this code, the Bureau of Employment Programs
44 established pursuant to article four, chapter twenty-one-a of this
45 code, the Workers' Compensation Commission established
46 pursuant to article one, chapter twenty-three of this code, the
47 Workforce Investment Commission established pursuant to
48 article two-c of this chapter, West Virginia Jobs Investment
49 Trust, regional planning and development councils, West
50 Virginia Rural Development Council, Office of Technology and
51 West Virginia Clearinghouse for Workforce Education shall
52 provide a copy of the their annual reports as submitted to the
53 Governor in accordance with the requirements set forth in
54 section twenty, article one, chapter five of this code to the West
55 Virginia Development Office. The Development Office shall
56 review, analyze and summarize the data contained in the
57 reports, including its own annual report, and annually submit its
58 findings to the Joint Commission on or before the thirty-first
59 day of December.

60 (c) The Legislative Auditor shall provide to the Joint
61 Commission a copy of any and all reports on agencies listed in
62 subsection (b) of this section, which are required under article
63 ten, chapter four of this code.

64 (d) The Joint Commission shall complete the studies set
65 forth in this section and any other studies the Joint Commission
66 determines to undertake prior to the first day of December of
67 each year and may make recommendations, including recom-
68 mended legislation for introduction during the regular session
69 of the Legislature.

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

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

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

1 (a) The following agencies and boards, including all of the
2 allied, advisory, affiliated or related entities and funds associ-
3 ated with any agency or board, are incorporated in and adminis-
4 tered as a part of the Department of Administration:

5 (1) Building Commission provided in article six, chapter
6 five of this code;

7 (2) Public Employees Insurance Agency and Public
8 Employees Insurance Agency Advisory Board provided in
9 article sixteen, chapter five of this code;

10 (3) Governor's Mansion Advisory Committee provided for
11 in article five, chapter five-a of this code;

12 (4) Commission on Uniform State Laws provided in article
13 one-a, chapter twenty-nine of this code;

14 (5) Education and State Employees Grievance Board
15 provided for in article twenty-nine, chapter eighteen of this
16 code and article six-a, chapter twenty-nine of this code;

17 (6) Board of Risk and Insurance Management provided for
18 in article twelve, chapter twenty-nine of this code;

19 (7) Boundary Commission provided in article twenty-three,
20 chapter twenty-nine of this code;

21 (8) Public Defender Services provided in article twenty-
22 one, chapter twenty-nine of this code;

23 (9) Division of Personnel provided in article six, chapter
24 twenty-nine of this code;

25 (10) The West Virginia Ethics Commission provided in
26 article two, chapter six-b of this code; and

27 (11) Consolidated Public Retirement Board provided in
28 article ten-d, chapter five of this code.

29 (b) The following agencies and boards, including all of the
30 allied, advisory, affiliated or related entities and funds associ-
31 ated with any agency or board, are incorporated in and adminis-
32 tered as a part of the Department of Commerce:

33 (1) Division of Labor provided in article one, chapter
34 twenty-one of this code, which includes:

35 (A) Occupational Safety and Health Review Commission
36 provided in article three-a, chapter twenty-one of this code; and

37 (B) Board of Manufactured Housing Construction and
38 Safety provided in article nine, chapter twenty-one of this code;

39 (2) Office of Miners' Health, Safety and Training provided
40 in article one, chapter twenty-two-a of this code. The following
41 boards are transferred to the Office of Miners' Health, Safety
42 and Training for purposes of administrative support and liaison
43 with the Office of the Governor:

44 (A) Board of Coal Mine Health and Safety and Coal Mine
45 Safety and Technical Review Committee provided in article six,
46 chapter twenty-two-a of this code;

47 (B) Board of Miner Training, Education and Certification
48 provided in article seven, chapter twenty-two-a of this code;
49 and

50 (C) Mine Inspectors' Examining Board provided in article
51 nine, chapter twenty-two-a of this code;

52 (3) The West Virginia Development Office, which includes
53 the Division of Tourism and the Tourism Commission provided
54 in article two, chapter five-b of this code;

55 (4) Division of Natural Resources and Natural Resources
56 Commission provided in article one, chapter twenty of this
57 code;

58 (5) Division of Forestry provided in article one-a, chapter
59 nineteen of this code;

60 (6) Geological and Economic Survey provided in article
61 two, chapter twenty-nine of this code; and

62 (7) The Bureau of Employment Programs provided in
63 chapter twenty-one-a of this code.

64 (c) The Economic Development Authority provided in
65 article fifteen, chapter thirty-one of this code is continued as an
66 independent agency within the executive branch.

67 (d) The Water Development Authority and Board provided
68 in article one, chapter twenty-two-c of this code is continued as
69 an independent agency within the executive branch.

70 (e) Workers' Compensation Commission provided in
71 article one, chapter twenty-three of this code is continued as an
72 independent agency within the executive branch.

