ACTS

OF THE

LEGISLATURE

OF

WEST VIRGINIA

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

Volume I
Chapters 1 - 132

WEST VIRGINIA HOUSE OF DELEGATES

HONORABLE RICHARD THOMPSON

SPEAKER OF THE HOUSE

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FOREWORD

These volumes contain the Acts of the Second Regular Session and the First and Second Extraordinary Sessions of the 79th Legislature, 2010, and the Fourth Extraordinary Session, 2009.

Second Regular Session, 2010

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

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

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

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

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

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

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First Extraordinary Session, 2010

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

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

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

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Second Extraordinary Session, 2010

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

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

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

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Fourth Extraordinary Session, 2009

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

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

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

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

These Acts may be purchased from the Office of the Clerk of the House, 212 Main Unit, State Capitol, Charleston, West Virginia 25305.

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

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2010

OFFICERS

Speaker-- Richard Thompson, Wayne
Clerk--Gregory M. Gray, Charleston
Sergeant at Arms--Oce Smith, Fairmont
Doorkeeper--John Roberts, Hedgesville

District	Name	Address	Legislative Service
First	Pat McGeehan (D)	Chester	79th
	Randy Swartzmiller (D)	Chester	75th - 79th
Second	Timothy R. Ennis (D)	Wellsburg	72nd - 79th
	Roy E. Givens (D)	Wellsburg	64th - 69th; 72nd - 75th; 79th
Third	Tal Hutchins (D)	Wheeling	72nd - 74th; 78th - 79th
	Orphy Klempa (D)	Wheeling	78th - 79th
Fourth	Michael T. Ferro (D)	McMechen	79th
	Scott G. Varner (D)	Moundsville	71st - 79th
Fifth	Dave Pethtel (D)	Hundred	69th - 71st; 74th - 79th
Sixth	William Roger Romine (R)	Sistersville	75th - 79th
Seventh	Lynwood "Woody" Ireland (R)	Pullman	78th - 79th
Eighth	Everette W. Anderson, Jr.(R)	Williamstown	71st - 79th
Ninth	Larry W. Border (R)	Davisville	70th - 79th
Tenth	Tom Azinger (R)	Vienna	72nd - 79th
	John Ellem (R)	Parkersburg	75th - 79th
	Daniel Poling (D)	Parkersburg	Appt. 1/07, 78th; 79th
Eleventh	Bob Ashley (R)	Spencer	67th - 73rd; 75th - 79th
Twelfth	Mitch Carmichael (R)	Ripley	75th - 79th
Thirteenth	Dale Martin (D)	Poca	75th - 79th
	Brady Paxton (D)	Liberty	71st; Appt. 4/22/99, 74th; 75th -79th
Fourteenth	Troy Andes (R)	Hurricane	78th - 79th
	Patti Eagloski Schoen (R)	Scott Depot	76th - 79th
Fifteenth	Kevin J. Craig (D)	Huntington	75th - 79th
	Carol Miller (R)	Huntington	78th - 79th
	Jim Morgan (D)	Huntington	Appt. 2/01, 75th; 76th - 79th
Sixteenth	Doug Reynolds (D)	Huntington	78th - 79th
	Kelli Sobonya (R)	Huntington	76th - 79th
	Dale Stephens (D)	Huntington	75th; 77th - 79th
Seventeenth	Don C. Perdue (D)	Prichard	74th - 79th
	Richard Thompson (D)	Lavelette	65th, Resigned 6/81; 76th - 79th
Eighteenth	Larry W. Barker (D)	Madison	77th - 79th
Nineteenth	Greg Butcher (D)	Chapmanville	73rd - 77th; 79th
	Jeff Eldridge (D)	Harts	77th - 79th
	Ralph Rodighiero (D)	Logan	78th - 79th
	Josh Stowers (D)	Alum Creek	79th
Twentieth	K. Steven Kominar (D)	Kermit	72nd - 79th
Twenty-first	Harry Keith White (D)	Gilbert	Appt. 9/11/92, 70th; 71st - 79th
Twenty-second	Daniel J. Hall (D)	Oceana	79th
	Linda Goode Phillips (D)	Pineville	79th
Twenty-third	Clif Moore (D)	Thorpe	77th - 79th
Twenty-fourth	John H. Shott (R)	Bluefield	79th
Twenty-fifth	John R. Frazier (D)	Princeton	65th; 79th
	Thomas Mike Porter (R)	Princeton	77th - 79th
Twenty-sixth	Gerald Crosier (D)	Union	76th - 79th
Twenty-seventh	Virginia Mahan (D)	Green Sulphur Springs	73rd - 79th
	Ricky Moye (D)	Crab Orchard	78th - 79th
	Linda Sumner (R)	Beckley	76th - 79th
	Sally Susman (D)	Beckley	74th - 77th; 79th
	William R. Wooton (D)	Beckley	63rd - 67th; 69th; (Senate 70th - 75th); 79th

MEMBERS OF THE HOUSE OF DELEGATES, Continued

District	Name	Address	Legislative Service
Twenty-eighth	Thomas W. Campbell (D)	Lewisburg	73rd - 79th
	Ray Canterbury (R)	Ronceverte	75th - 79th
Twenty-ninth	Tom Louisos (D)	Oak Hill	67th - 68th; 70th - 77th; 79th
	David G. Perry (D)	Oak Hill	75th - 79th
	Margaret Anne Staggers (D)	Fayetteville	78th - 79th
Thirtieth	Bonnie Brown (D)	South Charleston	66th - 68th; 70th; 75th - 79th
	Nancy Peoples Guthrie (D)	Charleston	78th - 79th
	Barbara Burruss Hatfield (D)	South Charleston	67th - 69th; 74th - 79th
	Mark Hunt (D)	Charleston	72nd - 74th; 77th; 79th
	Doug Skaff (D)	South Charleston	79th
	Sharon Spencer (D)	Charleston	66th; 68th - 71st; 73rd - 79th
	Danny Wells	Charleston	77th - 79th
Thirty-first	[1]Meshea L. Poore (D)	Charleston	Appt. 12/18/09, 79th
Thirty-second	Tim Armstead (R)	Elkview	Appt. 9/5/98, 73rd; 74th - 79th
	Patrick Lane (R)	Cross Lanes	77th - 79th
	Ron Walters (R)	Cross Lanes	71st - 73rd; 75th - 79th
Thirty-third	David Walker (D)	Procious	79th
Thirty-fourth	Brent Boggs (D)	Gassaway	73rd - 79th
Thirty-fifth	Sam J. Argento (D)	Mt. Nebo	77th - 79th
Thirty-sixth	Joe Talbott (D)	Webster Springs	71st - 72nd; 76th - 79th
Thirty-seventh	William G. Hartman (D)	Elkins	76th - 79th
	[2]Mike Ross (D)	Coalton	(Senate 71st - 76th); 79th
Thirty-eighth	Margaret (Peggy) D. Smith (D)	Weston	79th
Thirty-ninth	Bill Hamilton (R)	Buckhannon	76th - 79th
Fortieth	Mary M. Poling (D)	Moatsville	75th - 79th
Forty-first	Samuel J. Cann (D)	Clarksburg	72nd - 79th
	Ron Fragale (D)	Clarksburg	70th - 73rd; 75th - 79th
	Richard J. Iaquinta (D)	Clarksburg	76th - 79th
	Tim Miley (D)	Bridgeport	77th - 79th
Forty-second	Mike Manypenny (D)	Grafton	79th
Forty-third	Michael Caputo (D)	Fairmont	73rd - 79th
	Linda Longstreth (D)	Fairmont	77th - 79th
	Tim Manchin (D)	Fairmont	76th - 79th
Forty-fourth	Robert D. Beach (D)	Morgantown	Appt. 5/98, 73rd; 74th - 79th
	Barbara Evans Fleischauer (D)	Morgantown	72nd - 75th; 78th - 79th
	Charlene Marshall (D)	Morgantown	74th - 79th
	Alex J. Shook (D)	Morgantown	78th - 79th
Forty-fifth	Larry A. Williams (D)	Tunnelton	Appt. 10/8/93,71st; 72nd - 79th
Forty-sixth	Stan Shaver (D)	Tunnelton	74th - 75th; 78th - 79th
Forty-seventh	Harold K. Michael (D)	Moorefield	69th - 79th
Forty-eighth	Allen V. Evans (R)	Dorcas	70th - 79th
Forty-ninth	Robert A. Schadler (R)	Keyser	69th - 70th; 74th - 79th
Fiftieth	Ruth Rowan (R)	Points	77th - 79th
Fifty-first	Daryl E. Cowles (R)	Berkeley Springs	78th - 79th
Fifty-second	Craig P. Blair (R)	Martinsburg	76th - 79th
Fifty-third	Jonathan Miller (R)	Bunker Hill	78th- 79th
Fifty-fourth	Walter E. Duke (R)	Martinsburg	76th - 79th
Fifty-fifth	John Overington (R)	Martinsburg	67th - 79th
Fifty-sixth	[3]Terry Walker (D)	Kearneysville	Appt. 11/18/09, 79th
Fifty-seventh	John Doyle (D)	Shepherdstown	66th; 71st - 79th
Fifty-eighth	Tiffany Lawrence (D)	Ranson	79th

1 Appointed December 18, 2009, to fill the vacancy created by the resignation of the Honorable Carrie Webster.
2 Appointed January 9, 2009, to fill the vacancy created by the death of the Honorable Bill Proudfoot.
3 Appointed November 18, 2009 to fill the vacancy created by the resignation of the Honorable Robert C. Tabb.

(D)	Democrats	71
(R)	Republicans	29
	TOTAL	100

MEMBERS OF THE SENATE

REGULAR SESSION, 2010

OFFICERS

President– Earl Ray Tomblin, Chapmanville
Clerk–Darrell E. Holmes, Charleston
Sergeant at Arms–Howard Wellman, Bluefield
Doorkeeper- Billy L. Bevino, Charleston

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

(D)	Democrats	26
(R)	Republicans	8
	TOTAL	34

COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2010

STANDING

AGRICULTURE

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

BANKING AND INSURANCE

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

CONSTITUTIONAL REVISION

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

EDUCATION

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

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

ENERGY, INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS

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

FINANCE

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

GOVERNMENT ORGANIZATION

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

HOUSE OF DELEGATES COMMITTEES

HEALTH AND HUMAN RESOURCES

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

JUDICIARY

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

NATURAL RESOURCES

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

PENSIONS AND RETIREMENT

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

POLITICAL SUBDIVISIONS

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

ROADS AND TRANSPORTATION

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

COMMITTEE ON SENIOR CITIZEN ISSUES

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

RULES

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

VETERANS' AFFAIRS AND HOMELAND SECURITY

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

ENROLLED BILLS

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

LEGISLATIVE RULE-MAKING REVIEW

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

FOREST MANAGEMENT REVIEW

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

PARKS AND RECREATION

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

COMMITTEES OF THE SENATE
Regular Session, 2010

STANDING

AGRICULTURE

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

BANKING AND INSURANCE

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

CONFIRMATIONS

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

ECONOMIC DEVELOPMENT

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

EDUCATION

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

ENERGY, INDUSTRY AND MINING

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

FINANCE

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

GOVERNMENT ORGANIZATION

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

HEALTH AND HUMAN RESOURCES

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

INTERSTATE COOPERATION

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

JUDICIARY

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

LABOR

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

MILITARY

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

NATURAL RESOURCES

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

PENSIONS

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

RULES

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

TRANSPORTATION AND INFRASTRUCTURE

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

JOINT COMMITTEES

ENROLLED BILLS

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

GOVERNMENT AND FINANCE

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

GOVERNMENT OPERATIONS

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

LEGISLATIVE RULE-MAKING REVIEW

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

PENSIONS AND RETIREMENT

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

RULES

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

STATUTORY LEGISLATIVE COMMISSIONS

COMMISSION ON ECONOMIC DEVELOPMENT

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

COMMISSION ON INTERSTATE COOPERATION

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

COMMISSION ON SPECIAL INVESTIGATIONS

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

FOREST MANAGEMENT REVIEW COMMISSION

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

LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY

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

LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY

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

LEGISLATIVE OVERSIGHT COMMISSION ON STATE WATER RESOURCES

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

LEGISLATIVE OVERSIGHT COMMISSION ON WORKFORCE INVESTMENT FOR ECONOMIC DEVELOPMENT

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

SENATE COMMITTEES

LEGISLATIVE OVERSIGHT COMMITTEE ON THE REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

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

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 2010

CHAPTER 1

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

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. PUBLIC LAND CORPORATION.

§5A-11-3. Public Land Corporation, powers and duties.
§5A-11-6. Competitive bidding and notice requirements before the development or extraction of minerals on certain lands; related standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 2

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

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

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

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-1C-1, §19-1C-2, §19-1C-3, §19-1C-4, §19-1C-5 and §19-1C-6, all to read as follows:

ARTICLE 1C. CARE OF LIVESTOCK.

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

§19-1C-1. Legislative findings.

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

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

6 (2) Maintaining food safety;

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

8 (4) Protecting West Virginia farms and families.

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

§19-1C-2. Definitions.

1 For the purposes of this article:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Maintain food safety;

(3) Encourage locally grown and raised food; and

(4) Protect West Virginia farms and families.

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

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

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

(3) Food safety practices; and

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

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

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

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

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

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

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

§19-1C-6. Meetings of the board.

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

CHAPTER 3

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. INSPECTION AND PROTECTION OF AGRICULTURE.

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

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

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

14 (c) A person who:

15 (1) Owns and operates an apiary;

16 (2) Is registered with the Commissioner; and

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

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

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

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

CHAPTER 4

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

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

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

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

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §19-32-1, §19-32-2, §19-32-3, §19-32-4 and §19-32-5, all to read as follows:

ARTICLE 32. AQUACULTURE DEVELOPMENT.

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

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

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

§19-32-2. Short title.

This article shall be known as the Aquaculture Development Act.

§19-32-3. Definitions.

As used in this article:

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

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

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

(4) "Commissioner" means the Commissioner of Agriculture;

(5) "Department" means the West Virginia Department of Agriculture.

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

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

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

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

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

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

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

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

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

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

§19-32-5. Advisory board.

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

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

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

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

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

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

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

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

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

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

CHAPTER 5

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

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2010.]

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

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

Be it enacted by the Legislature of West Virginia:

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

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

*§17C-5A-3. Safety and treatment program; reissuance of license.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 6

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

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

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

Be it enacted by the Legislature of West Virginia:

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

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

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

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

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17A-1-1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§17A-6-1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 17F. ALL-TERRAIN VEHICLES.

ARTICLE 1. REGULATION OF ALL-TERRAIN VEHICLES.

§17F-1-9. Definition of all-terrain and utility terrain vehicle.

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

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

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

CHAPTER 7

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

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

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

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

Be it enacted by the Legislature of West Virginia:

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

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

§19-20A-2. Vaccination of dogs and cats.
§19-20A-5. Type of vaccine to be furnished; fee.

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

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

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

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

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

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

CHAPTER 8

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

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

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

Be it enacted by the Legislature of West Virginia:

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

TITLE I — GENERAL PROVISIONS.

Title I - General Provisions.
§1. General policy.
§2. Definitions.

§3. Classification of appropriations.
§4. Method of expenditure.
§5. Maximum expenditures.

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

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

"Governor" shall mean the Governor of the State of West Virginia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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State Department of Education--Aid for
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Program--Fund No. 8713 231
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Rehabilitation Services--Fund No. 8734 233
Rehabilitation, State Board of--Division of
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Fund No. 8738 225

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Fund No. 8869 240
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REVENUE, DEPARTMENT OF
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Tax Division–Consolidated Federal Fund--
Fund No. 8899 238

SENIOR SERVICES, BUREAU OF
Senior Services, Bureau of--Fund No. 8724 240

TRANSPORTATION, DEPARTMENT OF
Motor Vehicles, Division of--Fund No. 8787 239
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Health, Division of--Community Mental Health Services--Fund No. 8794 243
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Health, Division of--Preventive Health--Fund No. 8753 242
Health, Division of--Substance Abuse Prevention and Treatment--Fund No. 8793 242
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Human Services, Division of--Social Services--Fund No. 8757 243
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§8. Awards for claims against the State.
§9. Appropriations from State Excess Lottery Revenue.
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§10. Special Revenue Appropriations.
§11. State Improvement Fund Appropriations
§12. Specific funds and collection accounts
§13. Appropriations for refunding erroneous payment.
§14. Sinking fund deficiencies.
§15. Appropriations for local governments.
§16. Total appropriations.
§17. General school fund.

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

LEGISLATIVE

1—Senate

Fund 0165 FY 2011 Org 2100

	Activity	General Revenue Fund
Compensation of Members (R)	003	$ 1,010,000
Compensation and Per Diem of Officers and Employees (R)	005	3,003,210
Employee Benefits (R)	010	597,712
Current Expenses and Contingent Fund (R)	021	561,392
Repairs and Alterations (R)	064	210,410
Computer Supplies (R)	101	40,000
Computer Systems (R)	102	150,000
Printing Blue Book (R)	103	150,000
Expenses of Members (R)	399	700,000
BRIM Premium (R)	913	29,482
Total		$6,452,206

The appropriations for the Senate for the fiscal year 2010 are to remain in full force and effect and are hereby reappropriated to June 30, 2011. Any balances so reappropriated may be transferred and credited to the fiscal year 2011 accounts.

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

The Clerk of the Senate, with the approval of the president, is authorized to draw his or her requisitions upon

the auditor, payable out of the Current Expenses and Contingent Fund of the senate, for any bills for supplies and services that may have been incurred by the senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the Senate offices, the requisitions for which are to be accompanied by bills to be filed with the auditor.

The Clerk of the Senate, with the written approval of the President, or the President of the Senate shall have authority to employ such staff personnel during any session of the Legislature as shall be needed in addition to staff personnel authorized by the Senate resolution adopted during any such session. The Clerk of the Senate, with the written approval of the President, or the President of the Senate shall have authority to employ such staff personnel between sessions of the Legislature as shall be needed, the compensation of all staff personnel during and between sessions of the Legislature, notwithstanding any such Senate resolution, to be fixed by the President of the Senate. The Clerk is hereby authorized to draw his or her requisitions upon the auditor for the payment of all such staff personnel for such services, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

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

The distribution of the blue book shall be by the office of the Clerk of the Senate and shall include seventy-five copies

for each member of the Legislature and two copies for each classified and approved high school and junior high or middle school and one copy for each elementary school within the state.

2—House of Delegates

Fund 0170 FY 2011 Org 2200

Compensation of Members (R)	003	$ 3,000,000
Compensation and Per Diem of Officers and Employees (R)	005	700,000
Current Expenses and Contingent Fund (R)	021	3,954,031
Expenses of Members (R)	399	1,700,000
BRIM Premium (R)	913	50,000
Total		$ 9,404,031

The appropriations for the House of Delegates for the fiscal year 2010 are to remain in full force and effect and are hereby reappropriated to June 30, 2011. Any balances so reappropriated may be transferred and credited to the fiscal year 2011 accounts.

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

The Clerk of the House of Delegates, with the approval of the Speaker, is authorized to draw his or her requisitions upon the auditor, payable out of the Current Expenses and Contingent Fund of the House of Delegates, for any bills for supplies and services that may have been incurred by the House of Delegates and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the House of Delegates' offices, the

requisitions for which are to be accompanied by bills to be filed with the auditor.

The Speaker of the House of Delegates, upon approval of the House committee on rules, shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the House resolution, and the compensation of all personnel shall be as fixed in such House resolution for the session, or fixed by the Speaker, with the approval of the House committee on rules, during and between sessions of the Legislature, notwithstanding such House resolution. The Clerk of the House of Delegates is hereby authorized to draw requisitions upon the auditor for such services, payable out of the appropriation for the Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the House of Delegates.

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

3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2011 Org 2300

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

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

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

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

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

JUDICIAL

4—Supreme Court —
General Judicial

Fund 0180 FY 2011 Org 2400

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

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

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

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

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

EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2011 Org 0100

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

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

6—Governor's Office —
Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2011 Org 0100

1	Unclassified - Total	096	$ 597,099

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

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

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

7—Governor's Office —
Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2011 Org 0100

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

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

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

8—Auditor's Office — General Administration

(WV Code Chapter 12)

Fund 0116 FY 2011 Org 1200

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

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

9—Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2011 Org 1300

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

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

12 Any unexpended balances remaining in the appropriations
13 for Unclassified (fund 0126, activity 099) and Tuition Trust
14 Fund (fund 0126, activity 692) at the close of the fiscal year
15 2010 are hereby reappropriated for expenditure during the
16 fiscal year 2011 with the exception of fund 0126, fiscal year
17 2010, activity 692 ($27,547) which shall expire on June 30,
18 2010.

10—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2011 Org 1400

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

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

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

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

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

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

11—West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2011 Org 1400

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

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

12—Department of Agriculture —
Meat Inspection

(WV Code Chapter 19)

Fund 0135 FY 2011 Org 1400

1 Unclassified - Total	096	$	700,433

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

13—Department of Agriculture —
Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2011 Org 1400

Programs & Awards for 4-H Clubs and FFA/FHA	577	$	15,000
Commissioner's Awards and Programs.	737		43,650
Total		$	58,650

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

(WV Code Chapter 8A)

Fund 0607 FY 2011 Org 1400

Unclassified - Total (R)	096	$	102,743

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

15—Attorney General

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

Fund 0150 FY 2011 Org 1500

Personal Services (R)	001	$	2,230,679
Salary of Attorney General	002		95,000
Annual Increment	004		58,175
Employee Benefits (R)	010		986,811
Unclassified (R)	099		680,357
Better Government Bureau	740		317,964
BRIM Premium	913		118,590
Total		$	4,487,576

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

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

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

16—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2011 Org 1600

Personal Services	001	$	684,299
Salary of Secretary of State	002		95,000
Annual Increment	004		7,000
Employee Benefits	010		275,862
Unclassified (R)	099		202,804
BRIM Premium	913		15,393
Total		$	1,280,358

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

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

17—State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2011 Org 1601

Unclassified — Total	096	$	9,761

DEPARTMENT OF ADMINISTRATION

18—Department of Administration — Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2011 Org 0201

Personal Services	001	$	437,200
Annual Increment	004		3,026
Employee Benefits	010		130,218
Unclassified	099		116,553
Financial Advisor (R)	304		200,000
Lease Rental Payments	516		16,000,000
Design-Build Board	540		19,068
BRIM Premium	913		3,990
Total		$	16,910,055

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

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

19—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2011 Org 0205

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

20—Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2011 Org 0209

Personal Services	001	$	82,411
Annual Increment	004		1,101
Employee Benefits	010		32,416
Unclassified	099		120,500
GAAP Project (R)	125		670,687
BRIM Premium	913		4,526
Total		$	911,641

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

21—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2011 Org 0211

1	Personal Services	001	$ 1,466,406
2	Annual Increment	004	20,000
3	Employee Benefits	010	626,142
4	Unclassified	099	626,747
5	Fire Service Fee	126	14,000
6	Preservation and Maintenance of		
7	Statues and Monuments on		
8	Capitol Grounds	371	68,000
9	BRIM Premium	913	112,481
10	Total		$ 2,933,776

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

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2011 Org 0213

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

7 The division of highways shall reimburse the Unclassified
8 appropriation (fund 2031, activity 099) within the division of

9 purchasing for all actual expenses incurred pursuant to the
10 provisions of W.Va. Code §17-2A-13.

23-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2011 Org 0217

1 Unclassified - Total	096	$	46,550

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

24-West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2011 Org 0219

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

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

25-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2011 Org 0220

1	Unclassified	099	$ 662,906
2	BRIM Premium	913	2,788
3	Total		$ 665,694

26-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2011 Org 0221

1	Personal Services	001	$ 655,000
2	Annual Increment	004	11,940
3	Employee Benefits	010	241,508
4	Unclassified	099	474,222
5	Appointed Counsel Fees and		
6	Public Defender Corporations (R)	127	30,439,720
7	BRIM Premium	913	4,216
8	Total		$ 31,826,606

9 Any unexpended balance remaining in the above
10 appropriation for Appointed Counsel Fees and Public
11 Defender Corporations (fund 0226, activity 127) at the close
12 of the fiscal year 2010 is hereby reappropriated for
13 expenditure during the fiscal year 2011.

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

(WV Code Chapter 5A)

Fund 0233 FY 2011 Org 0224

1	Unclassified - Total	096	$ 5,055

28-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2011 Org 0225

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

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

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

29-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2011 Org 0228

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

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

30-Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 0588 FY 2011 Org 0230

1	Unclassified - Total	096	$10,425,628

31-Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2011 Org 0233

1	Unclassified	099	$	612,371
2	BRIM Premium	913		4,200
3	Total		$	616,571

DEPARTMENT OF COMMERCE

32-Division of Tourism

(WV Code Chapter 5B)

Fund 0246 FY 2011 Org 0304

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

33-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2011 Org 0305

1	Personal Services	001	$	2,520,900

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

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

34-Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2011 Org 0306

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

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

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

35-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2011 Org 0307

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

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

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

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

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

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

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

36-Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2011 Org 0308

Personal Services	001	$ 1,711,510
Annual Increment	004	31,343
Employee Benefits	010	734,041
Unclassified	099	820,033
BRIM Premium	913	47,521
Total		$ 3,344,448

37-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2011 Org 0310

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

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

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

38-Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2011 Org 0314

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

5	WV Diesel Equipment Commission	712	0
6	BRIM Premium	913	68,134
7	Total		$10,436,119

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

39-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2011 Org 0319

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

40-Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2011 Org 0320

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

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

41-WorkForce West Virginia

(WV Code Chapter 23)

Fund 0572 FY 2011 Org 0323

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

42-Department of Commerce - Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2011 Org 0327

1 Unclassified - Total ..... 096 $ [1]*1,442,440

2 [2]***
3
4
5
6
7 ***

43-Division of Energy

(WV Code Chapter 5H)

Fund 0612 FY 2011 Org 0328

1 Unclassified ..... 099 $ [3]*1,717,704
2 BRIM Premium 913 3,298

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

3	Total	$	1,757,502

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

DEPARTMENT OF EDUCATION

44-State Department of Education - School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2011 Org 0402

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

45-State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2011 Org 0402

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

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

5	BRIM Premium	913	21,694
6	Total		$ 1,062,041

46-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2011 Org 0402

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

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

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

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

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

From the above appropriation for Sparse Population Allocation (activity 973), funding shall be provided in the same manner as in Fiscal Year 2010. It shall be available to those counties whose population falls at or below 2.5 students per square mile and which have more than 650 square miles for transportation purposes.

From the above appropriation for Educational Program Allowance (activity 996), $95,100 shall be expended for Webster County Board of Education for Hacker Valley and $142,651 for the Randolph County Board of Education for Pickens School.

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

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

47-State Department of Education -
Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2011 Org 0402

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

Education of Institutionalized Juveniles and Adults (R)	472	15,862,209
Total		$27,393,501

Any unexpended balance remaining in the appropriation for Education of Institutionalized Juveniles and Adults (fund 0314, activity 472) at the close of the fiscal year 2010 is hereby reappropriated for expenditure during the fiscal year 2011 with the exception of fund 0314, fiscal year 2010, activity 472 ($673,500) which shall expire on June 30, 2010.

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

48-State Department of Education - State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2011 Org 0402

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

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

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

49-State Board of Education - Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2011 Org 0402

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

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

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

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

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2011 Org 0402

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

51-West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2011 Org 0403

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

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

DEPARTMENT OF EDUCATION AND THE ARTS

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

(WV Code Chapter 5F)

Fund 0294 FY 2011 Org 0431

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

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

53-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2011 Org 0432

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

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

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

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

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

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

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

54-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2011 Org 0433

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

55-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2011 Org 0439

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

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

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

56-State Board of Rehabilitation - Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2011 Org 0932

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

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

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

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION

57-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2011 Org 0311

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

58-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2011 Org 0313

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

14	BRIM Premium	913	56,802
15	Total		$ 7,681,746

16 Any unexpended balance remaining in the appropriation
17 for Unclassified - Surplus (fund 0273, activity 097) at the
18 close of fiscal year 2010 is hereby reappropriated for
19 expenditure during FY 2011.

20 A portion of the appropriation for Unclassified (fund
21 0273, activity 099) and Dam Safety (fund 0273, activity 607)
22 may be transferred to the special revenue fund Dam Safety
23 Rehabilitation Revolving Fund (fund 3025) for the state
24 deficient dams rehabilitation assistance program.

59-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2011 Org 0325

1	Unclassified	099	$	98,354
2	BRIM Premium	913		2,013
3	Total		$	100,367

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

60-Department of Health and Human Resources - Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2011 Org 0501

1	Unclassified	099	$	209,604
2	Women's Commission (R)	191		176,300
3	Commission for the Deaf			
4	and Hard of Hearing	704		245,272
5	Total		$	631,176

6 Any unexpended balance remaining in the appropriation
7 for the Women's Commission (fund 0400, activity 191) at
8 the close of the fiscal year 2010 is hereby reappropriated for
9 expenditure during the fiscal year 2011 with the exception of
10 fund 0400, fiscal year 2010, activity 191 ($6,220) which shall
11 expire on June 30, 2010.

61-Division of Health -
Central Office

(WV Code Chapter 16)

Fund 0407 FY 2011 Org 0506

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

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

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

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

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

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

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

From the above appropriation for Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, activity 575) $250,000 is for the West Virginia University Center for Excellence in Women's Health; and $400,000 shall be transferred to the Breast and Cervical Cancer Diagnostic Treatment Fund.

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

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

Systems, Inc. (Woman's Place and Harts Health Clinic); $7,600 for the mortgage payment for Northern Greenbrier Health Clinic; $12,061 for the mortgage payment for the Women's Care, Inc. (Putnam); $23,750 for the mortgage payment for the Preston-Taylor Community Health Centers, Inc.; $19,000 for the mortgage payment for the North Fork Clinic (Pendleton); $38,000 for the mortgage payment for the Pendleton Community Care; $36,480 for the mortgage payment for Clay-Battelle Community Health Center; $31,920 for the mortgage payment for Mountaineer Health Clinic in Paw Paw; $12,350 for the mortgage payment for the St. George Medical Clinic; $26,600 for the mortgage payment for the Bluestone Health Center; $42,750 for the mortgage payment for Wheeling Health Right; $45,600 for the mortgage payment for the Minnie Hamilton Health Care Center, Inc.; $51,300 for the mortgage payment for the Shenandoah Valley Medical Systems, Inc.; $42,750 for the mortgage payment for the Change, Inc.; and $27,510 for the mortgage payment for the Wirt County Health Services Association.

62-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2011 Org 0506

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

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

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

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

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

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

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

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

Additional funds have been appropriated in fund 5156, fiscal year 2011, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

63-Division of Health -
West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2011 Org 0506

West Virginia Drinking Water Treatment Revolving Fund - Transfer	689	$	700,000

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

64-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2011 Org 0510

Personal Services	001	$	735,925

2	Annual Increment	004	19,912
3	Employee Benefits	010	264,281
4	Unclassified	099	261,293
5	BRIM Premium	913	9,311
6	Total		$ 1,290,722

65-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2011 Org 0511

1	Personal Services	001	$ 26,491,320
2	Annual Increment	004	771,638
3	Employee Benefits	010	11,656,061
4	Unclassified	099	*[1] 15,165,257
5	Child Care Development	144	*[2]767,709
6	Medical Services Contracts and Office		
7	of Managed Care	183	*[3]1,835,469
8	Medical Services (R)	189	226,471,412
9	Social Services	195	*[4]74,147,057
10	Family Preservation Program	196	1,565,000
11	Family Resource Networks (R)	274	1,905,367
12	Domestic Violence Legal Services		
13	Fund	384	400,000
14	James "Tiger" Morton Catastrophic		
15	Illness Fund	455	695,618
16	MR/DD Waiver	466	87,753,483
17	Child Protective Services Case		
18	Workers	468	17,643,317
19	OSCAR and RAPIDS	515	5,055,102
20	Title XIX Waiver for Seniors	533	*[5]2,000,000

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

21 WV Teaching Hospitals		
22 Tertiary/Safety Net	547	6,356,000
23 Specialized Foster Care	566	365,729
24 Child Welfare System	603	* [6]1,669,501
25 In-Home Family Education	688	750,000
26 WV Works Separate State Program .	698	*[7]4,750,000
27 Child Support Enforcement	705	*[8]6,001,426
28 Medicaid Auditing	706	604,845
29 Temporary Assistance for Needy		
30 Families/Maintenance of Effort .	707	22,969,096
31 Child Care Maintenance of		
32 Effort Match	708	5,693,743
33 Child and Family Services	736	2,850,000
34 Grants for Licensed Domestic		
35 Violence Programs and Statewide		
36 Prevention	750	2,000,000
37 Capital Outlay and Maintenance (R)	755	11,875
38 Medical Services Administrative		
39 Costs	789	14,413,708
40 Indigent Burials (R)	851	1,700,000
41 BRIM Premium	913	834,187
42 Rural Hospitals Under 150 Beds ...	940	2,596,000
43 Children's Trust Fund - Transfer ..	951	300, 000
44 Total		$ 558,378,471

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

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

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

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

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

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

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

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

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

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

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

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

66-Department of Military Affairs and Public Safety - Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2011 Org 0601

Unclassified (R)	099	$ 796,301
Fusion Center (R)	469	493,568
BRIM Premium	913	9,404
Homeland State Security Administrative Agency (R)	953	591,269
Total		$1,890,542

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

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

67-Adjutant General - State Militia

(WV Code Chapter 15)

Fund 0433 FY 2011 Org 0603

Personal Services	001	$	0
Annual Increment	004		0
Employee Benefits	010		0
Unclassified (R)	099		17,849,357
Mountaineer ChalleNGe Academy	709		0
Capital Outlay and Maintenance	755		0
BRIM Premium	913		0
Total			$17,849,357

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

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

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

68-Adjutant General - Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2011 Org 0603

1	Unclassified — Total	096	$	200,000

69-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2011 Org 0605

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

70-Division of Homeland Security and Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2011 Org 0606

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

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

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

71-Division of Corrections - Central Office

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

Fund 0446 FY 2011 Org 0608

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

6 Any unexpended balance remaining in the appropriation
7 for Management Information System (fund 0446, activity
8 398) at the close of the fiscal year 2010 is hereby
9 reappropriated for expenditure during the fiscal year 2011.

72-Division of Corrections - Correctional Units

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

Fund 0450 FY 2011 Org 0608

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

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

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

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

73-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2011 Org 0612

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

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

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

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

74-Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2011 Org 0613

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

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

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

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

75-Division of Veterans' Affairs -
Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 2011 Org 0618

1	Personal Services	001	$ 704,951

2	Annual Increment	004	29,264
3	Employee Benefits	010	315,047
4	Unclassified	099	71,834
5	Total		$ 1,121,096

76-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2011 Org 0619

1	Unclassified - Total	096	$81,156

77-Division of Justice and Community Service

(WV Code Chapter 15)

Fund 0546 FY 2011 Org 0620

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

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

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

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

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

78-Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2011 Org 0621

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

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

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

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

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

79-Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2011 Org 0622

Personal Services	001	$ 1,348,894
Annual Increment	004	38,090
Employee Benefits	010	553,318
Unclassified (R)	099	313,618
BRIM Premium	913	9,969
Total		$ 2,263,889

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

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

DEPARTMENT OF REVENUE

80-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2011 Org 0701

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

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

81-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2011 Org 0702

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

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

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

82-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2011 Org 0703

Unclassified (R)	099	$	843,629
Pay Equity Reserve	364		250,000
BRIM Premium	913		3,628
Total		$	1,097,257

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

83-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2011 Org 0709

Unclassified (R)	099	$	648,935
BRIM Premium	913		3,166
Total		$	652,101

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

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

(WV Code Chapter 29)

Fund 0523 FY 2011 Org 0933

1	Unclassified - Total	096	$	85,723

DEPARTMENT OF TRANSPORTATION

85-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2011 Org 0804

1	Unclassified (R)	099	$	3,385,589
2	BRIM Premium	913		186,413
3	Total		$	3,572,002

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

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

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

86-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2011 Org 0805

Unclassified (R)	099	$ 1,669,170
Federal Funds/Grant Match (R)	749	1,116,839
Total		$ 2,786,009

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

87-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2011 Org 0806

Unclassified (R)	099	$ 398,421
BRIM Premium	913	2,764
Total		$ 401,185

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

88-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2011 Org 0807

1 Unclassified (R)	099	$ 1,213,593
2 Civil Air Patrol	234	155,095
3 Total		$ 1,368,688

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

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

BUREAU OF SENIOR SERVICES

89-Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2011 Org 0508

1 Any unexpended balance remaining in the appropriation
2 for Unclassified - Total - Surplus (fund 0420, activity 284) at
3 the close of the fiscal year 2010 is hereby reappropriated for
4 expenditure during the fiscal year 2011.

HIGHER EDUCATION

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

(WV Code Chapter 18B)

Fund 0596 FY 2011 Org 0420

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

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

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

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

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

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

91-Higher Education Policy Commission - Administration - Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2011 Org 0441

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

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

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

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

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

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

92-Higher Education Policy Commission -
System -
Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2011 Org 0442

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Total TITLE II, Section 1 - General Revenue

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

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

DEPARTMENT OF TRANSPORTATION

93-Division of Motor Vehicles

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

Fund 9007 FY 2011 Org 0802

	Activity	State Road Fund
Personal Services	001	$ 14,623,336
Annual Increment	004	321,240
Employee Benefits	010	5,226,796

4	Unclassified	099	17,657,345
5	Total		$ 37,828,717

94-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2011 Org 0803

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

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

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

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

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

42 Total TITLE II, Section 2 - State Road Fund

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

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

LEGISLATIVE

95-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2011 Org 2300

	Activity	Other Funds
Personal Services	001	$ 286,000
Annual Increment	004	6,200
Employee Benefits	010	109,200
Unclassified	099	135,603
Economic Loss Claim Payment Fund (R)	334	3,390,975
Total		$ 3,927,978

Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, activity 334) at the close of the fiscal year 2010 is hereby reappropriated for expenditure during the fiscal year 2011.

JUDICIAL

96-Supreme Court - Family Court Fund

(WV Code Chapter 51)

Fund 1763 FY 2011 Org 2400

Unclassified - Total	096	$ 1,000,000

EXECUTIVE

97-Auditor's Office - Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2011 Org 1200

Personal Services	001	$ 286,431

2 Annual Increment	004	9,300
3 Employee Benefits	010	134,986
4 Unclassified	099	676,054
5 Total		$ 1,106,771

6 There is hereby appropriated from this fund, in addition
7 to the above appropriation, the necessary amount for the
8 expenditure of funds other than personal services or
9 employee benefits to enable the division to pay the direct
10 expenses relating to land sales as provided in chapter eleven-
11 a of the West Virginia Code.

12 The total amount of this appropriation shall be paid from
13 the special revenue fund out of fees and collections as
14 provided by law.

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

(WV Code Chapter 6)

Fund 1224 FY 2011 Org 1200

1 Unclassified - Total	096	$ 154,922

99-Auditor's Office -
Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2011 Org 1200

1 Personal Services	001	$ 1,164,662
2 Annual Increment	004	18,316
3 Employee Benefits	010	469,696
4 Unclassified	099	1,471,122
5 Total		$ 3,123,796

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

(WV Code Chapter 12)

Fund 1233 FY 2011 Org 1200

1	Unclassified - Total	096	$ 400,000

2 Fifty percent of the deposits made into this fund shall be
3 transferred to the Treasurer's Office - Technology Support
4 and Acquisition Fund (fund 1329, org 1300) for expenditure
5 for the purposes described in W.Va. Code §12-3-10c.

101-Auditor's Office -
Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2011 Org 1200

1	Unclassified - Total	096	$ 4,204,610

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

(WV Code Chapter 6)

Fund 1235 FY 2011 Org 1200

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

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

(WV Code Chapter 18)

Fund 1301 FY 2011 Org 1300

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

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

(WV Code Chapter 12)

Fund 1329 FY 2011 Org 1300

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

105-Department of Agriculture -
Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2011 Org 1400

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

106-Department of Agriculture -
West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2011 Org 1400

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

2	Annual Increment	004	998
3	Employee Benefits	010	15,873
4	Unclassified	099	975,996
5	Total		$ 1,046,251

107-Department of Agriculture -
General John McCausland Memorial Farm

(WV Code Chapter 19)

Fund 1409 FY 2011 Org 1400

1	Unclassified - Total	096	$ 210,000

2 The above appropriation shall be expended in accordance
3 with Article 26, Chapter 19 of the Code.

108-Department of Agriculture -
Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2011 Org 1400

1	Unclassified - Total	096	$ 1,508,544

109-Department of Agriculture -
Donated Food Fund

(WV Code Chapter 19)

Fund 1446 FY 2011 Org 1400

1	Unclassified - Total	096	$ 4,546,778

110-Department of Agriculture -
Integrated Predation Management Fund

(WV Code Chapter 7)

Fund 1465 FY 2011 Org 1400

1	Unclassified - Total	096	$	25,000

111-Attorney General - Antitrust Enforcement

(WV Code Chapter 47)

Fund 1507 FY 2011 Org 1500

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

112-Attorney General - Preneed Burial Contract Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2011 Org 1500

1	Unclassified - Total	096	$	262,818

113-Attorney General - Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2011 Org 1500

1	Unclassified - Total	096	$	901,135

114–Secretary of State -
Service Fees and Collection Account

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2011 Org 1600

1	Personal Services	001	$ 300,000
2	Employee Benefits	010	68,300
3	Unclassified	099	881,700
4	Total		$ 1,250,000

115-Secretary of State -
General Administrative Fees Account

(WV Code Chapters 3, 5 and 59)

Fund 1617 FY 2011 Org 1600

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

DEPARTMENT OF ADMINISTRATION

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

(WV Code Chapter 18)

Fund 2044 FY 2011 Org 0201

Unclassified - Total	096	$ 32,772,000

The above appropriation for Unclassified - Total (fund 2044, activity 096) shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers' Retirement System Employers Accumulation Fund (fund 2601).

117-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2011 Org 0210

Personal Services	001	$ 16,326,413
Annual Increment	004	342,459
Employee Benefits	010	5,659,245
Unclassified	099	15,551,700
Total		$ 37,879,817

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

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

118-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2011 Org 0222

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

6 The total amount of this appropriation shall be paid from
7 a special revenue fund out of fees collected by the division of
8 personnel.

119-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2011 Org 0228

1 Unclassified - Total (R)	096	$	550,092

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

120-Office of Technology -
Chief Technology Officer Administration Fund

(WV Code Chapter 5A)

Fund 2531 FY 2011 Org 0231

1 Unclassified - Total	096	$	1,881,795

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

DEPARTMENT OF COMMERCE

121-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2011 Org 0305

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

122-Division of Forestry -
Timbering Operations Enforcement Fund

(WV Code Chapter 19)

Fund 3082 FY 2011 Org 0305

1	Unclassified - Total	096	$	141,750

123-Division of Forestry -
Severance Tax Operations

(WV Code Chapter 11)

Fund 3084 FY 2011 Org 0305

1	Unclassified - Total	096	$	1,190,145

124-Geological and Economic Survey-
Geological and Analytical Services Fund

(WV Code Chapter 29)

Fund 3100 FY 2011 Org 0306

1	Personal Services	001	$	25,821
2	Employee Benefits	010		2,351
3	Unclassified	099		190,107

4 Total . . . . . $ 218,279

5 The above appropriation shall be used in accordance with
6 W.Va. Code §29-2-4.

125-West Virginia Development Office -
Department of Commerce
Marketing and Communications Operating Fund

(WV Code Chapter 5B)

Fund 3002 FY 2011 Org 0307

1 Unclassified - Total . . . . . 096 $ 3,018,485

126-West Virginia Development Office -
Broadband Deployment Fund

(WV Code Chapter 31)

Fund 3174 FY 2011 Org 0307

1 Unclassified - Total . . . . . 096 $ 5,000,000

127-Division of Labor -
Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2011 Org 0308

1	Personal Services	001	$	1,095,009
2	Annual Increment	004		14,434
3	Employee Benefits	010		406,734
4	Unclassified	099		623,950
5	Total		$	2,140,127

128-Division of Labor -
Elevator Safety Act

(WV Code Chapter 21)

Fund 3188 FY 2011 Org 0308

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

129-Division of Labor -
Crane Operator Certification Fund

(WV Code Chapter 21)

Fund 3191 FY 2011 Org 0308

1	Unclassified - Total	096	$	136,849

130-Division of Labor -
Amusement Rides and Amusement Attraction Safety Fund

(WV Code Chapter 21)

Fund 3192 FY 2011 Org 0308

1	Unclassified - Total	096	$	107,066

131-Division of Labor -
State Manufactured Housing Administration Fund

(WV Code Chapter 21)

Fund 3195 FY 2011 Org 0308

1 Personal Services	001	$	102,203
2 Annual Increment	004		2,662
3 Employee Benefits	010		46,861
4 Unclassified	099		28,724
5 BRIM Premium	913		3,404
6 Total		$	183,854

132-Division of Labor - Weights and Measures Fund

(WV Code Chapter 47)

Fund 3196 FY 2011 Org 0308

1 Unclassified - Total	096	$	50,000

133-Division of Natural Resources

(WV Code Chapter 20)

Fund 3200 FY 2011 Org 0310

1 Wildlife Resources	023	$	5,493,200
2 Administration	155		1,303,878
3 Capital Improvements and			
4 Land Purchase (R)	248		1,373,300
5 Law Enforcement	806		5,493,200
6 Total		$	13,663,578

7 The total amount of this appropriation shall be paid from
8 a special revenue fund out of fees collected by the division of
9 natural resources.

10 Any unexpended balances remaining in the
11 appropriations for Capital Improvements and Land Purchase
12 (fund 3200, activity 248) at the close of the fiscal year 2010
13 are hereby reappropriated for expenditure during the fiscal
14 year 2011.

134-Division of Natural Resources - Game, Fish and Aquatic Life Fund

(WV Code Chapter 20)

Fund 3202 FY 2011 Org 0310

1	Unclassified - Total	096	$	75,000

135-Division of Natural Resources - Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2011 Org 0310

1	Personal Services	001	$	704,058
2	Annual Increment	004		9,930
3	Employee Benefits	010		275,186
4	Unclassified	099		322,567
5	Total		$	1,311,741

136-Division of Natural Resources - Planning and Development Division

(WV Code Chapter 20)

Fund 3205 FY 2011 Org 0310

1	Personal Services	001	$	130,300
2	Annual Increment	004		2,340
3	Employee Benefits	010		46,010
4	Unclassified	099		222,286
5	Total		$	400,936

137-Division of Natural Resources - Whitewater Study and Improvement Fund

(WV Code Chapter 20)

Fund 3253 FY 2011 Org 0310

1	Unclassified - Total	096	$	135,000

138-Division of Natural Resources - Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2011 Org 0310

1	Unclassified - Total	096	$	20,000

139-Miners' Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2011 Org 0314

1	Personal Services	001	$	339,000
2	Annual Increment	004		900
3	Employee Benefits	010		126,800
4	WV Mining Extension Service	026		150,000
5	Unclassified	099		3,591,900
6	Mine Safety Technology Task Force	061		0
7	Total		$	4,208,600

8 Any unexpended balance remaining in the appropriation
9 for Disaster Mitigation (fund 3355, activity 952) at the close
10 of the fiscal year 2010 is hereby reappropriated for
11 expenditure during the fiscal year 2011.

140-Division of Energy - Energy Assistance

(WV Code Chapter 5B)

Fund 3010 FY 2011 Org 0328

1	Energy Assistance — Total	647	$	300,000

141-Division of Energy -
Office of Coal Field Community Development

(WV Code Chapter 5B)

Fund 3011 FY 2011 Org 0328

1	Unclassified - Total	096	$	835,111

DEPARTMENT OF EDUCATION

142-State Board of Education -
Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2011 Org 0402

1	Unclassified - Total	096	$	900,000

143-State Department of Education -
School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2011 Org 0402

1	Personal Services	001	$	794,074
2	Annual Increment	004		9,120
3	Employee Benefits	010		276,409
4	Unclassified	099		271,715
5	Total		$	1,351,318

The above appropriation for the administrative expenses of the school building authority shall be paid from the interest earnings on debt service reserve accounts maintained on behalf of said authority.

144-State Department of Education - FFA-FHA Camp and Conference Center

(WV Code Chapter 18)

Fund 3960 FY 2011 Org 0402

Personal Services	001	$	830,000
Annual Increment	004		13,000
Employee Benefits	010		279,050
Unclassified	099		827,950
Total		$	1,950,000

DEPARTMENT OF EDUCATION AND THE ARTS

145-Office of the Secretary - Lottery Education Fund Interest Earnings - Control Account

(WV Code Chapter 29)

Fund 3508 FY 2011 Org 0431

Governor's Honor Academy	478	$	100,000
EPSCoR (R)	571		359,368
Literacy Project (R)	899		350,000
Total		$	809,368

Any unexpended balance remaining in the appropriation for EPSCoR (fund 3508, activity 571), Educational Enhancements (fund 3508, activity 695), and Literacy Project

8 (fund 3508, activity 899) at the close of the fiscal year 2010
9 are hereby reappropriated for expenditure during the fiscal
10 year 2011.