73 (f) The following agencies and boards, including all of the
74 allied, advisory and affiliated entities, are transferred to the
75 department of environmental protection for purposes of
76 administrative support and liaison with the office of the
77 governor:

78 (1) Air Quality Board provided in article two, chapter
79 twenty-two-b of this code;

80 (2) Solid Waste Management Board provided in article
81 three, chapter twenty-two-c of this code;

82 (3) Environmental Quality Board, or its successor board,
83 provided in article three, chapter twenty-two-b of this code;

84 (4) Surface Mine Board provided in article four, chapter
85 twenty-two-b of this code;

86 (5) Oil and Gas Inspectors' Examining Board provided in
87 article seven, chapter twenty-two-c of this code;

88 (6) Shallow Gas Well Review Board provided in article
89 eight, chapter twenty-two-c of this code; and

90 (7) Oil and Gas Conservation Commission provided in
91 article nine, chapter twenty-two-c of this code.

92 (g) The following agencies and boards, including all of the
93 allied, advisory, affiliated or related entities and funds associ-
94 ated with any agency or board, are incorporated in and adminis-
95 tered as a part of the Department of Education and the Arts:

96 (1) Library Commission provided in article one, chapter ten
97 of this code;

98 (2) Educational Broadcasting Authority provided in article
99 five, chapter ten of this code;

100 (3) Division of Culture and History provided in article one,
101 chapter twenty-nine of this code;

102 (4) Division of Rehabilitation Services provided in section
103 two, article ten-a, chapter eighteen of this code.

104 (h) The following agencies and boards, including all of the
105 allied, advisory, affiliated or related entities and funds associ-
106 ated with any agency or board, are incorporated in and adminis-
107 tered as a part of the Department of Health and Human Re-
108 sources:

109 (1) Human Rights Commission provided in article eleven,
110 chapter five of this code;

111 (2) Division of Human Services provided in article two,
112 chapter nine of this code;

113 (3) Bureau for Public Health provided in article one,
114 chapter sixteen of this code;

115 (4) Office of Emergency Medical Services and Advisory
116 Council provided in article four-c, chapter sixteen of this code;

117 (5) Health Care Authority provided in article twenty-nine-b,
118 chapter sixteen of this code;

119 (6) Commission on Mental Retardation provided in article
120 fifteen, chapter twenty-nine of this code;

121 (7) Women's Commission provided in article twenty,
122 chapter twenty-nine of this code; and

123 (8) The Child Support Enforcement Division provided in
124 chapter forty-eight of this code.

125 (i) The following agencies and boards, including all of the
126 allied, advisory, affiliated or related entities and funds associ-
127 ated with any agency or board, are incorporated in and adminis-
128 tered as a part of the Department of Military Affairs and Public
129 Safety:

130 (1) Adjutant General's Department provided in article one-
131 a, chapter fifteen of this code;

132 (2) Armory Board provided in article six, chapter fifteen of
133 this code;

134 (3) Military Awards Board provided in article one-g,
135 chapter fifteen of this code;

136 (4) West Virginia State Police provided in article two,
137 chapter fifteen of this code;

138 (5) Division of Homeland Security and Emergency Man-
139 agement and Disaster Recovery Board provided in article five,
140 chapter fifteen of this code and Emergency Response Commis-
141 sion provided in article five-a of said chapter;

142 (6) Sheriffs' Bureau provided in article eight, chapter
143 fifteen of this code;

144 (7) Division of Corrections provided in chapter twenty-five
145 of this code;

146 (8) Fire Commission provided in article three, chapter
147 twenty-nine of this code;

148 (9) Regional Jail and Correctional Facility Authority
149 provided in article twenty, chapter thirty-one of this code;

150 (10) Board of Probation and Parole provided in article
151 twelve, chapter sixty-two of this code; and

152 (11) Division of Veterans' Affairs and Veterans' Council
153 provided in article one, chapter nine-a of this code.

154 (j) The following agencies and boards, including all of the
155 allied, advisory, affiliated or related entities and funds associ-
156 ated with any agency or board, are incorporated in and adminis-
157 tered as a part of the Department of Revenue:

158 (1) Tax Division provided in article one, chapter eleven of
159 this code;

160 (2) Racing Commission provided in article twenty-three,
161 chapter nineteen of this code;

162 (3) Lottery Commission and position of Lottery Director
163 provided in article twenty-two, chapter twenty-nine of this
164 code;

165 (4) Agency of Insurance Commissioner provided in article
166 two, chapter thirty-three of this code;

167 (5) Office of Alcohol Beverage Control Commissioner
168 provided in article sixteen, chapter eleven of this code and
169 article two, chapter sixty of this code;

170 (6) Board of Banking and Financial Institutions provided in
171 article three, chapter thirty-one-a of this code;

172 (7) Lending and Credit Rate Board provided in chapter
173 forty-seven-a of this code;

174 (8) Division of Banking provided in article two, chapter
175 thirty-one-a of this code;

176 (9) The State Budget Office provided in article two of this
177 chapter;

178 (10) The Municipal Bond Commission provided in article
179 three, chapter thirteen of this code;

180 (11) The Office of Tax Appeals provided in article ten-a,
181 chapter eleven of this code; and

182 (12) The State Athletic Commission provided in article
183 five-a, chapter twenty-nine of this code.