146-Division of Culture and History –
Public Records and Preservation Revenue Account

(WV Code Chapter 5A)

Fund 3542 FY 2011 Org 0432

1	Unclassified – Total	096	$	800,000

147-State Board of Rehabilitation -
Division of Rehabilitation Services -
West Virginia Rehabilitation Center -
Special Account

(WV Code Chapter 18)

Fund 8664 FY 2011 Org 0932

1	Unclassified - Total	096	$	2,905,360

DEPARTMENT OF ENVIRONMENTAL PROTECTION

148-Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2011 Org 0312

1	Personal Services	001	$	577,384
2	Annual Increment	004		7,320
3	Employee Benefits	010		183,919
4	Unclassified	099		1,792,680
5	Total		$	2,561,303

149-Division of Environmental Protection - Hazardous Waste Management Fund

(WV Code Chapter 22)

Fund 3023 FY 2011 Org 0313

1	Personal Services	001	$	314,340
2	Annual Increment	004		5,640
3	Employee Benefits	010		119,654
4	Unclassified	099		159,558
5	Total		$	599,192

150-Division of Environmental Protection - Air Pollution Education and Environment Fund

(WV Code Chapter 22)

Fund 3024 FY 2011 Org 0313

1	Personal Services	001	$	314,794
2	Annual Increment	004		2,940
3	Employee Benefits	010		129,974
4	Unclassified	099		558,833
5	Total		$	1,006,541

151-Division of Environmental Protection - Special Reclamation Fund

(WV Code Chapter 22)

Fund 3321 FY 2011 Org 0313

1	Personal Services	001	$	933,156
2	Annual Increment	004		11,160
3	Employee Benefits	010		351,585
4	Unclassified	099		16,667,832
5	Total		$	17,963,733

152-Division of Environmental Protection -
Oil and Gas Reclamation Fund

(WV Code Chapter 22)

Fund 3322 FY 2011 Org 0313

1	Unclassified - Total	096	$	674,360

153-Division of Environmental Protection -
Oil and Gas Operating Permit and Processing Fund

(WV Code Chapter 22)

Fund 3323 FY 2011 Org 0313

1	Personal Services	001	$	1,037,657
2	Annual Increment	004		9,051
3	Employee Benefits	010		368,752
4	Unclassified	099		874,154
5	Total		$	2,289,614

154-Division of Environmental Protection -
Mining and Reclamation Operations Fund

(WV Code Chapter 22)

Fund 3324 FY 2011 Org 0313

1	Personal Services	001	$	3,685,317
2	Annual Increment	004		65,103
3	Employee Benefits	010		1,543,671
4	Unclassified	099		3,204,365
5	Total		$	8,498,456

155-Division of Environmental Protection -
Underground Storage Tank
Administrative Fund

(WV Code Chapter 22)

Fund 3325 FY 2011 Org 0313

1	Personal Services	001	$	269,168
2	Annual Increment	004		2,340
3	Employee Benefits	010		90,968
4	Unclassified	099		196,796
5	Total		$	559,272

156-Division of Environmental Protection - Hazardous Waste Emergency Response Fund

(WV Code Chapter 22)

Fund 3331 FY 2011 Org 0313

1	Personal Services	001	$	438,397
2	Annual Increment	004		6,750
3	Employee Benefits	010		171,659
4	Unclassified	099		635,576
5	Total		$	1,252,382

157-Division of Environmental Protection - Solid Waste Reclamation and Environmental Response Fund

(WV Code Chapter 22)

Fund 3332 FY 2011 Org 0313

1	Personal Services	001	$	554,901
2	Annual Increment	004		6,672
3	Employee Benefits	010		187,235
4	Unclassified	099		4,022,055
5	Total		$	4,770,863

158-Division of Environmental Protection - Solid Waste Enforcement Fund

(WV Code Chapter 22)

Fund 3333 FY 2011 Org 0313

1	Personal Services	001	$	1,901,038
2	Annual Increment	004		31,380
3	Employee Benefits	010		743,595
4	Unclassified	099		1,210,406
5	Total		$	3,886,419

159-Division of Environmental Protection - Air Pollution Control Fund

(WV Code Chapter 22)

Fund 3336 FY 2011 Org 0313

1	Personal Services	001	$	4,116,572
2	Annual Increment	004		49,910
3	Employee Benefits	010		1,337,174
4	Unclassified	099		2,307,644
5	Total		$	7,811,300

160-Division of Environmental Protection - Environmental Laboratory Certification Fund

(WV Code Chapter 22)

Fund 3340 FY 2011 Org 0313

1	Personal Services	001	$	160,166
2	Annual Increment	004		1,980
3	Employee Benefits	010		56,806
4	Unclassified	099		151,100
5	Total		$	370,052

161-Division of Environmental Protection - Stream Restoration Fund

(WV Code Chapter 22)

Fund 3349 FY 2011 Org 0313

1	Unclassified - Total	096	$	7,244,023

162-Division of Environmental Protection - Litter Control Fund

(WV Code Chapter 22)

Fund 3486 FY 2011 Org 0313

1	Unclassified - Total	096	$	60,000

163-Division of Environmental Protection - Recycling Assistance Fund

(WV Code Chapter 22)

Fund 3487 FY 2011 Org 0313

1	Personal Services	001	$	381,644
2	Annual Increment	004		2,170
3	Employee Benefits	010		132,276
4	Unclassified	099		2,256,658
5	Total		$	2,772,748

164-Division of Environmental Protection - Mountaintop Removal Fund

(WV Code Chapter 22)

Fund 3490 FY 2011 Org 0313

1 Personal Services	001	$	768,322
2 Annual Increment	004		11,785
3 Employee Benefits	010		281,953
4 Unclassified	099		492,090
5 Total		$	1,554,150

165-Oil and Gas Conservation Commission — Special Oil and Gas Conservation Fund

(WV Code Chapter 22C)

Fund 3371 FY 2011 Org 0315

1 Personal Services	001	$	115,814
2 Annual Increment	004		2,976
3 Employee Benefits	010		37,262
4 Unclassified	099		73,206
5 Total		$	229,258

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

166-Division of Health - Tobacco Settlement Expenditure Fund

(WV Code Chapter 4)

Fund 5124 FY 2011 Org 0506

1 Any unexpended balance remaining in the above
2 appropriation for Tobacco Education Program (fund 5124,
3 activity 906) at the close of the fiscal year 2010 is hereby
4 reappropriated for expenditure during the fiscal year 2011.

167-Division of Health - Vital Statistics

(WV Code Chapter 16)

Fund 5144 FY 2011 Org 0506

1 Personal Services	001	$	600,428
2 Annual Increment	004		15,190
3 Employee Benefits	010		252,216
4 Unclassified	099		673,288
5 Total		$	1,541,122

168-Division of Health -
Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)

(WV Code Chapter 16)

Fund 5156 FY 2011 Org 0506

1 Institutional Facilities		
2 Operations (R)	335	$ 38,874,567
3 Medical Services Trust Fund -		
4 Transfer (R)	512	25,300,000
5 Total		$ 64,174,567

6 Any unexpended balance remaining in the appropriation
7 for hospital services revenue account at the close of the fiscal
8 year 2010 is hereby reappropriated for expenditure during the
9 fiscal year 2011, except for fund 5156, fiscal year 2010,
10 activity 040 which shall expire on June 30, 2010.

11 The total amount of this appropriation shall be paid from
12 the hospital services revenue account special fund created by
13 W.Va. Code §16-1-13, and shall be used for operating
14 expenses and for improvements in connection with existing
15 facilities and bond payments.

16 The secretary of the department of health and human
17 resources is authorized to utilize up to ten percent of the
18 funds from the appropriation for Institutional Facilities
19 Operations line to facilitate cost effective and cost saving
20 services at the community level.

21 Necessary funds from the above appropriation may be
22 used for medical facilities operations, either in connection
23 with this account or in connection with the line item
24 designated Institutional Facilities Operations in the
25 consolidated medical service fund (fund 0525, fiscal year
26 2011, organization 0506).

27 From the above appropriation to Institutional Facilities
28 Operations, together with available funds from the
29 consolidated medical services fund (fund 0525, activity 335)
30 on July 1, 2010, the sum of $160,000 shall be transferred to
31 the department of agriculture - land division as advance
32 payment for the purchase of food products; actual payments
33 for such purchases shall not be required until such credits
34 have been completely expended.

169-Division of Health -
Laboratory Services

(WV Code Chapter 16)

Fund 5163 FY 2011 Org 0506

1	Personal Services	001	$	612,001
2	Annual Increment	004		13,774
3	Employee Benefits	010		270,661
4	Unclassified	099		1,298,830
5	Total		$	2,195,266

170-Division of Health -
Health Facility Licensing

(WV Code Chapter 16)

Fund 5172 FY 2011 Org 0506

1	Personal Services	001	$	423,536
2	Annual Increment	004		8,936
3	Employee Benefits	010		162,176
4	Unclassified	099		185,626
5	Total		$	780,274

171-Division of Health -
Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 2011 Org 0506

1	Personal Services	001	$	61,049
2	Annual Increment	004		2,247
3	Employee Benefits	010		23,871
4	Unclassified	099		2,621,540
5	Total		$	2,708,707

172-Division of Health -
Lead Abatement Fund

(WV Code Chapter 16)

Fund 5204 FY 2011 Org 0506

1	Unclassified - Total	096	$	40,000

173-Division of Health -
West Virginia Birth to Three Fund

(WV Code Chapter 16)

Fund 5214 FY 2011 Org 0506

1	Personal Services	001	$ 486,967
2	Annual Increment	004	5,890
3	Employee Benefits	010	205,883
4	Unclassified	099	24,192,437
5	Total		$24,891,177

174-Division of Health -
Tobacco Control Special Fund

(WV Code Chapter 16)

Fund 5218 FY 2011 Org 0506

1	Unclassified—Total	096	$ 15,000

175-West Virginia Health Care Authority —
Health Care Cost Review Fund

(WV Code Chapter 16)

Fund 5375 FY 2011 Org 0507

1	Personal Services	001	$ 2,148,295
2	Annual Increment	004	31,072
3	Employee Benefits	010	690,728
4	Hospital Assistance	025	600,000
5	Unclassified	099	3,192,945
6	Total		$ 6,663,040

7 The above appropriation is to be expended in accordance
8 with and pursuant to the provisions of Article 29B, Chapter
9 16 of the Code and from the special revolving fund
10 designated health care cost review fund.

11 The Health Care Authority is authorized to transfer up to
12 $1,500,000 from this fund to the West Virginia Health
13 Information Network Account (fund 5380) as authorized per
14 W.Va. Code §16-29G-4.

176-West Virginia Health Care Authority -
West Virginia Health Information Network Account

(WV Code Chapter 16)

Fund 5380 FY 2011 Org 0507

1	Unclassified	099	$ 1,500,000
2	Technology Infrastructure Network .	351	3,500,000
3	Total		$ 5,000,000

177-West Virginia Health Care Authority -
Revolving Loan Fund

(WV Code Chapter 16)

Fund 5382 FY 2011 Org 0507

1	Unclassified - Total	096	$ 2,000,000

178-Division of Human Services -
Health Care Provider Tax

(WV Code Chapter 11)

Fund 5090 FY 2011 Org 0511

1	Medical Services	189	$ 152,750,473
2	Medical Services Administrative Costs	789	412,639
3	Total		$153,163,112

4 From the above appropriation for Medical Services
5 Administrative Costs (fund 5090, activity 789), $200,000
6 shall be transferred to the tax division per W.Va. Code §11-
7 27-32 and the remainder shall be transferred to a special
8 revenue account in the treasury for use by the department of
9 health and human resources for administrative purposes. The
10 remainder of all moneys deposited in the fund shall be

11 transferred to the West Virginia medical services fund (fund
12 5084).

179-Division of Human Services -
Child Support Enforcement

(WV Code Chapter 48A)

Fund 5094 FY 2011 Org 0511

1 Unclassified - Total (R) ..... 096 $ 44,287,194

2 Any unexpended balance remaining in the appropriation
3 for Unclassified - Total (fund 5094, activity 096) at the close
4 of the fiscal year 2010 is hereby reappropriated for
5 expenditure during the fiscal year 2011, except for fund
6 5094, activity 096, fiscal year 2007 which shall expire on
7 June 30, 2010.

180-Division of Human Services -
Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2011 Org 0511

1	Medical Services	189	$ 30,556,594
2	Medical Services Administrative Costs	789	536,433
3	Total		$ 31,093,027

4 The above appropriation to Medical Services shall be
5 used to provide state match of Medicaid expenditures as
6 defined and authorized in subsection (c) of W.Va. Code §9-
7 4A-2a. Expenditures from the fund are limited to the
8 following: payment of backlogged billings, funding for
9 services to future federally mandated population groups and
10 payment of the required state match for medicaid

11 disproportionate share payments. The remainder of all
12 moneys deposited in the fund shall be transferred to the
13 division of human services accounts.

181-Division of Human Services -
James "Tiger" Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2011 Org 0511

1 Unclassified - Total ..... 096 $ 1,609,076

182–Family Protection Services Board -
Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2011 Org 0511

1 Unclassified - Total ..... 096 $ 838,022

183–Division of Human Services -
West Virginia Works Separate State College Program Fund

(WV Code Chapter 9)

Fund 5467 FY 2011 Org 0511

1 Unclassified - Total ..... 096 $ 1,700,000

184–Division of Human Services -
West Virginia Works Separate State Two-Parent Program Fund

(WV Code Chapter 9)

Fund 5468 FY 2011 Org 0511

1 Unclassified - Total ..... 096 $ 4,800,000

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

185-Department of Military Affairs and Public Safety - Office of the Secretary - Law-Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund

(WV Code Chapter 15)

Fund 6003 FY 2011 Org 0601

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

186-State Armory Board - General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2011 Org 0603

1 Unclassified - Total ..... 096 $ 600,000

187-Division of Homeland Security and Emergency Management - West Virginia Interoperable Radio Project

(WV Code Chapter 24)

Fund 6295 FY 2011 Org 0606

1 Unclassified - Total (R) ..... 096 $ 2,000,000

Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 6295, activity 096) at the close of fiscal year 2010 is hereby reappropriated for expenditure during the fiscal year 2011.

188-West Virginia Division of Corrections - Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2011 Org 0608

Personal Services	001	$	275,000
Annual Increment	004		2,070
Employee Benefits	010		88,812
Unclassified	099		376,923
Total		$	742,805

189-West Virginia State Police - Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2011 Org 0612

Personal Services	001	$	768,367
Annual Increment	004		32,340
Employee Benefits	010		255,938
Unclassified	099		415,165
BRIM Premium	913		302,432
Total		$	1,774,242

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

190-West Virginia State Police - Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2011 Org 0612

1 Unclassified	099	$	1,327,000
2 BRIM Premium	913		154,452
3 Total		$	1,481,452

4 The total amount of this appropriation shall be paid from
5 the special revenue fund out of receipts collected pursuant to
6 sections nine-a and sixteen, article fifteen, chapter eleven of
7 the code and paid into a revolving fund account in the state
8 treasury.

191-West Virginia State Police -
Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2011 Org 0612

1 Unclassified	099	$	444,980
2 BRIM Premium	913		77,222
3 Total		$	522,202

192-West Virginia State Police -
Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2011 Org 0612

1 Unclassified (R)	099	$	312,002
2 BRIM Premium	913		54,063
3 Total		$	366,065

4 Any unexpended balance remaining in the appropriation
5 for Unclassified (fund 6519, fiscal year 2009, activity 099) at

6 the close of the fiscal year 2010 is hereby reappropriated for
7 expenditure during the fiscal year 2011.

193-West Virginia State Police -
Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2011 Org 0612

1	Unclassified	099	$	247,241
2	BRIM Premium	913		18,524
3	Total		$	265,765

194-West Virginia State Police -
Bail Bond Enforcer Fund

(WV Code Chapter 15)

Fund 6532 FY 2011 Org 0612

1	Unclassified - Total	096	$	3,308

195-Division of Veterans' Affairs -
Veterans' Facilities Support Fund

(WV Code Chapter 9A)

Fund 6703 FY 2011 Org 0613

1	Unclassified - Total	096	$	3,000,000

196-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2011 Org 0615

1	Personal Services	001	$ 1,374,952
2	Annual Increment	004	21,860
3	Employee Benefits	010	442,958
4	Debt Service	040	9,000,000
5	Unclassified	099	545,235
6	Total		$ 11,385,005

197-Division of Veterans' Affairs -
WV Veterans' Home -
Special Revenue Operating Fund

(WV Code Chapter 9A)

Fund 6754 FY 2011 Org 0618

1	Unclassified - Total	096	$ 466,000

198-Fire Commission -
Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2011 Org 0619

1	Personal Services	001	$ 1,815,193
2	Annual Increment	004	31,024
3	Employee Benefits	010	647,548
4	Unclassified	099	1,447,562
5	BRIM Premium	913	58,013
6	Total		$ 3,999,340

7 Any unexpended cash balance remaining in fund 6152 at
8 the close of the fiscal year 2010 is hereby available for
9 expenditure as part of the fiscal year 2011 appropriation.

199-Division of Criminal Justice Services -
WV Community Corrections Fund

(WV Code Chapter 62)

Fund 6386 FY 2011 Org 0620

1	Unclassified - Total	096	$	2,010,348

200-Criminal Justice Services - Court Security Fund

(WV Code Chapter 51)

Fund 6804 FY 2011 Org 0620

1	Unclassified - Total	096	$	1,500,000

DEPARTMENT OF REVENUE

201-Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2011 Org 0303

1	Personal Services	001	$	1,674,727
2	Annual Increment	004		23,000
3	Employee Benefits	010		529,976
4	Unclassified	099		916,095
5	Total		$	3,143,798

202–Office of the Secretary - State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2011 Org 0701

1	Unclassified - Total - Transfer	402	$	31,584,000

The above appropriation for Unclassified - Total - Transfer shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers' Retirement System Employers Accumulation Fund (fund 2601).

203-Tax Division -
Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2011 Org 0702

Personal Services	001	$	17,244
Annual Increment	004		370
Employee Benefits	010		5,845
Unclassified	099		7,717
Total		$	31,176

204-Tax Division -
Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2011 Org 0702

Personal Services	001	$	869,551
Annual Increment	004		23,100
Employee Benefits	010		331,342
Unclassified	099		255,847
Total		$	1,479,840

205-Tax Division -
Special District Excise Tax Administration Fund

(WV Code Chapter 11)

Fund 7086 FY 2011 Org 0702

1 Unclassified - Total ..... 096 $ 51,372

206-Tax Division -
Wine Tax Administration Fund

(WV Code Chapter 60)

Fund 7087 FY 2011 Org 0702

1 Unclassified - Total ..... 096 $ 255,734

207-Tax Division -
Reduced Cigarette Ignition Propensity
Standard and Fire Prevention Act Fund

(WV Code Chapter 47)

Fund 7092 FY 2011 Org 0702

1 Unclassified - Total ..... 096 $ 50,000

208-State Budget Office -
Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

Fund 7400 FY 2011 Org 0703

1 Public Employees Insurance Reserve
2 Fund — Transfer ..... 903 $ 6,800,000

3 The above appropriation for Public Employees Insurance
4 Reserve Fund — Transfer shall be transferred to the Medical
5 Services Trust Fund (fund 5185, org 0511) for expenditure.

209-Insurance Commissioner -
Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2011 Org 0704

1	Personal Services	001	$	510,552
2	Annual Increment	004		6,352
3	Employee Benefits	010		158,997
4	Unclassified	099		1,476,110
5	Total		$	2,152,011

210-Insurance Commissioner - Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2011 Org 0704

1	Personal Services	001	$	379,358
2	Annual Increment	004		6,000
3	Employee Benefits	010		134,765
4	Unclassified	099		277,392
5	Total		$	797,515

211-Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2011 Org 0704

1	Personal Services	001	$	16,205,477
2	Annual Increment	004		376,376
3	Employee Benefits	010		6,990,751
4	Unclassified	099		14,163,710
5	Total		$	37,736,314

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

212-Insurance Commissioner –
Workers' Compensation Old Fund

(WV Code Chapter 23)

Fund 7162 FY 2011 Org 0704

1 Unclassified - Total ..... 096 $ 550,000,000

213-Insurance Commissioner –
Workers' Compensation Uninsured Employers' Fund

(WV Code Chapter 23)

Fund 7163 FY 2011 Org 0704

1 Unclassified - Total ..... 096 $ 27,000,000

214-Insurance Commissioner –
Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

Fund 7164 FY 2011 Org 0704

1 Unclassified - Total ..... 096 $ 5,000,000

215-Insurance Commissioner –
Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

Fund 7165 FY 2011 Org 0704

1 Unclassified - Total ..... 096 $ 10,000,000

216-Lottery Commission -
Revenue Center Construction Fund

(WV Code Chapter 29)

Fund 7209 FY 2011 Org 0705

1	Unclassified - Total	096	$	69,856,349

217-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2011 Org 0706

1	Personal Services	001	$	163,463
2	Annual Increment	004		5,332
3	Employee Benefits	010		70,089
4	Unclassified	099		86,497
5	Total		$	325,381

218-Racing Commission - Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2011 Org 0707

1	Medical Expenses - Total	245	$	57,000

2 The total amount of this appropriation shall be paid from
3 the special revenue fund out of collections of license fees and
4 fines as provided by law.

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

219-Racing Commission - Administration and Promotion

(WV Code Chapter 19)

Fund 7304 FY 2011 Org 0707

1	Personal Services	001	$	123,351
2	Annual Increment	004		2,170
3	Employee Benefits	010		32,456
4	Unclassified	099		82,161
5	Total		$	240,138

220-Racing Commission - General Administration

(WV Code Chapter 19)

Fund 7305 FY 2011 Org 0707

1	Personal Services	001	$	2,225,625
2	Annual Increment	004		25,206
3	Employee Benefits	010		583,657
4	Unclassified	099		614,364
5	Total		$	3,448,852

221-Racing Commission - Administration, Promotion and Education Fund

(WV Code Chapter 19)

Fund 7307 FY 2011 Org 0707

1	Unclassified - Total	096	$	770,996

222-Alcohol Beverage Control Administration - Wine License Special Fund

(WV Code Chapter 60)

Fund 7351 FY 2011 Org 0708

1	Personal Services	001	$	112,338

2	Annual Increment	004	3,780
3	Employee Benefits	010	50,468
4	Unclassified	099	140,324
5	Total		$ 306,910

6 To the extent permitted by law, four classified exempt
7 positions shall be provided from Personal Services line item
8 for field auditors.

223-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2011 Org 0708

1	Personal Services	001	$ 3,683,360
2	Annual Increment	004	98,092
3	Employee Benefits	010	1,629,154
4	Unclassified	099	3,030,048
5	Total		$ 8,440,654

6 From the above appropriation an amount shall be used for
7 the Tobacco/Alcohol Education Program.

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

10 The above appropriation includes the salary of the
11 commissioner and the salaries, expenses and equipment of
12 administrative offices, warehouses and inspectors.

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

DEPARTMENT OF TRANSPORTATION

224-Division of Motor Vehicles -
Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2011 Org 0802

1 Unclassified - Total ..... 096 $ 189,000

225-Division of Motor Vehicles -
Motor Vehicle Fees Fund

(WV Code Chapter 17B)

Fund 8223 FY 2011 Org 0802

1 Unclassified - Total ..... 096 $ 6,517,699

226-Division of Highways -
A. James Manchin Fund

(WV Code Chapter 17)

Fund 8319 FY 2011 Org 0803

1 Unclassified - Total ..... 096 $ 3,000,000

227-Public Port Authority -
Special Railroad and Intermodal Enhancement Fund

(WV Code Chapter 17)

Fund 8254 FY 2011 Org 0806

1 Unclassified - Total ..... 096 $ 2,500,000

BUREAU OF SENIOR SERVICES

228-Bureau of Senior Services -
Community Based Service Fund

(WV Code Chapter 22)

Fund 5409 FY 2011 Org 0508

1 Unclassified - Total ..... 096 $ 8,450,000

HIGHER EDUCATION

229-Higher Education Policy Commission -
System -
Registration Fee Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account

(WV Code Chapters 18 and 18B)

Fund 4902 FY 2011 Org 0442

1 Debt Service ..... 040 $ 4,805,840

2 General Capital Expenditures (R) .. 306 500,000

3 Total ..... $ 5,305,840

4 Any unexpended balance remaining in the appropriation
5 for General Capital Expenditures (fund 4902, activity 306,
6 fiscal year 2010) at the close of fiscal year 2010 is hereby
7 reappropriated for expenditure during the fiscal year 2011.

8 The total amount of this appropriation shall be paid from
9 the special capital improvements fund created in W.Va. Code
10 §18B-10-8. Projects are to be paid on a cash basis and made
11 available on July 1 of each year.

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at the institutions.

230-Higher Education Policy Commission - System - Tuition Fee Capital Improvement Fund (Capital Improvement and Bond Retirement Fund) Control Account

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2011 Org 0442

Debt Service	040	$23,429,974
General Capital Expenditures	306	3,000,000
Facilities Planning and Administration (R)	386	414,056
Total		$26,844,030

Any unexpended balance remaining in the appropriation for Facilities Planning and Administration (fund 4903, activity 386) at the close of fiscal year 2010 is hereby reappropriated for expenditure during the fiscal year 2011.

The total amount of this appropriation shall be paid from the special capital improvement fund created in W.Va. Code §18B-10-8. Projects are to be paid on a cash basis and made available on July 1.

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at the institutions.

231-Higher Education Policy Commission - Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2011 Org 0442

1 Any unexpended balance remaining in the appropriation
2 at the close of the fiscal year 2010 is hereby reappropriated
3 for expenditure during the fiscal year 2011.

4 The appropriation shall be paid from available
5 unexpended cash balances and interest earnings accruing to
6 the fund. The appropriation shall be expended at the
7 discretion of the Higher Education Policy Commission and
8 the funds may be allocated to any institution within the
9 system.

10 The total amount of this appropriation shall be paid from
11 the unexpended proceeds of revenue bonds previously issued
12 pursuant to W.Va. Code §18-12B-8, which have since been
13 refunded.

232-Higher Education Policy Commission -
West Virginia University -
West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2011 Org 0463

1 Unclassified - Total (R) 096 $15,812,292

2 Any unexpended balance remaining in the appropriation
3 at the close of fiscal year 2010 is hereby reappropriated for
4 expenditure during the fiscal year 2011.

233-Higher Education Policy Commission -
Marshall University -
Marshall University Land Sale Account

(WV Code Chapter 18B)

Fund 4270 FY 2011 Org 0471

1 Any unexpended balance remaining in the appropriation
2 at the close of fiscal year 2010 is hereby reappropriated for
3 expenditure during the fiscal year 2011.

234-WV Council for Community and Technical College Education -
West Virginia Northern Community and Technical College - WVNCC Land Sale Account

(WV Code Chapter 18B)

Fund 4732 FY 2011 Org 0489

1 Any unexpended balance remaining in the appropriation
2 at the close of fiscal year 2010 is hereby reappropriated for
3 expenditure during the fiscal year 2011.

MISCELLANEOUS BOARDS AND COMMISSIONS

235-Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Fund 5425 FY 2011 Org 0505

1	Personal Services	001	$	275,000
2	Annual Increment	004		4,500
3	Employee Benefits	010		130,000
4	Unclassified	099		175,000
5	Total		$	584,500

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

236-Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2011 Org 0509

1	Personal Services	001	$	48,520
2	Annual Increment	004		1,240
3	Employee Benefits	010		20,785
4	Unclassified	099		28,230
5	Total		$	98,775

6 The total amount of this appropriation shall be paid from
7 the special revenue fund out of fees and collections as
8 provided by Article 29A, Chapter 16 of the Code.

237-WV State Board of Examiners for Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2011 Org 0906

1	Unclassified - Total	096	$	381,443

238-WV Board of Examiners for Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2011 Org 0907

1	Unclassified - Total	096	$	927,146

239-Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2011 Org 0926

1	Personal Services	001	$	8,348,143
2	Annual Increment	004		161,734

Employee Benefits	010	2,719,122
Unclassified	099	2,957,041
PSC Weight Enforcement	345	4,294,773
Debt Payment/Capital Outlay	520	350,000
BRIM Premium	913	114,609
Total		$18,945,422

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

The Public Service Commission is authorized to spend up to $500,000, from surplus funds in this account, to meet the expected deficiencies in the Motor Carrier Division (fund 8625, org 0926) due to the amendment and reenactment of W.Va. Code §24A-3-1 by Enrolled House Bill Number 2715, Regular Session, 1997.

240-Public Service Commission -
Gas Pipeline Division —
Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

Fund 8624 FY 2011 Org 0926

Personal Services	001	$ 163,509
Annual Increment	004	6,890
Employee Benefits	010	54,843
Unclassified	099	85,966
Total		$ 311,208

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

241-Public Service Commission - Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2011 Org 0926

1	Personal Services	001	$ 1,552,208
2	Annual Increment	004	49,647
3	Employee Benefits	010	532,255
4	Unclassified	099	679,790
5	Total		$ 2,813,900

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

242-Public Service Commission - Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2011 Org 0926

1	Personal Services	001	$ 533,932
2	Annual Increment	004	8,692
3	Employee Benefits	010	165,481
4	Unclassified	099	286,472
5	BRIM Premium	913	4,532
6	Total		$ 999,109

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

243-Real Estate Commission

(WV Code Chapter 30)

Fund 8635 FY 2011 Org 0927

1	Personal Services	001	$	368,686
2	Annual Increment	004		8,828
3	Employee Benefits	010		118,892
4	Unclassified	099		309,122
5	Total		$	805,528

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

244-WV Board of Examiners for Speech-Language Pathology and Audiology

(WV Code Chapter 30)

Fund 8646 FY 2011 Org 0930

1	Unclassified - Total	096	$	114,000

245-WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2011 Org 0935

1	Unclassified - Total	096	$	112,120

246-WV Board of Licensed Dietitians

(WV Code Chapter 30)

Fund 8680 FY 2011 Org 0936

1	Unclassified - Total	096	$	20,500

247-Massage Therapy Licensure Board

(WV Code Chapter 30)

Fund 8671 FY 2011 Org 0938

1 Unclassified - Total ..... 096 $ 125,578

248-Board of Medicine

(WV Code Chapter 30)

Fund 9070 FY 2011 Org 0945

1 Unclassified - Total ..... 096 $ 1,251,299

249-Board of Treasury Investments

(WV Code Chapter 12)

Fund 9152 FY 2011 Org 0950

1 Unclassified - Total ..... 096 $ 1,266,707

2 There is hereby appropriated from this fund, in addition
3 to the above appropriation, the amount of funds necessary for
4 the Board of Treasury Investments to pay the fees and
5 expenses of custodians, fund advisors and fund managers for
6 the Consolidated fund of the State as provided in Article 6C,
7 Chapter 12 of the Code.

8 The total amount of the appropriation shall be paid from
9 the special revenue fund out of fees and collections as
10 provided by law.

11 Total TITLE II, Section 3 - Other Funds

12 (Including claims against the state) $ 1,456,817,902

Sec. 4. Appropriations from lottery net profits. - Net profits of the lottery are to be deposited by the director of the lottery to the following accounts in the amounts indicated. The director of the lottery shall prorate each deposit of net profits in the proportion the appropriation for each account bears to the total of the appropriations for all accounts.

After first satisfying the requirements for Fund 2252, Fund 3963, and Fund 4908 pursuant to W.Va. Code §29-22-18, the director of the lottery shall make available from the remaining net profits of the lottery any amounts needed to pay debt service for which an appropriation is made for Fund 9065, Fund 4297, and Fund 3514 and is authorized to transfer any such amounts to Fund 9065, Fund 4297, and Fund 3514 for that purpose. Upon receipt of reimbursement of amounts so transferred, the director of the lottery shall deposit the reimbursement amounts to the following accounts as required by this section.

250-Education, Arts, Sciences and Tourism - Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2011 Org 0211

	Activity	Lottery Funds
Debt Service - Total	310	$10,000,000

251-West Virginia Development Office - Division of Tourism

(WV Code Chapter 5B)

Fund 3067 FY 2011 Org 0304

Tourism - Telemarketing Center ...	463	$ 82,080
WV Film Office	498	333,220
Tourism - Advertising (R)	618	2,938,284
Tourism - Unclassified (R)	662	3,919,514
Total		$ 7,273,098

Any unexpended balances remaining in the appropriations for Capitol Complex - Capital Outlay (fund 3067, activity 417), Tourism - Advertising (fund 3067, activity 618), Tourism - Unclassified (fund 3067, activity 662), and Tourism - Special Projects (fund 3067, activity 859) at the close of the fiscal year 2010 are hereby reappropriated for expenditure during the fiscal year 2011.

252-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2011 Org 0310

Unclassified (R)	099	$ 2,237,443
Pricketts Fort State Park	324	120,000
Non-Game Wildlife (R)	527	411,232
State Parks and Recreation Advertising (R)	619	548,733
Total		$ 3,317,408

Any unexpended balances remaining in the appropriations for Gypsy Moth Suppression Program for State Parks (fund 3267, activity 017), Unclassified (fund 3267, activity 099), Capital Outlay - Parks (fund 3267, activity 288), Non-Game Wildlife (fund 3267, activity 527), and State Parks and Recreation Advertising (fund 3267, activity 619) at the close of the fiscal year 2010 are hereby reappropriated for expenditure during the fiscal year 2011.

253-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2011 Org 0402

Unclassified (R)	099	$ 3,950,000
FBI Checks	372	115,165
Vocational Education Equipment Replacement	393	783,692
Assessment Program (R)	396	3,410,463
21st Century Technology Infrastructure Network Tools and Support (R)	933	22,015,621
Total		$30,274,941

Any unexpended balances remaining in the appropriations for Unclassified (fund 3951, activity 099), Assessment Program (fund 3951, activity 396), Student Enrichment Programs (fund 3951, activity 879), and 21st Century Technology Infrastructure Network Tools and Support (fund 3951, activity 933) at the close of the fiscal year 2010 are hereby reappropriated for expenditure during the fiscal year 2011.

254-State Department of Education -
School Building Authority -
Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2011 Org 0402

Debt Service - Total	310	$18,000,000

255-Department of Education and the Arts -
Office of the Secretary -
Control Account -
Lottery Education Fund

(WV Code Chapter 5F)

Fund 3508 FY 2011 Org 0431

Unclassified (R)	099	$ 120,000
Commission for National and Community Service	193	435,050
Arts Programs (R)	500	80,575
College Readiness (R)	579	182,780
Challenger Learning Center	862	118,750
Statewide STEM 21st Century Academy.	897	150,000
Total		$ 1,087,155

Any unexpended balances remaining in the appropriations for Unclassified (fund 3508, activity 099), Arts Programs (fund 3508, activity 500), and College Readiness (fund 3508, activity 579) at the close of fiscal year 2010 are hereby reappropriated for expenditure during the fiscal year 2011.

256-Division of Culture and History - Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2011 Org 0432

Huntington Symphony	027	$ *90,250
Martin Luther King, Jr. Holiday Celebration	031	*10,260
Unclassified	099	*630,198
Fairs and Festivals	122	*2,010,518
Archeological Curation/Capital Improvements (R)	246	51,012
Historic Preservation Grants (R)	311	557,407
West Virginia Public Theater	312	*180,500
Tri-County Fair Association	343	*22,562
George Tyler Moore Center for the Study of the Civil War	397	*54,150

13	Greenbrier Valley Theater	423	*135,375
14	Theater Arts of West Virginia	464	265,000
15	Marshall Artists Series	518	*54,150
16	Grants for Competitive Arts		
17	Program (R).	624	1,021,250
18	West Virginia State Fair	657	*47,500
19	Contemporary American Theater		
20	Festival	811	*90,250
21	Independence Hall	812	*45,125
22	Mountain State Forest Festival	864	*63,175
23	WV Symphony	907	*90,250
24	Wheeling Symphony	908	*90,250
25	Appalachian Children's		
26	Chorus	916	*90,250
27	Total		$ 5,751,934

28 Any unexpended balances remaining in the appropriations
29 for Archeological Curation/Capital Improvements (fund 3534,
30 activity 246), Historic Preservation Grants (fund 3534, activity
31 311), Grants for Competitive Arts Program (fund 3534, activity
32 624), and Project ACCESS (fund 3534, activity 865) at the close
33 of the fiscal year 2010 are hereby reappropriated for expenditure
34 during the fiscal year 2011.

***CLERK'S NOTE:** The Governor reduced the following amounts in Item 256:
line 1 from $95,000 to $90,250
line 2 from $10,800 to $10,260
line 4 from $646,644 to $630,198 and deleting the "(R)"
line 5 from $2,090,571 to $2,010,518 and deleting the "(R)"
line 9 from $190,000 to $180,500
line 10 from $23,750 to $22,562
line 12 from $57,000 to $54,150
line 13 from $142,500 to $135,375
line 15 from $57,000 to $54,150
line 18 from $50,000 to $47,500
line 20 from $95,000 to $90,250
line 21 from $47,500 to $45,125
line 22 from $66,500 to $63,175
line 23 from $95,000 to $90,250
line 24 from $95,000 to $90,250
line 25 from $95,000 to $90,250
The total does NOT reflect the reductions made by the Governor.

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***CLERK'S NOTE: Language on lines 35 through 394 was deleted by the Governor.

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CLERK'S NOTE: All language deleted by Governor.

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Any Fairs & Festival awards shall be funded in addition to, and not in lieu of, individual grant allocations derived from the Arts Council and the Cultural Grant Program allocations.

257-Library Commission -
Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2011 Org 0433

1	Books and Films	179	$ *[1]427,500
2	Services to Libraries	180	550,000
3	Grants to Public Libraries	182	*[2]7,931,440
4	Digital Resources	309	219,992
5	Libraries - Special Projects (R)	625	*[3]744,800
6	Infomine Network	884	852,551
7	Total		$ 11,221,427

*CLERK'S NOTE: The Governor reduced the following amounts in Item 257:
line 1 from $450,000 to $427,500
line 3 from $8,348,884 to $7,931,440
line 5 from $800,000 to $744,800
The total does NOT reflect the reductions made by the Governor.

8 Any unexpended balance remaining in the appropriation
9 for Libraries-Special Projects (fund 3559, activity 625) at the
10 close of fiscal year 2010 is hereby reappropriated for
11 expenditure during the fiscal year 2011.

258-Bureau of Senior Services -
Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2011 Org 0508

1	Personal Services	001	$	137,542
2	Annual Increment	004		2,800
3	Employee Benefits	010		61,900
4	Unclassified	099		332,380
5	Local Programs Service Delivery			
6	Costs	200		2,475,250
7	Silver Haired Legislature	202		20,000
8	Area Agencies Administration	203		38,684
9	Senior Citizen Centers and			
10	Programs (R)	462		*2,470,000
11	Transfer to Division of Human Services			
12	for Health Care and Title XIX Waiver			
13	for Senior Citizens	539		31,822,578
14	Roger Tompkins Alzheimers Respite			
15	Care	643		1,794,215
16	Regional Aged and Disabled			
17	Resource Center	767		935,000
18	Senior Services Medicaid Transfer	871		8,670,000
19	Legislative Initiatives for the Elderly	904		10,000,000
20	Long Term Care Ombudsman	905		321,325
21	BRIM Premium	913		7,243
22	In-Home Services and Nutrition			
23	for Senior Citizens	917		4,500,000

*CLERK'S NOTE: The Governor reduced the amount on line 10 from $2,600,000 to $2,470,000.

24	West Virginia Helpline	006	$ *[1]142,500
25	West Virginia Elder Watch	934	0
26	Total		$ 63,968,917

27 Any unexpended balance remaining in the appropriation
28 for Senior Citizen Centers and Programs (fund 5405, activity
29 462), at the close of the fiscal year 2010 is hereby
30 reappropriated for expenditure during the fiscal year 2011.

31 The above appropriation for Transfer to Division of
32 Human Services for Health Care and Title XIX Waiver for
33 Senior Citizens along with the federal moneys generated
34 thereby shall be used for reimbursement for services
35 provided under the program.

259-Community and Technical College —
Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2011 Org 0442

1	Debt Service - Total*[2]	310	$ 5,000,000

2 Any unexpended balance remaining in the appropriation
3 for Capital Outlay and Improvements - Total (fund 4908,
4 activity 847) at the close of fiscal year 2010 is hereby
5 reappropriated for expenditure during the fiscal year 2011.

260-Higher Education Policy Commission -
Lottery Education -
Higher Education Policy Commission -
Control Account

(WV Code Chapters 18B and 18C)

***CLERK'S NOTE:** The Governor reduced the amount [1]on line 24 from $250,000 to $142,500. [2]He also deleted the "(R)" in Item 259, line 1. The total does NOT reflect the reduction by the Governor.

Fund 4925 FY 2011 Org 0441

Marshall Medical School - RHI Program and Site Support (R)	033	$ 427,085
WVU Health Sciences - RHI Program and Site Support (R)	035	1,175,955
RHI Program and Site Support - District Consortia (R)	036	2,213,469
RHI Program and Site Support - RHEP Program Administration (R)	037	169,731
RHI Program and Site Support - Grad Med Ed and Fiscal Oversight (R)	038	96,939
Higher Education Grant Program (R) .	164	859,002
Tuition Contract Program (R)	165	1,020,852
Minority Doctoral Fellowship (R) . .	166	150,000
Underwood—Smith Scholarship Program - Student Awards (R) .	167	141,142
Health Sciences Scholarship (R) . . .	176	251,000
Vice Chancellor for Health Sciences — Rural Health Residency Program (R)	601	249,632
MA Public Health Program and Health Science Technology (R) .	623	57,475
Marshall University Graduate College Writing Project (R)	807	22,960
WV Engineering, Science, and Technology Scholarship Program (R)	868	470,473
Health Sciences Career Opportunities Program (R)	869	347,335
HSTA Program (R)	870	1,278,883
WV Autism Training Center (R) . . .	932	1,915,060
Center for Excellence in Disabilities (R)	967	265,127
Total		$ 11,112,120

Any unexpended balances remaining in the appropriations at the close of fiscal year 2010 are hereby reappropriated for expenditure during the fiscal year 2011.

The above appropriation for Underwood-Smith Scholarship Program - Student Awards (activity 167) shall be transferred to the Underwood -Smith Teacher Scholarship Fund (fund 4922, org 0441) established by W.Va. Code §18C-4-1.

The above appropriation for WV Engineering, Science, and Technology Scholarship Program (activity 868) shall be transferred to the West Virginia Engineering, Science and Technology Scholarship Fund (fund 4928, org 0441) established by W.Va. Code §18C-6-1.

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

Total TITLE II, Section 4 - Lottery Revenue $ 167,007,000

Sec. 5. Appropriations from state excess lottery revenue fund. - In accordance with W.Va. Code §29-22-18a, the following appropriations shall be deposited and disbursed by the director of the lottery to the following accounts in this section in the amounts indicated.

After first funding the appropriations required by W.V. Code §29-22-18a, the director of the lottery shall provide funding from the state excess lottery revenue fund for the remaining appropriations in this section to the extent that funds are available. In the event that revenues to the state excess lottery revenue fund are not sufficient to meet all the appropriations made pursuant to this section, then the director of the lottery shall first provide the necessary funds to meet the appropriation for Fund 7208, activity 482 of this section; next, to provide the funds necessary for Fund 3517, activity 775 of this section; next, to provide the funds necessary for Fund 7208, activity 095 of this section; next, to provide the funds necessary for Fund 3517, activity 978 of this section.

19 Allocation of the funds for each appropriation shall be
20 allocated in succession before any funds are provided for the
21 next subsequent appropriation.

261-Lottery Commission -
Refundable Credit

Fund 7207 FY 2011 Org 0705

	Activity	Lottery Funds
1 Unclassified - Total - Transfer	402	$ 10,000,000

2 The above appropriation for Unclassified - Total -
3 Transfer (activity 402) shall be transferred to the General
4 Revenue Fund to provide reimbursement for the refundable
5 credit allowable under W.Va. Code §11-21-21. The amount
6 of the required transfer shall be determined solely by the state
7 tax commissioner and shall be completed by the director of
8 the lottery upon the commissioner's request.

262-Lottery Commission -
General Purpose Account

Fund 7206 FY 2011 Org 0705

1 Unclassified - Total - Transfer	402	$ 65,000,000

2 The above appropriation for Unclassified - Total -
3 Transfer (activity 402) shall be transferred to the General
4 Revenue Fund as determined by the director of the lottery.

263-Education Improvement Fund

Fund 4295 FY 2011 Org 0441

1 Unclassified - Total - Transfer ..... 402 $ 29,000,000

2 The above appropriation for Unclassified - Total -
3 Transfer (activity 402) shall be transferred to the PROMISE
4 Scholarship Fund (fund 4296, org 0441) established by
5 W.Va. Code §18C-7-7.

6 The Legislature has explicitly set a finite amount of
7 available appropriations and directed the administrators of
8 the Program to provide for the award of scholarships within
9 the limits of available appropriations.

264-Economic Development Authority -
Economic Development Project Fund

Fund 9065 FY 2011 Org 0944

1 Debt Service - Total ..... 310 $ 19,000,000

2 Pursuant to W.Va. Code §29-22-18a, subsection (f),
3 excess lottery revenues are authorized to be transferred to the
4 lottery fund as reimbursement of amounts transferred to the
5 economic development project fund pursuant to section four
6 of this title and W.Va. Code §29-22-18, subsection (f).

265-School Building Authority

Fund 3514 FY 2011 Org 0402

1 Unclassified - Total ..... 096 $ 19,000,000

266-West Virginia Infrastructure Council

Fund 3390 FY 2011 Org 0316

1 Unclassified - Total - Transfer ..... 402 $ 40,000,000

2 The above appropriation for Unclassified - Total -
3 Transfer (activity 402) shall be transferred to the West
4 Virginia Infrastructure Fund (fund 3384, org 0316) created
5 by W.Va. Code §31-15A-9.

267-Higher Education Improvement Fund

Fund 4297 FY 2011 Org 0441

1 Unclassified - Total . . . . . 096 $ 15,000,000

268-State Park Improvement Fund

Fund 3277 FY 2011 Org 0310

1 Unclassified - Total (R) . . . . . 096 $ 5,000,000

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5 Any unexpended balance remaining in the appropriation
6 at the close of the fiscal year 2010 is hereby reappropriated
7 for expenditure during the fiscal year 2011.

8 Appropriations to the State Park Improvement Fund are
9 not to be expended on personal services or employee
10 benefits.

269-Lottery Commission -
Excess Lottery Revenue Fund Surplus

Fund 7208 FY 2011 Org 0705

1 Teachers' Retirement Savings Realized 095 $ 32,772,000
2 Unclassified - Transfer 482 62,900,000

*CLERK'S NOTE: The Governor deleted the language in Item 268, on line 2 through 4.

3 Total ..... $ 95,672,000

4 The above appropriation for Unclassified - Transfer (fund
5 7208, activity 482) shall be transferred to the General
6 Revenue Fund.

7 The above appropriation for Teachers' Retirement
8 Savings Realized (fund 7208, activity 095) shall be
9 transferred to the Employee Pension and Health Care Benefit
10 Fund (fund 2044).

270—Joint Expenses

(WV Code Chapter 4)

Fund 1736 FY 2011 Org 2300

1 Any unexpended balance remaining in the appropriation
2 for Tax Reduction and Federal Funding Increased
3 Compliance (TRAFFIC) - Lottery Surplus (fund 1736,
4 activity 929) at the close of the fiscal year 2010 is hereby
5 reappropriated for expenditure during the fiscal year 2011.

271—Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2011 Org 0100

1 Any unexpended balance remaining in the appropriation
2 for Publication of Papers and Transition Expenses — Lottery
3 Surplus (fund 1046, activity 066) at the close of the fiscal
4 year 2010 is hereby reappropriated for expenditure during the
5 fiscal year 2011.

272-Division of Finance

(WV Code Chapter 5A)

Fund 2208 FY 2011 Org 0209

Any unexpended balance remaining in the appropriation Enterprise Resource Planning System Planning Project (fund 2208, activity 087) at the close of the fiscal year 2010 is hereby reappropriated for expenditure during the fiscal year 2011.

The above appropriation for Enterprise Resource Planning System Planning Project, activity 087, shall be expended upon consultation with the executive and legislative branches.

273—West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2011 Org 0307

Any unexpended balances remaining in the appropriations for Recreational Grants or Economic Development Loans (fund 3170, activity 253), Economic Development Assistance (fund 3170, activity 900), and Connectivity Research and Development - Lottery Surplus (fund 3170, activity 923) at the close of the fiscal year 2010 are hereby reappropriated for expenditure during the fiscal year 2011.

The above appropriation to Connectivity Research and Development - Lottery Surplus shall be used by the West Virginia Development Office for the coordinated development of technical infrastructure in areas where expanded resources and technical infrastructure may be expected or required pursuant to the provisions of W.Va. Code §5A-6-4.

274-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3517 FY 2011 Org 0402

Retirement Systems-Unfunded Liability	775	$ 89,597,503
School Access Safety	978	5,000,000
Total		$ 94,597,503

Any unexpended balance remaining in the appropriation for Student Enrichment Program (fund 3517, org 0402) at the close of fiscal year 2010 is hereby reappropriated for expenditure during the fiscal year 2011.

The above appropriation for Retirement Systems - Unfunded Liability (fund 3517, activity 775) shall be transferred to the Consolidated Public Retirement Board-West Virginia Teachers' Retirement System Employers Accumulation Fund (fund 2601).

The above appropriation for School Access Safety (fund 3517, activity 978), shall be transferred to the School Access Safety Fund (fund 3516).

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275—Higher Education Policy Commission - Administration - Control Account

(WV Code Chapter 18B)

*CLERK'S NOTE: The Governor deleted language in Item 274, line 17 through 20.

Fund 4932 FY 2011 Org 0441

Any unexpended balances remaining in the appropriations for Advanced Technology Centers (fund 4932, activity 028), and HEAPS Grant Program (fund 4932, activity 867) at the close of the fiscal year 2010 are hereby reappropriated for expenditure during the fiscal year 2011.

276-Division of Health — Central Office

(WV Code Chapter 16)

Fund 5219 FY 2011 Org 0506

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 5219, activity 755) at the close of the fiscal year 2010 is hereby reappropriated for expenditure during the fiscal year 2011.

277—Department of Military Affairs and Public Safety - Office of the Secretary

(WV Code Chapter 5F)

Fund 6005 FY 2011 Org 0601

Any unexpended balance remaining in the appropriation for Interoperable Communications System (fund 6005, activity 303) at the close of the fiscal year 2010 is hereby reappropriated for expenditure during the fiscal year 2011.

278—Division of Corrections - Correctional Units

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

Fund 6283 FY 2011 Org 0608

Any unexpended balances remaining in the appropriations for Capital Outlay, Repairs and Equipment (fund 6283, activity 589), and Capital Outlay and Maintenance (fund 6283, activity 755) at the close of the fiscal year 2010 are hereby reappropriated for expenditure during the fiscal year 2011.

279—Racing Commission -

(WV Code Chapter 19)

Fund ____ FY 2011 Org 0707

Special Breeders Compensation
(WVC §29-22-18a, subsection (l)) $2,000,000

Total TITLE II, Section 5 -

Excess Lottery Funds ..... $ 394,269,503

Sec. 6. Appropriations of federal funds. - In accordance with Article 11, Chapter 4 of the Code from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2011.

LEGISLATIVE

280-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2011 Org 2300

	Activity	Federal Funds
1 Unclassified - Total	096	$ 3,000,000

JUDICIAL

281-Supreme Court

Fund 8867 FY 2011 Org 2400

1 Unclassified - Total	096	$ 5,500,000

EXECUTIVE

282-Governor's Office -
American Recovery and Reinvestment Act

(WV Code Chapter 5)

Fund 8701 FY 2011 Org 0100

1 Federal Economic Stimulus	891	$ 266,468,000

2 The above appropriation for Federal Economic Stimulus
3 shall be used in accordance with regulations and guidelines
4 provided by the U.S. Department of Education which include
5 restoring funding levels in the public education funding
6 formula and higher education institutions.

283-Governor's Office -
ARRA NTIA Broadband Infrastructure Grant Fund

(WV Code Chapter 5)

Fund 8717 FY 2011 Org 0100

1 Federal Economic Stimulus	891	$126,000,000

284-Governor's Office -
Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8797 FY 2011 Org 0100

1	Unclassified - Total	096	$	7,272,541
2	Federal Economic Stimulus	891		25,000,000
3	Total		$	32,272,541

285-Governor's Office -
Commission for National and Community Service

(WV Code Chapter 5)

Fund 8800 FY 2011 Org 0100

1	Unclassified - Total	096	$	5,662,509
2	Federal Economic Stimulus	891		323,849
3	Total		$	5,986,358

286-Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2011 Org 1400

1	Unclassified - Total	096	$	5,019,826
2	Federal Economic Stimulus	891		716,000
3	Total		$	5,735,826

287-Department of Agriculture -
Meat Inspection

(WV Code Chapter 19)

Fund 8737 FY 2011 Org 1400

1 Unclassified - Total ..... 096 $ 852,868

288-Department of Agriculture - State Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2011 Org 1400

1 Unclassified - Total ..... 096 $ 1,814,314

289-Department of Agriculture - Land Protection Authority

Fund 8896 FY 2011 Org 1400

1 Unclassified - Total ..... 096 $ 60,000

290-Secretary of State - State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2011 Org 1600

1 Unclassified - Total ..... 096 $ 1,650,000

DEPARTMENT OF ADMINISTRATION

291-West Virginia Prosecuting Attorney's Institute

(WV Code Chapter 7)

Fund 8834 FY 2011 Org 0228

1 Unclassified - Total ..... 096 $ 81,343

292—Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2011 Org 0230

1	Unclassified - Total	096	$ 37,948,479

DEPARTMENT OF COMMERCE

293-Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2011 Org 0305

1	Unclassified - Total	096	$ 10,167,091

294-Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2011 Org 0306

1	Unclassified - Total	096	$ 380,000
2	Federal Economic Stimulus	891	1,162,000
3	Total		$ 1,542,000

295-West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2011 Org 0307

1	Unclassified - Total	096	$ 9,684,681

296-Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2011 Org 0308

1	Unclassified - Total	096	$ 566,143

297-Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2011 Org 0310

1	Unclassified - Total	096	$ 10,519,696

298-Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 8709 FY 2011 Org 0314

1	Unclassified - Total	096	$ 605,548

299-WorkForce West Virginia

(WV Code Chapter 23)

Fund 8835 FY 2011 Org 0323

1	Unclassified	099	$ 512,657
2	Reed Act 2002—Unemployment		
3	Compensation	622	2,850,000
4	Reed Act 2002—Employment		
5	Services	630	1,650,000

6 Total		$ 5,012,657

7 Pursuant to the requirements of 42 U.S.C. 1103, Section
8 903 of the Social Security Act, as amended, and the
9 provisions of W.Va. Code §21A-9-9, the above appropriation
10 to Unclassified shall be used by WorkForce West Virginia
11 for the specific purpose of administration of the state's
12 unemployment insurance program or job service activities,
13 subject to each and every restriction, limitation or obligation
14 imposed on the use of the funds by those federal and state
15 statutes.