184 (k) The following agencies and boards, including all of the
185 allied, advisory, affiliated or related entities and funds associ-
186 ated with any agency or board, are incorporated in and adminis-
187 tered as a part of the Department of Transportation:

188 (1) Division of Highways provided in article two-a, chapter
189 seventeen of this code;

190 (2) Parkways, Economic Development and Tourism
191 Authority provided in article sixteen-a, chapter seventeen of
192 this code;

193 (3) Division of Motor Vehicles provided in article two,
194 chapter seventeen-a of this code;

195 (4) Driver's Licensing Advisory Board provided in article
196 two, chapter seventeen-b of this code;

197 (5) Aeronautics Commission provided in article two-a,
198 chapter twenty-nine of this code;

199 (6) State Rail Authority provided in article eighteen,
200 chapter twenty-nine of this code; and

201 (7) Port Authority provided in article sixteen-b, chapter
202 seventeen of this code.

203 (l) Except for powers, authority and duties that have been
204 delegated to the secretaries of the departments by the provisions
205 of section two of this article, the position of administrator and
206 the powers, authority and duties of each administrator and
207 agency are not affected by the enactment of this chapter.

208 (m) Except for powers, authority and duties that have been
209 delegated to the secretaries of the departments by the provisions
210 of section two of this article, the existence, powers, authority
211 and duties of boards and the membership, terms and qualifica-
212 tions of members of the boards are not affected by the enact-
213 ment of this chapter. All boards that are appellate bodies or are
214 independent decision makers shall not have their appellate or
215 independent decision-making status affected by the enactment
216 of this chapter.

217 (n) Any department previously transferred to and incorpo-
218 rated in a department by prior enactment of this section means
219 a division of the appropriate department. Wherever reference is
220 made to any department transferred to and incorporated in a
221 department created in section two, article one of this chapter,
222 the reference means a division of the appropriate department
223 and any reference to a division of a department so transferred
224 and incorporated means a section of the appropriate division of
225 the department.

226 (o) When an agency, board or commission is transferred
227 under a bureau or agency other than a department headed by a
228 secretary pursuant to this section, that transfer is solely for
229 purposes of administrative support and liaison with the Office
230 of the Governor, a department secretary or a bureau. Nothing in
231 this section extends the powers of department secretaries under
232 section two of this article to any person other than a department
233 secretary and nothing limits or abridges the statutory powers

234 and duties of statutory commissioners or officers pursuant to
235 this code.

§5F-2-2. Power and authority of secretary of each department.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, the secretary of each department shall have plenary
3 power and authority within and for the department to:

4 (1) Employ and discharge within the office of the secretary
5 employees as may be necessary to carry out the functions of the
6 secretary, which employees shall serve at the will and pleasure
7 of the secretary;

8 (2) Cause the various agencies and boards to be operated
9 effectively, efficiently and economically, and develop goals,
10 objectives, policies and plans that are necessary or desirable for
11 the effective, efficient and economical operation of the depart-
12 ment;

13 (3) Eliminate or consolidate positions, other than positions
14 of administrators or positions of board members, and name a
15 person to fill more than one position;

16 (4) Delegate, assign, transfer or combine responsibilities or
17 duties to or among employees, other than administrators or
18 board members;

19 (5) Reorganize internal functions or operations;

20 (6) Formulate comprehensive budgets for consideration by
21 the Governor, and transfer within the department funds appro-
22 priated to the various agencies of the department which are not
23 expended due to cost savings resulting from the implementation
24 of the provisions of this chapter: *Provided*, That no more than
25 twenty-five percent of the funds appropriated to any one agency
26 or board may be transferred to other agencies or boards within
27 the department: *Provided, however*, That no funds may be
28 transferred from a special revenue account, dedicated account,
29 capital expenditure account or any other account or funds

30 specifically exempted by the Legislature from transfer, except
31 that the use of appropriations from the State Road Fund
32 transferred to the Office of the Secretary of the Department of
33 Transportation is not a use other than the purpose for which the
34 funds were dedicated and is permitted: *Provided further*, That
35 if the Legislature by subsequent enactment consolidates
36 agencies, boards or functions, the secretary may transfer the
37 funds formerly appropriated to the agency, board or function in
38 order to implement consolidation. The authority to transfer
39 funds under this section shall expire on the thirtieth day of June,
40 two thousand five;

41 (7) Enter into contracts or agreements requiring the
42 expenditure of public funds, and authorize the expenditure or
43 obligation of public funds as authorized by law: *Provided*, That
44 the powers granted to the secretary to enter into contracts or
45 agreements and to make expenditures or obligations of public
46 funds under this provision shall not exceed or be interpreted as
47 authority to exceed the powers granted by the Legislature to the
48 various commissioners, directors or board members of the
49 various departments, agencies or boards that comprise and are
50 incorporated into each secretary's department under this
51 chapter;

52 (8) Acquire by lease or purchase property of whatever kind
53 or character and convey or dispose of any property of whatever
54 kind or character as authorized by law: *Provided*, That the
55 powers granted to the secretary to lease, purchase, convey or
56 dispose of such property shall not exceed or be interpreted as
57 authority to exceed the powers granted by the Legislature to the
58 various commissioners, directors or board members of the
59 various departments, agencies or boards that comprise and are
60 incorporated into each secretary's department under this
61 chapter;