300-Division of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2011 Org 0328

1 Unclassified - Total	096	$ 1,505,435
2 Federal Economic Stimulus	891	27,000,000
3 Total		$ 28,505,435

DEPARTMENT OF EDUCATION

301-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2011 Org 0402

1 Unclassified - Total	096	$225,000,000
2 Federal Economic Stimulus	891	53,000,000
3 Total		$278,000,000

302-State Department of Education - School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2011 Org 0402

1	Unclassified - Total	096	$115,000,000
2	Federal Economic Stimulus	891	450,000
3	Total		$115,450,000

303-State Board of Education - Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2011 Org 0402

1	Unclassified - Total	096	$ 16,250,000

304-State Department of Education - Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2011 Org 0402

1	Unclassified - Total	096	$ 106,800,000
2	Federal Economic Stimulus	891	60,000,000
3	Total		$ 166,800,000

305-West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 8716 FY 2011 Org 0403

1	Unclassified - Total	096	$ 320,000

DEPARTMENT OF EDUCATION AND THE ARTS

306-Department of Education and the Arts - Office of the Secretary

(WV Code Chapter 5F)

Fund 8841 FY 2011 Org 0431

1	Unclassified - Total	096	$ 325,000
2	Federal Economic Stimulus	891	50,000
3	Total		$ 375,000

307-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2011 Org 0432

1	Unclassified - Total	096	$ 2,233,324
2	Federal Economic Stimulus	891	300,000
3	Total		$ 2,533,324

308-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2011 Org 0433

1	Unclassified - Total	096	$ 1,950,351

309-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2011 Org 0439

1	Unclassified - Total	096	$ 1,500,000

310-State Board of Rehabilitation - Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2011 Org 0932

1	Unclassified - Total	096	$32,224,316
2	Federal Economic Stimulus	891	4,808,444
3	Total		$37,032,760

311-State Board of Rehabilitation - Division of Rehabilitation Services - Disability Determination Services

(WV Code Chapter 18)

Fund 8890 FY 2011 Org 0932

1	Unclassified - Total	096	$ 21,731,781

DEPARTMENT OF ENVIRONMENTAL PROTECTION

312-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2011 Org 0313

1	Unclassified - Total	096	$ 153,334,192
2	Federal Economic Stimulus	891	48,947,000
3	Total		$ 202,281,192

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

313-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2011 Org 0506

1	Unclassified - Total	096	$	7,325,557

314-Division of Health - Central Office

(WV Code Chapter 16)

Fund 8802 FY 2011 Org 0506

1	Unclassified - Total	096	$	86,579,129
2	Federal Economic Stimulus	891		4,256,000
3	Total		$	90,835,129

315-Division of Health - West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2011 Org 0506

1	Unclassified - Total	096	$	16,000,000
2	Federal Economic Stimulus	891		14,500,000
3	Total		$	30,500,000

316-West Virginia Health Care Authority

(WV Code Chapter 16)

Fund 8851 FY 2011 Org 0507

1	Unclassified - Total	096	$	2,500,000
2	Federal Economic Stimulus	891		3,000,000
3	Total		$	5,500,000

317-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2011 Org 0510

1	Unclassified - Total	096	$ 438,899

318-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2011 Org 0511

1	Unclassified	099	$ 155,854,516
2	Medical Services	189	1,950,000,000
3	Medical Services Administrative		
4	Costs	789	66,082,651
5	Federal Economic Stimulus	891	128,279,584
6	Total		$ 2,300,216,751

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

319-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2011 Org 0601

1	Unclassified - Total	096	$25,002,304

320-Adjutant General - State Militia

(WV Code Chapter 15)

Fund 8726 FY 2011 Org 0603

1	Unclassified - Total	096	$96,633,010
2	Federal Economic Stimulus	891	4,535,000
3	Total		$ 101,168,010

321-Division of Homeland Security and Emergency Management

(WV Code Chapter 15)

Fund 8727 FY 2011 Org 0606

1	Unclassified - Total	096	$ 21,255,931

322-Division of Corrections

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

Fund 8836 FY 2011 Org 0608

1	Unclassified - Total	096	$ 110,000

323-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2011 Org 0612

1	Unclassified - Total	096	$ 12,266,939
2	Federal Economic Stimulus	891	485,386
3	Total		$ 12,752,325

324-Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 8858 FY 2011 Org 0613

1	Unclassified - Total	096	$ 11,200,000

325-Division of Veterans' Affairs - Veterans' Home

(WV Code Chapter 9A)

Fund 8728 FY 2011 Org 0618

1	Unclassified - Total	096	$ 1,774,230

326-Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2011 Org 0619

1	Unclassified - Total	096	$ 80,000

327-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 8803 FY 2011 Org 0620

1	Unclassified - Total	096	$ 11,304,778
2	Federal Economic Stimulus	891	5,910,000
3	Total		$ 17,214,778

DEPARTMENT OF REVENUE

328-Tax Division -
Consolidated Federal Fund

(WV Code Chapter 11)

Fund 8899 FY 2011 Org 0702

1	Unclassified - Total	096	$ 10,000

329-Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2011 Org 0704

1	Unclassified - Total	096	$ 4,200,000

DEPARTMENT OF TRANSPORTATION

330-Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2011 Org 0802

1	Unclassified - Total	096	$ 18,167,668

331-State Rail Authority

(WV Code Chapter 29)

Fund 8733 FY 2011 Org 0804

1	Federal Economic Stimulus	891	$ 1,000,000

332-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2011 Org 0805

1	Unclassified - Total	096	$ 15,381,392
2	Federal Economic Stimulus	891	6,000,000
3	Total		$21,381,392

333-Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2011 Org 0806

1 Unclassified - Total ..... 096 $ 2,600,000

BUREAU OF SENIOR SERVICES

334-Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2011 Org 0508

1 Unclassified - Total ..... 096 $ 14,515,250

MISCELLANEOUS BOARDS AND COMMISSIONS

335-Public Service Commission - Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2011 Org 0926

1	Unclassified - Total	096	$	1,562,171
2	Federal Economic Stimulus	891		796,248
3	Total		$	2,358,419

336-Public Service Commission - Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2011 Org 0926

1 Unclassified - Total ..... 096 $ 282,370

337-National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2011 Org 0941

1	Unclassified - Total	096	$	600,000

338-Coal Heritage Highway Authority

(WV Code Chapter 29)

Fund 8861 FY 2011 Org 0942

1	Unclassified - Total	096	$	50,000

2 Total TITLE II, Section 6 - Federal Funds $ 4,088,736,401

1 **Sec. 7. Appropriations from federal block grants.** -
2 The following items are hereby appropriated from federal
3 block grants to be available for expenditure during the fiscal
4 year 2011.

339-Governor's Office -
Office of Economic Opportunity
Community Services

Fund 8799 FY 2011 Org 0100

1	Unclassified - Total	096	$	9,632,952
2	Federal Economic Stimulus	891		5,597,000
3	Total		$	15,229,952

340-West Virginia Development Office -
Community Development

Fund 8746 FY 2011 Org 0307

1	Unclassified - Total	096	$	38,351,067
2	Federal Economic Stimulus	891		5,000,000
3	Total		$	43,351,067

341-WorkForce West Virginia -
Workforce Investment Act

Fund 8749 FY 2011 Org 0323

1	Unclassified - Total	096	$25,030,749
2	Federal Economic Stimulus	891	7,555,357
3	Total		$32,586,106

342-Division of Energy -
Energy and Conservation

Fund 8702 FY 2011 Org 0328

1	Federal Economic Stimulus	891	$10,000,000

343-Division of Health -
Maternal and Child Health

Fund 8750 FY 2011 Org 0506

1	Unclassified - Total	096	$10,974,424

344-Division of Health -
Preventive Health

Fund 8753 FY 2011 Org 0506

1	Unclassified - Total	096	$ 2,244,387

345-Division of Health -
Substance Abuse Prevention and Treatment

Fund 8793 FY 2011 Org 0506

1	Unclassified - Total	096	$11,586,339

346-Division of Health -
Community Mental Health Services

Fund 8794 FY 2011 Org 0506

1	Unclassified - Total	096	$ 3,345,285

347-Division of Health -
Abstinence Education Program

Fund 8825 FY 2011 Org 0506

1	Unclassified - Total	096	$ 500,000

348-Division of Human Services -
Energy Assistance

Fund 8755 FY 2011 Org 0511

1	Unclassified - Total	096	$40,000,000

349-Division of Human Services -
Social Services

Fund 8757 FY 2011 Org 0511

1	Unclassified - Total	096	$16,046,624

350-Division of Human Services -
Temporary Assistance for Needy Families

Fund 8816 FY 2011 Org 0511

1	Unclassified - Total	096	$130,250,890
2	Federal Economic Stimulus	891	30,000,000
3	Total		$160,250,890

351-Division of Human Services - Child Care and Development

Fund 8817 FY 2011 Org 0511

1	Unclassified - Total	096	$ 40,022,445
2	Federal Economic Stimulus	891	6,523,500
3	Total		$ 46,545,945

352-Division of Criminal Justice Services - Juvenile Accountability Incentive

Fund 8829 FY 2011 Org 0620

1	Unclassified - Total	096	$ 500,000

2	Total TITLE II, Section 7 -	
3	Federal Block Grants	$393,161,019

1 **Sec. 8. Awards for claims against the state.** – There are
2 hereby appropriated for fiscal year 2011, from the fund as
3 designated, in the amounts as specified, general revenue
4 funds in the amount of $2,170,152, special revenue funds in
5 the amount of $81,311, and state road funds in the amount of
6 $1,565,283 for payment of claims against the state.

1 **Sec. 9. Appropriations from state excess lottery**
2 **revenue surplus accrued.** - The following item is hereby
3 appropriated from the state excess lottery revenue fund,
4 and is to be available for expenditure during the fiscal year
5 2011 out of surplus funds only, as determined by the
6 director of lottery, accrued from the fiscal year ending June
7 30, 2010, subject to the terms and conditions set forth in
8 this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2010.

In the event that surplus revenues available from the fiscal year ending June 30, 2010, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation made pursuant to this section shall be made to the extent that surplus funds are available.

353-Division of Finance

(WV Code Chapter 5A)

Fund 2208 FY 2011 Org 0209

Enterprise Resource Planning System - Lottery Surplus	798	$	0

Sec. 10. Special revenue appropriations. - There are hereby appropriated for expenditure during the fiscal year 2011 appropriations made by general law from special revenues which are not paid into the state fund as general revenue under the provisions of W.Va. Code §12-2-2: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve and article two, chapter eleven-b of the code, unless the spending unit has filed with the director of the budget and the legislative auditor prior to the beginning of each fiscal year:

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

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

17 In addition to the preceding provisions, from the
18 unexpended balance remaining in Fund 3078, the Courtesy
19 Patrol Fund, at the close of the fiscal year 2010, the State
20 Auditor shall transfer $1,000,000 to Fund 3072, the Tourism
21 Promotion Fund.

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1 **Sec. 11. State improvement fund appropriations.** -
2 Bequests or donations of nonpublic funds, received by the
3 governor on behalf of the state during the fiscal year 2011,
4 for the purpose of making studies and recommendations
5 relative to improvements of the administration and
6 management of spending units in the executive branch of
7 state government, shall be deposited in the state treasury in
8 a separate account therein designated state improvement
9 fund.

*CLERK'S NOTE: The Governor deleted language on line 22 through 38.

There are hereby appropriated all moneys so deposited during the fiscal year 2011 to be expended as authorized by the governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 12. Specific funds and collection accounts. - A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of Article 3, Chapter 12 of the Code.

Sec. 13. Appropriations for refunding erroneous payment. - Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

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

Sec. 14. Sinking fund deficiencies. - There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by W.Va. Code §31-18-20b, or in the funds of the municipal bond

8 commission because of the failure of any state agency for
9 either general obligation or revenue bonds or any local taxing
10 district for general obligation bonds to remit funds necessary
11 for the payment of interest and sinking fund requirements.
12 The governor is authorized to transfer from time to time such
13 amounts to the municipal bond commission as may be
14 necessary for these purposes.

15 The municipal bond commission shall reimburse the state
16 of West Virginia through the governor from the first
17 remittance collected from the West Virginia housing
18 development fund or from any state agency or local taxing
19 district for which the governor advanced funds, with interest
20 at the rate carried by the bonds for security or payment of
21 which the advance was made.

1 **Sec. 15. Appropriations for local governments.** - There
2 are hereby appropriated for payment to counties, districts and
3 municipal corporations such amounts as will be necessary to
4 pay taxes due counties, districts and municipal corporations
5 and which have been paid into the treasury:

6 (a) For redemption of lands;

7 (b) By public service corporations;

8 (c) For tax forfeitures.

1 **Sec. 16. Total appropriations.** - Where only a total sum
2 is appropriated to a spending unit, the total sum shall include
3 personal services, annual increment, employee benefits,
4 current expenses, repairs and alterations, equipment and
5 capital outlay, where not otherwise specifically provided and

except as otherwise provided in TITLE I - GENERAL PROVISIONS, Sec. 3.

Sec. 17. General school fund. - The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with W.Va. Code §18-9A-16.

TITLE III - ADMINISTRATION.

TITLE III. ADMINISTRATION.
§1. Appropriations conditional.
§2. Constitutionality.

Section 1. Appropriations conditional. - The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of Article 2, Chapter 11B of the Code.

Where spending units or parts of spending units have been absorbed by or combined with other spending units, it is the intent of this act that appropriations and reappropriations shall be to the succeeding or later spending unit created, unless otherwise indicated.

Sec. 2. Constitutionality. - If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

CHAPTER 9

(H. B. 4668 - By Delegates Doyle, Spencer, Iaquinta, Eldridge, Guthrie, Mahan, Marshall, Phillips, Carmichael, Evans and Ashley)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on March 23, 2010.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2010, to the Crime Victims Compensation Fund, fund 8738, fiscal year 2010, organization 2300, to the Department of Education and the Arts - Division of Culture and History, fund 8718, fiscal year 2010, organization 0432, and to the Department of Environmental Protection - Division of Environmental Protection, fund 8708, fiscal year 2010, organization 0313, all supplementing and amending the appropriations for the fiscal year ending June 30, 2010.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Crime Victims Compensation Fund, fund 8738, fiscal year 2010, organization 2300, the Department of Education and the Arts - Division of Culture and History, fund 8718, fiscal year 2010, organization 0432, and the Department of Environmental Protection - Division of Environmental Protection, fund 8708, fiscal year 2010, organization 0313, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending June 30, 2010, to fund 8738, fiscal year 2010, organization 2300, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

LEGISLATIVE

280-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2010 Org 2300

	Activity	Federal Funds
1 Unclassified - Total	096	$ 1,336,801

And that the total appropriation for fiscal year ending June 30, 2010, to fund 8718, fiscal year 2010, organization 0432, be supplemented and amended by increasing an existing item of appropriation as follows:

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION AND THE ARTS

306-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2010 Org 0432

	Activity	Federal Funds
1 Unclassified - Total	096	$ 52,764

And that the total appropriation for fiscal year ending June 30, 2010, to fund 8708, fiscal year 2010, organization 0313, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

311—Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2010 Org 0313

	Activity	Federal Funds
1 Unclassified - Total	096	$ 15,524,000

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2010.

CHAPTER 10

(H. B. 4670 - By Delegates White, Marshall, Iaquinta, Varner, Klempa, Manchin, Guthrie, Spencer, Perdue, Ashley and Border)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on March 23, 2010.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2010, to the Department of Agriculture - Agriculture Fees Fund, fund 1401, fiscal year 2010, organization 1400, to the Department of Health and Human Resources - Division of Health - Vital Statistics, fund 5144, fiscal year 2010, organization 0506, to the Department of Health and Human Resources - Division of Human Services - West Virginia Works Separate State Two-Parent Program Fund, fund 5468, fiscal year 2010, organization 0511, to the Department of Revenue - Racing Commission - General Administration, fund 7305, fiscal year 2010, organization 0707, to the Bureau of Senior Services - Community Based Service Fund, fund 5409, fiscal year 2010, organization 0508, and to new items of appropriation designated to the Higher Education Policy Commission - Community and Technical College Capital Improvement Fund, fund 4908, fiscal year 2010, organization 0442, and to the Higher Education Policy Commission - West Liberty University - West Liberty University Land Sale Account, fund 4566, fiscal year 2010, organization 0488, by supplementing and amending chapter ten, Acts of the Legislature, regular session, 2009, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Agriculture - Agriculture Fees Fund, fund 1401, fiscal year 2010, organization 1400, the Department of Health and Human Resources - Division of Health - Vital Statistics, fund 5144, fiscal year 2010, organization 0506, the Department of Health and Human Resources - Division of Human Services - West Virginia Works Separate State Two-Parent Program Fund, fund 5468, fiscal year 2010, organization 0511, the Department of Revenue - Racing Commission - General Administration, fund 7305, fiscal year 2010, organization 0707, the Bureau of Senior Services - Community Based Service Fund, fund 5409, fiscal year 2010, organization 0508, the Higher Education Policy Commission - Community and Technical College Capital Improvement Fund, fund 4908, fiscal year 2010, organization 0442, and the Higher Education Policy Commission - West Liberty University - West Liberty University Land Sale Account, fund 4566, fiscal year 2010, organization 0488, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2010, to fund 1401, fiscal year 2010, organization 1400, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

EXECUTIVE

104-Department of Agriculture—
Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2010 Org 1400

	Act-ivity	Other Funds
1 Unclassified - Total	096	$ 900,000

And that the total appropriation for the fiscal year ending June 30, 2010, to fund 5144, fiscal year 2010, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

167-Division of Health-
Vital Statistics

(WV Code Chapter 16)

Fund 5144 FY 2010 Org 0506

	Act-ivity	Other Funds
1 Personal Services	001	$ 257,741
2 Annual Increment	004	4,000
3 Employee Benefits	010	90,259
4 Unclassified	099	40,000

And that the total appropriation for the fiscal year ending June 30, 2010, to fund 5468, fiscal year 2010, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

184-Division of Human Services—
West Virginia Works Separate State Two-Parent Program Fund

(WV Code Chapter 9)

Fund 5468 FY 2010 Org 0511

		Act-ivity	Other Funds
1	1 Unclassified - Total	096	$ 1,800,000

2 And that the total appropriation for the fiscal year ending
3 June 30, 2010, to fund 7305 fiscal year 2010, organization
4 0707, be supplemented and amended to read as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF REVENUE

219-Racing Commission -
General Administration

(WV Code Chapter 19)

Fund 7305 FY 2010 Org 0707

	Act-ivity	Other Funds
1 Personal Services	001	$ 2,199,977
2 Annual Increment	004	25,206
3 Employee Benefits	010	574,580
4 Unclassified	099	639,540
5 Total		$ 3,439,303

And that the total appropriation for the fiscal year ending June 30, 2010, to fund 5409, fiscal year 2010, organization 0508, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

BUREAU OF SENIOR SERVICES

227-Bureau of Senior Services—
Community Based Service Fund

(WV Code Chapter 22)

Fund 5409 FY 2010 Org 0508

	Act-ivity	Other Funds
1 Unclassified - Total	096	$ 620,000

And that chapter ten, Acts of the Legislature, regular session, 2009, known as the Budget Bill, be supplemented and amended by adding to Title II, section three thereof, the following:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

HIGHER EDUCATION

230a—Higher Education Policy Commission—
Community and Technical College Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2010 Org 0442

	Act-ivity	Other Funds
1 Capital Improvements - Total (R)	. 958	$ 80,000,000

The total amount of this appropriation shall be paid from the bond proceeds from the sale of the 2009 Series A Community and Technical Colleges Capital Improvement Revenue Bonds and anticipated interest earnings.

Any unexpended balance remaining in the appropriation for Capital Improvements - Total (fund 4908, activity 958) at the close of the fiscal year 2010 is hereby reappropriated for expenditure during the fiscal year 2011.

And that chapter ten, Acts of the Legislature, regular session, 2009, known as the Budget Bill, be supplemented and amended by adding to Title II, section three thereof, the following:

TITLE II — APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

HIGHER EDUCATION

232a-Higher Education Policy Commission—
West Liberty University-
West Liberty University Land Sale Account

(WV Code Chapter 18B)

Fund 4566 FY 2010 Org 0488

	Act-ivity	Other Funds
1 Unclassified - Total (R)	096	$ 153,367

The total amount of this appropriation shall be used for the purchase of additional real property or technology, or for capital improvements at the institution.

Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 4566, activity 096) at the close of the fiscal year 2010 is hereby reappropriated for expenditure during the fiscal year 2011.

The purpose of this supplementary appropriation bill is to supplement, decrease and increase existing items of appropriation and to provide for new items of appropriation to be established in the budget act for the designed spending units for expenditure during the fiscal year 2010.

CHAPTER 11

(Com. Sub. for H. B. 3152 - By Delegates Caputo, Ashley, White, Kominar and Campbell)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5, §30-20A-6 and §30-20A-7, all relating to athletic trainers; providing definitions; restricting the use of certain titles; setting forth powers and duties of the board; setting forth rulemaking authority; providing for registration of athletic trainers; establishing registration criteria; establishing renewal requirements; and allowing for disciplinary actions.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5, §30-20A-6 and §30-20A-7, all to read as follows:

ARTICLE 20A. ATHLETIC TRAINERS.

§30-20A-1. Definitions.
§30-20A-2. Title protection.
§30-20A-3. Powers and duties of the board.
§30-20A-4. Rulemaking authority.
§30-20A-5. Requirements for registration.
§30-20A-6. Renewal requirements.
§30-20A-7. Due process procedures; grounds for disciplinary action.

§30-20A-1. Definitions.

As used in this article:

(1) "Applicant" means any person making application for an original or renewal registration to act as an athletic trainer under the provisions of this article.

(2) "Board" means the West Virginia Board of Physical Therapy established under article twenty of this chapter.

(3) "Registrant" means a person registered as an athletic trainer under the provisions of this article.

(4) "Registration" means a registration issued by the board to practice athletic training.

§30-20A-2. Title protection.

(a) A person may not advertise or represent himself or herself as an athletic trainer in this state and may not use the initials "AT", the words "registered athletic trainer" or "athletic trainer", or any other words, abbreviations, titles or insignia that indicates, implies or represents that he or she is an athletic trainer, unless he or she is registered by the board.

(b) Nothing contained in this article shall be construed as preventing any person, firm, partnership or corporation from practicing athletic training, in any manner desired.

(c) Nothing in this article may be construed to prohibit or otherwise limit the use of the term "athletic trainer" in secondary school settings by persons who were practicing athletic training under a West Virginia Board of Education Athletic Certification, provided the practice is in accordance with Board of Education policy in effect prior to July 1, 2011.

§30-20A-3. Powers and duties of the board.

The board has the following powers and duties:

(1) Establish procedures for submitting, approving and denying applications for registration;

(2) Investigate alleged violations of the provisions of this article;

(3) Establish a fee schedule;

(4) Issue, renew, deny, suspend, revoke or reinstate a registration;

(5) Determine disciplinary action and issue orders;

(6) Institute appropriate legal action for the enforcement of the provisions of this article; and

(7) Maintain an accurate registry of the names and addresses of registrants.

§30-20A-4. Rule-making authority.

The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Procedures for the issuance and renewal of a registration;

(2) A fee schedule;

(3) Procedures for denying, suspending, revoking, reinstating or limiting the registration of a registrant; and

(4) Any other rules necessary to effectuate the provisions of this article.

§30-20A-5. Requirements for registration.

(a) To be eligible for registration by the board as an athletic trainer, an applicant shall:

(1) Submit an application in the form prescribed by the board;

(2) Submit a current certification from the National Athletic Trainers' Association Board of Certification or successor organization; and

(3) Pay the required fee.

(b) The board shall issue a registration to an applicant satisfying all the requirements in subsection (a) of this section: *Provided*, That the board may deny an application for registration if the applicant:

(1) Has been convicted of a felony or other crime involving moral turpitude;

(2) Is an alcohol or drug abuser as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: *Provided*, That the board may take into consideration that an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process;

(3) Has been convicted of fraudulent, false, misleading or deceptive advertising;

(4) Has been convicted for wrongfully prescribing medicines or drugs, or practicing any licensed profession without legal authority;

(5) Has had a registration or other authorization revoked, suspended, restricted or other disciplinary action taken by the proper authorities of another jurisdiction;

(6) Is incapacitated by a physical or mental disability which is determined by a physician to render further practice by the applicant inconsistent with competency and ethic requirements; or

(7) Has been convicted of sexual abuse or sexual misconduct.

(c) In determining whether an application should be denied for any of the reasons set forth in subsection (b), the board may consider:

(1) How recently the conduct occurred;

(2) The nature of the conduct and the context in which it occurred; and

(3) Any other relevant conduct of the applicant.

(d) A registration issued by the board is valid for two years from the date it was issued.

§30-20A-6. Renewal requirements.

(a) A registrant may apply to renew his or her registration by submitting an application for renewal in the form prescribed by the board and paying the renewal fee. The renewal application must be signed by the applicant.

(b) A renewal of registration issued by the board is valid for two years from the date it was issued.

(c) The board may deny an application for renewal for any reason which would justify the denial of an original application for a registration.

§30-20A-7. Due process procedures; grounds for disciplinary action.

(a) The board may, after notice and opportunity for hearing, suspend, restrict or revoke a registration of, impose probationary conditions upon or take disciplinary action against, any registrant if the board determines the registrant:

(1) Is grossly negligent in the practice of athletic training;

(2) Obtained a registration by fraud, misrepresentation or concealment of material facts; engaged in the practice of athletic training under a false or assumed name; or impersonated another registrant of a like or different name; or

(3) Has violated any of the provisions of subsection (b), section five of this article.

(b) For purposes of subsection (a) of this section, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fines;

(4) Practicing under supervision or other restriction;

(5) Requiring the registrant to report to the board for periodic interviews for a specified period of time; or

(6) Other corrective action as determined by the board.

CHAPTER 12

(S. B. 573 - By Senators Minard, Yost, Snyder, White, Edgell, Boley, Chafin and Stollings)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §6-9-7 of the Code of West Virginia, 1931, as amended, relating to allowing audits to be published electronically with notice to the proper authorities.

Be it enacted by the Legislature of West Virginia:

That §6-9-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-7. Examinations into affairs of local public offices; penalties.

(a) The chief inspector has the power by himself or herself, or by any person appointed, designated or approved by the chief inspector to perform the service, to examine into all financial affairs of every local governmental office or political subdivision and all boards, commissions, authorities, agencies or other offices created under authority thereof. An examination shall be made annually, if required, to comply with the Single Audit Act and when otherwise required by

law or contract. When that act does not apply, unless otherwise required by law or by contract, the examination shall be made at least once a year, if practicable. Furthermore, the chief inspector shall furnish annually to the Legislature a list of each local government office or political subdivision and all boards, commissions, authorities, agencies or other offices created under authority thereof and the year of its most recent completed audit.

(b) When required for compliance with regulations for federal funds received or expended by county boards of education the chief inspector or his or her designee, including any certified public accountant approved by the chief inspector shall conduct and issue an audit report within the time specified in controlling federal regulations. Examinations of other local governments shall be conducted and audit or review reports issued in accordance with uniform procedures of the chief inspector.

(c) A county board of education may elect, by May 1 of the fiscal year to be audited, to have its annual examination performed by a certified public accountant approved by the chief inspector to perform the examinations. When this election is made, a copy of the order of the county board making the election shall be filed with the chief inspector and the State Board of School Finance. The county board of education is allowed to contract with any certified public accountant on the chief inspector's then current list of approved certified public accountants, unless the State Board of School Finance or the prosecuting attorney of the county in which the board is located timely submits to the chief inspector a written request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation exists. The county board shall follow the audit bid procurement procedures established by the chief inspector in obtaining the audit.

(d) The chief inspector shall, at least annually, prepare a list of certified public accountants approved by the chief inspector to perform examinations of local governments. Names shall be added to or deleted from that list in accordance with uniform procedures of the chief inspector. When each list or updated list is issued, the chief inspector shall promptly file a copy of the list in the State Register and send a copy to the State Board of Education, the State Board of School Finance and to local governments who request a copy.

(e) A county board of education, when procuring the services of a certified public accountant on the chief inspector's list, shall follow the procurement standards prescribed by the grants management common rule, OMB Circular A-102 "Grants and Cooperative Agreements with State and Local Governments" in effect for the fiscal year being examined, or in any replacement circular or regulation of the office of management and budget and in addition shall follow those standards as determined by the office of chief inspector.

(f) The approved independent certified public accountant making examinations under this section shall comply with requirements of this section applicable to examinations performed by the chief inspector, including applicable requirements of the federal government and uniform procedures of the chief inspector applicable to examinations of county boards of education.

(1) Upon completion of the certified public accountant's examination and audit or review report, the certified public accountant shall promptly send two copies of the certified report to the county board of education who shall file one copy with the Federal Audit Clearing House. The certified public accountant shall send one copy of the certified report to the State Board of School Finance, and one copy to the chief inspector.

(2) If any examination discloses misfeasance, malfeasance or nonfeasance in office on the part of any public officer or employee, the certified public accountant shall submit his or her recommendation to the chief inspector regarding the legal action the approved certified public accountant considers appropriate, including, but not limited to, whether criminal prosecution or civil action to effect restitution is appropriate, and three additional copies of the certified audit report. After review of the recommendations and the audit report, the chief inspector shall proceed as provided in subsection (n) of this section. For purposes of this section and section thirteen, article nine-b, chapter eighteen of this code, a certified audit report of an approved certified public accountant shall be treated in the same manner as a report of the chief inspector.

(g) On every examination, inquiry shall be made as to the financial conditions and resources of the agency having jurisdiction over the appropriations and levies disbursed by the office and whether the requirements of the Constitution and statutory laws of the state and the ordinances and orders of the agency have been properly complied with and also inquire into the methods and accuracy of the accounts and such other matters of audit and accounting as the chief inspector may prescribe.

(h) If a local government office is not subject to a single audit requirement under federal regulations or if it is not otherwise required by law or contract to undergo an annual audit and its expenditures from all sources are less than $300,000 during the fiscal year the chief inspector may choose to perform either a review or audit on the local government office and may in his or her discretion determine the frequency of such review or audit.

(i) The chief inspector or any authorized assistant may issue subpoenas and compulsory process, direct the service

thereof by any sheriff, compel the attendance of witnesses and the production of books and papers at any designated time and place, selected in their respective county, and administer oaths.

(j) If any person refuses to appear before the chief inspector or his or her authorized assistant when required to do so, refuses to testify on any matter or refuses to produce any books or papers in his or her possession or under his or her control, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 and imprisoned in jail not more than six months.

(k) A person convicted of willful false swearing in an examination is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 and imprisoned in jail not more than six months.

(l) Except as otherwise provided in this section, a copy of the certified report of each examination shall be filed in the office of the commissioner, chief inspector with the governing body of the local government and with other offices as prescribed in uniform procedures of the chief inspector.

(m) If any examination discloses misfeasance, malfeasance or nonfeasance in office on the part of any public officer or employee, a certified copy of the report shall be published electronically by the chief inspector with notice of the publishing sent in writing to the proper legal authority of the agency, the prosecuting attorney of the county wherein the agency is located and with the Attorney General for such legal action as is proper. At the time the certified audit report is published, the chief inspector shall notify the proper legal authority of the agency, the prosecuting attorney and the Attorney General in writing of his or her recommendation as to the legal action that the chief inspector considers proper,

whether criminal prosecution or civil action to effect restitution, or both.

(n) If the proper legal authority or prosecuting attorney, within nine months of receipt of the certified audit report and recommendations, refuses, neglects or fails to take efficient legal action by a civil suit to effect restitution or by prosecuting criminal proceedings to a final conclusion, in accordance with the recommendations, the chief inspector may institute the necessary proceedings or participate therein and prosecute the proceedings in any court of the state to a final conclusion.

(o) A local government that is not a county board of education may elect, by May 1 of the fiscal year to be audited, to have its annual examination performed by a certified public accountant approved by the chief inspector to perform the examinations. When this election is made, a copy of the order of the governing body making the election shall be filed with the chief inspector. An electing local government is allowed to contract with any certified public accountant on the chief inspector's then current list of approved certified public accountants, unless the prosecuting attorney of the county in which the local government is located timely submits to the chief inspector a written request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation exists: *Provided,* That the audit of a local government may be performed by the chief inspector at his or her discretion. The local government shall follow the audit bid procurement procedures established by the chief inspector in obtaining the audit: *Provided, however,* That the chief inspector may elect to conduct the audit of a local unit of government with one or more members of his or her audit staff where, in the opinion of the chief inspector, a special or unusual situation exists.

CHAPTER 13

(Com. Sub. for H. B. 4285 - By Delegates Moore, Walters, Reynolds and Azinger)

[Passed March 12, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §31-17-4 of the Code of West Virginia, 1931, as amended, and to amend and reenact §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-6, §31-17A-9, §31-17A-12 and §31-17A-13 of said code, all relating to the licensing of residential mortgage brokers, lenders and loan originators by the Division of Banking; definitions; allowing the Commissioner of Banking to reduce or waive application fees, bond amounts and net worth requirements of bona-fide nonprofit business entities, including community housing development organizations; providing that mortgage loan originators may be employed by or under contract with only one mortgage broker or lender at any time; allowing the commissioner to reduce or waive the application fees for mortgage loan originators employed by bona fide nonprofit organizations or other community housing development organizations; providing that a mortgage loan originator license may not be transferred or assigned and that a mortgage loan originator changing employers must provide thirty days prior notice to the commissioner and pay a fee of $50; increasing the amount of prelicensing education required for loan originators from twenty to twenty-two hours; providing that prelicensing education courses and requirements and continuing education courses for mortgage loan originators may be approved by the

division of banking; providing a procedure for the commissioner to follow whenever taking an enforcement action under article seventeen-a of this code; allowing any person not licensed as a mortgage lender or broker under article seventeen of chapter thirty-one of this code or article four of chapter forty-six-a of this code to register with the Nationwide Mortgage Licensing System and Registry and provide a surety bond in the appropriate amount for any mortgage loan originators it employs; and allowing the commissioner to reduce or waive the bond amounts imposed by article seventeen-a for mortgage loan originators employed by bona fide nonprofit corporations or other bona fide nonprofit business entities, including community housing development organizations, if the commissioner determines that such action would not violate any applicable law.

Be it enacted by the Legislature of West Virginia:

That §31-17-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that §31-17A-2, §31-17A-3, §31-17A-4, §31-17A-6, §31-17A-9, §31-17A-12 and §31-17A-13, of said code be amended and reenacted, all to read as follows:

Article

17. West Virginia Residential Mortgage Lender, Broker and Servicer Act.
17A. West Virginia Safe Mortgage Licensing Act.

ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.

§31-17-4. Applications for licenses; requirements; bonds; fees; renewals; waivers and reductions; per loan fee.

1 (a) In connection with an application for licensing as a
2 mortgage lender or mortgage broker, the applicant shall, at a
3 minimum, furnish to the Nationwide Mortgage Licensing
4 System and Registry information concerning the applicant's
5 identity, including:

6 (1) Fingerprints for submission to the Federal Bureau of
7 Investigation and any governmental agency or entity
8 authorized to receive such information for a state, national
9 and international criminal history background check; and

10 (2) Personal history and experience in a form prescribed
11 by the Nationwide Mortgage Licensing System and Registry
12 and the commissioner, including the submission of
13 authorization for the Nationwide Mortgage Licensing System
14 and Registry and the commissioner to obtain:

15 (A) An independent credit report obtained from a
16 consumer reporting agency described in Section 603(p) of the
17 Fair Credit Reporting Act; and

18 (B) Information related to any administrative, civil or
19 criminal findings by any governmental jurisdiction.

20 (b) In order to reduce the points of contact which the
21 Federal Bureau of Investigation may have to maintain for
22 purposes of this article, the commissioner may use the
23 Nationwide Mortgage Licensing System and Registry or its
24 designated vendor as a channeling agent for requesting
25 information from and distributing information to the
26 Department of Justice or any governmental agency.

27 (c) In order to reduce the points of contact which the
28 commissioner may have to maintain, for purposes of this
29 article, the commissioner may use the Nationwide Mortgage
30 Licensing System and Registry as a channeling agent for
31 requesting and distributing information to and from any
32 source so directed by the commissioner.

33 (d) Application for a lender's or broker's license shall
34 each year be submitted under oath, in the form prescribed by
35 the commissioner, and shall contain the full name and
36 address of the applicant and, if the applicant is a partnership,

limited liability company or association, of every member thereof, and, if a corporation, of each officer, director and owner of ten percent or more of the capital stock thereof and further information as the commissioner may reasonably require. Background and credit checks shall be conducted in accordance with this section for any officer, director or owner, directly or indirectly, of ten percent or more of the capital stock of a corporation or any member of a limited liability or partnership with, directly or indirectly, a ten percent or greater ownership interest. Any application shall also disclose the location at which the business of lender or broker is to be conducted.

(e) At the time of making application for a lender's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the Secretary of State certifying that the applicant is registered with the Secretary of State to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net worth of at least $250,000;

(3) File with the commissioner a bond in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice in the amount of $100,000 for licensees with West Virginia annual loan originations of $0 to $3 million, $150,000 for West Virginia annual loan originations greater than $3 million and up to $10 million, and $250,000 for West Virginia annual loan originations over $10 million in a form and with conditions as the commissioner may prescribe and executed by a surety company authorized to do business in this state: *Provided,* That lender licensees who service West Virginia mortgage loans shall file with the commissioner a bond under the same conditions listed above in the amount of $200,000;

(4) Pay to the commissioner a license fee of $1,250 plus the actual cost of fingerprint processing and the processing fees assessed by the Nationwide Mortgage Licensing System and Registry. If the commissioner shall determine that an investigation outside this state is required to ascertain facts or information relative to the applicant or information set forth in the application, the applicant may be required to advance sufficient funds to pay the estimated cost of the investigation. An itemized statement of the actual cost of the investigation outside this state shall be furnished to the applicant by the commissioner and the applicant shall pay or shall have returned to him or her, as the case may be, the difference between his or her payment in advance of the estimated cost and the actual cost of the investigation; and

(5) Submit a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(f) At the time of making application for a broker's license, the applicant therefor shall:

(1) If a foreign corporation, submit a certificate from the Secretary of State certifying that the applicant is registered with the Secretary of State to transact business in this state;

(2) Submit proof that he or she has available for the operation of the business at the location specified in the application net worth of at least $10,000;

(3) File with the commissioner a bond in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice in the amount of $50,000 for licensees with West Virginia loan originations of $0 to $3 million, $75,000 for West Virginia loan originations greater

than $3 million and up to $10 million, and $100,000 for West Virginia loan originations over $10 million in a form and with conditions as the commissioner may prescribe and executed by a surety company authorized to do business in this state: *Provided,* That the bond must be in the amount of $150,000 before a broker may participate in a table-funded residential mortgage loan;

(4) Pay to the commissioner a license fee of $350 plus the actual cost of fingerprint processing and the processing fees assessed by the Nationwide Mortgage Licensing System and Registry; and

(5) Submit a full and complete disclosure of any litigation or unresolved complaint filed by a governmental authority or class action lawsuit on behalf of consumers relating to the operation of the license applicant.

(g) The aggregate liability of the surety on any bond given pursuant to the provisions of this section shall in no event exceed the amount of the bond.

(h) Nonresident lenders and brokers licensed under this article by their acceptance of the license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the service of process pursuant to section one hundred thirty-seven, article two, chapter forty-six-a of this code and section thirty-three, article three, chapter fifty-six of this code.

(i) The commissioner may elect to reduce or waive the application fees, bond amounts and net worth requirements imposed by this section for bona fide nonprofit corporations or other bona fide nonprofit business entities, including community housing development organizations, whose residential mortgage lending or brokering activities provide housing primarily to households or persons below the HUD-

135 established median income for their area of residence. Any
136 waiver of fees or other costs under this paragraph shall not be
137 construed as a waiver of the duty to comply with all other
138 provisions of this article.

139 (j) Every broker and lender licensee shall pay a fee of $5
140 for each residential mortgage loan originated, made or
141 brokered in a calendar year. This fee shall be paid annually
142 for the benefit of the Division of Banking and remitted with
143 the report required pursuant to subsection (b), section eleven
144 of this article for loans made, brokered or originated during
145 the previous calendar year. If a licensee ceases operation, it
146 shall remit any fees due since the last reporting period when
147 it relinquishes its license.

148 (k) If a claim for a consumer restitution is pending on a
149 bond required pursuant to this section when the
150 commissioner makes a claim for a civil administrative
151 penalty or an unpaid examination invoice, the consumer
152 claim shall be resolved before any payments may be made for
153 an unpaid penalty or examination invoice.

ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.

§31-17A-2. Definitions.
§31-17A-3. License and registration required.
§31-17A-4. State license application and issuance.
§31-17A-6. Prelicensing and relicensing education of loan originators.
§31-17A-9. Continuing education for mortgage loan originators.
§31-17A-12. Enforcement authorities, violations and penalties.
§31-17A-13. Surety bond required.

§31-17A-2. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the Commissioner of Banking
3 of this state;

4 (b) "Depository institution" has the same meaning as in
5 section three of the Federal Deposit Insurance Act and
6 includes any federally insured credit union; and,

7 (c) "Division" means the West Virginia Division of
8 Banking;

9 (d) "Federal banking agencies" means the board of
10 Governors of the Federal Reserve System, the Comptroller of
11 the Currency, the Director of the Office of Thrift
12 Supervision, the National Credit Union Administration and
13 the Federal Deposit Insurance Corporation;

14 (e) "Immediate family member" means a spouse, child,
15 sibling, parent, grandparent or grandchild. This includes
16 stepparents, stepchildren, stepsiblings and adoptive
17 relationships;

18 (f) "Individual" means a natural person; and,

19 (g) "Loan processor or underwriter" means an individual
20 who performs clerical or support duties as an employee at the
21 direction of and subject to the supervision and instruction of
22 a person licensed or exempt from licensing under article
23 seventeen of this chapter.

24 (1) For purposes of this paragraph, "clerical or support
25 duties" may include subsequent to the receipt of an
26 application:

27 (A) The receipt, collection, distribution and analysis of
28 information common for the processing or underwriting of a
29 residential mortgage loan; and,

30 (B) Communicating with a consumer to obtain the
31 information necessary for the processing or underwriting of
32 a loan, to the extent that such communication does not

33 include offering or negotiating loan rates or terms, or
34 counseling consumers about residential mortgage loan rates
35 or terms; or

36 (2) An individual engaging solely in loan processor or
37 underwriter activities shall not represent to the public,
38 through advertising or other means of communicating or
39 providing information, including the use of business cards,
40 stationery, brochures, signs, rate lists or other promotional
41 items, that such individual can or will perform any of the
42 activities of a mortgage loan originator;

43 (h) "Mortgage loan originator" means an individual who
44 for compensation or gain or in the expectation of
45 compensation or gain takes a residential mortgage loan
46 application or offers or negotiates terms of a residential
47 mortgage loan and is sponsored by a mortgage lender, broker
48 or regulated consumer lender licensed by the Division of
49 Banking.

50 "Mortgage loan originator" does not include:

51 (1) An individual engaged solely as a loan processor or
52 underwriter except as otherwise provided in section three of
53 this article;

54 (2) A person or entity that only performs real estate
55 brokerage activities and is licensed or registered in
56 accordance with West Virginia law, unless the person or
57 entity is compensated by a lender, a mortgage broker or other
58 mortgage loan originator or by any agent of such lender,
59 mortgage broker or other mortgage loan originator;

60 (3) A person or entity solely involved in extensions of
61 credit relating to timeshare plans, as that term is defined in
62 Section 101(53D) of Title 11, United States Code; or

63 (4) A manufactured or modular home retailer employee
64 who performs purely administrative or clerical tasks and who
65 receives only the customary salary or commission from the
66 employer in connection with the sales transaction;

67 (i) "Real estate brokerage activity" means any activity
68 that involves offering or providing real estate brokerage
69 services to the public, including:

70 (1) Acting as a real estate salesperson or real estate
71 broker for a buyer, seller, lessor or lessee of real property;

72 (2) Bringing together parties interested in the sale,
73 purchase, lease, rental or exchange of real property;

74 (3) Negotiating, on behalf of any party, any portion of a
75 contract relating to the sale, purchase, lease, rental or
76 exchange of real property other than in connection with
77 providing financing with respect to any such transaction;

78 (4) Engaging in any activity for which a person engaged
79 in the activity is required to be registered or licensed as a real
80 estate agent or real estate broker under any applicable law;
81 and

82 (5) Offering to engage in any activity, or act in any
83 capacity, described in subsection (1), (2), (3) or (4) of this
84 section;

85 (j) "Nationwide Mortgage Licensing System and
86 Registry" means a mortgage licensing system developed and
87 maintained by the Conference of State Bank Supervisors and
88 the American Association of Residential Mortgage Regulators
89 for the licensing and registration of mortgage brokers and
90 lenders licensed pursuant to article seventeen of this chapter
91 and mortgage loan originators licensed pursuant to this
92 article;

(k) "Nontraditional mortgage product" means any mortgage product other than a fixed rate mortgage;

(l) "Person" means a natural person, corporation, company, limited liability company, partnership or association;

(m) "Registered mortgage loan originator" means any individual who:

(1) Meets the definition of mortgage loan originator and is an employee of:

(A) A depository institution;

(B) A subsidiary that is:

(i) Owned and controlled by a depository institution; and

(ii) Regulated by a federal banking agency; or

(C) An institution regulated by the Farm Credit Administration; and

(2) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry;

(n) "Residential mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling as defined in Section 103(v) of the Truth in Lending Act or residential real estate upon which is constructed or intended to be constructed a dwelling;

(o) "Residential real estate" means any real property located in West Virginia, upon which is constructed or intended to be constructed a dwelling; and

120 (p) "Unique identifier" means a number or other
121 identifier assigned by protocols established by the
122 Nationwide Mortgage Licensing System and Registry.

§31-17A-3. License and registration required.

1 (a) An individual, unless specifically exempted under
2 subsection (c) of this section, shall not engage in the business
3 of a mortgage loan originator with respect to any dwelling
4 located in this state without first obtaining and maintaining
5 annually a license under this article. Each licensed mortgage
6 loan originator must register with and maintain a valid unique
7 identifier issued by the Nationwide Mortgage Licensing
8 System and Registry. A Mortgage loan originator licensed
9 under this article may be employed by, or under contract to
10 provide mortgage loan originator services for, only one entity
11 licensed or exempt from licensing under article seventeen of
12 this chapter at any time.

13 (b) To facilitate an orderly transition to licensing and
14 minimize disruption in the mortgage marketplace, the
15 effective date for subsection (a) of this section:

16 (1) For all individuals other than individuals described in
17 subdivision (2) of this subsection shall be January 31, 2010;
18 and

19 (2) For all individuals licensed as mortgage loan
20 originators before July 1, 2009, shall be January 1, 2011.

21 (c) The following are exempt from this article:

22 (1) Registered Mortgage Loan Originators, when acting
23 for an entity described in subdivision (11), section two of this
24 article;

25 (2) Any individual who offers or negotiates terms of a
26 residential mortgage loan with or on behalf of an immediate
27 family member of the individual;

28 (3) Any individual who offers or negotiates terms of a
29 residential mortgage loan secured by a dwelling that served
30 as the individual's residence; and

31 (4) A licensed attorney who negotiates the terms of a
32 residential mortgage loan on behalf of a client as an ancillary
33 matter to the attorney's representation of the client, unless the
34 attorney is compensated by a lender, a mortgage broker or
35 other mortgage loan originator or by any agent of such
36 lender, mortgage broker or other mortgage loan originator.

37 (d) A loan processor or underwriter who is an
38 independent contractor may not engage in the activities of a
39 loan processor or underwriter unless such independent
40 contractor loan processor or underwriter obtains and
41 maintains a license under subsection (a) of this section. Each
42 independent contractor loan processor or underwriter licensed
43 as a mortgage loan originator must have and maintain a valid
44 unique identifier issued by the Nationwide Mortgage
45 Licensing System and Registry.

46 (e) To implement an orderly and efficient licensing and
47 transition process, the commissioner may establish interim
48 policies and procedures for licensing and acceptance of
49 applications as follows:

50 (1) Mortgage loan originators employed by or under
51 exclusive contract to licensed mortgage brokers after the
52 effective date of this article shall submit an application on a
53 form prescribed by the commissioner, including all necessary
54 information, fees and authorizations for investigation as the
55 commissioner may determine necessary, and must meet the
56 standards for licensure set forth in this article. Any license
57 issued under this subdivision and any license current as of the
58 effective date of this article will expire on December 31,
59 2010: *Provided,* That notwithstanding the licensing
60 requirements under this section, an individual acting

exclusively as an employee of a servicer who is engaging in loss mitigation efforts with respect to an existing mortgage transaction serviced by his or her employer is not required to meet the education, testing, background and licensing standards of this article until July 1, 2011, to the extent that this extension of time is not denied by guideline, rule, regulation or interpretive letter issued by the United States Department of Housing and Urban Development. In the event this extension of time is denied, such individuals shall apply for a license under this section within ninety days of the denial; and

(2) Mortgage loan originators employed by or under exclusive contract to licensed mortgage lenders and regulated consumer lenders shall comply with this article and submit all applications through the Nationwide Mortgage Licensing System and Registry on or before January 31, 2010.

§31-17A-4. State license application and issuance.

(a) Applicants for a license must apply in a form as prescribed by the commissioner. Each form shall contain content as set forth by instruction or procedure of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this article. The application must be submitted with an application fee of $50 plus the actual cost of fingerprint processing, together with any processing fee assessed by the Nationwide Mortgage Licensing System and Registry. The commissioner may elect to reduce or waive the application fees for mortgage loan originators employed by bona fide nonprofit organizations or other community housing development organizations that serve the housing needs of households or persons below the HUD-established median income for their area of residence. Any waiver of fees or other costs under this paragraph shall not be construed as a waiver of the duty to comply with all other provisions of this article.

18 (b) The commissioner is authorized to establish
19 relationships or contracts with the Nationwide Mortgage
20 Licensing System and Registry or other entities designated by
21 the Nationwide Mortgage Licensing System and Registry to
22 collect and maintain records and process transaction fees or
23 other fees related to licensees or other persons subject to this
24 article.

25 (c) In connection with an application for licensing as a
26 mortgage loan originator, the applicant shall, at a minimum,
27 furnish to the Nationwide Mortgage Licensing System and
28 Registry information concerning the applicant's identity,
29 including:

30 (1) Fingerprints for submission to the Federal Bureau of
31 Investigation and any governmental agency or entity
32 authorized to receive such information for a state, national
33 and international criminal history background check; and

34 (2) Personal history and experience in a form prescribed
35 by the Nationwide Mortgage Licensing System and Registry
36 and the commissioner, including the submission of
37 authorization for the Nationwide Mortgage Licensing System
38 and Registry and the commissioner to obtain:

39 (A) An independent credit report obtained from a
40 consumer reporting agency described in Section 603(p) of the
41 Fair Credit Reporting Act; and

42 (B) Information related to any administrative, civil or
43 criminal findings by any governmental jurisdiction.

44 (d) To reduce the points of contact which the Federal
45 Bureau of Investigation may have to maintain, the
46 commissioner may use the Nationwide Mortgage Licensing
47 System and Registry or its designated vendor as a channeling
48 agent for requesting information from and distributing

information to the Department of Justice or any governmental agency.

(e) To reduce the points of contact which the commissioner may have to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(f) Nonresident mortgage loan originators licensed under this article by their acceptance of the license acknowledge that they are subject to the jurisdiction of the courts of West Virginia and the service of process pursuant to section one hundred thirty-seven, article two, chapter forty-six-a of this code and section thirty-three, article three, chapter fifty-six of this code.

(g) The Commissioner may grant a provisional license to a mortgage loan originator who has met all other requirements for licensing under this article but: (1) has not passed a test regarding West Virginia mortgage laws and regulations required for licensure: *Provided,* That the provisionally licensed mortgage loan originator takes and passes that test within sixty days of the test becoming available; or (2) for whom the Commissioner has not received the results of a criminal background check despite the good faith effort of the applicant to provide in a timely manner the information necessary to obtain a criminal background check.

§31-17A-6. Prelicensing and relicensing education of loan originators.

(a) To meet the prelicensing education requirement, a person must complete at least twenty-two hours of education approved in accordance with subsection (b) of this section, which shall include at least:

5 (1) Three hours of federal law and regulations;

6 (2) Three hours of ethics, which shall include instruction
7 on fraud, consumer protection and fair lending issues;

8 (3) Two hours of training related to lending standards for
9 the nontraditional mortgage product marketplace; and

10 (4) Two hours of training related to West Virginia
11 mortgage and consumer laws or issues.

12 (b) For purposes of subsection (a) of this section,
13 prelicensing education courses shall be reviewed and
14 approved by the Nationwide Mortgage Licensing System and
15 Registry or the Division based upon reasonable standards.
16 Review and approval of a prelicensing education course shall
17 include review and approval of the course provider.

18 (c) Nothing in this section precludes any prelicensing
19 education course, as approved by the Nationwide Mortgage
20 Licensing System and Registry or the Division, that is
21 provided by the employer of the applicant or an entity which
22 is affiliated with the applicant by an agency contract, or any
23 subsidiary or affiliate of such employer or entity.

24 (d) Prelicensing education may be offered either in a
25 classroom, online or by any other means approved by the
26 Nationwide Mortgage Licensing System and Registry.

27 (e) The prelicensing education requirements approved by
28 the Nationwide Mortgage Licensing System and Registry or
29 the Division in subdivisions (1), (2) and (3) subsection (a) of
30 this section for any state shall be accepted as credit towards
31 completion of prelicensing education requirements in West
32 Virginia.

33 (f) A person previously licensed under this article
34 subsequent to July 1, 2009, applying to be licensed again

35 must prove that they have completed all of the continuing
36 education requirements for the year in which the license was
37 last held.

§31-17A-9. Continuing education for mortgage loan originators.

1 (a) To meet the annual continuing education
2 requirements, a licensed mortgage loan originator must
3 complete at least eight hours of education approved in
4 accordance with subsection (b) of this section, which shall
5 include at least:

6 (1) Three hours of federal law and regulations;

7 (2) Two hours of ethics, which shall include instruction
8 on fraud, consumer protection and fair lending issues;

9 (3) Two hours of training related to lending standards for
10 the nontraditional mortgage product marketplace; and

11 (4) One hour of West Virginia law or regulations.

12 (b) For purposes of subsection (a) of this section,
13 continuing education courses shall be reviewed and approved
14 by the Nationwide Mortgage Licensing System and Registry
15 or the Division based upon reasonable standards. Review
16 and approval of a continuing education course shall include
17 review and approval of the course provider.

18 (c) Nothing in this section precludes any education
19 course, as approved by the Nationwide Mortgage Licensing
20 System and Registry, that is provided by the employer of the
21 mortgage loan originator or an entity which is affiliated with
22 the mortgage loan originator by an agency contract, or any
23 subsidiary or affiliate of the employer or entity.

24 (d) Continuing education may be offered either in a
25 classroom, online or by any other means approved by the
26 Nationwide Mortgage Licensing System and Registry.

27 (e) A licensed mortgage loan originator:

28 (1) Except for subsection (b), section eight of this article
29 and subsection (i) of this section, may only receive credit for
30 a continuing education course in the year in which the course
31 is taken; and

32 (2) May not take the same approved course in the same
33 or successive years to meet the annual requirements for
34 continuing education.

35 (f) A licensed mortgage loan originator who is an
36 approved instructor of an approved continuing education
37 course may receive credit for the licensed mortgage loan
38 originator's own annual continuing education requirement at
39 the rate of two hours credit for every one hour taught.

40 (g) A person having successfully completed the education
41 requirements approved by the Nationwide Mortgage
42 Licensing System and Registry in subdivisions (1), (2) and
43 (3), subsection (a) of this section for any state shall be
44 accepted as credit towards completion of continuing
45 education requirements in West Virginia.

46 (h) A licensed mortgage loan originator who
47 subsequently becomes unlicensed must complete the
48 continuing education requirements for the last year in which
49 the license was held prior to issuance of a new or renewed
50 license.

51 (i) A person meeting the renewal requirements of
52 subsections (a)(1) and (3) of section eight may make up any
53 deficiency in continuing education as established by the
54 commissioner.

§31-17A-12. Enforcement authorities, violations and penalties.

(a) To ensure the effective supervision and enforcement of this article, the commissioner may:

(1) Deny, suspend, revoke, condition or decline to renew a license issued under this article for a violation of this article or rules or order or directive entered under this article;

(2) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of section five or eight of this article, or withholds information or makes a material misstatement in an application for a license or renewal of a license;

(3) Order restitution against persons subject to this article for violations of this article;

(4) Impose civil administrative penalties on persons subject to this article pursuant to subsections (b), (c) and (d) of this section; and

(5) Issue orders or directives under this article as follows:

(A) Order or direct persons subject to this article to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(B) Order or direct persons subject to this article to cease any harmful activities or violations of this article, including immediate temporary orders to cease and desist;

(C) Enter immediate temporary orders to cease business under a license or interim license issued pursuant to the authority granted under section three if the commissioner determines that such license was erroneously issued or the licensee is currently in violation of this article; and

(D) Order or direct such other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose a civil administrative penalty on a mortgage loan originator or person subject to this article if the commissioner finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this article has violated or failed to comply with any requirement of this article or any rule prescribed by the commissioner under this article or order issued under authority of this article.

(c) The maximum amount of penalty for each act or omission described in subsection (b) of this section shall be $25,000.

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

(e) If the commissioner takes any enforcement action under this article, he or she shall enter an order to that effect and shall cause a copy of that order to be served in person or by certified mail, return receipt requested, or in any other manner in which process in a civil action in this state may be served, on the applicant or licensee. The commissioner shall also submit a copy of the order for publication in the Nationwide Mortgage Licensing System and Registry when that functionality of the system becomes available. An applicant or licensee adversely affected by an order may request an appeal and shall be provided a hearing as provided in section fourteen, article seventeen of this chapter.

§31-17A-13. Surety bond required.

(a) Each mortgage loan originator must be covered by a surety bond in accordance with this section in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or unpaid examination invoice. If the mortgage loan originator

is an employee or exclusive agent of a person subject to this article, article seventeen of this chapter, or article four, chapter forty-six-a of this code, the surety bond of that person may be used in lieu of the mortgage loan originator's individual surety bond requirement. Any person not subject to licensing as a mortgage lender or broker under article seventeen, chapter thirty-one of this code or article four, chapter forty-six-a of this code that employs a mortgage loan originator licensed under this article may elect to register with the Nationwide Mortgage Licensing System and Registry and provide a surety bond in the appropriate amount for the mortgage loan originator employed.

(1) The surety bond must provide coverage for each mortgage loan originator in an amount as prescribed in subsection (b) of this section.

(2) The surety bond shall be in a form as prescribed by the commissioner.

(3) The commissioner may promulgate rules with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this article.

(b) The penal sum of the surety bond shall be maintained in an amount as required by article seventeen of this chapter for licensed mortgage lenders and brokers or article four, chapter forty-six-a of this code for regulated consumer lenders.

(c) When an action is commenced on a licensee's bond or any bond covering the activities of a licensee under this article, the commissioner may require the filing of a new bond.

(d) Immediately upon recovery upon any action on a bond covering any licensee under this article, a new bond shall be filed.

38 (e) The commissioner may elect to reduce or waive the
39 bond amounts imposed by this section for mortgage loan
40 originators employed by bona fide nonprofit corporations or
41 other bona fide nonprofit business entities, including
42 community housing development organizations, or any
43 agency or instrumentality of this state, federal, county or
44 municipal government whose residential mortgage lending or
45 brokering activities provide housing primarily to households
46 or persons below the HUD-established median income for
47 their area of residence if the commissioner determines that a
48 reduction or waiver would not violate any applicable law.
49 Any waiver of fees or other costs under this paragraph shall
50 not be construed as a waiver of the duty to comply with all
51 other provisions of this article.

CHAPTER 14

(Com. Sub. for H. B. 4630 - By Delegates J. Miller and Andes)

[Passed March 12, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §31-17-8 of the Code of West Virginia, 1931, as amended, relating to refunding of appraisal fees collected by lenders, brokers and mortgage loan originators licensed by the Commissioner of Banking; providing that in the event a loan is not made, the licensee is not required to refund an appraisal fee that is collected and paid to an unrelated third-party appraiser unless required to be refunded pursuant to federal law.

Be it enacted by the Legislature of West Virginia:

That §31-17-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.

§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.

1 (a) The maximum rate of finance charges on or in
2 connection with any subordinate mortgage loan may not
3 exceed eighteen percent per year on the unpaid balance of the
4 amount financed.

5 (b) A borrower shall have the right to prepay his or her
6 debt, in whole or in part, at any time and shall receive a
7 rebate for any unearned finance charge, exclusive of any
8 points, investigation fees and loan origination fees, which
9 rebate shall be computed under the actuarial method.

10 (c) Except as provided by section one hundred nine,
11 article three, chapter forty-six-a of this code and by
12 subsection (g) of this section, no additional charges may be
13 made, nor may any charge permitted by this section be
14 assessed unless the loan is made*: Provided,* That in the event
15 the loan is not made, the licensee is not required to refund an
16 appraisal fee that is collected from a loan applicant by the
17 licensee and paid to an unrelated third-party appraiser unless
18 the fee is required to be refunded pursuant to federal law.

19 (d) Where loan origination fees, investigation fees or
20 points have been charged by the licensee, the charges may
21 not be imposed again in any refinancing of that loan or any

22 additional loan on that property made within twenty-four
23 months thereof, unless the new loan has a reasonable,
24 tangible net benefit to the borrower considering all of the
25 circumstances, including the terms of both the new and the
26 refinanced loans, the cost of the new loan and the borrower's
27 circumstances. The licensee shall document this benefit in
28 writing on a form prescribed by the commissioner and
29 maintain such documentation in the loan file. To the extent
30 this subdivision overrides the preemption on limiting points
31 and other charges on first lien residential mortgage loans
32 contained in the United States Depository Institutions
33 Deregulation and Monetary Control Act of 1980, 12 U.S.C.
34 §1735f-7a, the state law limitations contained in this section
35 shall apply.

36 (e) Notwithstanding other provisions of this section, a
37 delinquent charge or "late charge" may be charged on any
38 installment made ten or more days after the regularly
39 scheduled due date in accordance with section one hundred
40 twelve or one hundred thirteen, article three, chapter forty-
41 six-a of this code, whichever is applicable. The charge may
42 be made only once on any one installment during the term of
43 the primary or subordinate mortgage loan.

44 (f) Hazard insurance may be required by the lender. The
45 charges for any insurance shall not exceed the standard rate
46 approved by the Insurance Commissioner for the insurance.
47 Proof of all insurance in connection with primary and
48 subordinate mortgage loans subject to this article shall be
49 furnished to the borrower within thirty days from and after
50 the date of application therefor by the borrower.

51 (g) Except for fees for services provided by unrelated
52 third parties for appraisals, inspections, title searches and
53 credit reports, no application fee may be allowed whether or
54 not the mortgage loan is consummated; however, the
55 borrower may be required to reimburse the licensee for actual

expenses incurred by the licensee in a purchase money transaction after acceptance and approval of a mortgage loan proposal made in accordance with the provisions of this article which is not consummated because of:

(1) The borrower's willful failure to close the loan; or

(2) The borrower's false or fraudulent representation of a material fact which prevents closing of the loan as proposed.

(h) No licensee shall make, offer to make, accept or offer to accept any primary or subordinate mortgage loan except on the terms and conditions authorized in this article.

(i) No licensee shall induce or permit any borrower to become obligated to the licensee under this article, directly or contingently, or both, under more than one subordinate mortgage loan at the same time for the purpose or with the result of obtaining greater charges than would otherwise be permitted under the provisions of this article.

(j) No instrument evidencing or securing a primary or subordinate mortgage loan shall contain:

(1) Any power of attorney to confess judgment;

(2) Any provision whereby the borrower waives any rights accruing to him or her under the provisions of this article;

(3) Any requirement that more than one installment be payable in any one installment period, or that the amount of any installment be greater or less than that of any other installment, except for the final installment which may be in a lesser amount, or unless the loan is structured as a revolving line of credit having no set final payment date;

(4) Any assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned;

(5) A requirement for compulsory arbitration which does not comply with federal law; or

(6) Blank or blanks to be filled in after the consummation of the loan. A borrower must be given a copy of every signed document executed by the borrower at the time of closing.

(k) No licensee shall charge a borrower or receive from a borrower money or other valuable consideration as compensation before completing performance of all services the licensee has agreed to perform for the borrower unless the licensee also registers and complies with all requirements set forth for credit service organizations in article six-c, chapter forty-six-a of this code, including all additional bonding requirements as may be established therein.

(l) No licensee shall make or broker revolving loans secured by a primary or subordinate mortgage lien for the retail purchase of consumer goods and services by use of a lender credit card.

(m) In making any primary or subordinate mortgage loan, no licensee may, and no primary or subordinate mortgage lending transaction may, contain terms which:

(1) Collect a fee not disclosed to the borrower; collect any attorney fee at closing in excess of the fee that has been or will be remitted to the attorney; collect a fee for a product or service where the product or service is not actually provided; misrepresent the amount charged by or paid to a third party for a product or service; or collect duplicate fee or points to act as both broker and lender for the same mortgage

116 loan, however, fees and points may be divided between the
117 broker and the lender as they agree, but may not exceed the
118 total charges otherwise permitted under this article:
119 *Provided,* That the fact of any fee, point or compensation is
120 disclosed to the borrower consistent with the solicitation
121 representation made to the borrower;

122 (2) Compensate, whether directly or indirectly, coerce or
123 intimidate an appraiser for the purpose of influencing the
124 independent judgment of the appraiser with respect to the
125 value of real estate that is to be covered by a deed of trust or
126 is being offered as security according to an application for a
127 primary or subordinate mortgage loan;

128 (3) Make or assist in making any primary or subordinate
129 mortgage loan with the intent that the loan will not be repaid
130 and that the lender will obtain title to the property through
131 foreclosure: *Provided,* That this subdivision shall not apply
132 to reverse mortgages obtained under the provisions of article
133 twenty-four, chapter forty-seven of this code;

134 (4) Require the borrower to pay, in addition to any
135 periodic interest, combined fees, compensation, or points of
136 any kind to the lender and broker to arrange, originate,
137 evaluate, maintain or service a loan secured by any
138 encumbrance on residential property that exceed, in the
139 aggregate, six percent of the loan amount financed, including
140 any yield spread premium paid by the lender to the broker:
141 *Provided,* That reasonable closing costs, as defined in section
142 one hundred two, article one, chapter forty-six-a of this code,
143 payable to unrelated third parties may not be included within
144 this limitation: *Provided, however,* That no yield spread
145 premium is permitted for any loan for which the annual
146 percentage rate exceeds eighteen percent per year on the
147 unpaid balance of the amount financed: *Provided further,*
148 That if no yield spread premium is charged, the aggregate of
149 fees, compensation or points can be no greater than five

150 percent of the loan amount financed. The financing of the
151 fees and points are permissible and, where included as part of
152 the finance charge, does not constitute charging interest on
153 interest. To the extent that this section overrides the
154 preemption on limiting points and other charges on first lien
155 residential mortgage loans contained in the United States
156 Depository Institutions Deregulation and Monetary Control
157 Act of 1980, 12 U.S.C. §1735f-7a, the state law limitations
158 contained in this section applies;

159 (5) Secure a primary or subordinate mortgage loan by any
160 security interest in personal property unless the personal
161 property is affixed to the residential dwelling or real estate;

162 (6) Allow or require a primary or subordinate mortgage
163 loan to be accelerated because of a decrease in the market
164 value of the residential dwelling that is securing the loan;

165 (7) Require terms of repayment which do not result in
166 continuous monthly reduction of the original principal
167 amount of the loan: *Provided,* That the provisions of this
168 subdivision may not apply to reverse mortgage loans
169 obtained under article twenty-four, chapter forty-seven of this
170 code, home equity, open-end lines of credit, bridge loans
171 used in connection with the purchase or construction of a new
172 residential dwelling or commercial loans for multiple
173 residential purchases;

174 (8) Secure a primary or subordinate mortgage loan in a
175 principal amount that, when added to the aggregate total of
176 the outstanding principal balances of all other primary or
177 subordinate mortgage loans secured by the same property,
178 exceeds the fair market value of the property on the date that
179 the latest mortgage loan is made. For purposes of this
180 paragraph, a broker or lender may rely upon a bona fide
181 written appraisal of the property made by an independent
182 third-party appraiser, duly licensed or certified by the West

183 Virginia real estate appraiser licensing and certification board
184 and prepared in compliance with the uniform standards of
185 professional appraisal practice;

186 (9) Advise or recommend that the consumer not make
187 timely payments on an existing loan preceding loan closure
188 of a refinancing transaction; or

189 (10) Knowingly violate any provision of any other
190 applicable state or federal law regulating primary or
191 subordinate mortgage loans, including, without limitation,
192 chapter forty-six-a of this code.

CHAPTER 15

(Com. Sub. for H. B. 4291 - By Delegates Moore, Walters, Reynolds and Azinger)

[Passed March 9, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §31A-2-4 of the Code of West Virginia, 1931, as amended, relating to criminal background investigations for applicants seeking approval to engage in certain banking activities under the jurisdiction of the Commissioner of Banking; eliminating the requirement that the investigations be done through both the West Virginia State Police and the Federal Bureau of Investigation; providing that applicants provide fingerprints for submission to the Federal Bureau of Investigation or any governmental agency or entity authorized to receive such information for a state, national or international criminal history check.

Be it enacted by the Legislature of West Virginia:

That §31A-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4. Jurisdiction of commissioner; powers, etc., of division transferred to commissioner; powers and duties of commissioner.

1 (a) Subject to the powers vested in the board by article
2 three of this chapter, the commissioner has supervision and
3 jurisdiction over state banks, regulated consumer lenders,
4 residential mortgage lenders and brokers licensed pursuant to
5 article seventeen, chapter thirty-one of this code, credit
6 unions and all other persons now or hereafter made subject to
7 his or her supervision or jurisdiction. All powers, duties,
8 rights and privileges vested in the division are hereby vested
9 in the commissioner. He or she shall be the chief executive
10 officer of the Division of Banking and is responsible for the
11 division's organization, services and personnel and for the
12 orderly and efficient administration, enforcement and
13 execution of the provisions of this chapter and all laws
14 vesting authority or powers in or prescribing duties or
15 functions for the division or the commissioner.

16 (b) The commissioner shall:

17 (1) Maintain an office for the division and there keep a
18 complete record of all the division's transactions, of the
19 financial conditions of all financial institutions and records of
20 the activities of other persons as the commissioner considers
21 important. Notwithstanding any other provision of this code,
22 heretofore or hereafter enacted, the records relating to the
23 financial condition of any financial institution and any
24 information contained in the records shall be confidential for

25 the use of the commissioner and authorized personnel of the
26 Division of Banking. No person shall divulge any information
27 contained in any records except as authorized in this
28 subdivision in response to a valid subpoena or subpoena
29 duces tecum issued pursuant to law in a criminal proceeding
30 or in a civil enforcement action brought by the state or
31 federal regulatory authorities. Subpoenas shall first be
32 directed to the commissioner, who shall authorize disclosure
33 of relevant records and information from the records for good
34 cause, upon imposing terms and conditions considered necessary
35 to protect the confidential nature of the records, the financial
36 integrity of the financial institution or the person to which the
37 records relate, and the legitimate privacy interests of any
38 individual named in the records. Conformity with federal
39 procedures shall be sought where the institution maintains
40 federal deposit insurance. The commissioner has and may
41 exercise reasonable discretion as to the time, manner and
42 extent the other records in his or her office and the
43 information contained in the records are available for public
44 examination;

45 (2) Require all financial institutions to comply with all
46 the provisions of this chapter and other applicable laws, or
47 any rule promulgated or order issued thereunder;

48 (3) Investigate all alleged violations of this chapter and
49 all other laws which he or she is required to enforce and of
50 any rule promulgated or order issued thereunder; and

51 (4) Require a criminal background investigation,
52 including requiring fingerprints for submission to the Federal
53 Bureau of Investigation or any governmental agency or entity
54 authorized to receive such information for a state, national or
55 international criminal history check, of each: (A) Applicant
56 seeking approval to charter and/or control a state bank, state
57 credit union, or a foreign bank state agency or representative
58 office; (B) applicant seeking a license to engage in the

business of money transmission, currency exchange, or other activity regulated under article two, chapter thirty-two-a of this code; (C) applicant subject to the commissioner's supervision seeking a license to engage in the business of regulated consumer lending, mortgage lending or brokering; and (D) Division of Banking financial institutions regulatory employee applicant: *Provided,* That where the applicant is a company or entity already subject to supervision and regulation by the federal reserve board or other federal bank, thrift or credit union regulator, or is a direct or indirect subsidiary of a company or entity subject to the supervision and regulation, or where the applicant is a company subject to the supervision and regulation of the federal securities and exchange commission whose stock is publicly traded on a registered exchange or through the national association of securities dealers automated quotation system, or the applicant is a direct or indirect subsidiary of such a company, the investigation into criminal background is not required. The provisions of this subdivision are not applicable to applicants seeking interim bank charters organized solely for the purpose of facilitating the acquisition of another bank pursuant to section five, article four of this chapter: *Provided, however,* That where a nonexempt applicant under this subdivision is not a natural person, the principals of the applicant are subject to the requirements of this subdivision. As used in this subdivision, the term "principals" means the chief executive officer, regardless of title, managing partner if a partnership, members of the organizing group if no chief executive officer has yet been appointed, trustee or other person controlling the conduct of the affairs of a licensee. A person controlling ten percent or more of the stock of any corporate applicant shall be considered to be a principal under this provision.

(c) In addition to all other authority and powers vested in the commissioner by provisions of this chapter and other applicable laws, the commissioner may:

(1) Provide for the organization of the division and the procedures and practices of the division and implement the procedures and practices by the promulgation of rules and forms as appropriate and the rules shall be promulgated in accordance with article three, chapter twenty-nine-a of this code;

(2) Employ, direct, discipline, discharge and establish qualifications and duties for all personnel for the division, including, but not limited to, examiners, assistant examiners, conservators and receivers, establish the amount and condition of bonds for the personnel he or she considers appropriate and pay the premiums on the bonds and, if he or she elects, have all personnel subject to and under the classified service of the state personnel division;

(3) Cooperate with organizations, agencies, committees and other representatives of financial institutions of the state in connection with schools, seminars, conferences and other meetings to improve the responsibilities, services and stability of the financial institutions;

(4) In addition to the examinations required by section six of this article, inspect, examine and audit the books, records, accounts and papers of all financial institutions at such times as circumstances in his or her opinion may warrant;

(5) Call for and require any data, reports and information from financial institutions under his or her jurisdiction, at such times and in such form, content and detail considered necessary by him or her in the faithful discharge of his or her duties and responsibilities in the supervision of the financial institutions;

(6) Subject to the powers vested in the board by article three of this chapter, supervise the location, organization, practices and procedures of financial institutions and, without

limitation on the general powers of supervision of financial institutions, require financial institutions to:

(A) Maintain their accounts consistent with rules prescribed by the commissioner and in accordance with generally accepted accounting practices;

(B) Observe methods and standards which he or she may prescribe for determining the value of various types of assets;

(C) Charge off the whole or any part of an asset which at the time of his or her action could not lawfully be acquired;

(D) Write down an asset to its market value;

(E) Record or file writings creating or evidencing liens or other interests in property;

(F) Obtain financial statements from prospective and existing borrowers;

(G) Obtain insurance against damage and loss to real estate and personal property taken as security;

(H) Maintain adequate insurance against other risks as he or she may determine to be necessary and appropriate for the protection of depositors and the public;

(I) Maintain an adequate fidelity bond or bonds on its officers and employees;

(J) Take other action that in his or her judgment is required of the institution in order to maintain its stability, integrity and security as required by law and all rules promulgated by him or her; and

(K) Verify any or all asset or liability accounts;

(7) Subject to the powers vested in the board by article three of this chapter, receive from any person or persons and consider any request, petition or application relating to the organization, location, conduct, services, policies and procedures of any financial institution and to act on the request, petition or application in accordance with any provisions of law applicable thereto;

(8) In connection with the investigations required by subdivision (3), subsection (b) of this section, issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings. Any subpoenas or subpoenas duces tecum shall be issued, served and enforced in the manner provided in section one, article five, chapter twenty-nine-a of this code. Any person appearing and testifying at a hearing may be accompanied by an attorney employed by him or her;

(9) Issue declaratory rulings in accordance with the provisions of section one, article four, chapter twenty-nine-a of this code;

(10) Study and survey the location, size and services of financial institutions, the geographic, industrial, economic and population factors affecting the agricultural, commercial and social life of the state and the needs for reducing, expanding or otherwise modifying the services and facilities of financial institutions in the various parts of the state and compile and keep current data thereon to aid and guide him or her in the administration of the duties of his or her office;

(11) Implement all of the provisions of this chapter, except the provisions of article three of this chapter, and all other laws which he or she is empowered to administer and enforce by the promulgation of rules in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(12) Implement the provisions of chapter forty-six-a of this code applicable to consumer loans and consumer credit

sales by the promulgation of rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as long as the rules do not conflict with any rules promulgated by the state's Attorney General;

(13) Foster and encourage a working relationship between the Division of Banking and financial institutions, credit, consumer, mercantile and other commercial and finance groups and interests in the state in order to make current appraisals of the quality, stability and availability of the services and facilities of financial institutions;

(14) Provide to financial institutions and the public copies of the West Virginia statutes relating to financial institutions, suggested drafts of bylaws commonly used by financial institutions and any other forms and printed materials found by him or her to be helpful to financial institutions, their shareholders, depositors and patrons and make reasonable charges for the copies;

(15) Delegate the powers and duties of his or her office, other than the powers and duties excepted in this subdivision, to qualified division personnel who shall act under the direction and supervision of the commissioner and for whose acts he or she is responsible, but the commissioner may delegate to the deputy commissioner of banking and to no other division personnel the following powers, duties and responsibilities, all of which are hereby granted to and vested in the commissioner and for all of which the commissioner also is responsible. The commissioner shall:

(A) Order any person to cease violating any provision or provisions of this chapter or other applicable law or any rule promulgated or order issued thereunder;

(B) Order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor of the financial institution;

(C) Revoke the certificate of authority, permit or license of any financial institution except a banking institution in accordance with the provisions of section thirteen of this article; and

(D) Accept an assurance in writing that the person will not in the future engage in the conduct alleged by the commissioner to be unlawful, which could be subject to an order under the provisions of this chapter. This assurance of voluntary compliance shall not be considered an admission of violation for any purpose, except that if a person giving the assurance fails to comply with its terms, the assurance is prima facie evidence that prior to this assurance the person engaged in conduct described in the assurance;

(16) Seek and obtain civil administrative penalties against any person who violates this chapter, the rules issued pursuant to this chapter, or any orders lawfully entered by the commissioner or board of banking and financial institutions in an amount not more than five thousand dollars per day for each violation: *Provided,* That all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to any assessment of a penalty under this subsection;

(17) Receive from state banking institutions applications to change the locations of their principal offices and to approve or disapprove these applications;

(18) Expend funds in order to promote consumer awareness and understanding of issues related to residential mortgage lending; and

(19) Take other action as he or she may consider necessary to enforce and administer the provisions of this chapter, except the provisions of article three of this chapter, and all other laws which he or she is empowered to administer and enforce and apply to any court of competent jurisdiction for appropriate orders, writs, processes and remedies.

CHAPTER 16

(S. B. 381 - By Senators Minard, Jenkins, McCabe, Oliverio and Plymale)

[Passed March 9, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §31A-4-26 of the Code of West Virginia, 1931, as amended, relating to restrictions against the borrowing of money or the acceptance of credit by employees of the Division of Banking from institutions regulated by the division; clarifying and amending such restrictions; prohibiting the direct or indirect borrowing of any sum of money from a state chartered depository institution by an employee of the division who engages in certain review and regulatory activities with regard to state chartered depository institutions; prohibiting the direct or indirect borrowing of any sum of money from a state licensed nondepository institution by an employee of the division who engages in certain review and regulatory activities with regard to state licensed nondepository institutions; and prohibiting the commissioner, deputy commissioner and in-house counsel of the division from directly or indirectly borrowing any sum of money from any entity that is under the jurisdiction of the division.

Be it enacted by the Legislature of West Virginia:

That §31A-4-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to executive officers and directors of banks and employees of the banking department; exceptions; valuation of securities.

1 (a) (1) The total loans and extensions of credit made by
2 a state-chartered banking institution to any one person or
3 common enterprise and not fully secured, as determined in a
4 manner consistent with subdivision (2) of this subsection,
5 may not exceed fifteen percent of the unimpaired capital and
6 unimpaired surplus of that state-chartered banking institution
7 initially determined for the period such loan or extension of
8 credit is made.

9 (2) Where the total loans and extensions of credit by a
10 state- chartered banking institution to any one person or
11 common enterprise are fully secured by readily marketable
12 collateral having a market value, as determined by reliable
13 and continuously available price quotations, at least equal to
14 the outstanding amount of such loans and extensions, then
15 the bank may provide such loans or extensions of up to ten
16 percent of the unimpaired capital and unimpaired surplus of
17 that state-chartered banking institution initially determined
18 for the period such loan or extension is made. This limitation
19 shall be separate from and in addition to the limitation
20 contained in subdivision (1) of this subsection.

21 (3) For the purposes of this subsection:

22 (A) The term "loans and extensions of credit" includes all
23 direct or indirect advances of funds to a person made on the
24 basis of any obligation of that person to repay the funds or
25 repayable from specific property pledged by or on behalf of

26 the person and to the extent specified by the Commissioner
27 of Banking, the terms also include any liability of a
28 state-chartered banking institution to advance funds to or on
29 behalf of a person pursuant to a contractual commitment;

30 (B) The term "person" includes an individual,
31 partnership, sole proprietorship, society, association, firm,
32 institution, company, public or private corporation,
33 not-for-profit corporation, state, governmental agency,
34 bureau, department, division or instrumentality, political
35 subdivision, county commission, municipality, trust,
36 syndicate, estate or any other legal entity whatsoever,
37 formed, created or existing under the laws of this state or any
38 other jurisdiction;

39 (C) The term "unimpaired capital and unimpaired
40 surplus" means the amount of total equity capital outstanding
41 as indicated in the bank's most recent quarterly report of
42 condition and income as filed with the Commissioner of
43 Banking pursuant to section nineteen of this article, plus the
44 amount of the allowance for loan losses, minus the amount of
45 goodwill or other nonmarketable intangible assets included
46 in the quarterly report pursuant to generally accepted
47 accounting principles. Unrealized gains and losses on the
48 bank's securities and loan portfolios shall be included in the
49 calculation of total equity capital to the extent required by
50 generally accepted accounting principles and applicable
51 federal or state law, rule or regulation; and

52 (D) The term "common enterprise" includes, but is not
53 limited to, persons and entities who are so related by business
54 or otherwise that the expected source of repayment on the
55 loan or extension of credit is substantially the same for each
56 person or entity.

57 (4) The limitations contained in this subsection are
58 subject to the following exceptions:

59 (A) Loans or extensions of credit arising from the
60 discount of commercial or business paper evidencing an
61 obligation to the person negotiating it with recourse are not
62 subject to any limitation based on capital and surplus;

63 (B) The purchase of bankers' acceptances of the kind
64 described in section thirteen of the Federal Reserve Act and
65 issued by other banks are not subject to any limitation based
66 on capital and surplus;

67 (C) Loans and extensions of credit having a term of ten
68 months or less and secured by bills of lading, warehouse
69 receipts or similar documents transferring or securing title to
70 readily marketable staples are subject to a limitation of
71 twenty percent of unimpaired capital and unimpaired surplus
72 in addition to the general limitations set forth in subdivision
73 (1) of this subsection, provided the market value of the
74 staples securing each additional loan or extension of credit at
75 all times equals or exceeds one hundred fifteen percent of the
76 outstanding amount of such loan or extension of credit. The
77 staples shall be fully covered by insurance whenever it is
78 customary to insure the staples. If collateral values of the
79 staples fall below the levels required herein, to the extent that
80 the loan is no longer in conformance with its collateral
81 requirements and exceeds the general fifteen percent
82 limitation, the loan must be brought into conformance within
83 five business days, except where judicial proceedings,
84 regulatory actions or other extraordinary occurrences prevent
85 the bank from taking action;

86 (D) Loans or extensions of credit secured by bonds,
87 notes, certificates of indebtedness or Treasury bills of the
88 United States or by other such obligations fully guaranteed as
89 to principal and interest by the United States or by bonds,
90 notes, certificates of indebtedness which are general
91 obligations of the State of West Virginia or by other such
92 obligations fully guaranteed as to principal and interest by the

State of West Virginia are not subject to any limitation based on capital and surplus;

(E) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or of the State of West Virginia or any corporation wholly owned directly or indirectly by the United States are not subject to any limitation based on capital and surplus;

(F) Loans or extensions of credit secured by a segregated deposit account in the lending bank are not subject to any limitation based on capital and surplus;

(G) Loans or extensions of credit to any banking institution or to any receiver, conservator or other agent in charge of the business and property of such banking institution or other federally insured depository institution, when the loans or extensions of credit are approved by the Commissioner of Banking, are not subject to any limitation based on capital and surplus;

(H) (i) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person or common enterprise transferring the paper are subject under this section to a maximum limitation equal to twenty-five percent of such unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(ii) If the bank's files or the knowledge of its officers of the financial condition of each maker of consumer paper is reasonably adequate and an officer of the bank designated for that purpose by the board of directors of the bank certifies in

125 writing that the bank is relying primarily upon the
126 responsibility of each maker for payment of such loans or
127 extensions of credit and not upon any full or partial recourse
128 endorsement or guarantee by the transferor, the limitations of
129 this section as to the loans or extensions of credit of each
130 such maker are the sole applicable loan limitations;

131 (I) (i) Loans and extensions of credit secured by shipping
132 documents or instruments transferring or securing title
133 covering livestock or giving a lien on livestock when the
134 market value of the livestock securing the obligation is not at
135 any time less than one hundred fifteen percent of the face
136 amount of the note covered shall be subject under this section
137 to a maximum limitation equal to twenty-five percent of the
138 unimpaired capital and unimpaired surplus, notwithstanding
139 the collateral requirements set forth in subdivision (2) of this
140 subsection;

141 (ii) Loans and extensions of credit which arise from the
142 discount by dealers in livestock of paper given in payment for
143 livestock, which paper carries a full recourse endorsement or
144 unconditional guarantee of the seller and which are secured
145 by the livestock being sold, are subject under this section to
146 a limitation of twenty-five percent of the unimpaired capital
147 and unimpaired surplus, notwithstanding the collateral
148 requirements set forth in subdivision (2) of this subsection;

149 (iii) If collateral values of the livestock documents,
150 instruments or discount paper fall below the levels required
151 herein, to the extent that the loan is no longer in conformance
152 with its collateral requirements and exceeds the general
153 fifteen percent limitation, the loan must be brought into
154 conformance within thirty business days, except where
155 judicial proceedings, regulatory actions or other
156 extraordinary occurrences prevent the bank from taking
157 action;

158 (J) Loans or extensions of credit to the Student Loan
159 Marketing Association are not subject to any limitation based
160 on capital and surplus; and

161 (K) Loans or extensions of credit to a corporation owning
162 the property in which that state-chartered banking institution
163 is located, when that state-chartered banking institution has
164 an unimpaired capital and surplus of not less than one million
165 dollars or when approved in writing by the Commissioner of
166 Banking, are not subject to any limitation based on capital
167 and surplus.

168 (5) (A) The Commissioner of Banking may prescribe
169 rules to administer and carry out the purposes of this
170 subsection including rules to define or further define terms
171 used in this subsection and to establish limits or requirements
172 other than those specified in this subsection for particular
173 classes or categories of loans or extensions of credit;

174 (B) The Commissioner of Banking may also prescribe
175 rules to deal with loans or extensions of credit, which were
176 not in violation of this section prior to the effective date of
177 this article, but which will be in violation of this section upon
178 the effective date of this article; and

179 (C) The Commissioner of Banking may also determine
180 when a loan putatively made to a person is, for purposes of
181 this subsection, attributed to another person.

182 (b) (1) Except as hereinafter provided or otherwise
183 permitted by law, nothing herein contained authorizes the
184 purchase by a state-chartered banking institution for its own
185 account of any shares of stock of any corporation*: Provided,*
186 That a state- chartered banking institution may purchase and
187 sell securities and stock without recourse, solely upon the
188 order and for the account of customers.

189 (2) The total amount of investment securities of any one
190 obligor or maker held by a state-chartered banking institution
191 for its own account may not exceed that percentage of the
192 unimpaired capital and unimpaired surplus of that
193 state-chartered banking institution as is permitted for
194 investment by national banks or for any federally insured
195 depository institution.

196 (3) For purposes of this subsection:

197 (A) The term "investment securities" means a marketable
198 obligation in the form of a stock, bond, note or debenture
199 commonly regarded as an investment security and that is
200 salable under ordinary circumstances with reasonable
201 promptness at a fair value. "Derivative security" means a
202 type of investment security involving a financial contract
203 whose value depends on the values of one or more
204 underlying assets or indexes of asset values. The term
205 "derivative" refers inter alia to financial contracts such as
206 collateralized mortgage obligations ("CMOs"), forwards,
207 futures, forward rate agreements, swaps, options and
208 caps/floors/collars whose primary purpose is to transfer price
209 risks associated with fluctuations in asset values;

210 (B) The term "person" includes any individual,
211 partnership, sole proprietorship, society, association, firm,
212 institution, company, public or private corporation,
213 not-for-profit corporation, state, governmental agency,
214 bureau, department, division or instrumentality, political
215 subdivision, county commission, municipality, trust,
216 syndicate, estate or any other legal entity whatsoever,
217 formed, created or existing under the laws of this state or any
218 other jurisdiction; and

219 (C) The term "unimpaired capital and unimpaired
220 surplus" has the same meaning as set forth in subsection (a)
221 of this section.

222 (4) Notwithstanding any other provision of this
223 subsection, a state-chartered banking institution may invest
224 its funds in any investment authorized for national banking
225 associations or for any other federally insured depository
226 institution. The investments by state-chartered banking
227 institutions shall be on the same terms and conditions
228 applicable to national banking associations or any other
229 federally insured depository institution: *Provided,* That: (i)
230 The purchase of investment securities under this subdivision
231 may be made only when in the bank's prudent judgment,
232 which judgment may be based in part on estimates which it
233 believes to be reliable, there is adequate evidence that the
234 obligor will be able to perform all it undertakes to perform in
235 connection with the securities, including all debt service
236 requirements, and that the securities may be sold with
237 reasonable promptness at a price that corresponds to their fair
238 value; and (ii) the purchase conforms to the requirement of
239 subdivision (5) of this subsection. The Commissioner of
240 Banking may, from time to time, provide notice to
241 state-chartered banking institutions of authorized investments
242 under this paragraph.

243 (5) The purchase of investment securities, including
244 derivative securities, in which the investment characteristics
245 are considered distinctly or predominantly speculative, or the
246 purchase of such securities that are in default, whether as to
247 principal or interest, is prohibited. The proper management
248 of interest rate risk through the use of derivative or other
249 investment securities may not be held a speculative purpose.

250 (6) The Commissioner of Banking may prescribe rules to
251 administer and carry out the purposes of this subsection,
252 including rules to define or further define terms used in this
253 subsection and to establish limits or requirements other than
254 those specified in this subsection for particular classes or
255 categories of investment securities.

256 (c) If there is a material decline of unimpaired capital and
257 unimpaired surplus of a state-chartered bank during any
258 quarterly reporting period of more than twenty percent from
259 that amount reported in the bank's most recent report of
260 income and condition, or where there is a decrease of more
261 than thirty percent in any twelve-month period, the bank shall
262 review its outstanding loans, extensions of credit and
263 investments and report to the Commissioner of Banking
264 those loans, extensions and investments that exceed the
265 limitations of this section using the bank's current
266 reevaluated unimpaired capital and unimpaired surplus. The
267 report shall detail the bank's position in each such loan,
268 extension of credit and investment. The commissioner may,
269 within his or her discretion, require that such loans,
270 extensions of credit and investments be brought into
271 conformity with the bank's current reevaluated legal lending
272 and investment limitation.

273 (d) Notwithstanding any other provision of this section,
274 in order to ensure a bank's safety and soundness, the
275 Commissioner of Banking retains the authority to direct any
276 state-chartered bank to recalculate its lending and investment
277 limits at more frequent intervals than otherwise provided
278 herein and to require all outstanding loans, extensions of
279 credit and investments be brought into conformance with the
280 reevaluated limitations. In such cases, the commissioner will
281 provide the bank a written notice explaining briefly the
282 specific reasons why the determination was made to require
283 the more frequent calculations.

284 (e) Loans to directors or executive officers are subject to
285 the following limitations:

286 (1) A director or executive officer of any banking
287 institution may not borrow, directly or indirectly, from a
288 banking institution with which he or she is connected any
289 sum of money without the prior approval of a majority of the

board of directors or discount committee of the banking institution, or of any duly constituted committee whose duties include those usually performed by a discount committee. The approval shall be by resolution adopted by a majority vote of the board or committee, exclusive of the director or executive officer to whom the loan is made.

(2) If any director or executive officer of any bank owns or controls a majority of the stock of any corporation, or is a partner in any partnership, a loan to the corporation or partnership constitutes a loan to the director or officer.

(3) For purposes of this subsection, an "executive officer" means:

(A) A person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the company or bank, regardless of any official title, salary or other compensation. The chairman of the board, the president, every vice president, the cashier, the secretary and the treasurer of a company or bank are considered executive officers unless the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company from participation, other than in the capacity of director, in major policy-making functions of the bank or company and the officer does not actually participate therein.

(B) An executive officer of a company of which the bank is a subsidiary, and any other subsidiary of that company, unless the executive officer of the subsidiary is excluded, by name or by title, from participation in major policy-making functions of the bank by resolutions of the boards of directors of both the subsidiary and the bank and does not actually participate in such major policy-making functions.

(f) An employee of the Division of Banking whose regulatory activities involve participation in an examination,

audit, visitation, review, investigation or any other particular matter involving depository institutions chartered by the division may not borrow, directly or indirectly, any sum of money from a state-chartered bank or state-chartered credit union. An employee of the Division of Banking whose regulatory activities involve participation in an examination, audit, visitation, review, investigation or any other particular matter involving nondepository institutions licensed by the division may not borrow, directly or indirectly, any sum of money from a nondepository entity that is licensed by the division. The commissioner, deputy commissioner and in-house legal counsel of the Division of Banking may not borrow, directly or indirectly, any sum of money from any entity that is under the jurisdiction of the division.

(g) Securities purchased by a state-chartered banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities may not be valued at a valuation exceeding their present cost as determined by amortization of premiums and accretion of discounts pursuant to generally accepted accounting principles, that is, by charging to profit and loss a sum sufficient to bring them to par at maturity: *Provided,* That securities held for trade or permissible marketable equity securities and any other types of debt securities which pursuant to generally accepted accounting principles are to be carried on the bank's books at fair market value shall have the unrealized market appreciation and depreciation included in the income and capital as permitted by generally accepted accounting principles.

(h) The market value of securities purchased and loans extended by a state-chartered banking institution shall be reported in all public reports and quarterly reports to the commissioner pursuant to section nineteen of this article in accordance with generally accepted accounting principles and any applicable state or federal law, rule or regulation.

CHAPTER 17

(H. B. 4037 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed February 25, 2010; in effect from passage.]
[Approved by the Governor on March 8, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §13-4-1 and §13-4-2, all relating generally to federal subsidy bonds and bond financing; defining terms; authorizing certain bond issuers to receive and use credit payments with respect to federal subsidy bonds; and exempting the bonds from taxation.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §13-4-1 and §13-4-2, all to read as follows:

ARTICLE 4. FEDERAL SUBSIDY BONDS.

§13-4-1. Definitions.
§13-4-2. Authority to issue federal subsidy bonds; election of credit payments; treatment of federal subsidy payments; exemption from taxation.

§13-4-1. Definitions.

1 Unless the context clearly indicates otherwise, as used in
2 this article:

3 (1) "Federal subsidy bonds" means any state or local
4 government bonds authorized for sale under the Internal
5 Revenue Code of 1986, as amended, for which a credit
6 payment is available to the issuer or its designee. Certain
7 Build America Bonds authorized under Section 1531 of Title
8 I of Division B of the American Recovery and Reinvestment
9 Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009),
10 codified at Section 54AA(g) of the Internal Revenue Code of
11 1986, as amended, are federal subsidy bonds.

12 (2) "Credit payment" means any payment to an issuer of
13 federal subsidy bonds or its designee authorized under the
14 provisions of the Internal Revenue Code to offset a portion of
15 the interest paid on the bonds. Periodic credit payments
16 received from the United States Secretary of the Treasury, as
17 described in Section 6431(b) of the Internal Revenue Code,
18 are credit payments.

19 (3) "Government entity" means the State of West
20 Virginia, including any department, division, agency, bureau,
21 board, commission, office or authority thereof, any political
22 subdivision of the State of West Virginia including, but not
23 limited to, any county, municipality or school district, and
24 any other entity authorized by the provisions of this code to
25 issue bonds, notes or other debt obligations.

26 (4) "General revenue bond" means a bond, note or other
27 debt obligation issued by a government entity for which the
28 government entity has pledged the full faith and credit,
29 including a limited pledge, of such government entity to the
30 repayment of the obligation.

31 (5) "Special revenue bond" means a bond, note or other
32 debt obligation issued by a government entity for which the
33 government entity pledges a dedicated revenue stream or
34 other security interest to secure the repayment of the
35 obligation.

§13-4-2. Authority to issue federal subsidy bonds; election of credit payments; treatment of federal subsidy payments; exemption from taxation.

(a) A government entity authorized to issue bonds, notes or other debt obligations under the provisions of this code may issue federal subsidy bonds in the manner, and subject to the requirements, limitations and conditions, set forth in the provisions of the code that authorize the government entity to issue such bonds, notes or other debt obligations. This section may not be construed to grant bonding authority to any government entity or to expand the bonding authority of any government entity.

(b) A government entity that issues federal subsidy bonds may elect to receive credit payments.

(c) Credit payments shall be treated as special revenue in the case of special revenue bonds issued by a government entity or as general revenue in the case of general revenue bonds issued by a government entity. A government entity may use credit payments to pay future debt service on the federal subsidy bonds or for any other purpose allowable by law.

(d) Federal subsidy bonds issued by a government entity under this section shall be exempt from tax in the manner, and subject to the requirements, limitations and conditions, set forth in the provisions of this code that authorize the government entity to issue bonds, notes or other debt obligations.

CHAPTER 18

(Com. Sub. for H. B. 4457 - By Delegates Brown, Talbott, Fragale, Caputo, Hatfield, Wells, Fleischauer, Marshall and Perdue)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact §29-1-8a of the Code of West Virginia,1931, as amended; to amend and reenact §37-13A-1, §37-13A-2 and §37-13A-5 of said code; to amend said code by adding a new section, designated §37-13A-7; and to amend and reenact §61-8-14 of said code, all relating to the access to and protection of cemeteries; clarifying procedures for protection of graves and burial sites; clarifying requirements and procedures for access to cemeteries and grave sites located on private land; clarifying conduct subject to criminal sanctions as it relates to the crime of disinterment of a dead body or damage to a cemetery.

Be it enacted by the Legislature of West Virginia:

That §29-1-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §37-13A-1, §37-13A-2 and §37-13A-5 of said code be amended and reenacted; that said code be amended by adding a new section, designated §37-13A-7; and that §61-8-14 of said code be amended and reenacted, all to read as follows:

Chapter

29. Miscellaneous Boards and Officers.
37. Real Property.
61. Crimes and Their Punishment.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-8a. Protection of human skeletal remains, grave artifacts and grave markers; permits for excavation and removal; penalties.

1 (a) *Legislative findings and purpose.* --

2 The Legislature finds that there is a real and growing
3 threat to the safety and sanctity of unmarked human graves
4 in West Virginia and the existing laws of the state do not
5 provide equal or adequate protection for all such graves. As
6 evident by the numerous incidents in West Virginia which
7 have resulted in the desecration of human remains and
8 vandalism to grave markers, there is an immediate need to
9 protect the graves of earlier West Virginians from such
10 desecration. Therefore, the purpose of this article is to assure
11 that all human burials be accorded equal treatment and
12 respect for human dignity without reference to ethnic origins,
13 cultural backgrounds, or religious affiliations.

14 The Legislature also finds that those persons engaged in
15 the scientific study or recovery of artifacts which have been
16 acquired in accordance with the law are engaged in legitimate
17 and worthy scientific and educational activities. Therefore,
18 this legislation is intended to permit the appropriate pursuit
19 of those lawful activities.

20 Finally, this legislation is not intended to interfere with
21 the normal activities of private property owners, farmers, or
22 those engaged in the development, mining or improvement
23 of real property.

24 (b) *Definitions.*--

25 For the purposes of this section:

(1) "Human skeletal remains" means the bones, teeth, hair or tissue of a deceased human body;

(2) "Unmarked grave" means any grave or location where a human body or bodies have been buried or deposited for at least fifty years and the grave or location is not in a publicly or privately maintained cemetery or in the care of a cemetery association, or is located within such cemetery or in such care and is not commonly marked;

(3) "Grave artifact" means any items of human manufacture or use that are associated with the human skeletal remains in a grave;

(4) "Grave marker" means any tomb, monument, stone, ornament, mound, or other item of human manufacture that is associated with a grave;

(5) "Person" means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit or instrumentality of federal, state or local government;

(6) "Disturb" means the excavating, removing, exposing, defacing, mutilating, destroying, molesting, or desecrating in any way of human skeletal remains, unmarked graves, grave artifacts or grave markers;

(7) "Native American tribe" means any Indian tribe, band, nation, or organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(8) "Cultural affiliation" means the relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day group and an identifiable earlier group;

(9) "Lineal descendants" means any individuals tracing his or her ancestry directly or by proven kinship; and

(10) "Proven kinship" means the relationship among people that exists because of genetic descent, which includes racial descent.