62 (9) Conduct internal audits;

63 (10) Supervise internal management;

64 (11) Promulgate rules, as defined in section two, article
65 one, chapter twenty-nine-a of this code, to implement and make
66 effective the powers, authority and duties granted and imposed
67 by the provisions of this chapter in accordance with the
68 provisions of chapter twenty-nine-a of this code;

69 (12) Grant or withhold written consent to the proposal of
70 any rule, as defined in section two, article one, chapter
71 twenty-nine-a of this code, by any administrator, agency or
72 board within the department. Without written consent, no
73 proposal for a rule shall have any force or effect;

74 (13) Delegate to administrators the duties of the secretary
75 as the secretary may deem appropriate from time to time to
76 facilitate execution of the powers, authority and duties dele-
77 gated to the secretary; and

78 (14) Take any other action involving or relating to internal
79 management not otherwise prohibited by law.

80 (b) The secretaries of the departments hereby created shall
81 engage in a comprehensive review of the practices, policies and
82 operations of the agencies and boards within their departments
83 to determine the feasibility of cost reductions and increased
84 efficiency which may be achieved therein, including, but not
85 limited to, the following:

86 (1) The elimination, reduction and restriction of the state's
87 vehicle or other transportation fleet;

88 (2) The elimination, reduction and restriction of state
89 government publications, including annual reports, informa-
90 tional materials and promotional materials;

91 (3) The termination or rectification of terms contained in
92 lease agreements between the state and private sector for
93 offices, equipment and services;

94 (4) The adoption of appropriate systems for accounting,
95 including consideration of an accrual basis financial accounting
96 and reporting system;

97 (5) The adoption of revised procurement practices to
98 facilitate cost-effective purchasing procedures, including
99 consideration of means by which domestic businesses may be
100 assisted to compete for state government purchases; and

101 (6) The computerization of the functions of the state
102 agencies and boards.

103 (c) Notwithstanding the provisions of subsections (a) and
104 (b) of this section, none of the powers granted to the secretaries
105 herein shall be exercised by the secretary if to do so would
106 violate or be inconsistent with the provisions of any federal law
107 or regulation, any federal-state program or federally delegated
108 program or jeopardize the approval, existence or funding of any
109 program.

110 (d) The layoff and recall rights of employees within the
111 classified service of the state as provided in subsections five
112 and six, section ten, article six, chapter twenty-nine of this code
113 shall be limited to the organizational unit within the agency or
114 board and within the occupational group established by the
115 classification and compensation plan for the classified service
116 of the agency or board in which the employee was employed
117 prior to the agency or board's transfer or incorporation into the
118 department: *Provided*, That the employee shall possess the
119 qualifications established for the job class. The duration of
120 recall rights provided in this subsection shall be limited to two
121 years or the length of tenure, whichever is less. Except as
122 provided in this subsection, nothing contained in this section
123 shall be construed to abridge the rights of employees within the
124 classified service of the state as provided in sections ten and
125 ten-a, article six, chapter twenty-nine of this code, or the right
126 of classified employees of the Board of Regents to the proce-
127 dures and protections set forth in article twenty-six-b, chapter
128 eighteen of this code.

129 (e) Notwithstanding any other provision of this code to the
130 contrary, the secretary of each department with authority over
131 programs which are payors for prescription drugs, including but

132 not limited to, the Public Employees Insurance Agency, the
 133 Children's Health Insurance Program, the Division of Correc-
 134 tions, the Division of Juvenile Services, the Regional Jail and
 135 Correctional Facility Authority, the Workers' Compensation
 136 Fund, state colleges and universities, public hospitals, state or
 137 local institutions including nursing homes and veteran's homes,
 138 the Division of Rehabilitation, public health departments, the
 139 Bureau of Medical Services and other programs that are payors
 140 for prescription drugs, shall cooperate with the Office of the
 141 Pharmaceutical Advocate established pursuant to section four,
 142 article sixteen-d, chapter five of this code for the purpose of
 143 purchasing prescription drugs for any program over which they
 144 have authority.

**CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECRE-
 ATION; ATHLETIC ESTABLISHMENTS; MONUMENTS
 AND MEMORIALS; ROSTER OF SERVICEMEN;
 EDUCATIONAL BROADCASTING AUTHORITY.**

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

**§10-5-2. West Virginia Educational Broadcasting Authority;
 members; organization; officers; employees;
 meetings; expenses.**

1 (a) The West Virginia Educational Broadcasting Authority
 2 is hereby continued as a public benefit corporation. The
 3 Authority shall consist of eleven voting members, who shall be
 4 residents of the state, including the Governor or designee, the
 5 State Superintendent of Schools, one member of the West
 6 Virginia Board of Education to be selected by it annually, and
 7 one member of the West Virginia Higher Education Policy
 8 Commission to be selected by it annually. The other seven
 9 members shall be appointed by the Governor by and with the
 10 advice and consent of the Senate for overlapping terms of seven
 11 years, one term expiring each year. Not less than one appoint-
 12 ive member shall come from each congressional district.