(c) *Acts prohibited; penalties; exceptions.* --

(1) No person may excavate, remove, destroy, or otherwise disturb any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance unless such person has a valid permit issued to him or her by the Director of the Historic Preservation Section*: Provided,* That the supervising archaeologist of an archaeological investigation being undertaken in compliance with the federal Archaeological Resources Protection Act (Public Law 96-95 at 16 USC 470(aa)) and regulations promulgated thereunder is not required to obtain such permit, but shall notify the Director of the Historic Preservation Section that such investigation is being undertaken and file reports as are required of persons issued a permit under this section*: Provided, however,* That projects being undertaken in compliance with section 106 of the National Historic Preservation Act of 1966, as amended, or subsection (a), section five of this article are not required to obtain such permit for excavation, removal, destruction or disturbance of historic or prehistoric ruins or archaeological sites.

(2) A person who, either by himself or herself or through an agent, intentionally excavates, removes, destroys or otherwise disturbs any historic or prehistoric ruins, burial grounds or archaeological site, or unmarked grave, grave artifact or grave marker of historical significance without first having been issued a valid permit by the Director of the Historic Preservation Section, or who fails to comply with the terms and conditions of such permit, is guilty of a

misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500, confined in jail for not more than six months, or both fined and confined.

(3) A person who, either by himself or herself or through an agent, intentionally excavates, removes, destroys or otherwise disturbs human skeletal remains of historical significance without first having been issued a valid permit by the Director of the Historic Preservation Section, or who fails to comply with the terms and conditions relating to disinterment or displacement of human skeletal remains of such permit, is guilty of the felony of disinterment or displacement of a dead human body or parts thereof under section fourteen, article eight, chapter sixty-one of this code and, upon conviction thereof, shall be imprisoned in a state correctional facility not more than five years.

(4) A person who intentionally withholds information about the excavation, removal, destruction, or other disturbance of any historic or prehistoric ruins, burial grounds, archaeological site, or human skeletal remains, unmarked grave, grave artifact or grave marker of historical significance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100, or confined in jail not more than ten days, or both fined and confined.

(5) A person who, either by himself or herself or through an agent, offers for sale or exchange any human skeletal remains, grave artifact or grave marker obtained in violation of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 or confined in jail not more than one year, or both fined and confined.

(6) Each instance of excavation, removal, destruction, disturbance or offering for sale or exchange under subdivisions (1) through (5) of this subsection shall constitute a separate offense.

(7) It is a complete defense in a prosecution under this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported.

(8) This subsection does not apply to actions taken in the performance of official law-enforcement duties.

(d) *Notification of discovery of human skeletal remains in unmarked locations.* --

Upon the discovery of human skeletal remains, grave artifact or grave marker in an unmarked grave on any publicly or privately owned property, the person making such discovery shall immediately cease any activity which may cause further disturbance, make a reasonable effort to protect the area from further disturbance and notify the county sheriff within forty-eight hours of the discovery and its location. If the human remains, grave artifact or grave marker appear to be from an unmarked grave, the sheriff shall promptly, and prior to any further disturbance or removal of the remains, notify the Director of the Historic Preservation Section. The director shall cause an on-site inspection of the disturbance to be made to determine the potential for archaeological significance of the site: *Provided,* That when the discovery is made by an archaeological investigation permitted under state or federal law, the supervising archaeologist shall notify the Director of the Historic Preservation Section directly.

If the Director of the Historic Preservation Section determines that the site has no archaeological significance, the removal, transfer and disposition of the remains shall be subject to the provisions of article thirteen, chapter thirty-seven of this code, and the director shall notify the circuit court of the county wherein the site is located.

If the Director of the Historic Preservation Section determines that the site has a potential for archaeological significance, the director shall take such action as is reasonable, necessary and prudent, including consultation with appropriate private or public organizations, to preserve and advance the culture of the state in accordance with the powers and duties granted to the director, including the issuance of a permit for the archaeological excavation or removal of the remains. If the director determines that the issuance of a permit for the archaeological excavation or removal of the remains is not reasonable, necessary or prudent, the director shall provide written reasons to the applicant for not issuing the permit.

(e) *Issuance of permits.* --

Prior to the issuance of a permit for the disturbance of human skeletal remains, grave artifacts, or grave markers, the director of historic preservation shall convene and chair an ad hoc committee to develop permit conditions. The committee shall be comprised of the chair and six or eight members representing known or presumed lineal descendants, private and public organizations which have cultural affiliation to the presumed contents of the site, the Council for West Virginia Archaeology and the West Virginia Archaeological Society. In the case of Native American sites, the membership of the committee shall be comprised of the chair and six or eight members representing the Council for West Virginia Archaeology, the West Virginia Archaeological Society, and known or presumed lineal descendants, preferably with cultural affiliation to tribes that existed in the geographic area that is now West Virginia.

In the case of a site of less then five acres, which is owned by an individual or partnership, the ad hoc committee must be formed within thirty days of application for same by the property owner, must meet within sixty days of such application, and must render a decision within ninety days of such application.

All such permits shall at a minimum address the following conditions: (1) The methods by which lineal descendants of the deceased are notified prior to the disturbance; (2) the respectful manner in which the remains, artifacts or markers are to be removed and handled; (3) scientific analysis of the remains, artifacts or markers and the duration of those studies; (4) the way in which the remains may be reburied in consultation with any lineal descendants, when available; (5) methods for the respectful curation of recovered items; and (6) such other conditions as the director may deem necessary. Expenses accrued in meeting the permit conditions shall be borne by the permit applicant, except in cases where the deceased descendants or sponsors are willing to share or assume the costs. A permit to disturb human skeletal remains, grave artifacts or grave markers will be issued only after alternatives to disturbance and other mitigative measures have been considered.

In addition, a person applying for a permit to excavate or remove human skeletal remains, grave artifacts, grave markers, or any historic or prehistoric features of archaeological significance may provide to the ad hoc committee information he or she deems appropriate and shall:

(1) Provide a detailed statement to the Director of the Historic Preservation Section giving the reasons and objectives for excavation or removal and the benefits expected to be obtained from the contemplated work;

(2) Provide data and results of any excavation, study or collection in annual reports to the Director of the Historic Preservation Section and submit a final report to the director upon completion of the excavation;

(3) Obtain the prior written permission of the owner if the site of such proposed excavation is on privately owned land; and

(4) Provide any additional information the ad hoc committee deems necessary in developing the permit conditions.

The permits shall be issued for a period of two years and may be renewed at expiration. The permits are not transferable but other persons who have not been issued a permit may work under the direct supervision of the person holding the permit. The person or persons to whom a permit was issued must carry the permit while exercising the privileges granted and must be present at the site whenever work is being done.

Notwithstanding any other penalties to which a person may be subject under this section for failing to comply with the terms and conditions of a permit, the permit of a person who violates any of the provisions of this subsection shall be revoked.

As permits are issued, the Director of the Historic Preservation Section shall maintain a catalogue of unmarked grave locations throughout the state.

(f) *Property tax exemption for unmarked grave sites.* --

To serve as an incentive for the protection of unmarked graves, the owner, having evidence of the presence of unmarked graves on his or her property, may apply to the Director of the Historic Preservation Section for a determination as to whether such is the case. Upon making such a determination in the affirmative, the Director of the Historic Preservation Section shall provide written certification to the landowner that the site containing the graves is a cemetery and as such is exempt from property taxation upon presentation of the certification to the county assessor. The area of the site to receive property tax exempt status shall be determined by the Director of the Historic Preservation Section. Additionally, a property owner may

261 establish protective easements for the location of unmarked
262 graves.

263 (g) *Additional provisions for enforcement; civil penalties;*
264 *rewards for information.* --

265 (1) The prosecuting attorney of the county in which a
266 violation of any provision of this section is alleged to have
267 occurred may be requested by the Director of the Historic
268 Preservation Section to initiate criminal prosecutions or to
269 seek civil damages, injunctive relief and any other
270 appropriate relief. The Director of the Historic Preservation
271 Section shall cooperate with the prosecuting attorney in
272 resolving such allegations.

273 (2) Persons convicted of any prohibited act involving the
274 excavation, removal, destruction, disturbance or offering for
275 sale or exchange of historic or prehistoric ruins, burial
276 grounds, archaeological site, human skeletal remains,
277 unmarked grave, grave artifact or grave marker under the
278 provisions of subdivisions (1) and (2), subsection (c) of this
279 section shall also be liable for civil damages to be assessed
280 by the prosecuting attorney in consultation with the Director
281 of the Historic Preservation Section.

282 Civil damages may include:

283 (i) Forfeiture of any and all equipment used in disturbing
284 the protected unmarked graves or grave markers;

285 (ii) Any and all costs incurred in cleaning, restoring,
286 analyzing, accessioning and curating the recovered material;

287 (iii) Any and all costs associated with recovery of data,
288 and analyzing, publishing, accessioning and curating
289 materials when the prohibited activity is so extensive as to
290 preclude the restoration of the unmarked burials or grave
291 markers;

(iv) Any and all costs associated with restoring the land to its original contour or the grave marker to its original condition;

(v) Any and all costs associated with reinterment of the human skeletal remains; and

(vi) Any and all costs associated with the determination and collection of the civil damages.

When civil damages are recovered, the proceeds, less the costs of the prosecuting attorney associated with the determination and collection of such damages, shall be deposited into the Endangered Historic Properties Fund and may be expended by the Commissioner of Culture and History for archaeological programs at the state level, including the payment of rewards for information leading to the arrest and conviction of persons violating the provisions of subdivisions (1) and (2), subsection (c) of this section.

(3) The Commissioner of Culture and History is authorized to offer and pay rewards of up to $1,000 from funds on deposit in the Endangered Historic Properties Fund for information leading to the arrest and conviction of persons who violate the provisions of subdivisions (1) and (2), subsection (c) of this section.

(h) *Disposition of remains and artifacts not subject to reburial.* --

All human skeletal remains and grave artifacts found in unmarked graves on public or private land, and not subject to reburial, under the provisions of subsection (e) of this section, are held in trust for the people of West Virginia by the state and are under the jurisdiction of the Director of Historic Preservation. All materials collected and not reburied through this section shall be maintained with dignity and respect for the people of the state under the care of the West Virginia State Museum.

CHAPTER 37. REAL PROPERTY.

ARTICLE 13A. GRAVES LOCATED UPON PRIVATELY OWNED LANDS.

§37-13A-1. Access of certain persons to cemeteries and graves located on private land.
§37-13A-2. Definitions.
§37-13A-5. Cause of action for injunctive relief.
§37-13A-7. Existence of cemetery or grave site, notification.

§37-13A-1. Access of certain persons to cemeteries and graves located on private land.

(a) Any authorized person who wishes to visit a cemetery or grave site located on privately owned land and for which no public ingress or egress is available, shall have the right to reasonable ingress or egress for the purposes described in subsection (b) after providing the owner of the privately owned land with reasonable notice as defined in section two of this article.

(b) The right of access to cemeteries or grave sites provided in subsection (a) shall be during reasonable hours and only for the purposes of:

(1) Visiting graves;

(2) Maintaining the grave site or cemetery;

(3) Burying a deceased person in a cemetery plot by those granted rights of burial to that plot; and

(4) Conducting genealogy research.

(c) (1) The access route to the cemetery or grave site may be designated by the landowner if no traditional access route is obviously visible by a view of the property. If no traditional access route is obviously visible by a view of the property, the landowner is not required to incur any expense in improving a designated access route.

22 (2) Unless the property owner has caused a traditional
23 access route to the cemetery or grave site to be unusable or
24 unavailable, the property owner is not required to make any
25 improvements to their property to satisfy the requirement of
26 providing reasonable ingress and egress to a cemetery or
27 burial site pursuant to this section.

28 (d) A property owner who is required to permit
29 authorized persons reasonable ingress and egress for the
30 purpose of visiting a cemetery or grave site and who acts in
31 good faith and in a reasonable manner pursuant to this section
32 is not liable for any personal injury or property damage that
33 occurs in connection with the access to the cemetery or grave
34 site.

35 (e) Nothing in this section shall be construed to limit or
36 modify the power or authority of a court in any action of law
37 or equity to order the disinterment and removal of the
38 remains from a cemetery and interment in a suitable location.

§37-13A-2. Definitions.

1 In this article:

2 (1) "Authorized person" means:

3 (A) A family member, close friend or descendant of a
4 deceased person;

5 (B) A cemetery plot owner; or

6 (C) A person engaged in genealogy research.

7 (2) "Governmental subdivision" means any county
8 commission or municipality.

9 (3) "Reasonable ingress and egress" or "reasonable
10 access" means access to the cemetery or grave site within ten
11 days of the receipt of written notice of the intent to visit the

cemetery or grave site. If the property owner cannot provide reasonable access to the cemetery or grave on the desired date, the property owner shall provide reasonable alternative dates when the property owner can provide access within five days of the receipt of the initial notice.

(4) "Reasonable notice" means written notice of the date and time the authorized person intends to visit the cemetery or grave site delivered to the property owner at least ten days prior to the date of the intended visit.

§37-13A-5. Cause of action for injunctive relief.

(a) An authorized person denied reasonable access under the provisions of this article, including the denial of permission to use vehicular access, may institute a proceeding in the circuit court of the county in which the cemetery or grave site is located to enjoin the owner of the private lands on which the cemetery or grave site is located, or his or her agent, from denying the authorized person reasonable ingress and egress to the cemetery or grave site for the purposes set forth in this article. In granting relief, the court may set the frequency of access, hours and duration of the access.

(b) The court or the judge thereof may issue a preliminary injunction in any case pending a decision on the merits of any application filed without requiring the filing of a bond or other equivalent security.

§37-13A-7. Existence of cemetery or grave site, notification.

If a governmental subdivision is notified of the existence of a cemetery, or a marked grave site that is not located in a dedicated cemetery, within its jurisdiction, the governmental subdivision shall, as soon as is practicable, notify the owner of the land upon which the cemetery or burial site is located of the cemetery's or grave site's existence and location. The governmental subdivision shall, upon notification of grave

site location, document the location. Data collected shall be deposited with the Division of Culture and History. The notification shall include an explanation of the provisions of this article.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-14. Disinterment or displacement of dead body or part thereof; damage to cemetery or graveyard; penalties; damages in civil action.

(a) Any person who unlawfully and intentionally disinters or displaces a dead human body, or any part of a dead human body, placed or deposited in any vault, mausoleum or any temporary or permanent burial place, removes personal effects of the decedent removes or damages caskets, surrounds, outer burial containers, or any other device used in making the original burial; transports unlawfully removed human remains from the cemetery; or knowingly receives unlawfully removed human remains from the cemetery is guilty of a felony, and, upon conviction thereof, shall be confined in a state correctional facility for a determinate sentence of not more than five years.

(b)(1) Any person who intentionally desecrates any tomb, plot, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post, or railing, or any enclosure for the protection of a cemetery or any property in a cemetery, graveyard, mausoleum or other designated human burial site is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $2,000, or confined in jail not more than one year, or both fined and confined.

(2) Any person who intentionally and without legal right destroys, cuts, breaks, removes, or injures any building, statuary, ornamentation, landscape contents, including a tree,

24 shrub, flower, or plant, within the limits of a cemetery, is
25 guilty of a misdemeanor, and, upon conviction thereof, shall
26 be fined not more than $2,000, or confined in jail not more
27 than one year, or both fined and confined.

28 (3) For the purposes of this subsection, "desecrate"
29 means destroying, cutting, mutilating, effacing, injuring,
30 tearing down, removing, defacing, damaging or otherwise
31 physically mistreating in a way that a reasonable person
32 knows will outrage the sensibilities of persons likely to
33 observe or discover his or her actions.

CHAPTER 19

(Com. Sub. for H. B. 4248 - By Delegates Wells, Reynolds, Manypenny and Lawrence)

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

AN ACT to amend and reenact §29-19-2, §29-19-5 and §29-19-6 of the Code of West Virginia, 1931, as amended, all relating to the solicitation of charitable funds; defining the terms "audit" and "financial review"; including other methods of communications in the definition of the term "solicitation"; raising the threshold for exemption from filing audits and registering; and requiring financial reviews for charitable organization raising between $100,000 and $200,000 in contributions.

Be it enacted by the Legislature of West Virginia:

That §29-19-2, §29-19-5 and §29-19-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-2. Definitions.
§29-19-5. Registration of charitable organizations; fee.
§29-19-6. Certain persons and organizations exempt from registration.

§29-19-2. Definitions.

1 As used in this article:

2 (1) "Audit" means the systematic examination of records
3 and documents and the securing of other evidence by
4 confirmation, physical inspection, or otherwise, that includes
5 a written assurance that financial statements and reports are
6 fairly presented in conformity with generally accepted
7 accounting principles issued by the American Institute of
8 Certified Public Accountants.

9 (2) "Charitable organization" means a person who is or
10 holds itself out to be a benevolent, educational, philanthropic,
11 humane, patriotic, religious or eleemosynary organization, or
12 any person who solicits or obtains contributions solicited
13 from the public for charitable purposes, or any person who in
14 any manner employs any appeal for contributions which may
15 be reasonably interpreted to suggest that any part of those
16 contributions will be used for charitable purposes. A chapter,
17 branch, area, office or similar affiliate or any person
18 soliciting contributions within the state for a charitable
19 organization which has its principal place of business outside
20 the state is a charitable organization for the purposes of this
21 article.

22 (3) "Contribution" means the promise or grant of any
23 money or property of any kind or value.

24 (4) "Financial review" means an examination of financial
25 statements in accordance with generally accepted accounting

principles issued by the American Institute of Certified Public Accountants, in which a certified public accountant has a reasonable basis for expressing limited assurance that the reviewed statements are free of material misstatements or false or missing information and are found to be accurate, complete and fairly presented to meet the requirements of the generally accepted accounting principles.

(5) "Solicit" and "solicitation" means the request or appeal, directly or indirectly, for any contribution on the plea or representation that the contribution will be used for a charitable purpose, including, without limitation, the following methods of requesting a contribution:

(A) Any oral or written request;

(B) Any announcement to the press, over the radio or television, or by telephone, electronic mail or messaging, electronic bulletin board, or Internet technology, concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;

(C) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain public support; or

(D) The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket or any service or tangible item in connection with which any appeal is made for any charitable purpose or where the name of any charitable or civic organization is used or referred to in an appeal as an inducement or reason for making the sale, or when or where in connection with the sale, any statement is made that the whole or any part of the proceeds from the sale will be donated to any charitable purpose.

"Solicitation", as defined herein, occurs when the request is made, at the place the request is received, whether or not the person making the request actually receives any contribution.

(6) "Federated fund-raising organization" means a federation of independent charitable organizations which have voluntarily joined together, including, but not limited to, a united fund or community chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual agencies upon the federated group organization.

(7) "Parent organization" is that part of a charitable organization which coordinates, supervises or exercises control over policy, fund raising and expenditures, or assists, receives funds from or advises one or more chapters, branches or affiliates in the state.

(8) "Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society or any combination of them.

(9) "Professional fund-raising counsel" means any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of any charitable organization but who actually solicits no contributions as a part of the services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state is not a professional fund-raising counsel.

(10) "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of a charitable organization, whether the

solicitation is performed personally or through that person's agents, servants or employees specially employed by, or for a charitable organization, who are engaged in the solicitation of contributions under the direction of that person, or a person who plans, conducts, manages, carries on, advises or acts as a consultant to a charitable organization in connection with the solicitation of contributions but does not qualify as "professional fund-raising counsel" within the meaning of this article. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state is not a professional solicitor.

No attorney, investment counselor or banker, who advises any person to make a contribution to a charitable organization, is considered, as the result of the advice, a professional fund-raising counsel or a professional solicitor.

§29-19-5. Registration of charitable organizations; fee.

(a) Every charitable organization, except as provided in section six of this article, which intends to solicit contributions, donations or grants within this state or to have funds solicited or received on its behalf shall, prior to any solicitation, file a registration statement with the Secretary of State upon forms prescribed by him or her which shall be good for one full year and which shall be refiled in the next and each following year in which the charitable organization is engaged in solicitation activities. If an organization discontinues solicitation at any time after its last registration filing, then it shall file a registration statement reflecting its activities during its last fiscal year in which solicitation in West Virginia took place. It is the duty of the president, chairman or principal officer of the charitable organization to file the statements required under this article. The statements shall be sworn to and shall contain the following information:

(1) The name of the organization and the purpose for which it was organized;

(2) The principal address of the organization and the address of any offices in this state. If the organization does not maintain an office, the name and address of the person having custody of its financial records;

(3) The names and addresses of any chapters, branches or affiliates in this state;

(4) The place where and the date when the organization was legally established and the form of its organization;

(5) The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer;

(6) A copy of a balance sheet and a statement or report of income and expenses for the organization's immediately preceding fiscal year or a financial statement reporting information showing the kind and amount of funds raised during the preceding fiscal year, the costs and expenses incidental to the fundraising and showing how the funds were disbursed or allocated for the same fiscal year: *Provided*, That in addition to the financial documents required by this subdivision:

(A) Charitable organizations raising more than $200,000 per year in contributions, excluding grants from governmental agencies or private foundations, shall submit a report of an audit by an independent certified public accountant, and

(B) Charitable organizations raising more than $100,000 per year but less than $200,001 per year in contributions, excluding grants from governmental agencies or private foundations, shall submit a statement of financial review by an independent certified public accountant. Organizations are required to report the amount of money received in the state and the amount spent in the state for charitable purposes;

(7) A copy of any determination of the organization's tax exempt status under the provisions of 26 U.S.C. §501(c)(3) and a copy of the last filed Internal Revenue Service Form 990 and Schedule A for every charitable organization and any parent organization;

(8) Whether the organization intends to solicit contributions, donations or grants from the public directly or have other solicitation done on its behalf by others;

(9) Whether the organization is authorized by any other governmental authority to solicit contributions, donations or grants and whether it is or has ever been enjoined by any court from soliciting contributions;

(10) The general purpose or purposes for which the contributions to be solicited shall be used;

(11) The name or names under which it intends to solicit contributions;

(12) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions;

(13) The names of the individuals or officers of the organization responsible for the final distribution of the contributions; and

(14) Copies of all contract documentation from professional fund-raising counsels and professional solicitors as provided in subsection (d), section seven of this article.

(b) Each chapter, branch or affiliate, except an independent member agency of a federated fund-raising organization, may separately report the information required by this section or report the information to its parent

organization which shall then furnish the information regarding its West Virginia affiliates, chapters and branches in a consolidated form to the Secretary of State. An independent member agency of a federated fund-raising organization, as defined in section two of this article, shall comply with the provisions of this article independently. Each organization shall file a separate registration form for each name under which funds will be solicited.

(c) The registration forms and any other documents prescribed by the Secretary of State shall be signed by an authorized officer or by an independent public accountant and by the chief fiscal officer of the charitable organization and shall be verified under oath.

(d) Every charitable organization receiving less than $1 million during any year which submits an independent registration to the Secretary of State shall pay an annual registration fee of $15; every charitable organization collecting more than $1 million during one year which submits an independent registration to the Secretary of State shall pay an annual registration fee of $50; and a parent organization filing on behalf of one or more chapters, branches or affiliates or a single organization filing under different names shall pay a single annual registration fee of $50 for itself and the chapters, branches or affiliates included in the registration statement. All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state General Revenue Fund and one-half shall be deposited in the services fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

(e) For good cause shown, the Secretary of State may extend the due date for the annual filing of a registration statement or report by a charitable organization or a professional fundraiser for a period not to exceed ninety days. During that period, the previously filed registration statement or report of the charitable organization which has been granted the extension remains in effect.

(f) In addition to the registration fee required by this section, a charitable organization or professional fundraiser, or both, which fails to file a registration statement or report by the original or extended due date for filing as required by this section shall, for each month or part of the month thereafter in which the registration statement or report is not filed, pay an additional fee of $25: *Provided*, That the total amount of the additional fees for a registration statement or report required to be filed in any one year may not exceed $500. All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state General Revenue Fund and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the Office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

§29-19-6. Certain persons and organizations exempt from registration.

The following charitable organizations are not required to file an annual registration statement with the Secretary of State:

(1) Educational institutions, the curriculums of which, in whole or in part, are registered or approved by the State

Board of Education, either directly or by acceptance of accreditation by an accrediting body recognized by the State Board of Education; and any auxiliary associations, foundations and support groups which are directly responsible to the educational institutions;

(2) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his or her use;

(3) Hospitals and licensed nursing homes which are nonprofit and charitable;

(4) Organizations which solicit only within the membership of the organization by the members thereof: *Provided,* That the term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation. For the purpose of this section, "member" means a person having membership in a nonprofit corporation, or other organization, in accordance with the provisions of its articles of incorporation, bylaws or other instruments creating its form and organization; and having bona fide rights and privileges in the organization, including the right to vote, to elect officers, directors and issues, to hold office or otherwise as ordinarily conferred on members of the organizations;

(5) Churches, synagogues, associations or conventions of churches, religious orders or religious organizations that are an integral part of a church which qualifies as tax exempt under the provisions of 26 U.S.C. §501(c)(3) and which qualifies as being exempt from filing an annual return under the provisions of 26 U.S.C. §6033;

(6) Any person, firm, corporation or organization that sponsors a single fund-raising event for the benefit of a

named charitable organization where all or part of the funds collected are donated to the named charitable organization: *Provided,* That the named charitable organization receiving the funds is registered pursuant to this article, reports each of these donations individually and certifies that no funds were withheld by the organization that solicited the funds;

(7) Any charitable organization that does not employ a professional solicitor or fundraiser and does not intend to solicit and receive and does not actually raise or receive contributions, donations or grants from the public in excess of $25,000 during a calendar year.

Charitable organizations which do not intend to solicit and receive contributions, donations or grants in excess of $25,000, but do receive in excess of that amount from the public, shall file the annual registration statement within thirty days after contributions are in excess of $25,000.

CHAPTER 20

(Com. Sub. for H. B. 4164 - By Delegates Hatfield, Perdue, Brown, Guthrie, Campbell, Wells, Wooton, Marshall, Mahan and Givens)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-7-35, relating to the creation of a pilot program for the placement of children four to ten years of age in foster care.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §49-7-35, to read as follows:

ARTICLE 7. GENERAL PROVISIONS.

§49-7-35. Pilot program for the placement of children four to ten years of age in foster care; requirements.

1 (a) This section shall be known as "Jacob's Law."

2 (b) The Legislature finds that:

3 (1) The needs of young children are not always
4 adequately addressed when the Department of Health and
5 Human Resources is required to take custody of them;

6 (2) Often the behavior of young children taken from their
7 homes pose special challenges for the department and other
8 individuals who are charged with their care;

9 (3) The department must take extraordinary precautions
10 to prevent serious emotional damage to these children; and

11 (4) The department has resources within the department
12 that can be redirected to meet many of the needs of the
13 program required by this section.

14 (c) The department shall choose four regions in which to
15 implement a two-year pilot program to address children ages
16 four through ten immediately after removal from their homes
17 by the Child Protective Service Division due to child abuse
18 and neglect and who, by the nature of their removal, are in
19 crisis.

20 (d) The program shall:

21 (1) Include early intervention for children in crisis;

22 (2) Provide for the development of a short-term and an
23 ongoing long-term plan for each child;

24 (3) Provide that each child is evaluated for emotional and
25 physical trauma and other medical, educational, dental and
26 other needs, in a timely manner;

27 (4) Require that each child be assigned an independent
28 advocate through the community advocacy programs as staff
29 or volunteers are made available; and

30 (e) The plans required by subsection (d) of this section
31 shall:

32 (1) Address abandonment, separation anxiety, post
33 traumatic stress and other emotional and physical needs of
34 the child;

35 (2) Be developed by appropriately trained professional
36 staff;

37 (3) Require the participation of a child care agency, the
38 Department of Education, community programs and other
39 appropriate agencies providing services to children ages four
40 through ten; and

41 (4) Be developed to meet the ongoing emotional needs of
42 each child.

43 (f) The short-term plan required by subsection (d) of this
44 section shall address the child's needs for the first thirty days
45 under the department's supervision.

46 (g) During the initial evaluation period, and when the
47 child is being placed into foster care, the department shall
48 when possible place the child into an enhanced specialized
49 foster care home. Providers offering enhanced specialized

50 foster care homes shall include crisis intervention staffed
51 with trained and educated professional individuals and
52 specialized training on how to manage a child's reaction to
53 trauma and the crisis of being removed from the custody of
54 a parent, parents or other guardians, with emphasis on the
55 child's emotional needs. This program shall limit the number
56 of children in one location to three foster children at a time.
57 A greater number is permitted if all of the children are
58 siblings.

59 (h) After a short-term and long-term plan is developed,
60 the department shall:

61 (1) Provide the foster family with training and education
62 in the plan;

63 (2) Evaluate the child and foster parent or parents on the
64 interaction between the child and parents;

65 (3) Train the foster parent on how to respond to the
66 child's emotional crisis and how to understand the child's
67 crisis reactive behavior; and

68 (4) Evaluate the foster family on its understanding of the
69 need for this early intervention and the need for appropriate
70 crisis management.

71 (i) The providers of enhanced specialized foster care
72 services shall:

73 (1) Create and train a team to provide crisis intervention;

74 (2) Provide a call system for the enhanced specialized
75 foster parents and the child so that the enhanced specialized
76 foster parents or the child can speak to a team member or
77 other appropriately trained professional during a crisis; and

78 (3) Require a crisis team member to visit the home if
79 unable to adequately resolve the crisis over the telephone and

80 to do a follow up visit within two days to meet with the
81 enhanced specialized foster parents and child, individually,
82 to determine the crisis was satisfactorily resolved.

83 (j) The department shall develop a system to evaluate the
84 pilot program for outcomes and standards of care and report
85 back to public, private and community partners. In addition
86 the evaluation shall be reported to the Joint Committee on
87 Government and Finance or other designated committees
88 every six months for two years. The evaluation shall be
89 contracted by the department through an external entity who
90 shall:

91 (1) Establish measurable outcomes for purposes of
92 evaluation;

93 (2) Collect, analyze and report data quarterly and
94 annually;

95 (3) Identify trends and make recommendations for
96 program improvement;

97 (4) Conduct an analysis of the impact of the pilot
98 program on the child's emotional stability including the
99 number of placements that the child experiences and the
100 basis for required moves;

101 (5) Provide technical assistance and training to the pilot
102 program;

103 (6) Provide leadership in the development of data
104 collection and outcome reporting models;

105 (7) Provide feedback for quality improvement to those
106 responsible for the pilot program; and

107 (8) Monitor, research and present best practices through
108 everyday communication and training opportunities.

CHAPTER 21

(Com. Sub. for S. B. 51 - By Senators Wells, D. Facemire and Chafin)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2010.]

AN ACT to amend and reenact §48-9-205 of the Code of West Virginia, 1931, as amended, relating to requiring a permanent parenting plan to contain a provision concerning the custody of a child if either parent, as a member of the National Guard, a reserve component or an active duty component, is mobilized, deployed or called to active duty.

Be it enacted by the Legislature of West Virginia:

That §48-9-205 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

§48-9-205. Permanent parenting plan.

(a) A party seeking a judicial allocation of custodial responsibility or decision-making responsibility under this article shall file a proposed parenting plan with the court. Parties may file a joint plan. A proposed plan shall be verified and shall state, to the extent known or reasonably discoverable by the filing party or parties:

7 (1) The name, address and length of residence of any
8 adults with whom the child has lived for one year or more, or
9 in the case of a child less than one year old, any adults with
10 whom the child has lived since the child's birth;

11 (2) The name and address of each of the child's parents
12 and any other individuals with standing to participate in the
13 action under section one hundred three of this article;

14 (3) A description of the allocation of care taking and
15 other parenting responsibilities performed by each person
16 named in subdivisions (1) and (2) of this subsection during
17 the twenty-four months preceding the filing of an action
18 under this article;

19 (4) A description of the work and child-care schedules of
20 any person seeking an allocation of custodial responsibility,
21 and any expected changes to these schedules in the near
22 future;

23 (5) A description of the child's school and extracurricular
24 activities;

25 (6) A description of any of the limiting factors as
26 described in section two hundred nine of this article that are
27 present, including any restraining orders against either parent
28 to prevent domestic or family violence, by case number and
29 jurisdiction;

30 (7) Required financial information; and

31 (8) A description of the known areas of agreement and
32 disagreement with any other parenting plan submitted in the
33 case.

34 The court shall maintain the confidentiality of any
35 information required to be filed under this section when the
36 person giving that information has a reasonable fear of

domestic abuse and disclosure of the information would increase that fear.

(b) The court shall develop a process to identify cases in which there is credible information that child abuse or neglect, as defined in section three, article one, chapter forty-nine of this code, or domestic violence as defined in section two hundred two, article twenty-seven of this chapter has occurred. The process shall include assistance for possible victims of domestic abuse in complying with subdivision (6), subsection (a) of this section, and referral to appropriate resources for safe shelter, counseling, safety planning, information regarding the potential impact of domestic abuse on children and information regarding civil and criminal remedies for domestic abuse. The process shall also include a system for ensuring that jointly submitted parenting plans that are filed in cases in which there is credible information that child abuse or domestic abuse has occurred receive the court review that is mandated by subsection (b), section two hundred one of this article.

(c) Upon motion of a party and after consideration of the evidence, the court shall order a parenting plan consistent with the provisions of sections two hundred six, two hundred seven, two hundred eight and two hundred nine of this article, containing:

(1) A provision for the child's living arrangements and each parent's custodial responsibility, which shall include either:

(A) A custodial schedule that designates in which parent's home each minor child will reside on given days of the year; or

(B) A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

70 (2) An allocation of decision-making responsibility as to
71 significant matters reasonably likely to arise with respect to
72 the child;

73 (3) A provision consistent with section two hundred two
74 of this article for resolution of disputes that arise under the
75 plan, and remedies for violations of the plan; and

76 (4) A plan for the custody of the child should one or both
77 of the parents as a member of the National Guard, a reserve
78 component or an active duty component be mobilized,
79 deployed or called to active duty.

80 (d) A parenting plan may, at the court's discretion,
81 contain provisions that address matters that are expected to
82 arise in the event of a party's relocation, or provide for future
83 modifications in the parenting plan if specified contingencies
84 occur.

CHAPTER 22

(S. B. 610 - By Senators Helmick, McCabe, Bowman, Edgell, D. Facemire, Fanning, Green, Prezioso, Unger, Wells, White, Boley, K. Facemyer, Guills and Sypolt)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §49-2B-3 of the Code of West Virginia, 1931, as amended, relating to child care services; providing requirements for out-of-school time programs; exempting certain programs; requiring registration of certain programs; requiring licensed or registered child care centers to

have an annually updated written plan for evacuation in the event of an emergency; providing for plan requirements; providing for plan distribution and availability requirements; and making the evacuation plan a point of investigation before a new license is received."

Be it enacted by the Legislature of West Virginia:

That §49-2B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2B. DUTIES OF SECRETARY OF HEALTH AND HUMAN RESOURCES FOR CHILD WELFARE.

*§49-2B-3. Licensure, certification, approval and registration requirements.

(a) Any person, corporation or child welfare agency, other than a state agency, which operates a residential child care center shall obtain a license from the department.

(b) Any residential child care facility, day care center or any child-placing agency operated by the state shall obtain approval of its operations from the secretary: *Provided*, That this requirement does not apply to any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody. The facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

(c) Any family day care facility which operates in this state, including family day care facilities approved by the

*CLERK'S NOTE: This section was also amended by S. B. 349 (Chapter 23) which passed prior to this act.

department for receipt of funding, shall obtain a statement of certification from the department.

(d) Every family day care home which operates in this state, including family day care homes approved by the department for receipt of funding, shall obtain a certificate of registration from the department.

(e) This section does not apply to:

(1) A kindergarten, preschool or school education program which is operated by a public school or which is accredited by the state Department of Education, or any other kindergarten, preschool or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding thirty days;

(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing;

(5) Persons providing family day care solely for children related to them;

(6) Any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(7) Any out-of-school time program that has been awarded a grant by the West Virginia Department of Education to provide out-of-school time programs to

48 kindergarten through twelfth grade students when the
49 program is monitored by the West Virginia Department of
50 Education; or

51 (8) Any out-of-school time program serving children six
52 years of age or older and meets all of the following
53 requirements, or is an out-of-school time program that is
54 affiliated and in good standing with a national
55 Congressionally chartered organization and meets all of the
56 following requirements:

57 (i) The program is located in a facility that meets all fire
58 and health codes;

59 (ii) The program performs background checks on all
60 volunteers and staff;

61 (iii) The program's primary source of funding is not from
62 fees for service; and,

63 (iv) The program has a formalized monitoring system in
64 place.

65 (f) The secretary is authorized to issue an emergency rule
66 relating to conducting a survey of existing facilities in this
67 state in which children reside on a temporary basis in order
68 to ascertain whether they should be subject to licensing under
69 this article or applicable licensing provisions relating to
70 behavioral health treatment providers.

71 (g) Any informal family child care home or relative
72 family child care home may voluntarily register and obtain a
73 certificate of registration from the department.

74 (h) All facilities or programs that provide out-of-school
75 time care shall register with the department upon
76 commencement of operations and on an annual basis
77 thereafter. The department shall obtain information such as

78 the name of the facility or program, the description of the
79 services provided and any other information relevant to the
80 determination by the department as to whether the facility or
81 program meets the criteria for exemption under this section.

82 (i) Any child care service that is licensed or receives a
83 certificate of registration shall have a written plan for
84 evacuation in the event of fire, natural disaster or other
85 threatening situation that may pose a health or safety hazard
86 to the children in the child care service.

87 (1) The plan shall include, but not be limited to:

88 (A) A designated relocation site and evacuation;

89 (B) Procedures for notifying parents of the relocation and
90 ensuring family reunification;

91 (C) Procedures to address the needs of individual
92 children including children with special needs;

93 (D) Instructions relating to the training of staff or the
94 reassignment of staff duties, as appropriate;

95 (E) Coordination with local emergency management
96 officials; and

97 (F) A program to ensure that appropriate staff are familiar
98 with the components of the plan.

99 (2) A child care service shall update the evacuation plan
100 by December 31, of each year. If a child care service fails to
101 update the plan, no action shall be taken against the child care
102 service's license or registration until notice is provided and
103 the child care service is given thirty days after the receipt of
104 notice to provide an updated plan.

105 (3) A child care service shall retain an updated copy of
106 the plan for evacuation and shall provide notice of the plan
107 and notification that a copy of the plan will be provided upon
108 request to any parent, custodian or guardian of each child at
109 the time of the child's enrollment in the child care service
110 and when the plan is updated.

111 (4) All child care centers and family child care facilities
112 shall provide the plan and each updated copy of the plan to
113 the Director of the Office of Emergency Services in the
114 county where the center or facility is located.

CHAPTER 23

(Com. Sub. for S. B. 349 - By Senators Palumbo, Browning, McCabe, Foster, Laird, Wells, Stollings and D. Facemire)

[Passed March 5, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §49-2B-3 and §49-2B-8 of the Code of West Virginia, 1931, as amended, all relating to requiring licensed or registered child care centers to have an annually updated written plan for evacuation in the event of an emergency; providing for plan requirements; providing for plan distribution and availability requirements; and making the evacuation plan a point of investigation before a new license is received.

Be it enacted by the Legislature of West Virginia:

That §49-2B-3 and §49-2B-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2B. DUTIES OF SECRETARY OF HEALTH AND HUMAN RESOURCES FOR CHILD WELFARE.

§49-2B-3. Licensure, certification, approval and registration requirements.
§49-2B-8. Application for license or approval.

*§49-2B-3. Licensure, certification, approval and registration requirements.

(a) Any person, corporation or child welfare agency, other than a state agency, which operates a residential child care facility, a child-placing agency or a day care center shall obtain a license from the department.

(b) Any residential child care facility, day care center or any child-placing agency operated by the state shall obtain approval of its operations from the secretary: *Provided,* That this requirement does not apply to any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody. The facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

(c) Any family day care facility which operates in this state, including family day care facilities approved by the department for receipt of funding, shall obtain a statement of certification from the department.

(d) Every family day care home which operates in this state, including family day care homes approved by the department for receipt of funding, shall obtain a certificate of registration from the department.

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*CLERK'S NOTE: This section was also amended by S. B. 610 (Chapter 22) which passed subsequent to this act.

(e) This section does not apply to:

(1) A kindergarten, preschool or school education program which is operated by a public school or which is accredited by the state Department of Education, or any other kindergarten, preschool or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding thirty days;

(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing;

(5) Persons providing family day care solely for children related to them; or

(6) Any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(f) The secretary is hereby authorized to issue an emergency rule relating to conducting a survey of existing facilities in this state in which children reside on a temporary basis in order to ascertain whether they should be subject to licensing under this article or applicable licensing provisions relating to behavioral health treatment providers.

(g) Any informal family child care home or relative family child care home may voluntarily register and obtain a certificate of registration from the department.

55 (h) Any child care service that is licensed or receives a
56 certificate of registration shall have a written plan for
57 evacuation in the event of fire, natural disaster or other
58 threatening situation that may pose a health or safety hazard
59 to the children in the child care service.

60 (1) The plan shall include, but not be limited to:

61 (A) A designated relocation site and evacuation;

62 (B) Procedures for notifying parents of the relocation and
63 ensuring family reunification;

64 (C) Procedures to address the needs of individual
65 children including children with special needs;

66 (D) Instructions relating to the training of staff or the
67 reassignment of staff duties, as appropriate;

68 (E) Coordination with local emergency management
69 officials; and

70 (F) A program to ensure that appropriate staff are familiar
71 with the components of the plan.

72 (2) A child care service shall update the evacuation plan
73 by December 31, of each year. If a child care service fails to
74 update the plan, no action shall be taken against the child care
75 service's license or registration until notice is provided and
76 the child care service is given thirty days after the receipt of
77 notice to provide an updated plan.

78 (3) A child care service shall retain an updated copy of
79 the plan for evacuation and shall provide notice of the plan
80 and notification that a copy of the plan will be provided upon
81 request to any parent, custodian or guardian of each child at
82 the time of the child's enrollment in the child care service
83 and when the plan is updated.

(4) All child care centers and family child care facilities shall provide the plan and each updated copy of the plan to the Director of the Office of Emergency Services in the county where the center or facility is located.

§49-2B-8. Application for license or approval.

(a) Any person or corporation or any governmental agency intending to act as a child welfare agency shall apply for a license, approval or registration certificate to operate child care facilities regulated by this article. Applications for licensure, approval or registration shall be made separately for each child care facility to be licensed, approved, certified or registered.

(b) The secretary shall prescribe forms and reasonable application procedures including, but not limited to, fingerprinting of applicants and other persons responsible for the care of children for submission to the State Police and, if necessary, to the Federal Bureau of Investigation for criminal history record checks.

(c) Before issuing a license, or approval, the secretary shall investigate the facility, program and persons responsible for the care of children. The investigation shall include, but not be limited to, review of resource need, reputation, character and purposes of applicants, a check of personnel criminal records, if any, and personnel medical records, the financial records of applicants, review of the facilities emergency evacuation plan and consideration of the proposed plan for child care from intake to discharge.

(d) Before a home registration is granted, the secretary shall make inquiry as to the facility, program and persons responsible for the care of children. The inquiry shall include self-certification by the prospective home of compliance with standards including, but not limited to:

28 (1) Physical and mental health of persons present in the
29 home while children are in care;

30 (2) Criminal and child abuse or neglect history of persons
31 present in the home while children are in care;

32 (3) Discipline;

33 (4) Fire and environmental safety;

34 (5) Equipment and program for the children in care;

35 (6) Health, sanitation and nutrition.

36 (e) Further inquiry and investigation may be made as the
37 secretary may direct.

38 (f) The secretary shall make a decision on each
39 application within sixty days of its receipt and shall provide
40 to unsuccessful applicants written reasons for the decision.

CHAPTER 24

(Com. Sub. for S. B. 669 - By Senators Kessler, Foster, Prezioso and Plymale)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §49-5-11 and §49-5-13d of the Code of West Virginia, 1931, as amended, all relating to juvenile proceedings; providing circuit court judges the option to refer truant juveniles to be supervised by his or her probation office in judicial circuits that operate a truancy program; allowing

municipalities to operate teen courts; clarifying jurisdiction and procedures for teen courts; authorizing the establishment additional mandatory municipal court fees to support a municipal teen court; and providing for supervision of juveniles referred by teen courts.

Be it enacted by the Legislature of West Virginia:

That §49-5-11 and §49-5-13d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-11. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.
§49-5-13d. Teen court program.

§49-5-11. Adjudication for alleged status offenders and delinquents; mandatory initial disposition of status offenders.

1 At the outset of an adjudicatory hearing, the court shall
2 inquire of the juvenile whether he or she wishes to admit or deny
3 the allegations in the petition. The juvenile may elect to stand
4 mute, in which event the court shall enter a general denial of all
5 allegations in the petition.

6 (a) If the respondent juvenile admits the allegations of the
7 petition, the court shall consider the admission to be proof of the
8 allegations if the court finds: (1) The respondent fully
9 understands all of his or her rights under this article; (2) the
10 respondent voluntarily, intelligently and knowingly admits all
11 facts requisite for an adjudication; and (3) the respondent in his
12 or her admission has not set forth facts which constitute a
13 defense to the allegations.

14 (b) If the respondent juvenile denies the allegations, the
15 court shall dispose of all pretrial motions and the court or jury
16 shall proceed to hear evidence.

17 (c) If the allegations in a petition alleging that the juvenile is
18 delinquent are admitted or are sustained by proof beyond a
19 reasonable doubt, the court shall schedule the matter for
20 disposition pursuant to section thirteen of this article.

21 (d) If the allegations in a petition alleging that the juvenile is
22 a status offender are admitted or sustained by clear and
23 convincing proof, the court shall refer the juvenile to the
24 department of health and human resources for services, pursuant
25 to section eleven-a of this article and order the department to
26 report back to the court with regard to the juvenile's progress at
27 least every ninety days or until the court, upon motion or sua
28 sponte, orders further disposition under section eleven-a of this
29 article or dismisses the case from its docket: *Provided,* That in
30 a judicial circuit operating its own truancy program, a circuit
31 judge may in lieu of referring truant juveniles to the department,
32 order that the juveniles be supervised by his or her probation
33 office.

34 (e) If the allegations in a petition are not sustained by proof
35 as provided in subsections (c) and (d) of this section, the petition
36 shall be dismissed and the juvenile shall be discharged if he or
37 she is in custody.

38 (f) Findings of fact and conclusions of law addressed to all
39 allegations in the petition shall be stated on the record or
40 reduced to writing and filed with the record or incorporated into
41 the order of the court.

§49-5-13d. Teen court program.

1 (a) Notwithstanding any provision of this article to the
2 contrary, in any county or municipality that chooses to institute
3 a teen court program in accordance with the provisions of this
4 section, any juvenile who is alleged to have committed a status
5 offense or an act of delinquency which would be a misdemeanor
6 if committed by an adult or in the case of a violation of a

municipal ordinance, an offense over which municipal courts have concurrent jurisdiction, and who is otherwise subject to the provisions of this article may be given the option of proceeding in the teen court program as an alternative to the filing of a formal petition under section seven of this article or proceeding to a disposition as provided by section eleven-a or thirteen of this article, as the case may be. The decision to extend the option to enter the teen court program as an alternative procedure shall be made by the circuit or municipal court if the court finds that the offender is a suitable candidate for the program. No juvenile may enter the teen court program unless he or she and his or her parent or guardian consent. Any juvenile who does not successfully cooperate in and complete the teen court program and any disposition imposed therein shall be returned to the circuit court for further disposition as provided by section eleven-a or thirteen of this article, as the case may be or return to a municipal court for further disposition for cases originating in circuit court consistent with any applicable ordinance.

(b) The following provisions apply to all teen court programs:

(1) The judge for each teen court proceeding shall be an acting or retired circuit court judge or an active member of the West Virginia State Bar, who serves on a voluntary basis.

(2) Any juvenile who selects the teen court program as an alternative disposition shall agree to serve thereafter on at least two occasions as a teen court juror.

(3) Volunteer students from grades seven through twelve of the schools within the county shall be selected to serve as defense attorney, prosecuting attorney, court clerk, bailiff and jurors for each proceeding.

(4) Disposition in a teen court proceeding shall consist of requiring the juvenile to perform sixteen to forty hours of community service, the duration and type of which shall be

40 determined by the teen court jury from a standard list of
41 available community service programs provided by the county
42 juvenile probation system and a standard list of alternative
43 consequences that are consistent with the purposes of this
44 article. The performance of the juvenile shall be monitored by
45 the county juvenile probation system for cases originating in the
46 circuit court's jurisdiction, or municipal teen court coordinator
47 or other designee for cases originating in the municipal court's
48 jurisdiction. The juvenile shall also perform at least two sessions
49 of teen court jury service and, if considered appropriate by the
50 circuit court judge or teen court judge, participate in an
51 education program. Nothing in this section may be construed so
52 as to deny availability of the services provided under section
53 eleven-a of this article to juveniles who are otherwise eligible for
54 such service.

55 (c) The rules for administration, procedure and admission of
56 evidence shall be determined by the chief circuit judge or teen
57 court judge, but in no case may the court require a juvenile to
58 admit the allegation against him or her as a prerequisite to
59 participation in the teen court program. A copy of these rules
60 shall be provided to every teen court participant.

61 (d) Each county or municipality that operates, or wishes to
62 operate, a teen court program as provided in this section is
63 hereby authorized to adopt a mandatory fee of up to five dollars
64 to be assessed as provided in this subsection. Municipal courts
65 may assess a fee pursuant to the provisions of this section upon
66 authorization by the city council of the municipality.
67 Assessments collected by the clerk of the court pursuant to this
68 subsection shall be deposited into an account specifically for the
69 operation and administration of a teen court program. The clerk
70 of the court of conviction shall collect the fees established in this
71 subsection and shall remit the fees to the teen court program.

72 Any mandatory fee established by a county commission or
73 city council in accordance with the provisions of this subsection
74 shall be paid by the defendant on a judgment of guilty or a plea

of nolo contendere for each violation committed in the county or municipality of any felony, misdemeanor or any local ordinance, including traffic violations and moving violations but excluding municipal parking ordinances. Municipalities operating teen courts are authorized to use fees assessed in municipal court pursuant to this subsection for operation of a teen court in their municipality.

CHAPTER 25

(S. B. 636 - By Senators Prezioso, Jenkins and Foster)

[Passed March 10, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact §49-7-34 of the Code of West Virginia, 1931, as amended, relating to reconstituting the Commission to Study Residential Placement of Children.

Be it enacted by the Legislature of West Virginia:

That §49-7-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. GENERAL PROVISIONS.

§49-7-34. Commission to Study Residential Placement of Children.