13 Employees of noncommercial broadcasting stations in West
14 Virginia are not eligible for appointment to the Authority. Any
15 vacancy among the appointive members shall be filled by the
16 Governor by appointment for the unexpired term.

17 (b) As of the effective date of the reenactment of this
18 section during the Regular Session of 2005, the Governor or
19 designee serves as chair, for a term not to exceed four years
20 unless extended by act of the Legislature. Thereafter, the
21 Authority shall select the chair. The Authority shall annually
22 select one of its public members as vice chair and shall appoint
23 a secretary who need not be a member of the Authority and who
24 shall keep records of its proceedings.

25 (c) As of the effective date of the reenactment of this
26 section during the Regular Session of 2005, the Governor shall
27 appoint an Executive Director, at a salary fixed by the Gover-
28 nor, to serve for a term not to exceed four years unless extended
29 by act of the Legislature. Thereafter the Authority shall appoint
30 the Executive Director and fix his or her salary. The Executive
31 Director is responsible for managing and administering the
32 daily functions of the Authority and for performing all other
33 functions necessary to the effective operation of the Authority.
34 The Authority is authorized to establish offices for the proper
35 performance of its duties.

36 (d) The Authority shall hold at least one annual meeting.
37 The time and place of the meetings shall be established upon its
38 own resolution or at the call of the chairperson of the Authority.
39 The members shall serve without compensation but may be
40 reimbursed for all reasonable and necessary expenses actually
41 incurred in the performance of their duties in a manner consis-
42 tent with the guidelines of the Travel Management Office of the
43 Department of Administration.

§10-5-5a. Advisory Committee on Journalistic and Editorial Integrity.

1 (a) The Authority shall appoint an Advisory Committee on
 2 Journalistic and Editorial Integrity, which shall consist of five
 3 qualified members to serve staggered terms of three years. The
 4 Advisory Committee shall annually elect a chair, vice chair and
 5 secretary.

6 (b) The Advisory Committee shall advise the Authority on
 7 issues related to the journalistic independence and editorial
 8 integrity of public education and public broadcasting stations,
 9 which have the same constitutional protections as other
 10 journalistic enterprises in West Virginia.

CHAPTER 11. TAXATION.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-6. Chief Administrative Law Judge; appointment, term and vacancy; qualifications; compensation; conflicts of interest prohibited; removal.

1 (a) The Governor, with the advice and consent of the
 2 Senate, shall appoint the Chief Administrative Law Judge from
 3 a list of three qualified nominees submitted to the Governor by
 4 the Board of Governors of the West Virginia State Bar for a
 5 four-year term. An appointment to fill a vacancy in the position
 6 shall be for the unexpired term.

7 (b) Prior to appointment, the Chief Administrative Law
 8 Judge shall be a citizen of the United States and a resident of
 9 this state who is admitted to the practice of law in this state and
 10 who has five years of full-time or equivalent part-time experi-
 11 ence as an attorney with federal or state tax law expertise or as
 12 a judge of a court of record.

13 (c) The salary of the Chief Administrative Law Judge shall
14 be set by the Secretary of the Department of Revenue created
15 in section two, article one, chapter five-f of this code. The
16 salary shall be within the salary range for comparable chief
17 administrative law judges as determined by the State Personnel
18 Board created by section six, article six, chapter twenty-nine of
19 this code.

20 (d) The Chief Administrative Law Judge during his or her
21 term shall:

22 (1) Devote his or her full time to the duties of the position;

23 (2) Not otherwise engage in the active practice of law or be
24 associated with any group or entity which is itself engaged in
25 the active practice of law: *Provided*, That nothing in this
26 paragraph may be construed to prohibit the Chief Administra-
27 tive Law Judge from being a member of a national, state or
28 local bar association or committee, or of any other similar
29 group or organization, or to prohibit the Chief Administrative
30 Law Judge from engaging in the practice of law by representing
31 himself, herself or his or her immediate family in their personal
32 affairs in matters not subject to this article.

33 (3) Not engage directly or indirectly in any activity,
34 occupation or business interfering or inconsistent with his or
35 her duties as Chief Administrative Law Judge;

36 (4) Not hold any other appointed public office or any
37 elected public office or any other position of public trust; and

38 (5) Not be a candidate for any elected public office, or
39 serve on or under any committee of any political party.

40 (e) The Governor may remove the Chief Administrative
41 Law Judge only for incompetence, neglect of duty, official
42 misconduct or violation of subsection (d) of this section, and

43 removal shall be in the same manner as that specified for
44 removal of elected state officials in section six, article six,
45 chapter six of this code.

**§11-10A-7. Powers and duties of Chief Administrative Law
Judge; all employees, except Chief Administrative
Law Judge, members of classified service; qualifi-
cations of administrative law judges.**

1 (a) The Chief Administrative Law Judge is the chief
2 executive officer of the Office of Tax Appeals and he or she
3 may employ one person to serve as executive director, one staff
4 attorney and other clerical personnel as necessary for the proper
5 administration of this article. The Chief Administrative Law
6 Judge may delegate administrative duties to other employees,
7 but the Chief Administrative Law Judge shall be responsible for
8 all official delegated acts.

9 (1) Upon the request of the Chief Administrative Law
10 Judge, the Governor may appoint up to two administrative law
11 judges as necessary for the proper administration of this article.

12 (2) All employees of the Office of Tax Appeals, except the
13 Chief Administrative Law Judge, shall be in the classified
14 service and shall be governed by the provisions of the statutes,
15 rules and policies of the classified service in accordance with
16 the provisions of article six, chapter twenty-nine of this code.

17 (3) Prior to employment by the Office of Tax Appeals, all
18 administrative law judges shall be admitted to the practice of
19 law in this state and have at least two years of full-time or
20 equivalent part-time experience as an attorney with federal or
21 state tax law expertise.

22 (4) The Chief Administrative Law Judge and all administra-
23 tive law judges shall be members of the public employees
24 retirement system and do not qualify as participants in the
25 judicial retirement system during their tenure with the Office of
26 Tax Appeals.

- 27 (b) The Chief Administrative Law Judge shall:
- 28 (1) Direct and supervise the work of the legal staff;
- 29 (2) Make hearing assignments;
- 30 (3) Maintain the records of the Office of Tax Appeals;
- 31 (4) Review and approve decisions of administrative law
- 32 judges as to legal accuracy, clarity and other requirements;
- 33 (5) Publish decisions in accordance with the provisions of
- 34 section sixteen of this article;
- 35 (6) Submit to the Legislature, on or before the fifteenth day
- 36 of February, an annual report summarizing the Office of Tax
- 37 Appeals' activities since the end of the last report period,
- 38 including a statement of the number and type of matters
- 39 handled by the Office of Tax Appeals during the preceding
- 40 fiscal year and the number of matters pending at the end of the
- 41 year; and
- 42 (7) Perform the other duties necessary and proper to carry
- 43 out the purposes of this article.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.

§17-16A-3. West Virginia Parkways, Economic Development and Tourism Authority generally.

- 1 (a) The West Virginia Parkways, Economic Development
- 2 and Tourism Authority is continued as an agency of the state,
- 3 and the exercise by the Parkways Authority of the powers
- 4 conferred by this article in the construction, reconstruction,
- 5 improvement, operation and maintenance of parkway, eco-
- 6 nomic development and tourism projects shall be deemed an
- 7 essential governmental function of the state.

8 (b) The West Virginia Parkways, Economic Development
9 and Tourism Authority shall consist of seven members,
10 including the Governor or designee, the Transportation Secre-
11 tary and five public members appointed by the Governor, by
12 and with the advice and consent of the Senate. The appointed
13 members shall be residents of the state and shall have been
14 qualified electors for a period of at least one year next preced-
15 ing their appointment. Public members are appointed for eight-
16 year terms, which are staggered in accordance with the initial
17 appointments under prior enactment of this section. Any
18 member whose term has expired shall serve until his or her
19 successor has been duly appointed and qualified. Any person
20 appointed to fill a vacancy shall serve only for the unexpired
21 term. Any member shall be eligible for reappointment. Each
22 appointed member of the Parkways Authority before entering
23 upon his or her duties shall take an oath as provided by section
24 five, article IV of the constitution of West Virginia.

25 (c) The Governor or designee shall serve as chair and the
26 Authority shall annually elect one of the appointed members as
27 vice chair, and shall also elect a secretary and treasurer who
28 need not be members of the Parkways Authority.

29 (d) The Governor appoints an Executive Director of the
30 Authority with the advice and consent of the Senate. The
31 Executive Director serves at the Governor's will and pleasure.
32 The Executive Director is responsible for managing and
33 administering the daily functions of the Authority and for
34 performing all other functions necessary to the effective
35 operation of the Authority. The compensation of the Executive
36 Director is annually fixed by the Governor.

37 (e) Four members of the Parkways Authority shall consti-
38 tute a quorum and the vote of a majority of members present
39 shall be necessary for any action taken by the Parkways
40 Authority. No vacancy in the membership of the Parkways
41 Authority shall impair the right of a quorum to exercise all the
42 rights and perform all the duties of the Parkways Authority. The
43 Parkways Authority shall meet at least monthly and either the

44 chair or any four members shall be empowered to call special
45 meetings for any purpose: *Provided*, That notice of any meeting
46 shall be given to all members of the Parkways Authority not
47 less than ten days prior to said special meetings.

48 (f) Before the issuance of any parkway revenue bonds or
49 revenue refunding bonds under the provisions of this article,
50 each appointed member of the Parkways Authority shall
51 execute a surety bond in the penal sum of twenty-five thousand
52 dollars and the secretary and treasurer shall execute a surety
53 bond in the penal sum of fifty thousand dollars, each surety
54 bond to be conditioned upon the faithful performance of the
55 duties of his or her office, to be executed by a surety company
56 authorized to transact business in West Virginia as surety and
57 to be approved by the Governor and filed in the Office of the
58 Secretary of State.

59 (g) The members of the Parkways Authority shall not be
60 entitled to compensation for their services, but shall be reim-
61 bursed for all reasonable and necessary expenses actually
62 incurred in the performance of their duties in a manner consis-
63 tent with guidelines of the Travel Management Office of the
64 Department of Administration.