(a) The Legislature finds that the state's current system of serving children and families in need of or at risk of needing social, emotional and behavioral health services is

4 fragmented. The existing categorical structure of government
5 programs and their funding streams discourages
6 collaboration, resulting in duplication of efforts and a waste
7 of limited resources. Children are usually involved in
8 multiple child-serving systems, including child welfare,
9 juvenile justice and special education. More than ten percent
10 of children presently in care are presently in out-of-state
11 placements. Earlier efforts at reform have focused on quick
12 fixes for individual components of the system at the expense
13 of the whole. It is the purpose of this section to establish a
14 mechanism to achieve systemic reform by which all of the
15 state's child-serving agencies involved in the residential
16 placement of at-risk youth jointly and continually study and
17 improve upon this system and make recommendations to
18 their respective agencies and to the Legislature regarding
19 funding and statutory, regulatory and policy changes. It is
20 further the Legislature's intent to build upon these
21 recommendations to establish an integrated system of care for
22 at-risk youth and families that makes prudent and
23 cost-effective use of limited state resources by drawing upon
24 the experience of successful models and best practices in this
25 and other jurisdictions, which focuses on delivering services
26 in the least restrictive setting appropriate to the needs of the
27 child, and which produces better outcomes for children,
28 families and the state.

29 (b) There is hereby created within the Department of
30 Health and Human Resources the Commission to Study the
31 Residential Placement of Children. The commission consists
32 of the Secretary of the Department of Health and Human
33 Resources, the Commissioner of the Bureau for Children and
34 Families, the Commissioner for the Bureau for Behavioral
35 Health and Health Facilities, the Commissioner for the
36 Bureau for Medical Services, the State Superintendent of
37 Schools, a representative of local educational agencies, the
38 Director of the Office of Institutional Educational Programs,

the Director of the Office of Special Education Programs and Assurance, the Director of the Division of Juvenile Services and the Executive Director of the Prosecuting Attorney's Institute. At the discretion of the West Virginia Supreme Court of Appeals, circuit and family court judges and other court personnel, including the Administrator of the Supreme Court of Appeals and the Director of the Juvenile Probation Services Division, may serve on the commission. These statutory members may further designate additional persons in their respective offices who may attend the meetings of the commission if they are the administrative head of the office or division whose functions necessitate their inclusion in this process. In its deliberations, the commission shall also consult and solicit input from families and service providers.

(c) The Secretary of the Department of Health and Human Resources shall serve as chair of the commission, which shall meet on a quarterly basis at the call of the chair.

(d) At a minimum, the commission shall study:

(1) The current practices of placing children out-of-home and into in-residential placements, with special emphasis on out-of-state placements;

(2) The adequacy, capacity, availability and utilization of existing in-state facilities to serve the needs of children requiring residential placements;

(3) Strategies and methods to reduce the number of children who must be placed in out-of-state facilities and to return children from existing out-of-state placements, initially targeting older youth who have been adjudicated delinquent;

(4) Staffing, facilitation and oversight of multidisciplinary treatment planning teams;

69 (5) The availability of and investment in community-
70 based, less restrictive and less costly alternatives to
71 residential placements;

72 (6) Ways in which up-to-date information about in-state
73 placement availability may be made readily accessible to
74 state agency and court personnel, including an interactive
75 secure web site;

76 (7) Strategies and methods to promote and sustain
77 cooperation and collaboration between the courts, state and
78 local agencies, families and service providers, including the
79 use of inter-agency memoranda of understanding, pooled
80 funding arrangements and sharing of information and staff
81 resources;

82 (8) The advisability of including "no-refusal" clauses in
83 contracts with in-state providers for placement of children
84 whose treatment needs match the level of licensure held by
85 the provider;

86 (9) Identification of in-state service gaps and the
87 feasibility of developing services to fill those gaps, including
88 funding;

89 (10) Identification of fiscal, statutory and regulatory
90 barriers to developing needed services in-state in a timely and
91 responsive way;

92 (11) Ways to promote and protect the rights and
93 participation of parents, foster parents and children involved
94 in out-of-home care;

95 (12) Ways to certify out-of-state providers to ensure that
96 children who must be placed out-of-state receive high quality
97 services consistent with this state's standards of licensure and
98 rules of operation; and

99 (13) Any other ancillary issue relative to foster care
100 placement.

101 (e) On or before December 1, 2010, the commission shall
102 report to the Legislative Oversight Commission on Health
103 and Human Resources Accountability its conclusions and
104 recommendations, including an implementation plan
105 whereby:

106 (1) Out-of-state placements shall be reduced by at least
107 ten percent per year and by at least fifty percent within three
108 years;

109 (2) Child-serving agencies shall develop joint operating
110 and funding proposals to serve the needs of children and
111 families that cross their jurisdictional boundaries in a more
112 seamless way;

113 (3) Steps shall be taken to obtain all necessary federal
114 plan waivers or amendments in order for agencies to work
115 collaboratively while maximizing the availability of federal
116 funds;

117 (4) Agencies shall enter into memoranda of
118 understanding to assume joint responsibilities;

119 (5) System of care components and cooperative
120 relationships shall be incrementally established at the local,
121 state and regional levels, with links to existing resources,
122 such as family resource networks and regional summits,
123 wherever possible; and

124 (6) Recommendations for changes in fiscal, statutory and
125 regulatory provisions are included for legislative action.

CHAPTER 26

(Com. Sub. for H. B. 4374 - By Delegates Moore, C. Miller, Staggers, Lawrence, Phillips, T. Walker, Hatfield, Manypenny, Hamilton, Moye and Perry)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-11-1, §49-11-2, §49-11-3, §49-11-4, §49-11-5, §49-11-6, §49-11-7, §49-11-8, §49-11-9 and §49-11-10, all relating to establishing the Caregivers Consent Act; defining terms; setting parameters of caregiver's consent for minor's health care; detailing duties of health care facilities or practitioners; stating requirements for affidavits of caregiver consent; providing for revocation or termination of consent; limiting liability for good faith reliance on affidavit; stating exceptions to applicability; creating a criminal penalty for false statement; and establishing rule-making authority.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §49-11-1, §49-11-2, §49-11-3, §49-11-4, §49-11-5, §49-11-6, §49-11-7, §49-11-8, §49-11-9 and §49-11-10, all to read as follows:

ARTICLE 11. CAREGIVERS CONSENT ACT.

§49-11-1. Short title.
§49-11-2. Definitions.
§49-11-3. Caregiver consent for minor's health care.
§49-11-4. Duty of health care facility or practitioner.
§49-11-5. Affidavit of caregiver consent.
§49-11-6. Revocation and termination of consent.
§49-11-7. Good faith reliance on affidavit.
§49-11-8. Exception to applicability.
§49-11-9. Penalty for false statement.
§49-11-10. Rule-making authority.

§49-11-1. Short title.

1 This article may be cited as the Caregivers Consent Act.

§49-11-2. Definitions.

1 As used in this article:

2 (1) "Caregiver" means any person who is at least
3 eighteen years of age and:

4 (A) Is related by blood, marriage or adoption to the
5 minor, but who is not the legal custodian or guardian of the
6 minor; or

7 (B) Has resided with the minor continuously during the
8 immediately preceding period of six months or more.

9 (2) "Health care and treatment" means:

10 (A) Developmental screening;

11 (B) Mental health screening;

12 (C) Mental health treatment;

13 (D) Ordinary and necessary medical and dental examination
14 and treatment;

(E) Preventive care including ordinary immunizations, tuberculin testing and well-child care; and

(F) Non-emergency diagnosis and treatment: *Provided*, That non-emergency diagnosis and treatment does not include an abortion.

§49-11-3. Caregiver consent for minor's health care.

(a) Except for minor children placed under the custody of the Department of Health and Human Resources pursuant to proceedings established by this chapter, a caregiver who possesses and presents a notarized affidavit pursuant to section five of this article may consent on behalf of a minor to health care and treatment.

(b) Examination and treatment shall be prescribed by or under the supervision of a physician, advanced practice nurse, dentist or mental health professional licensed to practice in the state.

§49-11-4. Duty of health care facility or practitioner.

The decision of a caregiver who possesses and presents a notarized affidavit of caregiver consent for a minor's health care pursuant to section five of this article shall be honored by a health care facility or practitioner unless the health care facility or practitioner has actual knowledge that a parent, legal custodian or guardian of a minor has made a contravening decision to consent to or to refuse medical treatment for the minor.

§49-11-5. Affidavit of caregiver consent.

An affidavit of caregiver consent for a minor's health care shall include the following:

(1) The caregiver's name and current home address;

(2) The caregiver's birth date;

(3) The relationship of the caregiver to the minor;

(4) The minor's name;

(5) The minor's birth date;

(6) The length of time the minor has resided with the caregiver;

(7) The caregiver's signature under oath affirming the truth of the matter asserted in the affidavit;

(8) The signature of the minor's parent, guardian or legal custodian consenting to the caregiver's authority over the minor's health care: *Provided,* That the signature of the minor's parent, guardian or legal custodian is not necessary if the affidavit includes the following: (A) a statement that the caregiver has attempted, but has been unable to obtain, the signature of the minor's parent, guardian or legal custodian; (B) a statement that the minor's parent, guardian or legal custodian has not refused to give consent for health care and treatment of the minor child; and (C) a description, in detail, of the attempts the caregiver made to obtain the signature of the minor's parent, guardian or legal custodian; and

(9) A statement, as follows:

"General Notices:

This declaration does not affect the rights of the minor's parent, guardian or legal custodian regarding the care, custody and control of the minor, other than with respect to

29 health care, and does not give the caregiver legal custody of
30 the minor.

31 This affidavit is valid for one year unless the minor no
32 longer resides in the caregiver's home. Furthermore, the
33 minor's parent, guardian or legal custodian may at any time
34 rescind this affidavit of caregiver consent for a minor's health
35 care by providing written notification of the rescission to the
36 appropriate health care professional.

37 A person who relies in good faith on this affidavit of
38 caregiver consent for a minor's health care has no obligation
39 to conduct any further inquiry or investigation and shall not
40 be subject to civil or criminal liability or to professional
41 disciplinary action because of that reliance."

§49-11-6. Revocation and termination of consent.

1 (a) The affidavit of caregiver consent for a minor's health
2 care is superseded by written notification from the minor's
3 parent, guardian or legal custodian to the health care
4 professionals providing services to the minor that the
5 affidavit has been rescinded.

6 (b) The affidavit of caregiver consent for a minor's health
7 care is valid for one year unless the minor no longer resides
8 in the caregiver's home or a parent, guardian or legal
9 custodian revokes his or her approval by written notification
10 to the health care professionals providing services to the
11 minor that the affidavit has been rescinded. If a parent,
12 guardian or legal custodian revokes approval, the caregiver
13 shall notify any health care provider or health service plans
14 with which the minor has been involved through the
15 caregiver.

§49-11-7. Good faith reliance on affidavit.

(a) Any person who relies in good faith on the affidavit of caregiver consent for a minor's health care:

(1) Has no obligation to conduct any further inquiry or investigation; and

(2) Is not subject to civil or criminal liability or to professional disciplinary action because of the reliance.

(b) The provisions of subsection (a) of this section apply even if medical treatment is provided to a minor in contravention of a decision of a parent, legal custodian or guardian of the minor who signed the affidavit if the person providing care has no actual knowledge of the decision of the parent, legal custodian or guardian.

§49-11-8. Exceptions to applicability.

The consent authorized by this section shall not be applicable for purposes of the Individuals with Disabilities Education Act, 20 U. S. C. §1400 *et seq.*, or Section 504 of the Rehabilitation Act of 1973, 29 U. S. C. §791.

§49-11-9. Penalty for false statement.

A person who knowingly makes a false statement in an affidavit under this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000.

§49-11-10. Rule-making authority.

The Secretary of the Department of Health and Human Resources is authorized to propose rules necessary to implement the provisions of this article for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 27

(H. B. 4373 - By Delegates Cann, Eldridge, Guthrie, Hatfield, Lawrence, Mahan, Manypenny, Michael, C. Miller, Perdue and Phillips)

[Passed March 12, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §5-16B-6d of the Code of West Virginia, 1931, as amended, regarding the eligibility of uninsured children to receive insurance under the Children's Health Insurance Program; eliminating the period of potential ineligibility of an uninsured child to receive insurance under the Children's Health Insurance Program if they were previously insured by an employer sponsored insurance plan.

Be it enacted by the Legislature of West Virginia:

That §5-16B-6d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.

§5-16B-6d. Modified benefit plan implementation.

1 (a) Upon approval by the Centers for Medicare and
2 Medicaid Services, the board shall implement a benefit plan for
3 uninsured children of families with income between two
4 hundred and three hundred percent of the federal poverty level.

5 (b) The benefit plans offered pursuant to this section shall
6 include services determined to be appropriate for children,
7 but may vary from those currently offered by the board.

8 (c) The board shall structure the benefit plans for this
9 expansion to include premiums, coinsurance or copays and
10 deductibles. The board shall develop the cost sharing features
11 in such a manner as to keep the program fiscally stable
12 without creating a barrier to enrollment. Such features may
13 include different cost-sharing features within this group
14 based upon the percentage of the federal poverty level.

15 (d) Provider reimbursement schedules shall be no lower
16 than the reimbursement provided for the same services under
17 the plans offered in article sixteen of this chapter.

18 (e) All provisions of this article are applicable to this
19 expansion unless expressly addressed in this section.

20 (f) Nothing in this section may be construed to require
21 any appropriation of State General Revenue Funds for the
22 payment of any benefit provided pursuant to this section,
23 except for the state appropriation used to match the federal
24 financial participation funds. In the event that federal funds
25 are no longer authorized for participation by individuals
26 eligible at income levels above two hundred percent, the
27 board shall take immediate steps to terminate the expansion
28 provided for in this section and notify all enrollees of such
29 termination. In the event federal appropriations decrease for
30 the programs created pursuant to Title XXI of the Social
31 Security Act of 1997, the board is directed to make those
32 decreases in this expansion program before making changes
33 to the programs created for those children whose family
34 income is less than two hundred percent of the federal
35 poverty level.

36 (g) The board is directed to report no less than quarterly
37 to the Legislative Oversight Commission on Health and
38 Human Resources Accountability on the development,
39 implementation and progress of the expansion authorized in
40 this section.

CHAPTER 28

(Com. Sub. for S. B. 471 - By Senator Kessler)

[Passed March 13, 2010; in effect July 1, 2010.]
[Approved by the Governor on March 10, 2010.]

AN ACT to amend and reenact §59-1-11 of the Code of West Virginia, 1931, as amended, relating to increasing the amount circuit clerks may charge for copies.

Be it enacted by the Legislature of West Virginia:

That §59-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

(a) The clerk of a circuit court shall charge and collect for services rendered by the clerk the following fees which shall be paid in advance by the parties for whom services are to be rendered:

(1) For instituting any civil action under the Rules of Civil Procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals or any other action, cause, suit or proceeding, $145, of which $30 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code and $10 shall be deposited in the special revenue account created in section six hundred

13 three, article twenty-six, chapter forty-eight of this code to
14 provide legal services for domestic violence victims;

15 (2) For instituting an action for medical professional
16 liability, $260, of which $10 of that amount shall be
17 deposited in the Courthouse Facilities Improvement Fund
18 created by section six, article twenty-six, chapter twenty-nine
19 of this code;

20 (3) Beginning on and after July 1, 1999, for instituting an
21 action for divorce, separate maintenance or annulment, $135;

22 (4) For petitioning for the modification of an order
23 involving child custody, child visitation, child support or
24 spousal support, $85; and

25 (5) For petitioning for an expedited modification of a
26 child support order, $35.

27 (b) In addition to the foregoing fees, the following fees
28 shall likewise be charged and collected:

29 (1) For preparing an abstract of judgment, $5;

30 (2) For any transcript, copy or paper made by the clerk
31 for use in any other court or otherwise to go out of the office,
32 for each page, seventy-five cents;

33 (3) For issuing a suggestion and serving notice to the
34 debtor by certified mail, $25;

35 (4) For issuing an execution, $25;

36 (5) For issuing or renewing a suggestee execution and
37 serving notice to the debtor by certified mail, $25;

38 (6) For vacation or modification of a suggestee execution,
39 $1;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate court, $3;

(8) For arranging the papers in a certified question, writ of error, appeal or removal to any other court, $10, of which $5 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(9) For postage and express and for sending or receiving decrees, orders or records, by mail or express, three times the amount of the postage or express charges;

(10) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, 50¢;

(11) For additional service (plaintiff or appellant) where any case remains on the docket longer than three years, for each additional year or part year, $20; and

(12) For administering funds deposited into a federally insured interest-bearing account or interest-bearing instrument pursuant to a court order, $50, to be collected from the party making the deposit. A fee collected pursuant to this subdivision shall be paid into the general county fund.

(c) The clerk shall tax the following fees for services in any criminal case against any defendant convicted in such court:

(1) In the case of any misdemeanor, $85; and

(2) In the case of any felony, $105, of which $10 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(d) The clerk of a circuit court shall charge and collect a fee of $25 per bond for services rendered by the clerk for processing of criminal bonds and the fee shall be paid at the time of issuance by the person or entity set forth below:

(1) For cash bonds, the fee shall be paid by the person tendering cash as bond;

(2) For recognizance bonds secured by real estate, the fee shall be paid by the owner of the real estate serving as surety;

(3) For recognizance bonds secured by a surety company, the fee shall be paid by the surety company;

(4) For ten-percent recognizance bonds with surety, the fee shall be paid by the person serving as surety; and

(5) For ten-percent recognizance bonds without surety, the fee shall be paid by the person tendering ten percent of the bail amount.

In instances in which the total of the bond is posted by more than one bond instrument, the above fee shall be collected at the time of issuance of each bond instrument processed by the clerk and all fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code. Nothing in this subsection may be construed as authorizing the clerk to collect the above fee from any person for the processing of a personal recognizance bond.

(e) The clerk of a circuit court shall charge and collect a fee of $10 for services rendered by the clerk for processing of bailpiece and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection

97 shall be deposited in the Courthouse Facilities Improvement
98 Fund created by section six, article twenty-six, chapter
99 twenty-nine of this code.

100 (f) No clerk shall be required to handle or accept for
101 disbursement any fees, cost or amounts of any other officer
102 or party not payable into the county treasury except on
103 written order of the court or in compliance with the
104 provisions of law governing such fees, costs or accounts.

CHAPTER 29

(H. B. 4416 - By Delegates Marshall, Iaquinta, Craig, Manchin, Evans and Anderson)

[Passed March 11, 2010; in effect from passage.]
[Approved by the Governor on March 26, 2010.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Division of Corrections to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received or services rendered, or both, by certain claimants herein and has considered these claims against the state, and agencies thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of the state spending units, the claims having been previously considered by the Court of Claims which also found that the state has received the benefit of the commodities received or services rendered, or both, by the claimants, but were denied by the Court of Claims on the purely statutory grounds that to allow the claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the Court of Claims as its own, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below and directs the Auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the Code of West Virginia, 1931, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) *Claims against the Division of Corrections:*

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Monongalia General Hospital	$	5,085.90
(2) Montgomery General Hospital	$	5,135.75

CHAPTER 30

(S. B. 526 - By Senators Fanning, Edgell, White, Sypolt and Unger)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Administration; Department of Health and Human Resources; Division of Corrections; Division of Highways; Division of Motor Vehicles; Library Commission; Public Service Commission; Regional Jail and Correctional Facility Authority and the West Virginia State Police to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the Court of Claims concerning various claims against the state and agencies thereof and in respect to each of the following claims, the Legislature adopts those findings of fact as its own and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of

8 award and hereby declares it to be the moral obligation of the
9 state to pay each such claim in the amount specified below
10 and directs the Auditor to issue warrants for the payment
11 thereof out of any fund appropriated and available for the
12 purpose.

13 (a) *Claim against the Department of Administration:*

14 (TO BE PAID FROM SPECIAL REVENUE FUND)

15 (1) Roy J. McDaniel $250

16 (b) *Claims against the Department of Health and Human*
17 *Resources:*

18 (TO BE PAID FROM SPECIAL REVENUE FUND)

19 (1) Diskriter Inc. $69,011.05

20 (2) Verizon $5,042.93

21 (c) *Claims against the Division of Corrections:*

22 (TO BE PAID FROM GENERAL REVENUE FUND)

23 (1) Abner D. Allen $113.65

24 (2) Astar Abatement Inc. $20,411.77

25 (3) Ryan Baker $120

26 (4) Jessie Davis $18.85

27 (5) Miguel Delgado $40

28 (6) Donald Eakle $127.05

(7) Aron Joseph Freeland $149.87

(8) Glock Inc. $24

(9) Mark F. Hanna $32.90

(10) Marlin J. McClain $28.55

(11) Roger McKinney $38.00

(12) Monongahela Power Co., dba Allegheny Power $1,012.40

(13) Samuel Nibert $19.85

(14) Roy Posey $32.90

(15) Regional Jail and Correctional Facility Authority $2,131,927.32

(16) Clifford Rice $28.00

(17) Ricoh Americas Corporation $4,631.29

(d) *Claims against the Division of Highways:*

(TO BE PAID FROM STATE ROAD FUND)

(1) John Scott Allen $19,000

(2) James D. Amick $254.87

(3) William D. Anderson $500

(4) Donna Anthony $2,000

(5) Dottie Arbogast $500

49 (6) Stacy Armstrong $217.94

50 (7) Sue L. Baney $250

51 (8) Carl Bawgus $500

52 (9) Bonita Bell $240.40

53 (10) Patricia A. Blankenship $951.36

54 (11) Stephanie D. Blasingim $90.10

55 (12) Larry J. Boughner and Brenda L. Boughner $317.07

56 (13) Deborah C. Bouvy $125.08

57 (14) Sarah E. Brickner $362.91

58 (15) Michael H. Brown $457.39

59 (16) Robert E. Burns $93.97

60 (17) Daniel Cantis and Deborah Cantis $500

61 (18) Kate Cosby Cardwell $187.50

62 (19) Jeffery S. Chumley $250

63 (20) Thomas G. Coberly $246.93

64 (21) John S. Cochran and Jami L. Cochran $500

65 (22) Michael A. Corcoglioniti $200

66 (23) Tammy Cranfield $100

67 (24) Bobby P. Darnell $2,366.55

68 (25) Danny R. Davis and Sonya Davis $500

69 (26) Shane A. Day $442.29

70 (27) James W. Dean $191.32

71 (28) Rosalind Drake $100

72 (29) Donna Durand and Walter Durand $280.79

73 (30) Bernard Eddy and Reta June Eddy $379.13

74 (31) Karen Elischer $172.78

75 (32) John R. Elko Jr. $196.73

76 (33) James W. Elliott $145.54

77 (34) Judy Lynn Farley $118.16

78 (35) Kevin Farley $250

79 (36) Jeffrey Ferrell and Melissa Ferrell $500

80 (37) Nika Mai Fields $262.28

81 (38) Susan Renee Finley $580

82 (39) Gary R. Fling and Tracy A. Fling $250

83 (40) Linda L. Floyd $1,555.05

84 (41) Larry D. Ford $200.87

85 (42) Thomas H. Freshwater $250

86 (43) Donald Garnes $500

87 (44) Stephen J. Gawthrop $249.19

88 (45) Justin Gordon and Allison Gordon $978.36

89 (46) Gerald E. Greene $205.75

90 (47) Richard R. Greene II $694.94

91 (48) Charles Gregory $1,000

92 (49) Lori Haldren $158.96

93 (50) Jason E. Hardy $500

94 (51) Marilyn T. Hargett $57.19

95 (52) Lee Harris $254.40

96 (53) James H. Hassig and Teresa A. Hassig $319.39

97 (54) Dennis Helmick $383.86

98 (55) Paul D. Helmick $1,158.10

99 (56) Melissa Herold and Herbert H. Herold $333.05

100 (57) Anthony M. Hicks $250

101 (58) Wesley B. Holley $352.56

102 (59) Wandell Huffman $500

103 (60) Melvin R. Hyre $111.25

104 (61) Mona L. Iddings $144.16

105 (62) Melissa Isner and Robert Isner $286.75

106 (63) Amber Johnson $100

107 (64) Elyssa Jo Johnson and Terry Blaine McManaway
108 $225.82

109 (65) Jerry L. Johnson and Earlene Johnson $500

110 (66) Rose Anna Johnson and Ronald Wayne Johnson
111 $232.60

112 (67) Alvin Jackson Jones and Teresa Elaine Jones
113 $346.05

114 (68) Antoine Katiny $454.61

115 (69) Gregory L. Keffer $500

116 (70) Katrina S. Kelley and Michel L. Kelley $500

117 (71) Gary Allen Ketterman $3,100

118 (72) Howard L. Keyser $133.13

119 (73) Leigh Ann Kinder $30,000

120 (74) Paul Joseph King $452.49

121 (75) Gregory S. Kipp $500

122 (76) Donna Kiser, Admin. Of the Estate of Melvin Kiser
123 $300,000

124 (77) Donna Kiser, Admin. Of the Estate of Michael Kiser
125 $610,000

126 (78) Clark A. Lawrence $2,497.41

127 (79) Kelly M. Levy and Peter D. Levy $500

128 (80) Barbara A. Lorenzo and Lou Lorenzo $500

129 (81) Christopher N. Mann and Meresa Mann $261.56

130 (82) Doris C. Mayo $86.50

131 (83) Plura McClanahan $257.77

132 (84) Sherry McCoy $500

133 (85) Michele Merigo $122,500

134 (86) Lisa Metz and Brian K. Metz $257.32

135 (87) Ronda L. Miller $496.76

136 (88) Roy H. Miller $200

137 (89) Richard P. Morrone $702.20

138 (90) Teresa M. Myers and Anthony D. Myers $400

139 (91) Stanley G. Nash $1,000

140 (92) Richard L. Newman and Marqueta Sue Newman
141 $281.50

142 (93) Ernestine Nigh $200

143 (94) Michelle D. Oney $500

144 (95) Gary Orndorff and Kathryn Orndorff $350

145 (96) Jason Robert Pickens $341.75

146 (97) Eugene Pleasant Jr. $280.73

147 (98) Sherry L. Post $530.43

148 (99) Stanley E. Powers and Francis Powers $50,000

149 (100) Ronald Lee Price $411.73

150 (101) Tamara Pritt $22.74

151 (102) Crystal Pruett $56.75

152 (103) David A. Ratliff $378.83

153 (104) Noah Edward Rawlings and Sherry L. Rawlings
154 $300.23

155 (105) RLI Insurance Company $167,634.95

156 (106) Gail S. Robbins $50

157 (107) Robert L. Rogers and Melissa J. Rogers $500

158 (108) Peggy A. Sanders $54.13

159 (109) Dirk Robert Hugo Schlingmann and Catherine
160 Ellen Schlingmann $68,250

161 (110) Randy L. Searls $500

162 (111) Jana Lynne Shannon $5,436.13

163 (112) Alicia G. Shaver and Robert H. Shaver Jr. $468.75

164 (113) Kendall C. Shepard $307.58

165 (114) Sherill A. Simmons and Dick F. Simmons $500

166 (115) Greg Six and Ray Six $100

167 (116) Franklin T. Smith $100

168 (117) Judy K. Snider $250

169 (118) Kim Sovine $519.29

170 (119) Loyd Dale Spotloe $543.68

171 (120) Mary Stewart $500

172 (121) Robert L. Summers $45,000

173 (122) Russell G. Swecker and Wanda L. Swecker
174 $441.54

175 (123) Allen Tennant $90.58

176 (124) K. Brooke Vance $135.43

177 (125) Judy A. Walter $67.05

178 (126) Ann S. Walters $192.87

179 (127) Carol White and Nancy White $346.15

180 (128) Ruth M. Whittaker and Vernon B. Whittaker
181 $4,000

182 (129) David Wilfong $897.75

183 (130) Robert Woods $90,000

184 (131) Robert C. Wright and Kimberly S. Wright $500

185 (132) Robin L. Wright and Robert L. Wright $231.50

186 (133) Wesley R. Yoho Sr. $500

187 (e) *Claims against the Division of Motor Vehicles:*

188 (TO BE PAID FROM STATE ROAD FUND)

189 (1) John H. Halstead $292.50

190 (2) Joan Lorraine Jarvis-Halstead $989

191 (f) *Claim against the Library Commission:*

192 (TO BE PAID FROM GENERAL REVENUE FUND)

193 (1) Jo Anne Cooke $895.63

194 (g) *Claim against the Public Service Commission:*

195 (TO BE PAID FROM SPECIAL REVENUE FUND)

196 (1) Lynada Woods $677.25

197 (h) *Claims against the Regional Jail and Correctional*
198 *Facility Authority:*

199 (TO BE PAID FROM SPECIAL REVENUE FUND)

200 (1) Sammy Ray Copley $39.16

201 (2) Wallace Davis $62.00

202 (3) Roxanne Lee Funk $2,091.97

203 (4) Robert Gladhill $129.99

204 (5) Larry Edward Harmon $426.96

205 (6) Robin Diahann Jenkins $240

206 (7) Joseph J. Johnson $871.50

207 (8) Christina L. King $30

208 (9) Frank McKeiver $210.94

209 (10) Roosevelt Motley II $1,696

210 (11) Terry J. Shaver $372.45

211 (12) Robert L. Stewart $18.77

212 (13) Jimmy R. Taylor $140

213 (i) *Claim against the State Police:*

214 (TO BE PAID FROM GENERAL REVENUE FUND)

215 (1) Kenny S. Willett $277.44

216 The Legislature finds that the above moral obligations
217 and the appropriations made in satisfaction thereof shall be
218 the full compensation for all claimants and that prior to the
219 payments to any claimant provided in this bill, the Court of
220 Claims shall receive a release from said claimant releasing
221 any and all claims for moral obligations arising from the
222 matters considered by the Legislature in the finding of the
223 moral obligations and the making of the appropriations for
224 said claimant. The Court of Claims shall deliver all releases
225 obtained from claimants to the department against which the
226 claim was allowed.

CHAPTER 31

(Com. Sub. for H. B. 4339 - By Delegates H. White and Campbell)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §14-1-37, relating to collecting debts through the United States Treasury Offset Program; authorizing the State Auditor to enter into agreements with the United States Treasury's Financial Management Service; specifying reduction and offset of payments for collection of debt; authorizing rules; specifying cost-effective actions to aggressively collect; and authorizing interagency agreements.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §14-1-37, to read as follows:

ARTICLE 1. CLAIMS DUE THE STATE.

§14-1-37. United States Treasury offset program authorized; setoff of federal debts.

1 (a) The auditor is authorized to enter into an agreement
2 with the Secretary of the Treasury to participate in the
3 Treasury Offset Program pursuant to 31 U.S.C. §3716 for the

collection of any debts owed to the state or to state agencies from federal payments to vendors, contractors and taxpayers. The agreement may provide for the United States to submit nontax debts owed to federal agencies for offset against state payments otherwise due and owing to taxpayers, vendors and contractors providing goods or services to the state, its departments, agencies or institutions.

(b) For purposes of this section the following words have the meanings indicated.

(1) "Federal official" means a unit or official of the federal government charged with the collection of nontax liabilities payable to the federal government and with the authority to enter into the offset agreement.

(2) "Offset agreement" is the agreement authorized by this section.

(3) "Person" means an individual, vendor, contractor, partnership, society, association, joint stock company, limited liability company, corporation, estate, receiver, trustee, assignee, and any other person acting in a fiduciary or representative capacity whether appointed by a court or otherwise, or any combination of the foregoing.

(4) "State payments" shall include tax refunds pursuant to the Tax Procedure and Administration Act, article ten, chapter eleven of this code, and vendor or contractor payments made by the state to any person including expense reimbursements to an employee of the state: *Provided*, That "state payments" do not include salary, wages, pension and any other type, class or amount of payment as the auditor determines to impact the health or welfare of the citizens of the state.

(c) Pursuant to the agreement authorized herein, a federal official may:

36 (1) Certify to the auditor the existence of a person's
37 delinquent, nontax debt owed by the person to the federal
38 government by providing:

39 (A) The name of the person;

40 (B) The social security number or federal tax
41 identification number;

42 (C) The amount of the nontax debt; and

43 (D) Any other information pursuant to the agreement
44 authorized herein;

45 (2) Request the auditor to withhold any state payment to
46 which the person is entitled; and

47 (3) Retain a portion of the proceeds of any federal
48 administrative setoff pursuant to 31 CSR 285.6.

49 (d) As required or permitted by state law, federal law or
50 the offset agreement, the State Auditor:

51 (1) Shall determine if a person for whom a certification
52 is received is due a state payment;

53 (2) Shall withhold a state payment that is due a person
54 whose name has been certified by a federal official;

55 (3) Shall notify the person of the amount withheld in
56 accordance with the offset agreement;

57 (4) Shall pay to the federal official the lesser of:

58 (A) The entire state payment; or

59 (B) The amount certified; and

(C) Pay any refund or state payment in excess of the certified amount to the person less any fee pursuant to subsection (e);

(5) May certify to a federal official a person's delinquent debt owed to the state by providing the federal official:

(A) The name of the person;

(B) The social security number or tax identification number;

(C) The amount of the debt due the state; and

(D) Any other information required by the offset agreement; and

(6) May request that the federal official withhold any federal vendor or other federal payment pursuant to the offset agreement to which the person is entitled.

(e) The auditor may, by rule, establish a reasonable administrative fee to be charged to the person for the provision of state offset of federal debt. The fee is a separate debt and may be withheld from any refund, reimbursement or other moneys held for the person. The auditor may charge the person who is the subject of federal offset of a state debt, a fee equal to the fee authorized in subsection (c).

(f) Each state agency and institution shall take all appropriate and cost-effective actions to aggressively collect its accounts receivable. Each agency and institution may participate in the Treasury Offset program of the United States under 31 U.S.C. §3716.

(g) The auditor may propose rules for legislative approval in accordance with the provisions of article three, chapter

twenty-nine-a of this code to administer and implement this section and the offset agreement.

(h) The auditor and the chief administrators of the various state agencies are authorized by this section to enter into interagency agreements for the purpose of protecting a person's return information as defined in section ten, article five-d, chapter eleven of this code and collecting debts, fees and penalties due the state, its departments, agencies or institutions.

CHAPTER 32

(Com. Sub. for H. B. 4134 - By Delegates Morgan, Stephens, Swartzmiller, Hartman, D. Poling, Givens, Manypenny and Staggers)

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

AN ACT to repeal §4-8-6 of the Code of West Virginia, 1931, as amended; to repeal §5-1D-11 of said code; to repeal §5-10D-8 of said code; to repeal §5-11-21 of said code; to repeal §5-14-12 of said code; to repeal §5-16-4a and §5-16-27 of said code; to repeal §5-16B-4a of said code; to repeal §5-16C-10 of said code; to repeal §5-22A-15 of said code; to repeal §5-26A-6 of said code; to repeal §5-28-4 of said code; to repeal §5A-3-57 of said code; to repeal §5A-8-15a of said code; to repeal §5A-11-8 of said code; to repeal §5B-2-13 of said code; to repeal §5B-2A-13 of said code; to repeal §5B-2C-8 of said code; to repeal §5C-2-6 of said code; to repeal §5D-1-24 of said code; to repeal §6B-2-11 of said code; to repeal §6C-3-5 of said code;

to repeal §9A-1-2a of said code; to repeal §10-5-6 of said code; to repeal §11-1-8 of said code; to repeal §12-6-20 of said code; to repeal §12-6C-20 of said code; to repeal §15-2-50 of said code; to repeal §15-2D-6 of said code; to repeal §15-2E-8 of said code; to repeal §16-1-13a of said code; to repeal §16-5P-15 of said code; to repeal §16-5Q-3 of said code; to repeal §16-29B-28 of said code; to repeal §16-41-7 of said code; to repeal §17-2A-1a of said code; to repeal §17A-2-24 of said code; to repeal §17A-6-18b of said code; to repeal §17B-1D-10 of said code; to repeal §18-2F-9 of said code; to repeal §18-9D-18 of said code; to repeal §18-10C-3 of said code; to repeal §18-10L-8 of said code; to repeal §18A-3A-4 of said code; to repeal §18B-16-6b of said code; to repeal §19-1-3b of said code; to repeal §19-2B-1a of said code; to repeal §19-2F-11 of said code; to repeal §19-23-30 of said code; to repeal §20-1-18d and §20-1-21 of said code; to repeal §20-2-23f of said code; to repeal §20-5-20 of said code; to repeal §21-1-5 of said code; to repeal §21-9-13 of said code; to repeal §21-11-19 of said code; to repeal §21A-1-9 of said code; to repeal §21A-2-9 of said code; to repeal §22-1-4 and §22-1-7a of said code; to repeal §22-3A-11 of said code; to repeal §22-15A-15 of said code; to repeal §22-20-2 of said code; to repeal §22-25-13 of said code; to repeal §22B-3-5 of said code; to repeal §22C-7-4 of said code; to repeal §22C-9-4a of said code; to repeal §22C-11-6 of said code; to repeal §24-1-10 of said code; to repeal §25-1-2 of said code; to repeal §29-1-1b of said code; to repeal §29-1A-5 of said code; to repeal §29-2-10 of said code; to repeal §29-3-31 of said code; to repeal §29-6-5a of said code; to repeal §29-12-12 of said code; to repeal §29-18-24 of said code; to repeal §29-20-7 of said code; to repeal §29-21-3a of said code; to repeal §29-22-26 of said code; to repeal §30-3-18 of said code; to repeal §30-4-30 of said code; to repeal §30-5-25 and §30-5-29 of said code; to repeal §30-6-32 of said code; to repeal §30-7-17 of said code; to repeal §30-7A-12 of said code; to repeal §30-7B-10 of said code; to repeal §30-9-32 of said code; to repeal §30-12-15 of said code; to repeal §30-13-25 of said code; to repeal §30-14-16 of said code; to repeal §30-21-16 of said code; to repeal §30-22-29 of said code; to repeal §30-23-

30 of said code; to repeal §30-30-14 of said code; to repeal §30-32-22 of said code; to repeal §30-34-17 of said code; to repeal §30-35-15 of said code; to repeal §30-36-20 of said code; to repeal §30-37-12 of said code; to repeal §30-38-19 of said code; to repeal §30-40-28 of said code; to repeal §31-16-5 of said code; to repeal §31A-3-5 of said code; to repeal §48-18-134 of said code; and to repeal §48-26-1102 of said code, all relating to removing outmoded code sections regarding sunset provisions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 8. CAPITOL BUILDING COMMISSION.

§1 Repeal of section relating to the sunset review of the West Virginia Capitol Building Commission.

1 That §4-8-6 of the Code of West Virginia, 1931, as
2 amended, be repealed.

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

ARTICLE 1D. GOVERNOR'S OFFICE OF FISCAL RISK ANALYSIS AND MANAGEMENT.

§1 Repeal of section relating to the sunset review of the Governor's Office of Fiscal Risk Analysis and Management.

1 That §5-1D-11 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§1 Repeal of section relating to the sunset review of the West Virginia Consolidated Public Retirement Board.

1 That §5-10D-8 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§1 Repeal of section relating to the sunset review of the Human Rights Commission.

1 That §5-11-21 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-HEARING.

§1 Repeal of section relating to the sunset review of the West Virginia Commission for the Deaf and Hard of Hearing.

1 That §5-14-12 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§1 Repeal of section relating to the sunset review of the Public Employees Insurance Agency Finance Board.

1 That §5-16-4a of the Code of West Virginia, 1931, as
2 amended, be repealed.

§2 Repeal of section relating to the sunset review of the Public Employees Insurance Agency.

1 That §5-16-27 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.

§1 Repeal of section relating to the sunset review of the Children's Health Insurance Board.

1 That §5-16B-4a of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 16C. PRESCRIPTION DRUG COST MANAGEMENT ACT.

§1 Repeal of section relating to the sunset review of the Prescription Drug Cost Management Act.

1 That §5-16C-10 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 22A. DESIGN-BUILD PROCUREMENT ACT.

§1 Repeal of section relating to the sunset review of the Design-Build Board.

1 That §5-22A-15 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 26A. WEST VIRGINIA COMMISSION FOR NATIONAL AND COMMUNITY SERVICE.

§1 Repeal of section relating to the sunset review of the West Virginia Commission for National and Community Service.

1 That §5-26A-6 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 28. COMMISSION ON HOLOCAUST EDUCATION.

§1 Repeal of section relating to the sunset review of the West Virginia Commission on Holocaust Education.

1 That §5-28-4 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§1 Repeal of section relating to the sunset review of the Division of Purchasing.

1 That §5A-3-57 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§1 Repeal of section relating to the sunset review of the Records Management and Preservation Board.

1 That §5A-8-15a of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 11. PUBLIC LAND CORPORATION.

§1 Repeal of section relating to the sunset review of the Public Land Corporation.

1 That §5A-11-8 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§1 Repeal of section relating to the sunset review of the Tourism Commission.

1 That §5B-2-13 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§1 Repeal of section relating to the sunset review of the Office of Coalfield Community Development.

1 That §5B-2A-13 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 2C. WEST VIRGINIA ACADEMY OF SCIENCE AND TECHNOLOGY.

§1 Repeal of section relating to the sunset review of the West Virginia Academy of Science and Technology.

1 That §5B-2C-8 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 5C. BASIC ASSISTANCE FOR INDUSTRY AND TRADE.

ARTICLE 2. WEST VIRGINIA CLEAN COAL TECHNOLOGY ACT.

§1 Repeal of section relating to the sunset review of the Council for Clean Coal Technology.

1 That §5C-2-6 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§1 Repeal of section relating to the sunset review of the West Virginia Public Energy Authority Board.

1 That §5D-1-24 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES; ETHICS; CONFLICTS OF INTEREST; FINANCIAL DISCLOSURE.

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.

§1 Repeal of section relating to the sunset review of the West Virginia Ethics Commission.

1 That §6B-2-11 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 6C. PUBLIC EMPLOYEES.

ARTICLE 3. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD.

§1 Repeal of section relating to the sunset review of the West Virginia Public Employees Grievance Board.

1 That §6C-3-5 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 9A. VETERANS AFFAIRS.

ARTICLE 1. DIVISION OF VETERANS AFFAIRS.

§1. Repeal of section relating to the sunset review of the Veterans' Council.

1 That §9A-1-2a of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION; ATHLETIC ESTABLISHMENTS; MONUMENTS AND MEMORIALS; ROSTER OF SERVICEMEN; EDUCATIONAL BROADCASTING AUTHORITY.

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§1 Repeal of section relating to the sunset review of the West Virginia Educational Broadcasting Authority.

1 That §10-5-6 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 11. TAXATION.

ARTICLE 1. SUPERVISION.

§1 Repeal of section relating to the sunset review of the Department of Tax and Revenue.

1 That §11-1-8 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§1 Repeal of section relating to the sunset review of the West Virginia Investment Management Board.

1 That §12-6-20 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§1 Repeal of section relating to the sunset review of the West Virginia Board of Treasury Investments.

1 That §12-6C-20 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§1 Repeal of section relating to the sunset review of the West Virginia State Police.

1 That §15-2-50 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§1 Repeal of section relating to the sunset review of the Division of Protective Services.

1 That §15-2D-6 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 2E. STATE POLICE ACADEMY POST EXCHANGE.

§1 Repeal of section relating to the sunset review of the state Police Academy Post Exchange.

1 That §15-2E-8 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§1 Repeal of section relating to the sunset review of the Office of Health Facility Licensure and Certification.

1 That §16-1-13a of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 5P. SENIOR SERVICES.

§1 Repeal of section relating to the sunset review of the Bureau of Senior Services.

1 That §16-5P-15 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 5Q. THE JAMES "TIGER" MORTON CATASTROPHIC ILLNESS FUND.

§1 Repeal of section relating to the sunset review of the James "Tiger" Morton Catastrophic Illness Commission.

1 That §16-5Q-3 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 29B. HEALTH CARE AUTHORITY.

§1 Repeal of section relating to the sunset review of the Health Care Authority.

1 That §16-29B-28 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 41. ORAL HEALTH IMPROVEMENT ACT.

§1 Repeal of section relating to the sunset review of the Oral Health Program.

1 That §16-41-7 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§1 Repeal of section relating to the sunset review of the Division of Highways.

1 That §17-2A-1a of the Code of West Virginia, 1931, as
2 amended, be repealed.

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

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§1 Repeal of section relating to the sunset review of the Division of Motor Vehicles.

1 That §17A-2-24 of the Code of West Virginia, 1931, as
2 amended, be repealed.

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

§1 Repeal of section relating to the sunset review of the Motor Vehicle Dealers Advisory Board.

1 That §17A-6-18b of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 1D. MOTORCYCLE SAFETY EDUCATION.

§1 Repeal of section relating to the sunset review of the Motorcycle Safety Awareness Board.

1 That §17B-1D-10 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 18. EDUCATION.

ARTICLE 2F. INCENTIVES AND RESULTS BASED SCHOLARSHIP PROGRAM.

§1 Repeal of section relating to the sunset review of the Share in Your Future Commission.

1 That §18-2F-9 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§1 Repeal of section relating to the sunset review of the School Building Authority.

1 That §18-9D-18 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 10C. THE SOUTHERN REGIONAL EDUCATION COMPACT.

§1 Repeal of section relating to the sunset review of West Virginia's membership in the Southern Regional Education Compact.

1 That §18-10C-3 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 10L. RON YOST PERSONAL ASSISTANCE SERVICES ACT.

§1 Repeal of section relating to the sunset review of the Ron Yost Personal Assistance Services Program.

1 That §18-10L-8 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§1 Repeal of section relating to the sunset review of the Center for Professional Development Board.

1 That §18A-3A-4 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 16. HEALTH CARE EDUCATION.

§1 Repeal of section relating to the sunset review of the Rural Health Advisory Panel.

1 That §18B-16-6b of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§1 Repeal of section relating to the sunset review of the Marketing and Development Division of the Department of Agriculture.

1 That §19-1-3b of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 2B. INSPECTION OF MEAT AND POULTRY.

§1 Repeal of section relating to the sunset review of the Meat and Poultry Inspection Program.

1 That §19-2B-1a of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 2F. BEEF INDUSTRY SELF-IMPROVEMENT ASSESSMENT PROGRAM.

§1 Repeal of section relating to the sunset review of the Beef Industry Self-improvement Assessment Program.

1 That §19-2F-11 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 23. HORSE AND DOG RACING.

§1 Repeal of section relating to the sunset review of the Racing Commission.

1 That §19-23-30 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§1 Repeal of section relating to the sunset review of the United States Geological Survey Program within the Department of Natural Resources.

1 That §20-1-18d of the Code of West Virginia, 1931, as
2 amended, be repealed.

§2 Repeal of section relating to the sunset review of the Division of Natural Resources.

1 That §20-1-21 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 2. WILDLIFE RESOURCES.

§1 Repeal of section relating to the sunset review of the Whitewater Commission.

1 That §20-2-23f of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 5. PARKS AND RECREATION.

§1 Repeal of section relating to the sunset review of the Parks Section of Division of Natural Resources.

1 That §20-5-20 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 21. LABOR.

ARTICLE 1. DIVISION OF LABOR.

§1 Repeal of section relating to the sunset review of the Division of Labor.

1 That §21-1-5 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§1 Repeal of section relating to the sunset review of the West Virginia Board of Manufactured Housing Construction and Safety.

1 That §21-9-13 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§1 Repeal of section relating to the sunset review of the West Virginia Contractor Licensing Board.

1 That §21-11-19 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 1. UNEMPLOYMENT COMPENSATION.

§1 Repeal of section relating to the sunset review of the Division of Unemployment Compensation.

1 That §21A-1-9 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT PROGRAMS.

§1 Repeal of section relating to the sunset review of the authority of Commissioner to administer unemployment compensation.

1 That §21A-2-9 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§1 Repeal of section relating to the sunset review of the Department of Environmental Protection.

1 That §22-1-4 of the Code of West Virginia, 1931, as
2 amended, be repealed.

§2 Repeal of section relating to the sunset review of the Office of Water Resources.

1 That §22-1-7a of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 3A. OFFICE OF EXPLOSIVES AND BLASTING.

§1 Repeal of section relating to the sunset review of the Office of Explosives and Blasting.

1 That §22-3A-11 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§1 Repeal of section relating to the sunset review of the Waste Tire Remediation Program.

1 That §22-15A-15 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 20. ENVIRONMENTAL ADVOCATE.

§1 Repeal of section relating to the sunset review of the Office of Environmental Advocate.

1 That §22-20-2 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 25. ENVIRONMENTAL EXCELLENCE PROGRAM.

§1 Repeal of section relating to the sunset review of the Environmental Excellence Program.

1 That §22-25-13 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 22B. ENVIRONMENTAL BOARDS.

ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§1 Repeal of section relating to the sunset review of the Environmental Quality Board.

1 That §22B-3-5 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 7. ENVIRONMENTAL RESOURCES.

§1 Repeal of section relating to the sunset review of the Oil and Gas Inspectors' Examining Board.

1 That §22C-7-4 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 9. OIL AND GAS CONSERVATION.

§1 Repeal of section relating to the sunset review of the Oil and Gas Conservation Commission.

1 That §22C-9-4a of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 11. INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.

§1 Repeal of section relating to the sunset review of West Virginia's membership in the Interstate Commission on the Potomac River Basin.

1 That §22C-11-6 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

§1 Repeal of section relating to the sunset review of the Public Service Commission.

1 That §24-1-10 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§1 Repeal of section relating to the sunset review of the Division of Corrections.

1 That §25-1-2 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§1 Repeal of section relating to the sunset review of the Division of Culture and History.

1 That §29-1-1b of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 1A. COMMISSION ON UNIFORM STATE LAWS.

§1 Repeal of section relating to the sunset review of the Interstate Commission on Uniform State Laws.

1 That §29-1A-5 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 2. GEODETIC AND GEOLOGICAL SURVEY.

§1 Repeal of section relating to the sunset review of the state Geological and Economic Survey.

1 That §29-2-10 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§1 Repeal of section relating to the sunset review of the state Fire Commission.

1 That §29-3-31 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 6. CIVIL SERVICE SYSTEM.

§1 Repeal of section relating to the sunset review of the Division of Personnel.

1 That §29-6-5a of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 12. STATE INSURANCE.

§1 Repeal of section relating to the sunset review of the state Board of Risk and Insurance Management.

1 That §29-12-12 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§1 Repeal of section relating to the sunset review of the West Virginia State Rail Authority.

1 That §29-18-24 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 20. WOMEN'S COMMISSION.

§1 Repeal of section relating to the sunset review of the West Virginia Women's Commission.

1 That §29-20-7 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§1 Repeal of section relating to the sunset review of the Public Defender Services.

1 That §29-21-3a of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 22. STATE LOTTERY ACT.

§1 Repeal of section relating to the sunset review of the state Lottery Commission.

1 That §29-22-26 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§1 Repeal of section relating to the sunset review of the board of Medicine.

1 That §30-3-18 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§1 Repeal of section relating to the sunset review of the West Virginia Board of Dental Examiners.

1 That §30-4-30 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§1 Repeal of section relating to the sunset review of the West Virginia Board of Pharmacy.

1 That §30-5-25 of the Code of West Virginia, 1931, as
2 amended, be repealed.

§2 Repeal of section relating to the sunset review of the pharmacy collaborative agreements in community settings.

1 That §30-5-29 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 6. BOARD OF FUNERAL SERVICE EXAMINERS.

§1 Repeal of section relating to the sunset review of the board of Embalmers and Funeral Directors.

1 That §30-6-32 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§1 Repeal of section relating to the sunset review of the board of Examiners for Registered Professional Nurses.

1 That §30-7-17 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 7A. PRACTICAL NURSES.

§1 Repeal of section relating to the sunset review of the board of Examiners for Licensed Practical Nurses.

1 That §30-7A-12 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 7B. CENTER FOR NURSING.

§1 Repeal of section relating to the sunset review of the West Virginia Center for Nursing.

1 That §30-7B-10 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 9. ACCOUNTANTS.

§1 Repeal of section relating to the sunset review of the West Virginia Board of Accountancy.

1 That §30-9-32 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 12. ARCHITECTS.

§1 Repeal of section relating to the sunset review of the board of Architects.

1 That §30-12-15 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 13. ENGINEERS.

§1 Repeal of section relating to the sunset review of the board of Registration for Professional Engineers.

1 That §30-13-25 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§1 Repeal of section relating to the sunset review of the West Virginia Board of Osteopathy.

1 That §30-14-16 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§1 Repeal of section relating to the sunset review of the board of Examiners of Psychologists.

1 That §30-21-16 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 22. LANDSCAPE ARCHITECTS.

§1 Repeal of section relating to the sunset review of the West Virginia Board of Landscape Architects.

1 That §30-22-29 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§1 Repeal of section relating to the sunset review of the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners.

1 That §30-23-30 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 30. SOCIAL WORKERS.

§1 Repeal of section relating to the sunset review of the board of Social Work Examiners.

1 That §30-30-14 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 32. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS.

§1 Repeal of section relating to the sunset review of the West Virginia Board of Examiners for Speech-language Pathology and Audiology.

1 That §30-32-22 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.

§1 Repeal of section relating to the sunset review of the board of Respiratory Care Practitioners.

1 That §30-34-17 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 35. BOARD OF DIETITIANS.

§1 Repeal of section relating to the sunset review of the board of Licensed Dietitians.

1 That §30-35-15 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 36. ACUPUNCTURISTS.

§1 Repeal of section relating to the sunset review of the West Virginia Acupuncture Board.

1 That §30-36-20 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 37. MASSAGE THERAPISTS.

§1 Repeal of section relating to the sunset review of the Massage Therapy Licensure Board.

1 That §30-37-12 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§1 Repeal of section relating to the sunset review of the Real Estate Appraiser Licensing and Certification Board.

1 That §30-38-19 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§1 Repeal of section relating to the sunset review of the West Virginia Real Estate Commission.

1 That §30-40-28 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 31. CORPORATIONS.

ARTICLE 16. WEST VIRGINIA STEEL FUTURES PROGRAM.

§1 Repeal of section relating to the sunset review of the West Virginia Steel Futures Program.

1 That §31-16-5 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§1 Repeal of section relating to the sunset review of the West Virginia Board of Banking and Financial Institutions.

1 That §31A-3-5 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§1 Repeal of section relating to the sunset review of the Bureau for Child Support Enforcement.

1 That §48-18-134 of the Code of West Virginia, 1931, as
2 amended, be repealed.

ARTICLE 26. DOMESTIC VIOLENCE ACT.

§1 Repeal of section relating to the sunset review of the Family Protection Services Board.

1 That §48-26-1102 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 33

(S. B. 648 - By Senators Plymale, Wells, Oliverio and Stollings)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to repeal §18-2F-1, §18-2F-2, §18-2F-3, §18-2F-4, §18-2F-5, §18-2F-6, §18-2F-7, §18-2F-8 and §18-2F-9 of the Code of West Virginia, 1931, as amended; and to repeal §18-7A-5, §18-7A-6, §18-7A-7, §18-7A-8, §18-7A-9 and §18-7A-10 of said code, all relating to repealing outdated and obsolete sections regarding education.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 2F. INCENTIVES AND RESULTS BASED SCHOLARSHIP PROGRAM.

§1. Repeal of article relating to the "West Virginia Share in Your Future Act."

1 That §18-2F-1, §18-2F-2, §18-2F-3, §18-2F-4, §18-2F-5,
2 §18-2F-6, §18-2F-7, §18-2F-8 and §18-2F-9 of the Code of
3 West Virginia, 1931, as amended, be repealed.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§1. Repeal of section relating to membership of Teachers Retirement Board.

1 That §18-7A-5 of the Code of West Virginia, 1931, as
2 amended, be repealed.

§2. Repeal of section relating to compensation of Teachers Retirement Board.

1 That §18-7A-6 of the Code of West Virginia, 1931, as
2 amended, be repealed.

§3. Repeal of section relating to quorum of Teachers Retirement Board.

1 That §18-7A-7 of the Code of West Virginia, 1931, as
2 amended, be repealed.

§4. Repeal of section relating to legal advisor of Teachers Retirement Board.

1 That §18-7A-8 of the Code of West Virginia, 1931, as
2 amended, be repealed.

§5. Repeal of section relating to meetings of Teachers Retirement Board.

1 That §18-7A-9 of the Code of West Virginia, 1931, as
2 amended, be repealed.

§6. Repeal of section relating to employment of executive secretary and other employees by Teachers Retirement Board.

1 That §18-7A-10 of the Code of West Virginia, 1931, as
2 amended, be repealed.

CHAPTER 34

(S. B. 457 - By Senators D. Facemire, Foster and Kessler)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to repeal §61-1-6 of the Code of West Virginia, 1931, as amended; to repeal §61-2-17, §61-2-18, §61-2-19, §61-2-20, §61-2-21, §61-2-22, §61-2-23, §61-2-24 and §61-2-25 of said code; to repeal §61-6-16 of said code; to repeal §61-8-3, §61-8-4 and §61-8-15 of said code; to repeal §61-10-18, §61-10-25, §61-10-26, §61-10-27, §61-10-28 and §61-10-29 of said code; and to amend and reenact §61-1-7 of said code, repealing

outmoded criminal sections of the code relating generally to the display of a red or black flag and the accompanying penalty; keeping doors of vehicles for hire locked while in motion; dueling; wearing hats in theaters; adultery and lewd cohabitation; conducting bucket shops; public swearing and drunkenness; engaging in certain work, labor or business activities on Sunday; and clarifying the penalty provision for unlawful speeches, publications and communications.

Be it enacted by the Legislature of West Virginia:

That §61-1-6 of the Code of West Virginia, 1931, as amended be repealed; that §61-2-17, §61-2-18, §61-2-19, §61-2-20, §61-2-21, §61-2-22, §61-2-23, §61-2-24 and §61-2-25 of said code be repealed; that §61-6-16 of said code be repealed; that §61-8-3, §61-8-4 and §61-8-15 of said code be repealed; that §61-10-18, §61-10-25, §61-10-26, §61-10-27, §61-10-28 and §61-10-29 be repealed; and that §61-1-7 of said code be amended and reenacted to read as follows:

ARTICLE 1. CRIMES AGAINST THE GOVERNMENT.

§61-1-7. Penalty for unlawful speeches, publications and communications.

Any person violating any of the provisions of section five of this article, shall, for the first offense, be guilty of a misdemeanor, and, upon conviction, shall be fined not less than $100 nor more than $500, or, in the discretion of the court, be confined in jail not exceeding twelve months, or both; and, for the second offense, shall be guilty of a felony, and, upon conviction shall be confined in a state correctional facility not less than one nor more than five years.

CHAPTER 35

(S. B. 387 - By Senators Minard, Jenkins, McCabe, Williams and Plymale)

[Passed March 9, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §46A-4-102 of the Code of West Virginia, 1931, as amended, relating to regulated consumer lenders; providing that mortgage loan originators employed by regulated consumer lenders in this state must be either licensed or registered with the Nationwide Mortgage Licensing System and Registry; and requiring regulated consumer lenders to provide notice of change of ownership and/or control of such institutions to the West Virginia Division of Banking.

Be it enacted by the Legislature of West Virginia:

That §46A-4-102 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-102. License to make regulated consumer loans.

1 (1) The commissioner shall receive and act on all
2 applications for licenses to make regulated consumer loans
3 under this chapter. Applications shall be under oath, be filed
4 in the manner prescribed by the commissioner and contain
5 the information the commissioner requires to make an

6 evaluation of the financial responsibility, experience,
7 character and fitness of the applicant and the findings
8 required of him or her before he or she may issue a license.
9 At the time of the filing of the application, the sum of $750
10 shall be paid to the commissioner as an investigation fee.

11 (2) A license may not be issued to a supervised financial
12 organization other than to one primarily engaged in the
13 business of making consumer loans through offices located
14 within this state or to one licensed under the provisions of the
15 West Virginia Mortgage Loan Act as contained in article
16 seventeen, chapter thirty-one of this code, or to any banking
17 institution as defined by the provisions of section two, article
18 one, chapter thirty-one-a of this code. A license will not be
19 granted to any office located outside this state: *Provided,*
20 That the limitation of licensing contained in this subsection
21 does not prevent any supervised financial organization from
22 making regulated consumer loans when the applicable state
23 or federal statute, law, rule or regulation permits. A license
24 may not be issued to any person unless the commissioner,
25 upon investigation, finds that the financial responsibility,
26 experience, character and fitness of the applicant, and of the
27 members thereof (if the applicant is a copartnership or
28 association) and of the officers and directors thereof (if the
29 applicant is a corporation), are such as to command the
30 confidence of the community and to warrant belief that the
31 business will be operated honestly, fairly and efficiently,
32 within the purposes of this chapter, and the applicant has
33 available for the operation of the business at least $10,000 in
34 capital and has, for each specified location of operation,
35 assets of at least $2,000.

36 (3) Upon written request, the applicant is entitled to a
37 hearing on the question of his or her qualifications for a
38 license if: (a) The commissioner has notified the applicant in
39 writing that his or her application has been denied; or (b) the

commissioner has not issued a license within sixty days after the application for the license was filed. A request for a hearing may not be made more than fifteen days after the commissioner has mailed a writing to the applicant notifying him or her that the application has been denied and stating in substance the commissioner's findings supporting denial of the application.

(4) Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this article governing an original issuance of a license for each such new license. Each license shall remain in full force and effect until surrendered, forfeited, suspended or revoked.

(5) Upon giving the commissioner at least fifteen days' prior written notice, a licensee may: (a) Change the location of any place of business located within a municipality to any other location within that same municipality; or (b) change the location of any place of business located outside of a municipality to a location no more than five miles from the originally licensed location, but in no case may a licensee move any place of business located outside a municipality to a location within a municipality. A licensee may not move the location of any place of business located within a municipality to any other location outside of that municipality.

(6) A licensee may conduct the business of making regulated consumer loans only at or from a place of business for which he or she holds a license and not under any other name than that stated in the license.

(7) A license issued under the provisions of this section shall not be transferable or assignable.

(8) A licensee must be incorporated under the laws of this state. The licensee may, however, be a subsidiary of an out-of-state company or financial institution.

(9) All mortgage loan originators, as defined in article seventeen-a, chapter thirty-one of this code, who are employed by a licensed regulated consumer lender must be licensed or registered and issued a unique identifier by the Nationwide Mortgage Licensing System and Registry pursuant to the requirements provided in article seventeen-a, chapter thirty-one of this code.

(10) All regulated consumer lenders must file with the commissioner a bond in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice in the amount of $100,000 for licensees with West Virginia mortgage loan originations of $0 to $3 million, $150,000 for West Virginia mortgage loan originations greater than $3 million and up to $10 million, and $200,000 for West Virginia mortgage loan originations over $10 million in a form and with conditions as the commissioner may prescribe and executed by a surety company authorized to do business in this state.

(11) All regulated consumer lenders shall notify the commissioner of any merger or acquisition which may result in a change of control or a change in principals of the regulated consumer lender within fifteen days of announcement or publication of the proposal, or its occurrence, whichever is earlier. Upon notice of these circumstances by a corporate licensee, the commissioner may require all information necessary to determine whether it results in a transfer or assignment of the license and thus if a new application is required in order for the company to continue doing business under this article. A licensee that is an entity other than a corporation shall in these circumstances submit a new application for licensure at the time of notice.

CHAPTER 36

(Com. Sub. for S. B. 362 - By Senators Jenkins, Stollings, Tomblin (Mr. President), Barnes, Edgell, Foster, Laird, Plymale, Prezioso and Palumbo)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §60A-4-410 of the Code of West Virginia, 1931, as amended, relating to unlawfully withholding information from a medical practitioner in order to obtain a prescription for a controlled substance; clarifying language; and increasing penalties.

Be it enacted by the Legislature of West Virginia:

That §60A-4-410 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-410. Prohibited acts -- Withholding information from practitioner; additional controlled substances; penalties.

1 (a) It is unlawful for a patient, in an attempt to obtain a
2 prescription for a controlled substance, to knowingly
3 withhold from a practitioner, that the patient has obtained a
4 prescription for a controlled substance of the same or similar
5 therapeutic use in a concurrent time period from another
6 practitioner.

(b) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not more than nine months, or fined not more than $2,500, or both fined and confined.

(c) The offense established by this section is in addition to and a separate and distinct offense from any other offense set forth in this code.

CHAPTER 37

(Com. Sub. for H. B. 4018 - By Delegates D. Poling, Swartzmiller and Manypenny)

[Passed March 12, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to amend the Code of West Virginia,1931, as amended, by adding thereto a new section, designated §60A-4-413, relating to establishing that the manufacture or possession of an extract or compound intended for human consumption containing Salvia divinorum is unlawful; and creating criminal penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, be amended, by adding thereto a new section, designated §60A-4-413, to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-413. Unlawful production, manufacture or possession of Salvia divinorum.

1 (a) For purposes of this section, "Salvia divinorum" means
2 an herb belonging to the Lamiaceae family, genus of Salvia,
3 species of divinorum, with common names including, but not
4 limited to, "Salvia," "Ska Pastora," "Shepherdess's Herb,"
5 "Maria Pastora," "yerba de Maria," "Purple Sticky" and
6 "Sally-D."

7 (b) It is unlawful for any person to knowingly or
8 intentionally manufacture or possess an extract, compound,
9 concentrate, or other processed substance intended for human
10 consumption which contains Salvia divinorum, unless the
11 substance was obtained directly from, or pursuant to, a valid
12 prescription or order of a licensed physician or dispensed by
13 a pharmacist for a recommended or medically necessary
14 therapeutic use. Any person who violates this subsection is
15 guilty of a misdemeanor, and disposition may be made under
16 section four hundred seven of this article, subject to the
17 limitations specified in said section, or upon conviction, such
18 person may be confined in jail not more than six months, or
19 fined not more than $1,000, or both. Notwithstanding any
20 other provision of this code to the contrary, any first offense
21 for possession of Salvia divinorum shall be disposed of under
22 section four hundred seven of this article.

23 (c) The provisions of this section shall not apply to
24 licensed physicians, pharmacists, and accredited hospitals
25 and teaching facilities engaged in the research or study of
26 Salvia divinorum, and shall not include any person
27 participating in clinical trials involving the use of Salvia
28 divinorum.

CHAPTER 38

(S. B. 514 - By Senators Jenkins, Stollings, Foster, Unger, Laird, Plymale, Palumbo and Kessler)

[Passed March 5, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §60A-9-4 of the Code of West Virginia, 1931, as amended, relating to the Controlled Substances Monitoring Act; and modifying and clarifying the controlled substances that are subject to reporting when a prescription is filled or when the controlled substance is dispensed by a medical services provider.

Be it enacted by the Legislature of West Virginia:

That §60A-9-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-4. Required information.

1 (a) Whenever a medical services provider dispenses a
2 controlled substance listed in Schedule II, III or IV, as
3 established under the provisions of article two of this chapter
4 or whenever a prescription for the controlled substance is
5 filled by: (i) A pharmacist or pharmacy in this state; (ii) a
6 hospital, or other health care facility, for out-patient use; or
7 (iii) a pharmacy or pharmacist licensed by the Board of

Pharmacy, but situated outside this state for delivery to a person residing in this state, the medical services provider, health care facility, pharmacist or pharmacy shall, in a manner prescribed by rules promulgated by the Board of Pharmacy under this article, report the following information, as applicable:

(1) The name, address, pharmacy prescription number and Drug Enforcement Administration controlled substance registration number of the dispensing pharmacy;

(2) The name, address and birth date of the person for whom the prescription is written;

(3) The name, address and Drug Enforcement Administration controlled substances registration number of the practitioner writing the prescription;

(4) The name and national drug code number of the Schedule II, III and IV controlled substance dispensed;

(5) The quantity and dosage of the Schedule II, III and IV controlled substance dispensed;

(6) The date the prescription was filled; and

(7) The number of refills, if any, authorized by the prescription.

(b) The Board of Pharmacy may prescribe by rule promulgated under this article the form to be used in prescribing a Schedule II, III and IV substance if, in the determination of the board, the administration of the requirements of this section would be facilitated.

(c) Products regulated by the provisions of article ten of this chapter shall be subject to reporting pursuant to the provisions of this article to the extent set forth in said article.

37 (d) Reporting required by this section is not required for
38 a drug administered directly to a patient or a drug dispensed
39 by a practitioner at a facility licensed by the state: *Provided,*
40 That the quantity dispensed is limited to an amount adequate
41 to treat the patient for a maximum of seventy-two hours with
42 no greater than two seventy-two-hour cycles in any fifteen-
43 day period of time.

CHAPTER 39

(Com. Sub. for S. B. 365 - By Senators Jenkins, Stollings, Tomblin (Mr. President), Edgell, Foster, Plymale and Prezioso)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact §60A-9-5 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Controlled Substances Monitoring Program database; requiring all prescribers or dispensers of Schedule II, III or IV controlled substances to have online access to the West Virginia Controlled Substances Monitoring Program database; authorizing persons or entities with access to the database to delegate access to database to others; limiting liability practitioners for good faith reliance on database; authorizing the Office of the Chief Medical Examiner access to the database; clarifying that practitioners have no duty to access database; authorizing rules for delegation of access; and rulemaking.

Be it enacted by the Legislature of West Virginia:

That §60A-9-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

(a) The information required by this article to be kept by the State Board of Pharmacy is confidential and is open to inspection only by inspectors and agents of the State Board of Pharmacy, members of the West Virginia State Police expressly authorized by the Superintendent of the West Virginia State Police to have access to the information, authorized agents of local law-enforcement agencies as a member of a drug task force, authorized agents of the federal Drug Enforcement Administration, duly authorized agents of the Bureau for Medical Services and the Workers' Compensation Commission, duly authorized agents of the Office of the Chief Medical Examiner for use in post-mortem examinations, duly authorized agents of licensing boards of practitioners in this state and other states authorized to prescribe Schedules II, III and IV controlled substances, prescribing practitioners and pharmacists and persons with an enforceable court order or regulatory agency administrative subpoena: *Provided,* That all information released by the State Board of Pharmacy must be related to a specific patient or a specific individual or entity under investigation by any of the above parties except that practitioners who prescribe controlled substances may request specific data related to their Drug Enforcement Administration controlled substance registration number or for the purpose of providing treatment to a patient. The Board shall maintain the information required by this article for a period of not less than five years. Notwithstanding any other provisions of this code to the contrary, data obtained under the provisions of this article

may be used for compilation of educational, scholarly or statistical purposes as long as the identities of persons or entities remain confidential. No individual or entity required to report under section four of this article may be subject to a claim for civil damages or other civil relief for the reporting of information to the Board of Pharmacy as required under and in accordance with the provisions of this article;

(b) All practitioners, as that term is defined in section one hundred-one, article two of this chapter who prescribe or dispense schedule II, III or IV controlled substances shall, on or before July 1, 2011 have online or other form of electronic access to the West Virginia Controlled Substances Monitoring Program database;

(c) Persons or entities with access to the West Virginia Controlled Substances Monitoring Program database pursuant to this section may, pursuant to rules promulgated by the Board of Pharmacy, delegate appropriate personnel to have access to said database;

(d) Good faith reliance by a practitioner on information contained in the West Virginia Controlled Substances Monitoring Program database in prescribing or dispensing or refusing or declining to prescribe or dispense a schedule II, III or IV controlled substance shall constitute an absolute defense in any civil or criminal action brought due to prescribing or dispensing or refusing or declining to prescribe or dispense; and

(e) The Board of Pharmacy is hereby authorized to promulgate an emergency rule under chapter twenty-nine-A to effectuate the amendments to this section enacted during the 2010 Regular Session of the Legislature.

(f) Nothing in the article shall be construed to require a practitioner to access the West Virginia Controlled Substances Monitoring Program database.

CHAPTER 40

(H. B. 2485 - By Delegates Border and Perdue)

[Passed March 12, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2010.]

AN ACT to amend and reenact §60A-10-3, §60A-10-4, §60A-10-5 and §60A-10-8 of the Code of West Virginia, 1931, as amended, all relating to updating who may sell, possess or otherwise handle pseudoephedrine and other chemical precursors of methamphetamine; defining terms; and updating reporting requirements.

Be it enacted by the Legislature of West Virginia:

That §60A-10-3, §60A-10-4, §60A-10-5 and §60A-10-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.

§60A-10-3. Definitions.
§60A-10-4. Purchase, receipt, acquisition and possession of substance to be used as precursor to manufacture of methamphetamine or other controlled substance; offenses; exceptions; penalties.
§60A-10-5. Restrictions on the sale, transfer or delivery of certain drug products; penalties.
§60A-10-8. Reporting requirements; confidentiality.

§60A-10-3. Definitions.

1 In this article:

(a) "Board of Pharmacy" or "board" means the West Virginia Board of Pharmacy established by the provisions of article five, chapter thirty of this code.

(b) "Designated precursor" means any drug product made subject to the requirements of this article by the provisions of section seven of this article.

(c) "Distributor" means any person within this state or another state, other than a manufacturer or wholesaler, who sells, delivers, transfers or in any manner furnishes a drug product to any person who is not the ultimate user or consumer of the product;

(d) "Drug product" means a pharmaceutical product that contains as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine or a substance identified on the supplemental list provided for in section seven of this article which may be sold without a prescription and which is labeled for use by a consumer in accordance with the requirements of the laws and rules of this state and the federal government.

(e) "Ephedrine " means ephedrine, its salts or optical isomers or salts of optical isomers.

(f) "Manufacturer" means any person within this state who produces, compounds, packages or in any manner initially prepares for sale or use any drug product or any such person in another state if they cause the products to be compounded, packaged or transported into this state.

(g) "Phenylpropanolamine" means phenylpropanolamine, its salts, optical isomers and salts of optical isomers.

(h) "Pseudoephedrine" means pseudoephedrine, its salts, optical isomers and salts of optical isomers.

32 (i) "Precursor" means any substance which may be used
33 along with other substances as a component in the production
34 and distribution of illegal methamphetamine.

35 (j) "Pharmacist" means an individual currently licensed
36 by this state to engage in the practice of pharmacy and
37 pharmaceutical care as defined in subsection (t), section one-
38 b, article fifty, chapter thirty of this code.

39 (k) "Pharmacy intern" has the same meaning as the term
40 "intern" as set forth in section one-b, article five, chapter
41 thirty of this code.

42 (l) "Pharmacy" means any drugstore, apothecary or place
43 within this state where drugs are dispensed and sold at retail
44 or display for sale at retail and pharmaceutical care is
45 provided outside of this state where drugs are dispensed and
46 pharmaceutical care is provided to residents of this state.

47 (m) "Pharmacy counter" means an area in the pharmacy
48 restricted to the public where controlled substances are stored
49 and housed and where controlled substances may only be
50 sold, transferred or dispensed by a pharmacist or pharmacy
51 technician.

52 (n) "Pharmacy technician" means a registered technician
53 who meets the requirements for registration as set forth in
54 article five, chapter thirty of this code.

55 (o) "Retail establishment" means any entity or person
56 within this state who sells, transfers or distributes goods,
57 including over-the-counter drug products, to an ultimate
58 consumer.

59 (p) "Schedule V" means the schedule of controlled
60 substances set out in section two hundred twelve, section two
61 of this chapter.

(q) "Single active ingredient" means those ingredients listed on a drug product package as the only active ingredient in over-the-counter medication or identified on the Schedule maintained by the Board of Pharmacy as being primarily used in the illegal production and distribution of methamphetamine.

(r) "Superintendent of the State Police" or "Superintendent" means the Superintendent of the West Virginia State Police as set forth in section five, article two, chapter fifteen of this code.

(s) "Wholesaler" means any person within this state or another state, other than a manufacturer, who sells, transfers or in any manner furnishes a drug product to any other person in this state for the purpose of being resold.

§60A-10-4. Purchase, receipt, acquisition and possession of substances to be used as precursor to manufacture of methamphetamine or another controlled substance; offenses; exceptions; penalties.

(a) Any person who within any thirty-day period knowingly purchases, receives or otherwise possesses more than three packages of a drug product containing as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine or more than nine grams of ephedrine, pseudoephedrine or phenylpropanolamine in any form shall be guilty of a misdemeanor and, upon conviction, shall be confined in a jail for not more than one year, fined not more than $1,000, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second or subsequent violation of the provisions of said subsection or a statute or ordinance of the United States or another state which

14 contains the same essential elements shall be guilty of a
15 felony and, upon conviction, shall be confined in a state
16 correctional facility for not less than one nor more than five
17 years, fined not more than $25,000, or both.

18 (c) The provisions of subsection (a) of this section shall
19 not apply to:

20 (1) Drug products which are for pediatric use primarily
21 intended for administration to children under the age of
22 twelve;

23 (2) Drug products which have been determined by the
24 Board of Pharmacy to be in a form which is unamenable to
25 being used for the manufacture of methamphetamine;

26 (3) Persons lawfully possessing drug products in their
27 capacities as distributors, wholesalers, manufacturers,
28 pharmacists, pharmacy interns, pharmacy technicians, health
29 care professionals or persons possessing such drug products
30 pursuant to a valid prescription.

31 (d) Notwithstanding any provision of this code to the
32 contrary, any person who knowingly possesses any amount
33 of ephedrine, pseudoephedrine, phenylpropanolamine or
34 other designated precursor with the intent to use it in the
35 manufacture of methamphetamine or who knowingly
36 possesses a substance containing ephedrine, pseudoephedrine
37 or phenylpropanolamine or their salts, optical isomers or salts
38 of optical isomers in a state or form which is, or has been
39 altered or converted from the state or form in which these
40 chemicals are, or were, commercially distributed shall be
41 guilty of a felony and, upon conviction, shall be confined in
42 a state correctional facility for not less than two nor more
43 than ten years, fined not more than $25,000, or both.

44 (e) (1) Any pharmacy, wholesaler, manufacturer or
45 distributor of drug products containing as their single active

ingredient ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers or salts of optical isomers or other designated precursor shall obtain a registration annually from the State Board of Pharmacy as described in section six of this article. Any such pharmacy, wholesaler, manufacturer or distributor shall keep complete records of all sales and transactions as provided in section eight of this article. The records shall be gathered and maintained pursuant to legislative rule promulgated by the Board of Pharmacy.

(2) Any drug products possessed without a registration as provided in this section are subject to forfeiture upon conviction for a violation of this section.

(3) In addition to any administrative penalties provided by law, any violation of this subsection is a misdemeanor, punishable upon conviction by a fine in an amount not more than $10,000.

§60A-10-5. Restrictions on the sale, transfer or delivery of certain drug products; penalties.

(a) No pharmacy or individual may display, offer for sale or place a drug product containing as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine or other designated precursor where the public may freely access the drug product. All such drug products or designated precursors shall be placed behind a pharmacy counter where access is restricted to a pharmacist, a pharmacy intern, a pharmacy technician or other pharmacy employee.

(b) All storage of drug products regulated by the provisions of this section shall be in a controlled and locked access location that is not accessible by the general public and shall maintain strict inventory control standards and complete records of quantity of the product maintained in bulk form.

(c) No pharmacy shall sell, deliver or provide any drug product regulated by the provisions of this section to any person who is under the age of eighteen.

(d) If a drug product regulated by the provisions of this section is transferred, sold or delivered, the individual, pharmacy or retail establishment transferring, selling or delivering the drug product shall require the person purchasing, receiving or otherwise acquiring the drug product to:

(1) Produce a government-issued photo identification showing his or her date of birth; and

(2) Sign a form containing the information set forth in subsection (b), section eight of this article and attesting to the validity of such information. Any person who knowingly makes a false representation or statement pursuant to the requirements of this section shall be guilty of a misdemeanor and, upon conviction, be confined in a jail for not more than six months, fined not more than $5,000, or both.

(e) This section does not apply to drug products that are dispensed pursuant to a prescription, are pediatric products primarily intended for administration, according to label instructions, to children under twelve years of age.

(f) Any violation of this section is a misdemeanor, punishable upon conviction by a fine in an amount not more than $10,000.

§60A-10-8. Reporting requirements; confidentiality.

(a) Whenever there is a sale, retail, transfer or distribution of any drug product referred to in section seven of this article or another designated precursor, the pharmacist, pharmacy intern, or pharmacy technician making the sale, transfer or distribution shall report the following information for inclusion in a central repository established and maintained by the Board of Pharmacy:

8 (1) The date of the transaction;

9 (2) The name, address and driver's license or state-issued
10 identification number of the person; and

11 (3) The name, quantity of packages and total gram weight
12 of the product or products purchased, received or otherwise
13 acquired.

14 (b) The information required to be reported by this
15 section shall be reported by paper log maintained at the point
16 of sale: *Provided,* That, beginning on January 1, 2007,
17 reporting shall be by electronic transmission to the Board of
18 Pharmacy no more frequently than once a week.

19 (c) The information required by this section shall be the
20 property of the state and a pharmacy shall have no duty to
21 retain a copy of the information in any format once the
22 information has been reported to the Board of Pharmacy as
23 required by this section.

CHAPTER 41

(S. B. 436 - By Senators Williams and White)

[Passed March 8, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §31-14-2 of the Code of West Virginia, 1931, as amended, relating to the process of incorporation; and clarifying the requirements of that process.

Be it enacted by the Legislature of West Virginia:

That §31-14-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. WEST VIRGINIA BUSINESS DEVELOPMENT CORPORATIONS.

§31-14-2. Incorporators; purposes; agreement of incorporation.

1 Any number of persons, not fewer than ten, a majority of
2 whom shall be bona fide residents of this state, may associate
3 to create a business development corporation under the
4 provisions of this article for the purpose of promoting,
5 developing and advancing business and industrial
6 development within the state and, to that end, may exercise
7 the powers, rights and privileges hereinafter provided. The
8 persons desiring to form the corporation shall sign,
9 acknowledge and file with the Secretary of State an
10 agreement in the general form prescribed by the Secretary of
11 State, in which shall be set forth:

12 (1) The name of the corporation, which shall contain the
13 words "Business Development Corporation," together with
14 a designation of the area or locality within the state in which
15 the corporation is intended to operate.

16 (2) The post-office address of its principal office or place
17 of business.

18 (3) The object or objects for which the corporation is
19 formed, which shall include the following:

20 To promote, develop and advance the business prosperity
21 and economic welfare of the State of West Virginia and its
22 citizens; to encourage and assist through loans, investments
23 or other business transactions in the locating of new business
24 and industry within the state and to rehabilitate and assist
25 existing businesses and industries; to stimulate and promote

the expansion of all kinds of business and industrial activity which will tend to advance business and industrial development and maintain the economic stability of the state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of the state; to cooperate and act in conjunction with the Department of Commerce and with other organizations, federal, state or local, in the promotion and advancement of industrial, commercial, agricultural and recreational developments within the state; and to furnish money and credit, land and industrial sites, technical assistance and such other aid as may be deemed requisite to approved and deserving applicants for the promotion, development and conduct of all kinds of business activity within the state.

(4) The names and post-office addresses of the incorporators, and the number of shares of stock subscribed by each.

(5) Whether or not the corporation is to have perpetual existence; if not, the time when its existence is to commence and the time when its existence is to cease.

(6) Any provision in which the incorporators may choose to insert for the management of the business and for the conduct of the affairs of the corporation, and any provisions creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders and members thereof: *Provided,* That such provisions are not contrary to the provisions of this article.

(7) The agreement may also contain the following provision in these words verbatim:

"Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or

any class of them, any court of equitable jurisdiction within the State of West Virginia may, on the application in a summary way of this corporation or of any creditor or stockholder thereof, or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the laws of the State of West Virginia, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, such compromise or arrangement and such reorganization shall, if sanctioned by the court to which such application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders of this corporation, as the case may be, and also on this corporation."

CHAPTER 42

(Com. Sub. for S. B. 624 - By Senators White, Williams and Jenkins)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §31B-2-203 and §31B-2-211 of the Code of West Virginia, 1931, as amended; to amend and reenact §31B-10-1002 of said code; to amend and reenact §31D-2-202 of said code; to amend and reenact §31D-15-1503

of said code; to amend and reenact §31E-2-202 of said code; to amend and reenact §31E-14-1403 of said code; and to amend and reenact §47-9A-2 and §47-9A-3 of said code, all relating to business organizations and associations generally; providing consistency of filing deadlines for all organizations filing annual reports with the Secretary of State; and requiring e-mail addresses for informational notices.

Be it enacted by the Legislature of West Virginia:

That §31B-2-203 and §31B-2-211 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31B-10-1002 of said code be amended and reenacted; that §31D-2-202 of said code be amended and reenacted; that §31D-15-1503 of said code be amended and reenacted; that §31E-2-202 of said code be amended and reenacted; that §31E-14-1403 of said code be amended and reenacted; and that §47-9A-2 and §47-9A-3 of said code be amended and reenacted, all to read as follows:

Chapter

31B. Uniform Limited Liability Company Act.
31D. West Virginia Business Corporation Act.
31E. West Virginia Nonprofit Corporation Act.
47. Regulation of Trade.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

Article

2. Organization.
10. Foreign Limited Liability Companies.

ARTICLE 2. ORGANIZATION.

§31B-2-203. Articles of organization.
§31B-2-211. Annual report for Secretary of State.

§31B-2-203. Articles of organization.

1 (a) Articles of organization of a limited liability company
2 must set forth:

(1) The name of the company;

(2) The address of the initial designated office in West Virginia, if any, and the mailing address of the principal office;

(3) The name and address of the initial agent for service of process, if any;

(4) The name and address of each organizer and of each member having authority to execute instruments on behalf of the limited liability company;

(5) Whether the company is to be a term company and, if so, the term specified;

(6) Whether the company is to be manager-managed and, if so, the name and address of each initial manager;

(7) Whether one or more of the members of the company are to be liable for its debts and obligations under section 3-303(c);

(8) The purpose or purposes for which the limited liability company is organized; and

(9) An e-mail address where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply.

(b) Articles of organization of a limited liability company may set forth:

(1) Provisions permitted to be set forth in an operating agreement; or

(2) Other matters not inconsistent with law.

(c) Articles of organization of a limited liability company may not vary the nonwaivable provisions of section 1-103(b). As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(1) The operating agreement controls as to managers, members and members' transferees; and

(2) The articles of organization control as to persons other than managers, members and their transferees who reasonably rely on the articles to their detriment.

§31B-2-211. Annual report for Secretary of State.

(a) A limited liability company, and a foreign limited liability company authorized to transact business in this state, shall deliver to the Secretary of State for filing an annual report that sets forth:

(1) The name of the company and the state or country under whose law it is organized;

(2) The address of its designated office, if any and the name and address of its agent for service of process in this state, if any;

(3) The address of its principal office;

(4) The names and business addresses of any managers and the name and address of each member having authority to execute instruments on behalf of the limited liability company; and

(5) An e-mail address where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply.

(b) Information in an annual report must be current as of the date the annual report is signed on behalf of the limited liability company.

(c) The first annual report must be delivered to the Secretary of State between January 1 and July 1 of the year following the calendar year in which a limited liability company was organized or a foreign company was authorized to transact business. Subsequent annual reports must be delivered to the Secretary of State between January 1 and July 1 of the ensuing calendar years.

(d) If an annual report does not contain the information required in subsection (a) of this section, the Secretary of State shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the Secretary of State within thirty days after the effective date of the notice, it is timely filed.

ARTICLE 10. FOREIGN LIMITED LIABILITY COMPANIES.

§31B-10-1002. Application for certificate of authority.

(a) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing, together with the fee prescribed by section two, article one, chapter fifty-nine of this code.

The application shall set forth:

(1) The name of the foreign company or, if its name is unavailable for use in this state, a name that satisfies the requirements of section 10-1005 of this article;

10 (2) The name of the state or country under whose law it
11 is organized;

12 (3) The mailing address of its principal office;

13 (4) The name and address of each member having
14 authority to execute instruments on behalf of the limited
15 liability company;

16 (5) The address of its initial designated office in this
17 state, if any;

18 (6) The name and address of its initial agent for service
19 of process in this state, if any;

20 (7) Whether the duration of the company is for a
21 specified term and, if so, the period specified;

22 (8) Whether the company is manager-managed and, if so,
23 the name and address of each initial manager;

24 (9) Whether the members of the company are to be liable
25 for its debts and obligations under a provision similar to
26 section 3-303(c);

27 (10) The purpose or purposes for which the limited
28 liability company is organized; and

29 (11) An e-mail address where informational notices and
30 reminders of annual filings may be sent, unless there is a
31 technical inability to comply.

32 (b) A foreign limited liability company shall deliver with
33 the completed application a certificate of existence or a
34 record of similar import authenticated by the Secretary of
35 State or other official having custody of company records in
36 the state or country under whose law it is organized.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

Article
2. **Incorporation.**
15. **Foreign Corporations.**

ARTICLE 2. INCORPORATION.

§31D-2-202. Articles of incorporation.

1 (a) The articles of incorporation must set forth:

2 (1) A corporate name for the corporation that satisfies the
3 requirements of section four hundred one, article four of this
4 chapter;

5 (2) The number of shares the corporation is authorized to
6 issue, the par value of each of the shares or a statement that
7 all shares are without par value;

8 (3) The street address of the corporation's initial
9 registered office, if any, and the name of its initial registered
10 agent at that office, if any;

11 (4) The name and address of each incorporator;

12 (5) The purpose or purposes for which the corporation is
13 organized;

14 (6) The mailing address of the corporation's principal
15 office; and

16 (7) An e-mail address where informational notices and
17 reminders of annual filings may be sent, unless there is a
18 technical inability to comply.

19 (b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law regarding:

(A) Managing the business and regulating the affairs of the corporation;

(B) Defining, limiting and regulating the powers of the corporation, its board of directors and shareholders; or

(C) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(3) Any provision that, under this chapter, is required or permitted to be set forth in the bylaws;

(4) A provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director: *Provided,* That a provision may not eliminate or limit the liability of a director: (A) For any breach of the director's duty of loyalty to the corporation or its stockholders; (B) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (C) under section eight hundred thirty-three, article eight of this chapter for unlawful distributions; or (D) for any transaction from which the director derived an improper personal benefit. No provision may eliminate or limit the liability of a director for any act or omission occurring prior to the date when that provision becomes effective; and

(5) A provision permitting or making obligatory indemnification of a director for liability as that term is defined in section eight hundred fifty, article eight of this chapter to any person for any action taken, or any failure to

take any action, as a director except liability for: (A) Receipt of a financial benefit to which he or she is not entitled; (B) an intentional infliction of harm on the corporation or its shareholders; (C) a violation of section eight hundred thirty-three, article eight of this chapter for unlawful distributions; or (D) an intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

ARTICLE 15. FOREIGN CORPORATIONS.

§31D-15-1503. Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section one thousand five hundred six of this article;

(2) The name of the state or country under whose law it is incorporated;

(3) Its date of incorporation and period of duration;

(4) The mailing address of its principal office;

(5) The address of its registered office in this state, if any, and the name of its registered agent at that office, if any;

(6) The names and usual business addresses of its current directors and officers;

17 (7) Purpose or purposes for transaction of business in
18 West Virginia; and

19 (8) An e-mail address where informational notices and
20 reminders of annual filings may be sent, unless there is a
21 technical inability to comply.

22 (b) The foreign corporation shall deliver with the
23 completed application a certificate of existence, or a
24 document of similar import, duly authenticated by the
25 Secretary of State or other official having custody of
26 corporate records in the state or country under whose law it
27 is incorporated.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

Article

2. Incorporation.
14. Foreign Corporations.

ARTICLE 2. INCORPORATION.

§31E-2-202. Articles of incorporation.

1 (a) The articles of incorporation must set forth:

2 (1) A corporate name for the corporation that satisfies the
3 requirements of section four hundred one, article four of this
4 chapter;

5 (2) A statement that the corporation is nonprofit and that
6 the corporation may not have or issue shares of stock or make
7 distributions;

8 (3) Whether the corporation is to have members and, if it
9 is to have members, the provisions required by section six
10 hundred one, article six of this chapter to be set forth in the
11 certificate of incorporation;

(4) The mailing address of the corporation's initial registered office, if any, and the name of its initial registered agent at that office, if any;

(5) The name and address of each incorporator;

(6) The mailing address of the corporation's principal office; and

(7) An e-mail address where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply.

(b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law regarding:

(A) Managing and regulating the affairs of the corporation; or

(B) Defining, limiting and regulating the powers of the corporation, its board of directors and members or any class of members;

(3) Any provision that under this chapter is required or permitted to be set forth in the bylaws;

(4) A provision eliminating or limiting the personal liability of a director to the corporation or its members for monetary damages for any action taken, or any failure to take any action, as a director or member, except liability for: (A) The amount of a financial benefit received by a director or member to which he or she is not entitled; (B) an intentional infliction of harm on the corporation or the members; (C) a violation of section eight hundred thirty-three, article eight of

this chapter regarding unlawful distributions; or (D) an intentional violation of criminal law; and

(5) A provision permitting or making obligatory indemnification of a director for liability as that term is defined in section eight hundred fifty, article eight of this chapter to any person for any action taken, or any failure to take any action, as a director, except liability for: (A) Receipt of a financial benefit to which he or she is not entitled; (B) an intentional infliction of harm on the corporation or its members; (C) a violation of section eight hundred thirty-three, article eight of this chapter for unlawful distributions; or (D) an intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

ARTICLE 14. FOREIGN CORPORATIONS.

§31E-14-1403. Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to conduct affairs in this state by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section one thousand four hundred six of this article;

(2) The name of the state or country under whose law it is incorporated;

(3) Its date of incorporation and period of duration;

(4) The mailing address of its principal office;

13 (5) The address of its registered office in this state, if any,
14 and the name of its registered agent at that office, if any;

15 (6) The names and usual addresses of its current directors
16 and officers;

17 (7) The purpose or purposes of the corporation which it
18 proposes to pursue in conducting its affairs or doing or
19 transacting its business in this state; and

20 (8) An e-mail address where informational notices and
21 reminders of annual filings may be sent, unless there is a
22 technical inability to comply.

23 (b) The foreign corporation shall deliver with the
24 completed application a certificate of existence, or a
25 document of similar import, duly authenticated by the
26 Secretary of State or other official having custody of
27 corporate records in the state or country under whose law it
28 is incorporated.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9A. VOLUNTARY ASSOCIATIONS AND BUSINESS TRUSTS.

§47-9A-2. Application for registration of business trust; issuance of certificate of business trust.
§47-9A-3. Filing of voluntary association; issuance of certificate of voluntary association.

§47-9A-2. Application for registration of business trust; issuance of certificate of business trust.

1 (a) For the purposes of this article, a "business trust" is
2 any trust organized for the purpose of conducting business
3 and commonly designated as a Massachusetts trust.

4 (b) Any business trust organized in this state shall file
5 with the Secretary of State: (1) One executed original copy of

an application for registration; and (2) one executed original copy of the declaration, articles or agreement of trust creating the business trust.

(c) Any business trust organized outside this state and operating within this state shall file with the Secretary of State: (1) One executed original copy of an application for registration; (2) one executed original copy of the declaration, articles or agreement of trust creating the business trust as recorded in the state or country of origin of the business trust; and (3) a statement or certificate from the proper officer of the state or country of origin that the business trust is in good standing.

(d) An application for registration shall set forth:

(1) The name of the business trust;

(2) If organized within the state, a statement that it is a West Virginia business trust, or if organized outside the state, the state in which it was organized and the formation date of the business trust;

(3) The purpose or purposes for which the business trust is organized;

(4) The address of its principal office;

(5) The name and address of the person to whom notice of process may be sent, if any;

(6) The names and addresses of all trustees having authority to act on behalf of the business trust;

(7) A statement reflecting the business trust's consent to and recognition of the application to the business trust of the law of this state with respect to corporations; and

(8) An e-mail address where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply.

(e) An application for registration may contain the notarized signature of a trustee of the business trust.

(f) If the Secretary of State determines that an application for registration has been properly filed in complete form and that the fee prescribed in section two, article one, chapter fifty-nine of this code has been paid, he or she shall file it and deliver to the business trust or its representative a receipt for the record and the fees.

§47-9A-3. Filing of voluntary association; issuance of certificate of voluntary association.

(a) For purposes of this article, a "voluntary association" is any association organized for the purpose of conducting business in this state, but does not include an organization formed as an unincorporated nonprofit association under the provisions of article eleven, chapter thirty-six of this code.

(b) Any voluntary association organized in this state shall file with the Secretary of State: (1) One executed original copy of an application for registration; and (2) one executed original copy of the agreement of association creating the voluntary association (if such an agreement exists apart from the application for registration itself).

(c) Any voluntary association organized outside this state and operating within this state shall file with the Secretary of State: (1) One executed original copy of an application for registration; (2) one executed original copy of the agreement of association creating the voluntary association; and (3) a statement or certificate from the proper officer of the state or country of origin that the voluntary association is in good standing.

20 (d) An application for registration shall set forth:

21 (1) The name of the voluntary association;

22 (2) The principal office address of the voluntary
23 association;

24 (3) The mailing address of the voluntary association, if
25 different from the principal office address;

26 (4) The name and address of the person to whom notice
27 of process may be sent, if any;

28 (5) Whether the voluntary association is organized for
29 profit or as a nonprofit voluntary association;

30 (6) The purpose or purposes for which the voluntary
31 association is formed;

32 (7) The full names and addresses of one or more of the
33 organizers of the voluntary association;

34 (8) The full names and addresses of no fewer than two
35 officers, owners or members of the voluntary association who
36 have signatory authority for the association;

37 (9) Any additional statements as may be required for the
38 type of business to be conducted;

39 (10) A statement reflecting the voluntary association's
40 consent to and recognition of the application of the law of
41 this state with respect to corporations to the voluntary
42 association; and

43 (11) An e-mail address where informational notices and
44 reminders of annual filings may be sent, unless there is a
45 technical inability to comply.

(e) An application for registration may contain the notarized signature of at least one organizer or member of the voluntary association.

(f) If the Secretary of State determines that an application for registration has been properly filed in complete form and that the fee prescribed in section two, article one, chapter fifty-nine of this code has been paid, he or she shall file it and deliver to the voluntary association or its representative a receipt for the record and the fees.

CHAPTER 43

(H. B. 4171 - By Delegates Miley, Wooton, Barker, Moore, Shook, Ferro, Ellem, Schoen and Sobonya)

[Passed March 9, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §25-1-15 of the Code of West Virginia, 1931, as amended, relating to the Division of Corrections; and allowing Division of Corrections to utilize criminogenic risk and need instruments.

Be it enacted by the Legislature of West Virginia:

That §25-1-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION AND INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-15. Diagnostic and classification divisions.

1 (a) The Commissioner of Corrections may establish
2 diagnostic and classification divisions.

3 (b) Notwithstanding any provision of the code to the
4 contrary, all persons committed to the custody of the
5 Commissioner of the Division of Corrections for presentence
6 diagnosis and classification and all persons sentenced to the
7 custody of the Division of Corrections shall, upon transfer to
8 the Division of Corrections, undergo diagnosis and
9 classification, which may include assessments of a person's
10 criminogenic risk and need factors that are reliable, validated
11 and normed for a specific population and responsive to
12 cultural and gender-specific needs as well as individual
13 learning styles and temperament.

CHAPTER 44

(S. B. 385 - By Senators Minard, Jenkins, McCabe, Oliverio and Plymale)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §7-6-2 of the Code of West Virginia, 1931, as amended, relating to bond requirements for county depositories; requiring that a county depository execute a bond only for the amount of the public money deposited that exceeds the amount of the deposit insured by an agency of the federal government.

Be it enacted by the Legislature of West Virginia:

That §7-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-2. BOND OF DEPOSITORIES.

No designation is binding on any county, nor shall any public money be deposited thereunder in excess of the amount insured by an agency of the federal government, until the banking institution designated executes a bond with good and sufficient sureties, to be accepted and approved by the county commission, payable to the State of West Virginia, in a sum as the county commission shall direct, and which may not be less than the amount of the deposit that exceeds the amount insured by an agency of the federal government in the depository at any one time. The bond shall be executed by at least four resident freeholders as sureties owning in the aggregate unencumbered real estate having an assessed valuation thereon equal to the penalty of the bond, or by a fidelity or indemnity company authorized to do business within the state, satisfactory to, and acceptable by the county commission, and having not less than $600,000 capital; and the bond shall be conditioned for the receipt, safekeeping and payment over of all money which may be deposited in or come under the custody of the banking institution designated a county depository under the provisions hereof, together with the interest thereon at the rate specified by this article; and the bond shall be further conditioned for the faithful performance, by the banking institution so designated, of all the duties imposed by this article upon a depository of public moneys: *Provided,* That the clerk of the county commission shall keep a record of each surety on all personal bonds given as hereinbefore provided and the clerk shall notify the county

commission of every recorded conveyance of real estate made by any surety on said personal bond.

An action shall lie on the bond at the instance of the county commission, or the sheriff, for the recovery of any money deposited in the depository, upon failure or default of the depository to fully and faithfully account for and pay over any and all public moneys deposited by the sheriff and of all interests earned and accrued thereon as required by this article. A bond may not be accepted by the county commission until it has been submitted to the prosecuting attorney, and certified by him or her to be in due and legal form, and conformable to the provisions of this article, which certificate shall be endorsed thereon: *Provided,* That the county commission may, in lieu of the bond provided hereinbefore, accept as security for money deposited as aforesaid, interest-bearing securities of the United States, or of a state, county, district or municipal corporation, or of the federal land banks, or endorsed county and district warrants of the county in which the depository is located, or letters of credit of the federal land banks, or federal home loan banks, or any other letters of credit approved by the treasurer; the face value of which securities may not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which the securities are accepted; or the county commission may accept the securities as partial security to the extent of their face value for the money so deposited, and require bond for the remainder of the full amount hereinbefore specified, to be named in the bond, and in the bond so required, the acceptance of securities as partial security, and the extent thereof, shall be set forth: *Provided, however,* That a banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements: (1) The funds are invested through a designated state depository selected by the county; (2) the selected depository arranges for the deposit of the funds in

certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the county; (3) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (4) the selected depository acts as custodian for the county with respect to such certificates of deposit issued for the county's account; and (5) at the same time that the county's funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the county through the selected depository. The hypothecation of the securities shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as depository as aforesaid. All the securities shall be delivered to or deposited for the account of the county commission, and withdrawal or substitution thereof may be permitted from time to time upon approval by the county commission by order of record, but the collateral security shall be released only by order of record of the county commission when satisfied that full and faithful accounting and payment of all the moneys has been made under the provisions hereof. In the event actual possession of the hypothecated securities are delivered to the county commission, it shall make ample provision for the safekeeping thereof and the interest thereon when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid. The county commission may permit the deposit under proper receipt of the securities with one or more banking institutions within or without the State of West Virginia and may contract with any institution for safekeeping and exchange of any hypothecated securities, and may prescribe the rules for handling and protecting the same.

CHAPTER 45

(Com. Sub. for H. B. 4352 - By Delegates Miley, Fleischauer, Brown, Frazier, Hunt, Manchin, Michael, Moore, Wooton, Hamilton and Ellem)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §51-2-15, relating to the establishment of a Business Court Division within West Virginia's circuit court districts by the West Virginia Supreme Court of Appeals; legislative findings; authorizing the designation of Business Court Divisions within certain circuit court districts; providing for the promulgation of appropriate rules of the Court.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §51-2-15, to read as follows:

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-15. Business Court Division.

1 (a) The West Virginia Legislature finds that, due to the
2 complex nature of litigation involving highly technical
3 commercial issues, there is a need for a separate and

4 specialized court docket to be maintained in West Virginia's
5 most populated circuit court districts with specific
6 jurisdiction over actions involving such commercial issues
7 and disputes between businesses.