65 (h) All expenses incurred in carrying out the provisions of
66 this article shall be payable solely from funds provided under
67 the authority of this article and no liability or obligation shall be
68 incurred by the Parkways Authority beyond the extent to which
69 moneys shall have been provided under the authority of this
70 article.

71 (i) Pursuant to the provisions of article ten, chapter four of
72 this code, the West Virginia Parkways, Economic Development
73 and Tourism Authority shall continue to exist until the first day
74 of July, two thousand seven.

§17-16A-10. Parkway revenue bonds generally.

1 (a) The Parkways Authority is authorized to provide by
2 resolution for the issuance of parkway revenue bonds of the

3 state for the purpose of paying all or any part of the cost of one
4 or more projects: *Provided*, That this section shall not be
5 construed as authorizing the issuance of parkway revenue bonds
6 for the purpose of paying the cost of the West Virginia Turn-
7 pike, which parkway revenue bonds may be issued only as
8 authorized under section eleven of this article. The principal of
9 and the interest on bonds shall be payable solely from the funds
10 provided for payment.

11 (b) The bonds of each issue shall be dated, shall bear
12 interest at a rate as may be determined by the Parkways
13 Authority in its sole discretion, shall mature at a time not
14 exceeding forty years from their date or of issue as may be
15 determined by the Parkways Authority, and may be made
16 redeemable before maturity, at the option of the Parkways
17 Authority at a price and under the terms and conditions as may
18 be fixed by the Parkways Authority prior to the issuance of the
19 bonds.

20 (c) The Parkways Authority shall determine the form of the
21 bonds, including any interest coupons to be attached thereto,
22 and shall fix the denomination of the bonds and the place of
23 payment of principal and interest, which may be at any bank or
24 trust company within or without the state.

25 (d) The bonds shall be executed by manual or facsimile
26 signature by the chair of the Parkways Authority, and the
27 official seal of the Parkways Authority shall be affixed to or
28 printed on each bond, and attested, manually or by facsimile
29 signature, by the secretary and treasurer of the Parkways
30 Authority . Any coupons attached to any bond shall bear the
31 manual or facsimile signature of the chair of the Parkways
32 Authority.

33 (e) In case any officer whose signature or a facsimile of
34 whose signature appears on any bonds or coupons shall cease
35 to be an officer before the delivery of the bonds, the signature
36 or facsimile shall nevertheless be valid and sufficient for all
37 purposes the same as if he had remained in office until delivery.

38 In case the seal of the Parkways Authority has been changed
39 after a facsimile has been imprinted on the bonds, then the
40 facsimile seal will continue to be sufficient for all purposes.

41 (f) All bonds issued under the provisions of this article shall
42 have all the qualities and incidents of negotiable instruments
43 under the negotiable instruments law of the state. The bonds
44 may be issued in coupon or in registered form, or both, as the
45 Parkways Authority may determine, and provision may be
46 made for the registration of any coupon bonds as to principal
47 alone and also as to both principal and interest, and for the
48 recorders into coupon bonds of any bonds registered as to both
49 principal and interest.

50 (g) The Parkways Authority may sell the bonds at a public
51 or private sale at a price it determines to be in the best interests
52 of the state.

53 (h) The proceeds of the bonds of each issue shall be used
54 solely for the payment of the cost of the parkway project or
55 projects for which the bonds were issued, and shall be disbursed
56 in a manner consistent with the resolution authorizing the
57 issuance of the bonds or in the trust agreement securing the
58 bonds.

59 (i) If the proceeds of the bonds of any issue, by error of
60 estimates or otherwise, shall be less than the cost, then addi-
61 tional bonds may in like manner be issued to provide the
62 amount of the deficit. Unless otherwise provided in the resolu-
63 tion authorizing the issuance of the bonds or in the trust
64 agreement securing the bonds, the additional bonds shall be
65 deemed to be of the same issue and shall be entitled to payment
66 from the same fund without preference or priority of the bonds
67 first issued.

68 (j) If the proceeds of the bonds of any issue exceed the cost
69 of the project or projects for which the bonds were issued, then
70 the surplus shall be deposited to the credit of the sinking fund
71 for the bonds.

72 (k) Prior to the preparation of definitive bonds, the Park-
73 ways Authority may, under like restrictions, issue interim
74 receipts or temporary bonds, with or without coupons, ex-
75 changeable for definitive bonds when the bonds have been
76 executed and are available for delivery. The Parkways Author-
77 ity may also provide for the replacement of any bonds that
78 become mutilated or are destroyed or lost.

79 (l) Bonds may be issued under the provisions of this article
80 without obtaining the consent of any department, division,
81 commission, board, bureau or agency of the state in accordance
82 with this article.

CHAPTER 49. CHILD WELFARE.

ARTICLE 9. MISSING CHILDREN INFORMATION ACT.

§49-9-15. Clearinghouse Advisory Council; members, appoint- ments and expenses; appointment, duties and compensation of director.

1 (a) The Clearinghouse Advisory Council is continued as a
2 body corporate and politic, constituting a public corporation
3 and government instrumentality. The Council shall consist of
4 eleven members, who are knowledgeable about and interested
5 in issues relating to missing or exploited children, as follows:

6 (1) Six members to be appointed by the Governor, with the
7 advice and consent of the Senate, with not more than four
8 belonging to the same political party, three being from different
9 congressional districts of the state and, as nearly as possible,
10 providing broad state geographical distribution of members of
11 the Council, and at least one representing a nonprofit organiza-
12 tion involved with preventing the abduction, runaway or
13 exploitation of children or locating missing children;

14 (2) The Secretary of the Department of Health and Human
15 Resources or his or her designee;

16 (3) The Superintendent of the West Virginia State Police or
17 his or her designee;

18 (4) The State Superintendent of Schools or his or her
19 designee;

20 (5) The Director of the Criminal Justice and Highway
21 Safety Division or his or her designee; and (6) The Executive
22 Director of the Governor's Cabinet on Children and Families.

23 (b) The Governor shall appoint the six Council members for
24 staggered terms. The terms of the members first taking office
25 on or after the effective date of this legislation shall expire as
26 designated by the Governor. Each subsequent appointment shall
27 be for a full three-year term. Any appointed member whose
28 term is expired shall serve until a successor has been duly
29 appointed and qualified. Any person appointed to fill a vacancy
30 shall serve only for the unexpired term. A member is eligible
31 for only one successive reappointment. A vacancy shall be
32 filled by the Governor in the same manner as the original
33 appointment was made.

34 (c) Members of the Council are not entitled to compensa-
35 tion for services performed as members but are entitled to
36 reimbursement for all reasonable and necessary expenses
37 actually incurred in the performance of their duties in a manner
38 consistent with the guidelines of the Travel Management Office
39 of the Department of Administration.

40 (d) A majority of serving members constitutes a quorum for
41 the purpose of conducting business. The chair of the Council
42 shall be designated by the Governor from among the appointed
43 Council members who represent nonprofit organizations
44 involved with preventing the abduction, runaway or exploita-
45 tion of children or locating missing children. The term of the
46 chair shall run concurrently with his or her term of office as a
47 member of the Council. The Council shall conduct all meetings
48 in accordance with the open governmental meetings law
49 pursuant to article nine-a, chapter six of this code.

50 (e) The employee of the West Virginia State Police who is
51 primarily responsible for the clearinghouse established by
52 section three of this article shall serve as the Executive Director

53 of the Council. He or she shall receive no additional compensa-
54 tion for service as the Executive Director of the Council but
55 shall be reimbursed for any reasonable and necessary expenses
56 actually incurred in the performance of his or her duties as
57 Executive Director in a manner consistent with the guidelines
58 of the Travel Management Office of the Department of Admin-
59 istration.

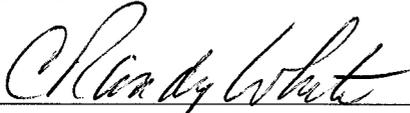
60 (f) The expenses of Council members and the Executive
61 Director shall be reimbursed from funds provided by foundation
62 grants, in-kind contributions or funds obtained pursuant to
63 subsection (b), section seventeen of this article.

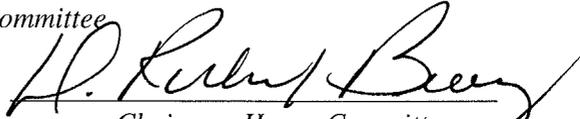
64 (g) The Executive Director shall provide or obtain informa-
65 tion necessary to support the administrative work of the Council
66 and, to that end, may contract with one or more nonprofit
67 organizations or state agencies for research and administrative
68 support.

69 (h) The Executive Director of the Council shall be available
70 to the Governor and to the Speaker of the House of Delegates
71 and the President of the Senate to analyze and comment upon
72 proposed legislation and rules which relate to or materially
73 affect missing or exploited children.

74 (i) The Council shall prepare and publish an annual report
75 of its activities and accomplishments and submit it to the
76 Governor and to the Joint Committee on Government and
77 Finance on or before the fifteenth day of December of each
78 year.

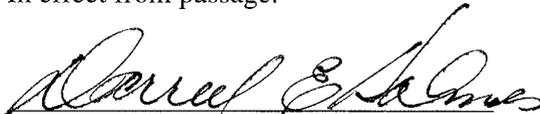
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

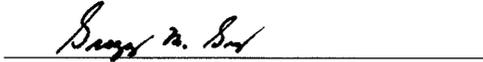

Chairman Senate Committee

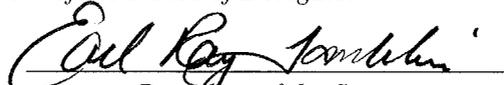

Chairman House Committee

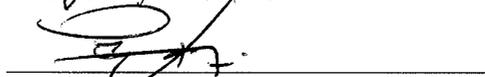
Originating in the House.

In effect from passage.

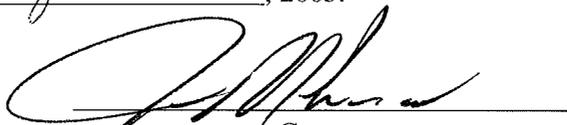

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 8th
day of May, 2005.


Governor

PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 4:05 PM