8 (b) The West Virginia Supreme Court of Appeals is
9 authorized to designate a business court division within the
10 circuit court of any judicial district with a population in
11 excess of sixty thousand according to the 2000 Federal
12 Decennial Census.

13 (c) Upon the determination to designate business court
14 divisions, the West Virginia Supreme Court of Appeals shall
15 promulgate rules for the establishment and jurisdiction of the
16 business court divisions within its circuit court system.

CHAPTER 46

(Com. Sub. for S. B. 215 - By Senators Tomblin (Mr. President) and Caruth) [By Request of the Executive]

[Passed March 9, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §61-2-10b of the Code of West Virginia, 1931, as amended, relating to expanding certain crimes against governmental representatives and health care providers to include emergency service personnel; and defining certain terms.

Be it enacted by the Legislature of West Virginia:

That §61-2-10b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery; and assault on governmental representatives, health care providers, and emergency medical service personnel; definitions; penalties.

1 (a) For purposes of this section:

2 (1) "Government representative" means any officer or
3 employee of the state or a political subdivision thereof, or a
4 person under contract with a state agency or political
5 subdivision thereof.

6 (2) "Health care worker" means any nurse, nurse
7 practitioner, physician, physician assistant or technician
8 practicing at, and all persons employed by or under contract
9 to a hospital, county or district health department, long-term
10 care facility, physician's office, clinic or outpatient treatment
11 facility.

12 (3) "Emergency service personnel" means any paid or
13 volunteer firefighter, emergency medical technician,
14 paramedic, or other emergency services personnel employed
15 by or under contract with an emergency medical service
16 provider or a state agency or political subdivision thereof.

17 (b) *Malicious assault.* -- Any person who maliciously
18 shoots, stabs, cuts or wounds or by any means causes bodily
19 injury with intent to maim, disfigure, disable or kill a
20 government representative, health care worker or emergency
21 service personnel acting in his or her official capacity, and
22 the person committing the malicious assault knows or has
23 reason to know that the victim is acting in his or her official
24 capacity is guilty of a felony and, upon conviction thereof,

shall be confined in a correctional facility for not less than three nor more than fifteen years.

(c) *Unlawful assault.* -- Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes a government representative, health care worker or emergency service personnel acting in his or her official capacity bodily injury with intent to maim, disfigure, disable or kill him or her and the person committing the unlawful assault knows or has reason to know that the victim is acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than two nor more than five years.

(d) *Battery.* -- Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with a government representative, health care worker or emergency service personnel acting in his or her official capacity, or unlawfully and intentionally causes physical harm to that person acting in such capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or confined in jail not less than one month nor more than twelve months or both fined and confined. If any person commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned in a state correctional facility not less than one year nor more than three years, or both fined and imprisoned. Any person who commits a third violation of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not more than $2,000 or imprisoned in a state correctional facility not less than two years nor more than five years, or both fined and imprisoned.

(e) *Assault.* -- Any person who unlawfully attempts to commit a violent injury to the person of a government

59 representative, health care worker or emergency service
60 personnel acting in his or her official capacity, or unlawfully
61 commits an act which places that person acting in his or her
62 official capacity in reasonable apprehension of immediately
63 receiving a violent injury, is guilty of a misdemeanor and,
64 upon conviction thereof, shall be confined in jail for not less
65 than twenty-four hours nor more than six months, fined not
66 more than $200, or both fined and confined.

CHAPTER 47

(Com. Sub. for H. B. 4604 - By Delegates Armstead, Miley, Iaquinta, Walters, Fragale, Skaff, Cann and Lane)

[Amended and again passed March 20, 2010, as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §61-5-17 of the Code of West Virginia, 1931, as amended, relating to increasing the criminal penalties for crimes against law enforcement, probation and parole officers; establishing crime for disarming or attempting to disarm probation and parole officers; establishing new crime for reckless fleeing from law-enforcement officers and parole and probation officers; increasing penalties for fleeing or attempting to flee in a vehicle causing property damage; increasing penalties for fleeing or attempting to flee in a vehicle causing injury; increasing penalties for fleeing or attempting to flee in a vehicle causing death; and designating this act as the "Jerry Alan Jones Act."

Be it enacted by the Legislature of West Virginia:

That §61-5-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer; penalties; definitions.

1 (a) Any person who by threats, menaces, acts or otherwise,
2 forcibly or illegally hinders or obstructs, or attempts to hinder or
3 obstruct, any law-enforcement officer, probation officer or
4 parole officer acting in his or her official capacity is guilty of a
5 misdemeanor and, upon conviction thereof, shall be fined not
6 less than $50 nor more than $500 or confined in jail not more
7 than one year, or both fined and confined.

8 (b) Any person who intentionally disarms or attempts to
9 disarm any law-enforcement officer, probation officer or parole
10 officer, acting in his or her official capacity, is guilty of a felony
11 and, upon conviction thereof, shall be imprisoned in a state
12 correctional facility not less than one nor more than five years.

13 (c) Any person who, with intent to impede or obstruct a
14 law-enforcement officer in the conduct of an investigation of
15 a felony offense, knowingly and willfully makes a materially
16 false statement, is guilty of a misdemeanor and, upon
17 conviction thereof, shall be fined not less than $25 and not
18 more than$200, or confined in jail for five days, or both fined
19 or confined. However, the provisions of this section do not
20 apply to statements made by a spouse, parent, stepparent,
21 grandparent, sibling, half-sibling, child, stepchild or grandchild,
22 whether related by blood or marriage, of the person under
23 investigation. Statements made by the person under
24 investigation may not be used as the basis for prosecution
25 under this subsection. For the purposes of this subsection,
26 "law-enforcement officer" does not include a watchman, a
27 member of the West Virginia State Police or college security
28 personnel who is not a certified law-enforcement officer.

(d) Any person who intentionally flees or attempts to flee by any means other than the use of a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity who is attempting to make a lawful arrest of the person, and who knows or reasonably believes that the officer is attempting to arrest him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined in jail not more than one year, or both.

(e) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000 and shall be confined in a regional jail not more than one year.

(f) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who operates the vehicle in a manner showing a reckless indifference to the safety of others, is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $2,000, and shall be imprisoned in a state correctional facility not less than one nor more than five years.

(g) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of any person during or resulting from his or her flight, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $3,000 and shall be

confined in the county or regional jail for not less than six months nor more than one year.

(h) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to any person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than ten years.

(i) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who causes death to any person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be punished by a definite term of imprisonment in a state correctional facility which is not less than five nor more than fifteen years. A person imprisoned pursuant to the provisions of this subsection is not eligible for parole prior to having served a minimum of three years of his or her sentence or the minimum period required by the provisions of section thirteen, article twelve, chapter sixty-two of this code, whichever is greater.

(j) Any person who intentionally flees or attempts to flee in a vehicle from any law-enforcement officer, probation officer or parole officer acting in his or her official capacity, after the officer has given a clear visual or audible signal directing the person to stop, and who is under the influence of alcohol, controlled substances or drugs at the time, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than ten years.

(k) For purposes of this section, the term "vehicle" includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle or snowmobile, as those terms are defined in section one, article one, chapter seventeen-a of this code, whether or not it is being operated on a public highway at the time and whether or not it is licensed by the state.

(l) For purposes of this section, the terms "flee," "fleeing" and "flight" do not include any person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop.

(m) The revisions to subsections (e), (f), (g) and (h) of this article enacted during the Regular Session of the 2010 Regular Legislative Session shall be known as the "Jerry Alan Jones Act."

CHAPTER 48

(S. B. 533 - By Senators Kessler, Unger, Minard, Chafin and Plymale)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §61-8D-5 of the Code of West Virginia, 1931, as amended, relating to sex crimes involving a child; making it unlawful for a parent, guardian, custodian or other person in a position of trust in relation to a child to knowingly procure, authorize, or induce another person to engage in or attempt to engage in prohibited sexual conduct.

Be it enacted by the Legislature of West Virginia:

That §61-8D-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8D. CHILD ABUSE.

§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties.

1 (a) In addition to any other offenses set forth in this code,
2 the Legislature hereby declares a separate and distinct offense
3 under this subsection, as follows: If any parent, guardian or
4 custodian of or other person in a position of trust in relation
5 to a child under his or her care, custody or control, shall
6 engage in or attempt to engage in sexual exploitation of, or in
7 sexual intercourse, sexual intrusion or sexual contact with, a
8 child under his or her care, custody or control,
9 notwithstanding the fact that the child may have willingly
10 participated in such conduct, or the fact that the child may
11 have consented to such conduct or the fact that the child may
12 have suffered no apparent physical injury or mental or
13 emotional injury as a result of such conduct, then such parent,
14 guardian, custodian or person in a position of trust shall be
15 guilty of a felony and, upon conviction thereof, shall be
16 imprisoned in a correctional facility not less than ten nor
17 more than twenty years, or fined not less than $500 nor more
18 than $5,000 and imprisoned in a correctional facility not less
19 than ten years nor more than twenty years.

20 (b) Any parent, guardian, custodian or other person in a
21 position of trust in relation to the child who knowingly
22 procures, authorizes, or induces another person to engage in
23 or attempt to engage in sexual exploitation of, or sexual

24 intercourse, sexual intrusion or sexual contact with, a child
25 under the care, custody or control of such parent, guardian,
26 custodian or person in a position of trust when such child is
27 less than sixteen years of age, notwithstanding the fact that
28 the child may have willingly participated in such conduct or
29 the fact that the child may have suffered no apparent physical
30 injury or mental or emotional injury as a result of such
31 conduct, such parent, guardian, custodian or person in a
32 position of trust shall be guilty of a felony and, upon
33 conviction thereof, shall be imprisoned in a correctional
34 facility not less than five years nor more than fifteen years, or
35 fined not less than $1,000 nor more than $10,000 and
36 imprisoned in a correctional facility not less than five years
37 nor more than fifteen years.

38 (c) Any parent, guardian, custodian or other person in a
39 position of trust in relation to the child who knowingly
40 procures, authorizes, or induces another person to engage in
41 or attempt to engage in sexual exploitation of, or sexual
42 intercourse, sexual intrusion or sexual contact with, a child
43 under the care, custody or control of such parent, guardian,
44 custodian or person in a position of trust when such child is
45 sixteen years of age or older, notwithstanding the fact that the
46 child may have consented to such conduct or the fact that the
47 child may have suffered no apparent physical injury or
48 mental or emotional injury as a result of such conduct, then
49 such parent, guardian, custodian or person in a position of
50 trust shall be guilty of a felony and, upon conviction thereof,
51 shall be imprisoned in a correctional facility not less than one
52 year nor more than five years.

53 (d) The provisions of this section shall not apply to a
54 custodian or person in a position of trust whose age exceeds
55 the age of the child by less than four years.

CHAPTER 49

(Com. Sub. for H. B. 4541 - By Delegates Shott and Frazier)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2010.]

AN ACT to amend and reenact §31-20-9, §31-20-10 and §31-20-32 of the Code of West Virginia, 1931, as amended, all relating to authorizing circuit court judges and magistrates to utilize county or municipal jails to detain persons charged with a crime up to ninety-six hours, or, to confine persons convicted of a crime for not more than fourteen days; eliminating any restrictions for county or municipal jails to be used only as holding facilities; and distributing certain processing fees to municipalities or counties.

Be it enacted by the Legislature of West Virginia:

That §31-20-9, §31-20-10 and §31-20-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-9. Jail facilities standards commission; purpose, powers and duties.
§31-20-10. Regional jail and correctional facility authority funds.
§31-20-32. Jail processing fee.

§31-20-9. Jail facilities standards commission: purpose, powers and duties.

(a) The purpose of the jail facilities standards commission is to assure that proper minimum standards and procedures are developed for jail facility operation, maintenance and management of inmates for regional jails and local jail facilities. In order to accomplish this purpose, the commission shall:

(1) Prescribe standards for the maintenance and operation of county and regional jails. The standards shall include, but not be limited to, requirements assuring adequate space, lighting and ventilation; fire protection equipment and procedures; provision of specific personal hygiene articles; bedding, furnishings and clothing; food services; appropriate staffing and training; sanitation, safety and hygiene; isolation and suicide prevention; appropriate medical, dental and other health services; indoor and outdoor exercise; appropriate vocational and educational opportunities; classification; inmate rules and discipline; inmate money and property; religious services; inmate work programs; library services; visitation, mail and telephone privileges; and other standards necessary to assure proper operation: *Provided*, That the standards developed for the construction, operation and maintenance of jails apply only to jail facilities completed after April 5, 1988, and that the standards serve only as guidelines for any jail facility in operation prior to that date: *Provided, however*, That the commission shall establish standards and procedures permitting and implementing in those facilities the double bunking of inmates in all appropriate cases to the extent that this practice does not violate federal law;

(2) Propose legislative rules for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code that are necessary to implement the provisions of this article relating to jail facilities, including, without limitation, minimum jail and work farm standards which shall be proposed for promulgation on or before July 1, 1999:

Provided, That rules filed by the jail and correctional facilities standards commission and authorized by the Legislature to be promulgated before the amendment to this section enacted in the regular session of the Legislature in the year 1998 remain in force except that such previously promulgated rules no longer apply to: (i) Correctional facilities; and (ii) jail facilities that were originally constructed for use as a jail which were completed and placed in operation before April 5, 1998: *Provided, however*, That such previously promulgated rules shall serve as guidelines for those facilities that fall within the specifications of (ii) herein;

(3) Develop a process for reviewing and updating the jail and work farm standards pursuant to the provisions of article three, chapter twenty-nine-a of this code as necessary to assure that they conform to current law; and

(4) Report periodically to the regional jail and correctional facility authority and the appropriate county and municipal authorities to advise, recommend, and direct actions to be taken by the authority, the county or the municipality to implement proper minimum jail and work farm standards.

(b) Notwithstanding any other provision of this code to the contrary, any county commission providing and maintaining a jail on the effective date of this article may not be required to provide and maintain a jail after a regional jail becomes available pursuant to the provisions of article twenty, chapter thirty-one of this code, unless the county commission determines that a facility is necessary: *Provided,* That the county commission may provide and maintain a facility which complies with the standards set forth for holding facilities in legislative rules promulgated by the jail facilities standards commission or its predecessor, the jail and correctional facilities standards commission.

§31-20-10. Regional jail and correctional facility authority funds.

1 (a) The Regional Jail and Correctional Facility Authority
2 may create special funds in the State Treasury to identify
3 various revenue sources and payment of specific obligations.
4 These funds may be used for purposes that include, but are
5 not limited to, the construction, renovation or repair of
6 specific facilities, cash control, facility maintenance and the
7 individual operations accounts of facilities operated by the
8 authority. The authority may create other separate accounts
9 within these funds that it determines are necessary for the
10 efficient operation of the authority.

11 (b) Revenues deposited into these funds shall be used to
12 make payments of interest and shall be pledged as security
13 for bonds, security interests or notes issued or lease-purchase
14 obligations entered into with another state entity by the
15 authority pursuant to this article.

16 (c) Whenever the authority determines that the balance in
17 these funds is in excess of the immediate requirements of this
18 article, it may request that the excess be invested until
19 needed. In this case, the excess shall be invested in a manner
20 consistent with the investment of temporary state funds.
21 Interest earned on any money invested pursuant to this
22 section shall be credited to these funds.

23 (d) If the authority determines that moneys held in these
24 funds are in excess of the amount needed to carry out the
25 purposes of this article, it shall take any action that is
26 necessary to release the excess and transfer it to the General
27 Revenue Fund of the State Treasury.

28 (e) These funds consist of the following:

29 (1) Amounts raised by the authority by the sale of bonds
30 or other borrowing authorized by this article;

(2) Moneys collected and deposited in the State Treasury which are specifically designated by Acts of the Legislature for inclusion in these funds;

(3) Contributions, grants and gifts from any source, both public and private, which may be used by the authority for any project or projects;

(4) All sums paid by the counties pursuant to subsection (h) of this section; and

(5) All interest earned on investments made by the state from moneys deposited in these funds.

(f) The amounts deposited in these funds shall be accounted for and expended in the following manner:

(1) Amounts raised by the sale of bonds or other borrowing authorized by this article shall be deposited in a separate account within these funds and expended for the purpose of construction, renovation and repair of correctional facilities, regional jails and juvenile detention and correctional facilities for which need has been determined by the authority;

(2) Amounts deposited from all other sources shall be pledged first to the debt service on any bonded indebtedness, including lease-purchase obligations entered into by the authority with another state entity or other obligation incurred by borrowing of the authority;

(3) After any requirements of debt service have been satisfied, the authority shall requisition from these funds the amounts that are necessary to provide for payment of the administrative expenses of this article;

(4) The authority shall requisition from these funds, after any requirements of debt service have been satisfied, the

amounts that are necessary for the maintenance and operation of regional jails that are constructed pursuant to the provisions of this article and shall expend those amounts for that purpose. These funds shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs or fines required by law to be deposited in these funds and amounts from the jail improvement funds of the various counties. After the expenses of administration have been deducted, the amounts expended in the respective regions from those sources shall be in proportion to the percentage the amount contributed to these funds by the counties in each region bears to the total amount received by these funds from those sources;

(5) Notwithstanding any other provisions of this article, sums paid into these funds by each county pursuant to subsection (h) of this section for each inmate shall be placed in a separate account and shall be requisitioned from these funds to pay for costs incurred at the regional jail facility at which each inmate was incarcerated; and

(6) Any amounts deposited in these funds from other sources permitted by this article shall be expended in the respective regions based on particular needs to be determined by the authority.

(g) (1) After a regional jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the regional jail facility in the regional jail facility except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the standards and procedures developed pursuant to section nine of this article and who the sheriff or the circuit court elects to incarcerate therein.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, circuit and magistrate courts are authorized to:

(A) Detain persons who have been arrested or charged with a crime, in a county or municipal jail, specified as appropriate under the standards and procedures developed pursuant to section nine of this article, for a period not to exceed ninety-six hours; or

(B) Commit persons convicted of a crime in a county or municipal jail, specified as appropriate under the standards and procedures developed pursuant to section nine of this article, for a period not to exceed fourteen days.

(h) When inmates are placed in a regional jail facility pursuant to subsection (g) of this section, the county shall pay into the Regional Jail and Correctional Facility Authority Fund a cost per day for each incarcerated inmate to be determined by the Regional Jail and Correctional Facility Authority according to criteria and by procedures established by legislative rules proposed for promulgation pursuant to article three, chapter twenty-nine-a of this code and as established in section ten-a of this article to cover the costs of operating the regional jail facilities of this state to maintain each inmate. The per diem costs for incarcerating inmates may not include the cost of construction, acquisition or renovation of the regional jail facilities: *Provided,* That each regional jail facility operating in this state shall keep a record of the date and time that an inmate is incarcerated and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than twenty-four hours. After that, in cases of continuous incarceration, subsequent per diem charges shall be made upon a county only as subsequent intervals of twenty-four hours pass from the original time of incarceration.

§31-20-32. Jail processing fee.

(a) A person committed to be housed in jail by order of magistrate, circuit judge or by temporary commitment order shall, at the time of booking into the jail, pay a processing fee of thirty dollars. If the person is unable to pay at the time of booking, the fee shall be deducted, at a rate of fifty percent, from any new deposits made into the person's jail trust account until the jail processing fee is paid in full. The fee shall be credited to:

(1) The Regional Jail and Correctional Facility Authority's operating budget if the person is committed to and housed in a regional jail;

(2) To the county commission if the person is committed to and housed in a county jail; or

(3) To the municipality if the person is committed to and housed in a municipal jail. The fee should be paid prior to the offender being released.

(b) A refund of a fee collected under this section shall be made to a person who has paid the fee if the person is not convicted of the offense for which the person was booked and the person provides documentation from the court showing that all charges for which the person was booked were dismissed, accurate current name and address and a valid photographic identification. In the case of multiple offenses, if the person is convicted of any of the offenses the fee may not be refunded. If the person is convicted of a lesser included offense or a related offense, no refund may be made.

CHAPTER 50

(Com. Sub. for S. B. 218 - By Senators Tomblin (Mr. President) and Caruth) [By Request of the Executive]

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating to powers and duties of the board of parole; eligibility for parole; changing when an inmate's written parole release plan may be prepared and considered; procedures for granting parole; accelerated parole eligibility for certain inmates who complete a rehabilitation treatment plan created with the assistance of a standardized risk and needs assessment; authorizing the Division of Corrections to promulgate policies and procedures related to accelerated parole eligibility; creating a rebuttable presumption for parole in certain circumstances; authorizing board of parole to contingently grant parole allowing board of parole to consider inmates for parole who have certain detainers pending against them; reducing the period for parole reconsideration; making technical corrections; and creating an internal effective date for certain amendments to the section.

Be it enacted by the Legislature of West Virginia:

That §62-12-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

(a) The board of parole, whenever it is of the opinion that the best interests of the state and of the inmate will be served, and subject to the limitations hereinafter provided, shall release any inmate on parole for terms and upon conditions as are provided by this article.

(b) Any inmate of a state correctional center is eligible for parole if he or she:

(1) (A) Has served the minimum term of his or her indeterminate sentence or has served one fourth of his or her definite term sentence, as the case may be, or

(B) He or she:

(i) Has applied for and been accepted by the Commissioner of Corrections into an accelerated parole program;

(ii) Does not have a prior criminal conviction for a felony crime of violence against the person, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child;

(iii) Has no record of institutional disciplinary rule violations for a period of 120 days prior to parole consideration unless the requirement is waived by the commissioner;

(iv) Is not serving a sentence for a crime of violence against the person, or more than one felony for a controlled substance offense for which the inmate is serving a consecutive sentence, a felony offense involving the use of a firearm, or a felony offence where the victim was a minor child; and

(v) Has successfully completed a rehabilitation treatment program created with the assistance of a standardized risk and needs assessment;

(I) As used in this paragraph "felony crime of violence against the person" means felony offenses set forth in articles two, three-e, eight-b or eight-d of chapter sixty-one of this code; and

(II) as used in this paragraph "felony offense where the victim was a minor child" means any felony crime of violence against the person and any felony violation set forth in article eight, eight-a, eight-c or eight-d of chapter sixty-one of this code.

(C) Notwithstanding any provision of this code to the contrary, any person who committed, or attempted to commit a felony with the use, presentment or brandishing of a firearm, is not eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: *Provided*, That any person who committed, or attempted to commit, any violation of section twelve, article two, chapter sixty-one of this code, with the use, presentment or brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this section applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm. A person is not ineligible for parole under the provisions of this subdivision because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm unless that fact is clearly stated and

included in the indictment or presentment by which the person was charged and was either: (I) Found by the court at the time of trial upon a plea of guilty or nolo contendere; or (ii) found by the jury, upon submitting to the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found by the court, if the matter was tried by the court without a jury.

For the purpose of this section, the term "firearm" means any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder or any other similar means.

(D) The amendments to this subsection adopted in the year 1981:

(i) Apply to all applicable offenses occurring on or after August 1 of that year;

(ii) Apply with respect to the contents of any indictment or presentment returned on or after August 1 of that year irrespective of when the offense occurred;

(iii) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided,* That the state gives notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which the finding will be sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried; and

(iv) Does not apply with respect to cases not affected by the amendments and in such cases the prior provisions of this section apply and are construed without reference to the amendments.

Insofar as the amendments relate to mandatory sentences restricting the eligibility for parole, all matters requiring a mandatory sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(2) Is not in punitive segregation or administrative segregation as a result of disciplinary action;

(3) Has maintained a record of good conduct in prison for a period of at least three months immediately preceding the date of his or her release on parole;

(4) Has prepared and submitted to the board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and post-release counseling and treatment. The Commissioner of Corrections or his or her designee shall review the plan to be reviewed and investigated and provide recommendations to the board as to the suitability of the plan: *Provided,* That in cases in which there is a mandatory thirty day notification period required prior to the release of the inmate, pursuant to section twenty-three of this article, the board may conduct an initial interview and deny parole without requiring the development of a plan. In the event the board does not believe parole should be denied, it may defer a final decision pending completion of an investigation and receipt of recommendations. Upon receipt of the plan together with the investigation and recommendation, the board, through a panel, shall make a final decision regarding the granting or denial of parole; and

(5) Has satisfied the board that if released on parole he or she will not constitute a danger to the community.

(c) Except in the case of a person serving a life sentence, no person who has been previously twice convicted of a felony may be released on parole until he or she has served the minimum term provided by law for the crime for which he or she was convicted. A person sentenced for life may not be paroled until he or she has served ten years, and a person sentenced for life who has been previously twice convicted of a felony may not be paroled until he or she has served fifteen years: *Provided,* That a person convicted of first degree murder for an offense committed on or after June 10, 1994, is not eligible for parole until he or she has served fifteen years.

(d) In the case of a person sentenced to any state correctional center, it is the duty of the board, as soon as a person becomes eligible, to consider the advisability of his or her release on parole.

(e) If, upon consideration, parole is denied, the board shall promptly notify the inmate of the denial. The board shall, at the time of denial, notify the person of the month and year he or she may apply for reconsideration and review. The board shall at least once a year reconsider and review the case of every inmate who was denied parole and is still eligible.

(f) Any person serving a sentence on a felony conviction who becomes eligible for parole consideration prior to being transferred to a state correctional center may make written application for parole. The terms and conditions for parole consideration established by this article apply to such inmates.

(g) The board shall, with the approval of the Governor, adopt rules governing the procedure in the granting of parole.

No provision of this article and none of the rules adopted hereunder are intended or may be construed to contravene, limit or otherwise interfere with or affect the authority of the Governor to grant pardons and reprieves, commute sentences, remit fines or otherwise exercise his or her constitutional powers of executive clemency.

(h) The Division of Corrections shall promulgate policies and procedures for developing a rehabilitation treatment plan created with the assistance of a standardized risk and needs assessment. The policies and procedures shall include, but not be limited to, policy and procedures for screening and selecting inmates for rehabilitation treatment and development and use of standardized risk and needs assessment tools. An inmate shall not be paroled solely due to having successfully completed a rehabilitation treatment plan but completion of all the requirements of a rehabilitation parole plan along with compliance with the requirements of subsection (b) of this section shall create a rebuttable presumption that parole is appropriate. The presumption created by this subsection may be rebutted by a parole board finding that at the time parole release is sought the inmate still constitutes a reasonable risk to the safety or property of other persons if released. Nothing in subsection (b) of this section or in this subsection may be construed to create a right to parole.

(i) Notwithstanding the provisions of subsection (b) of this section, the parole board may, in its discretion, grant or deny parole to an inmate against whom a detainer is lodged by a jurisdiction other than West Virginia for service of a sentence of incarceration, upon a written request for parole from the inmate. A denial of parole under this subsection shall preclude consideration for a period of one year or until the provisions of subsection (b) of this section are applicable.

(j) Where an inmate is otherwise eligible for parole pursuant to subsection (b) of this section but the parole board

determines that the inmate should participate in an additional program or complete an assigned task or tasks prior to actual release on parole, the board may grant parole contingently, effective upon successful completion of the program or assigned task or tasks, without the need for a further hearing. The Commissioner of Corrections shall provide notice to the parole board of the imminent release of a contingently paroled inmate to effectuate appropriate supervision.

(k) The Division of Corrections is charged with the duty of supervising all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the uniform act for out-of-state parolee supervision.

(l)(1) When considering an inmate of a state correctional center for release on parole, the parole board panel considering the parole is to have before it an authentic copy of or report on the inmate's current criminal record as provided through the West Virginia State Police, the United States Department of Justice or other reliable criminal information sources and written reports of the warden or superintendent of the state correctional center to which the inmate is sentenced:

(A) On the inmate's conduct record while in custody, including a detailed statement showing any and all infractions of disciplinary rules by the inmate and the nature and extent of discipline administered therefor;

(B) On improvement or other changes noted in the inmate's mental and moral condition while in custody, including a statement expressive of the inmate's current attitude toward society in general, toward the judge who sentenced him or her, toward the prosecuting attorney who prosecuted him or her, toward the policeman or other officer who arrested the inmate and toward the crime for which he or she is under sentence and his or her previous criminal record;

(C) On the inmate's industrial record while in custody which shall include: The nature of his or her work, occupation or education, the average number of hours per day he or she has been employed or in class while in custody and a recommendation as to the nature and kinds of employment which he or she is best fitted to perform and in which the inmate is most likely to succeed when he or she leaves prison;

(D) On physical, mental and psychiatric examinations of the inmate conducted, insofar as practicable, within the two months next preceding parole consideration by the board.

(2) The board panel considering the parole may waive the requirement of any report when not available or not applicable as to any inmate considered for parole but, in every such case, shall enter in the record thereof its reason for the waiver: *Provided,* That in the case of an inmate who is incarcerated because the inmate has been found guilty of, or has pleaded guilty to a felony under the provisions of section twelve, article eight, chapter sixty-one of this code or under the provisions of article eight-b or eight-c of said chapter, the board panel may not waive the report required by this subsection and the report is to include a study and diagnosis including an on-going treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program: *Provided, however,* That nothing disclosed by the person during the study or diagnosis may be made available to any law-enforcement agency, or other party without that person's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the parolee to do harm to any person, animal, institution or to property. Progress reports of outpatient treatment are to be made at least every six months to the parole officer supervising the person. In addition, in such cases, the parole board shall inform the prosecuting attorney of the county in which the person was convicted of the parole

hearing and shall request that the prosecuting attorney inform the parole board of the circumstances surrounding a conviction or plea of guilty, plea bargaining and other background information that might be useful in its deliberations.

(m) Before releasing any inmate on parole, the board of parole shall arrange for the inmate to appear in person before a parole board panel and the panel may examine and interrogate him or her on any matters pertaining to his or her parole, including reports before the board made pursuant to the provisions hereof: *Provided,* That an inmate may appear by video teleconference if the members of the panel conducting the examination are able to contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to contemporaneously see each of the members of the panel conducting the examination and hear all of the members' remarks. The panel shall reach its own written conclusions as to the desirability of releasing the inmate on parole and the majority of the panel considering the release shall concur in the decision. The warden or superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the parole board. All information, records and reports received by the board are to be kept on permanent file.

(n) The board and its designated agents are at all times to have access to inmates imprisoned in any state correctional center or in any jail in this state and may obtain any information or aid necessary to the performance of its duties from other departments and agencies of the state or from any political subdivision thereof.

(o) The board shall, if so requested by the Governor, investigate and consider all applications for pardon, reprieve or commutation and shall make recommendation thereon to the Governor.

295 (p) Prior to making a recommendation for pardon,
296 reprieve or commutation and prior to releasing any inmate on
297 parole, the board shall notify the sentencing judge and
298 prosecuting attorney at least ten days before the
299 recommendation or parole.

300 (q) Any person released on parole shall participate as a
301 condition of parole in the litter control program of the county
302 to the extent directed by the board, unless the board
303 specifically finds that this alternative service would be
304 inappropriate.

305 (r) Except for the amendments to this section contained
306 in subdivision (4), subsection (b) and subsection (i) of this
307 section the amendments to this section enacted during the
308 2010 regular session of the legislature shall become effective
309 on January 1, 2011.

CHAPTER 51

(S. B. 633 - By Senators Fanning and Chafin)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-6-2a; to amend and reenact §8-13-22a of said code; to amend and reenact §12-1-4 of said code; and to amend and reenact §18-9-6 of said code, all relating to enabling counties, municipalities, the state and county boards of education to deposit public funds into deposit accounts that are swept periodically into multiple federally fully insured deposit accounts through a deposit placement program

with full federal insurance in lieu of a bond or other collateral required of the depository institution.

Be it enacted by the Legislature of West Virginia;

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-6-2a; that §8-13-22a of said code be amended and reenacted; that §12-1-4 of said code be amended and reenacted; and that §18-9-6 of said code be amended and reenacted, all to read as follows:

Chapter

7. County Commissions and Officers.
8. Municipal Corporations.
12. Public Moneys and Securities.
18. Education.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-2a. Further exception to bond requirement; fully insured cash sweep accounts.

A banking institution is not required to provide a bond or security in lieu of bond pursuant to section two of this article if the deposit is placed in a designated state depository that is selected and authorized by the county to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions:

(a) On or after the date that the county funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the county with respect to the funds redeposited into such accounts.

(b) County funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with section two of this article.

(c) The full amount of the funds of the county redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this section (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation.

(d) On the same date that the funds of the county are redeposited pursuant to this section, the selected depository receives an amount of deposits from customers of other financial institutions through the deposit placement program that are equal to the amount of the county money redeposited by the selected depository.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

§8-13-22a. Investment of municipal funds.

All municipal funds, the investment of which is not governed by other provisions of this code and not required for the payment of current obligations and not otherwise prohibited, may be invested and reinvested in:

(1) Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;

(2) Any evidence of indebtedness issued by any United States government agency guaranteed as to the payment of

both principal and interest, directly or indirectly, by the United States of America including, but not limited to, the following: Government National Mortgage Association, federal land banks, federal home loan banks, federal intermediate credit banks, banks for cooperatives, Tennessee Valley Authority, United States postal service, farmers home administration, export-import bank, federal financing bank, federal home loan mortgage corporation, student loan marketing association and federal farm credit banks;

(3) Any evidence of indebtedness issued by the Federal National Mortgage Association to the extent such indebtedness is guaranteed by the government National Mortgage Association;

(4) Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situate within this state, if the payment thereof is substantially insured or guaranteed by the United States of America or any agency thereof;

(5) Direct and general obligations of this state;

(6) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, the trust at the time of the acquisition of the undivided interest, is rated in one of the three highest rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts;

(7) Any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association: *Provided,* That any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: *Provided, however,* That if any commercial paper or any such security will mature within

one year from the date of its issuance, it shall, at the time of its acquisition, be rated in one of the two highest rating grades by any such nationally known agency and commercial paper or other evidence of indebtedness of any private corporation or association shall be purchased only upon the written recommendation from an investment advisor that has over $300 million in other funds under its management;

(8) Negotiable certificates of deposit issued by any bank, trust company, national banking association or savings institution which mature in less than one year and are fully collateralized;

(9) Interest earning deposits including certificates of deposit, with any duly designated state depository, which deposits are fully secured by a collaterally secured bond as provided in section four, article one, chapter twelve of this code: *Provided,* That a banking institution is not required to provide this collaterally secured bond, or other security in lieu of bond, if the deposits accepted are placed in certificates of deposit meeting the following requirements: (A) The funds are invested through a designated state depository selected by the municipality; (B) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the municipality; (C) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (D) the selected depository acts as custodian for the municipality with respect to such certificates of deposit issued for the municipality's account; and (E) at the same time that the municipality's funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the municipality through the selected depository;

(10) Mutual funds registered with the Securities and Exchange Commission which have assets in excess of $300 million; and

(11) Deposits with any duly designated state depository that is selected and authorized by the municipality to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions:

(a) On or after the date that the municipal funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the municipality with respect to the funds deposited into such accounts.

(b) Municipal funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with section four, article one, chapter twelve of this code.

(c) The full amount of the funds of the municipality redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this subsection (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation.

(d) On the same date that the funds of the municipality are redeposited pursuant to this subsection, the selected depository receives an amount of deposits from customers of other financial institutions through the direct placement program that are equal to the amount of the municipality's funds redeposited by the selected depository.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-4. Bonds to be given by depositories.

(a) Before allowing any money to be deposited with any eligible depository in excess of the amount insured by an agency of the federal government or insured by a deposit guaranty bond issued by a valid bankers surety company acceptable to the treasurer, the State Treasurer shall require the depository to give a collaterally secured bond, in the amount of not less than $10,000, payable to the State of West Virginia, conditioned upon the prompt payment, whenever lawfully required, of any state money, or part thereof, that may be deposited with that depository, or of any accrued interest on deposits. The bond shall be a continuous bond but may be increased or decreased in amount or replaced by a new bond with the approval of the State Treasurer. The collateral security for the bond shall consist of bonds of the United States, or bonds or letters of credit of the federal land banks, of the federal home loan banks, or bonds of the State of West Virginia or of any county, district or municipality of this state, or other bonds, letters of credit, or securities approved by the treasurer. All bonds so secured are here designated as collaterally secured bonds. Withdrawal or substitution of any collateral pledged as security for the performance of the conditions of the bond may be permitted with the approval in writing of the treasurer. All depository bonds shall be recorded by the treasurer in a book kept in his or her office for the purpose, and a copy of the record, certified by the treasurer, shall be prima facie evidence of the execution and contents of the bond in any suit or legal proceeding. All collateral securities shall be delivered to or deposited for the account of the treasurer of the State of West Virginia and in the event said securities are delivered to the treasurer, he or she shall furnish a receipt therefor to the owner thereof. The treasurer and his or her bondsmen shall be liable to any person for any loss by reason of the

34 embezzlement or misapplication of the securities by the
35 treasurer or any of his or her employees, and for the loss
36 thereof due to his or her negligence or the negligence of his
37 or her employees; and the securities shall be delivered to the
38 owner thereof when liability under the bond which they are
39 pledged to secure has terminated. The treasurer may permit
40 the deposit under proper receipt of the securities with one or
41 more banking institutions within or outside the State of West
42 Virginia and may contract with any institution for
43 safekeeping and exchange of any collateral securities and
44 may prescribe the rules for handling and protecting the
45 collateral securities.

46 (b) A banking institution is not required to provide a
47 bond or security in lieu of bond if the deposits accepted are
48 placed in certificates of deposit meeting the following
49 requirements: (1) The funds are invested through a
50 designated state depository selected by the treasurer; (2) the
51 selected depository arranges for the deposit of the funds in
52 certificates of deposit in one or more banks or savings and
53 loan associations wherever located in the United States, for
54 the account of the state; (3) the full amount of principal and
55 accrued interest of each certificate of deposit is insured by the
56 Federal Deposit Insurance Corporation; (4) the selected
57 depository acts as custodian for the state with respect to such
58 certificates of deposit issued for the state's account; and (5)
59 at the same time that the state's funds are deposited and the
60 certificates of deposit are issued, the selected depository
61 receives an amount of deposits from customers of other
62 financial institutions wherever located in the United States
63 equal to or greater than the amount of the funds invested by
64 the state through the selected depository.

65 (c) A banking institution is not required to provide a bond
66 or security in lieu of bond pursuant to this section if the
67 deposits accepted are placed in a designated state depository
68 that is selected and authorized by the state to arrange for the

redeposit of the funds through a deposit placement program that meets the following conditions:

(1) On or after the date that the funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the state with respect to the funds redeposited into such accounts.

(2) State funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with section two, article six, chapter seven of this code.

(3) The full amount of the funds of the state redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this section (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation.

(4) On the same date that the funds of the state are redeposited pursuant to this section, the selected depository receives an amount of deposits from customers of other financial institutions through the deposit placement program that are equal to the amount of the state funds redeposited by the selected depository.

CHAPTER 18. EDUCATION.

ARTICLE 9. SCHOOL FINANCES.

§18-9-6. Transfer of moneys; appointment of treasurer; bonding of treasurer; approval of bank accounts; authority to invest; security for funds invested.

The sheriff of each county shall remit to the board of education all moneys in his or her possession held on behalf of the county board of education, whether or not deposited in a bank or depository, unless the sheriff has been designated treasurer of the board of education as provided in this section. The transfer of funds shall be made as of the balances on hand on June 30 of the year in which the board of education appoints a treasurer other than the sheriff, and shall be completed no later than August 1 of that year. The transfer shall be adjudged complete and final upon the approval of the sheriff's official settlement for the fiscal year ending on June 30 of the year in which the board of education appoints a treasurer other than the sheriff, and any minor adjustment made necessary by the actually known figures shall also be made at that time. All balances in all county school funds at the end of each month after June 30 of the year in which the board of Education appoints a treasurer other than the sheriff shall be transferred by the sheriff to the county board of education not later than the tenth day of the following month.

On or before the first Monday in May each county board of education shall upon recommendation of the county superintendent appoint a treasurer for the board. The treasurer is the fiscal officer of the board, or an employee commonly designated as the person in charge of the financial affairs of the county board, or the county sheriff: *Provided,* That once a board of education has appointed a treasurer other than the sheriff, the sheriff may not be named treasurer of the board in a subsequent year. Upon appointment this person shall be titled and referred to as treasurer of the board of education. For the faithful performance of this duty, the treasurer shall execute a bond, to be approved by the board of education, in the penalty to be fixed by the board of education, not to exceed the amount of school funds which it is estimated the treasurer will handle within any period of two months. The premium on the bond shall be paid by the board of education.

The board of education may open a bank account, or accounts, as required to adequately and properly transact the business of the district in a depository, or banks, within the county. The depositories, or banks, shall provide bond to cover the maximum amount to be deposited at any one time. However, the county board of education may, in lieu of such bond, accept as security for money deposited letters of credit from a federal home loan bank, securities of the United States, or of a state, county, district or municipal corporation, or federal agency securities: *Provided,* That a banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements: (1) The funds are invested through a designated state depository selected by the county board of education; (2) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the county board of education; (3) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (4) the selected depository acts as custodian for the county board of education with respect to such certificates of deposit issued for the county's account; and (5) at the same time that the county board of education's funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the county board of education through the selected depository: *Provided, however,* That a banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in a designated state depository that is selected and authorized by the county board of education to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions: (1) On or after the date that the county board of

education funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the county with respect to the money redeposited into such accounts. (2) County board of education funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with the second and third sentences of this paragraph. (3) The full amount of the funds of the county board of education redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this section (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation. (4) On the same date that the funds of the county board of education are redeposited pursuant to this section, the selected depository receives an amount of deposits from customers of other financial institutions through the deposit placement program that are equal to the amount of the county board of education funds redeposited by the selected depository.

One hundred ten percent of the face or par value of the securities may not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which the securities are accepted, or the county board of education may accept the securities as partial security to the extent of their face value for the money so deposited and require bond for the remainder of the full amount hereinbefore specified, to be named in the bond, and, in the bond so required, the acceptance of securities as partial security and the extent thereof shall be set forth. The hypothecation of the securities shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as

depository as aforesaid. All such securities shall be delivered to or deposited for the account of the county board of education, and withdrawal or substitution thereof may be permitted from time to time upon approval by the county board of education by order of record, but the collateral security shall be released only by order of record of the county board of education when satisfied that full and faithful accounting and payment of all the moneys has been made under the provisions hereof. If actual possession of the hypothecated securities is delivered to the county board of education, it shall make ample provision for the safekeeping thereof, and the interest thereon when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid. The county board of education may permit the deposit under proper receipt of such securities with one or more banking institutions within the State of West Virginia and may contract with any such institution for safekeeping and exchange of any such hypothecated securities, and may prescribe the rules for handling and protecting the same.

On and after July 1, 1973, all levies and any other school moneys received by the sheriff and paid to the treasurer of the county board of education shall be deposited in these accounts, and all proper payments from such funds shall be made by the designated depository or bank upon order or draft presented for payment and signed by the duly authorized signatories of the Board of Education: *Provided,* That in determining the depository for Board of Education funds a board member who has a pecuniary interest in a bank within the county shall not participate in the determination of the depository for such funds.

If it is considered that sufficient funds are on hand in any account at any one time which may be more than are normally required for the payment of incurred expenses, the funds in the amount so considered available may be invested by the treasurer of the county board with the West Virginia Municipal Bond Commission, or in guaranteed certificates of

146 deposit issued by the depository or bank, or other guaranteed
147 investments such as treasury bills, treasury notes or
148 certificates of deposit issued by either the United States
149 government or a banking institution in which federal or state
150 guarantees are applicable. Interest earned in such investments
151 is to be credited to the fund from which the moneys were
152 originally available.

CHAPTER 52

(H. B. 4361 - By Delegates Miley, Barker, Susman, Ellem, Schadler, Ferro, Brown, Longstreth, Moore and Ross)

[Passed March 9, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2010.]

AN ACT to repeal §48-27-803 of the Code of West Virginia, 1931, as amended; and to amend and reenact §48-27-206 of said code, all relating generally to the prevention and treatment of domestic violence; removing provisions prohibiting the sharing of information with other governments and law-enforcement agencies; and broadening the definition of "law-enforcement agency" for the purpose of sharing information with the federal government and its agencies.

Be it enacted by the Legislature of West Virginia:

That §48-27-803 of the Code of West Virginia, 1931, as amended, be repealed; and that §48-27-206 of said code, be amended and reenacted to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-206. Law-enforcement agency defined.

1 (a) "Law-enforcement agency" means and is limited to:

2 (1) The state police and its members;

3 (2) A county sheriff and his or her law-enforcement
4 deputies; and

5 (3) A police department in any municipality as defined in
6 section two, article one, chapter eight of this code;

7 (4) Any federal agency whose purpose includes
8 enforcement, maintenance and gathering of information of
9 both criminal and civil records relating to domestic violence
10 under federal law.

11 (b) The term "law-enforcement agency" includes, but is
12 not limited to, the Department of Health and Human
13 Resources in those instances of child abuse reported to the
14 department that are not otherwise reported to any other law-
15 enforcement agency.

CHAPTER 53

(Com. Sub. for H. B. 4354 - By Delegates Miley, Susman, Longstreth, Ferro, Brown, Ross and Moore)

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

AN ACT to amend and reenact §48-27-1002 of the Code of West Virginia, 1931, as amended, relating to conditions and arrests in

domestic violence matters; including certain injunctive relief and protective orders the violation of which allow law-enforcement officers to seize weapons in possession of domestic violence respondents.

Be it enacted by the Legislature of West Virginia:

That §48-27-1002 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-1002. Arrest in domestic violence matters; conditions.

(a) Notwithstanding any provision of this code to the contrary, if a person is alleged to have committed a violation of the provisions of subsection (a) or (b), section twenty-eight, article two, chapter sixty-one of this code against a family or household member, in addition to any other authority to arrest granted by this code, a law-enforcement officer has authority to arrest that person without first obtaining a warrant if:

(1) The law-enforcement officer has observed credible corroborative evidence that an offense has occurred; and either:

(2) The law-enforcement officer has received, from the victim or a witness, an oral or written allegation of facts constituting a violation of section twenty-eight, article two, chapter sixty-one of this code; or

(3) The law-enforcement officer has observed credible evidence that the accused committed the offense.

(b) For purposes of this section, credible corroborative evidence means evidence that is worthy of belief and corresponds to the allegations of one or more elements of the offense and may include, but is not limited to, the following:

(1) *Condition of the alleged victim.* -- One or more contusions, scratches, cuts, abrasions, or swellings; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.

(2) *Condition of the accused.* -- Physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self-defense by the victim.

(3) *Condition of the scene.* -- Damaged premises or furnishings; disarray or misplaced objects consistent with the effects of a struggle.

(4) *Other conditions.* -- Statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of an officer; audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for police assistance; written statements by witnesses.

(c) Whenever any person is arrested pursuant to subsection (a) of this section, the arrested person shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia.

(d) If an arrest for a violation of subsection (c), section twenty-eight, article two, chapter sixty-one of this code is authorized pursuant to this section, that fact constitutes prima facie evidence that the accused constitutes a threat or danger to the victim or other family or household members for the purpose of setting conditions of bail pursuant to section seventeen-c, article one-c, chapter sixty-two of this code.

52 (e) Whenever any person is arrested pursuant to the
53 provisions of this article or for a violation of an order issued
54 pursuant to section five hundred nine or subsections (b) and (c),
55 of section six hundred eight, article five of this chapter the
56 arresting officer, subject to the requirements of the Constitutions
57 of this state and of the United States:

58 (1) Shall seize all weapons that are alleged to have been
59 involved or threatened to be used in the commission of domestic
60 violence;

61 (2) May seize a weapon that is in plain view of the officer or
62 was discovered pursuant to a consensual search, as necessary for
63 the protection of the officer or other persons; and

64 (3) May seize all weapons that are possessed in violation of
65 a valid protective order.

CHAPTER 54

(Com. Sub. for S. B. 490 - By Senators Kessler, Laird, Palumbo, Barnes, Foster Unger, Oliverio, White, Wells and Plymale)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2010.]

AN ACT to amend and reenact §48-27-202, §48-27-503, §48-27-505, §48-27-901 and §48-27-903 of the Code of West Virginia, 1931, as amended, all relating to prevention and treatment of domestic violence; authorizing family court judges to issue protective orders that contain certain provisions related to animals; providing that family court judges may make protective orders with a one year duration upon a finding of aggravating

circumstances; authorizing family court judges to extend protective orders with a one year duration; establishing criteria for granting lengthier periods of protection; requiring secured bonds to prevent future domestic violence; amending current penalties for violations of protective orders; and creating a new misdemeanor offense of third and subsequent offenses for violations of a protective order.

Be it enacted by the Legislature of West Virginia:

That §48-27-202, §48-27-503, §48-27-505, §48-27-901 and §48-27-903 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 2. DEFINITIONS.

§48-27-202. Domestic violence defined.
§48-27-503. Permissive provisions in protective order.
§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.
§48-27-901. Civil contempt; violation of protective orders; order to show cause.
§48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.

§48-27-202. Domestic violence defined.

"Domestic violence" or "abuse" means the occurrence of one or more of the following acts between family or household members, as that term is defined in section two hundred four of this article:

(1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;

(2) Placing another in reasonable apprehension of physical harm;

(3) Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts;

(4) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code; and

(5) Holding, confining, detaining or abducting another person against that person's will.

§48-27-503. Permissive provisions in protective order.

The terms of a protective order may include:

(1) Granting possession to the petitioner of the residence or household jointly resided in at the time the abuse occurred;

(2) Ordering the respondent to refrain from entering or being present in the immediate environs of the residence of the petitioner;

(3) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children named in the order;

(4) Establishing terms of temporary visitation with regard to the minor children named in the order including, but not limited to, requiring third party supervision of visitations if necessary to protect the petitioner and/or the minor children;

(5) Ordering the noncustodial parent to pay to the caretaker parent a sum for temporary support and maintenance of the petitioner and children, if any;

(6) Ordering the respondent to pay to the petitioner a sum for temporary support and maintenance of the petitioner, where appropriate;

(7) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household or family members for the purpose of violating the protective order;

(8) Ordering the respondent to participate in an intervention program for perpetrators;

(9) Ordering the respondent to refrain from contacting, telephoning, communicating, harassing or verbally abusing the petitioner;

(10) Providing for either party to obtain personal property or other items from a location, including granting temporary possession of motor vehicles owned by either or both of the parties, and providing for the safety of the parties while this occurs, including ordering a law-enforcement officer to accompany one or both of the parties;

(11) Ordering the respondent to reimburse the petitioner or other person for any expenses incurred as a result of the domestic violence, including, but not limited to, medical expenses, transportation and shelter;

(12) Ordering the petitioner and respondent to refrain from transferring, conveying, alienating, encumbering or otherwise dealing with property which could otherwise be subject to the jurisdiction of the court or another court in an action for divorce or support, partition or in any other action affecting their interests in property;

(13) Awarding the petitioner the exclusive care, possession, or control of any animal owned, possessed, leased, kept or held by either the petitioner or the respondent or a minor child residing in the residence or household of either the petitioner or the respondent and prohibiting the respondent from taking, concealing, molesting, physically

injuring, killing or otherwise disposing of the animal and limiting or precluding contact by the respondent with the animal; and

(14) Ordering any other relief the court deems necessary to protect the physical safety of petitioner or those persons for whom a petition may be filed as provided in subdivision (2), section three hundred five of this article.

§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.

(a) Except as otherwise provided in subsection (d), section four hundred one of this article, a protective order, entered by the family court pursuant to this article, is effective for either ninety days or one hundred eighty days, in the discretion of the court. Upon receipt of a written request for renewal from the petitioner prior to the expiration of the original order, the family court shall extend its order for an additional ninety-day period.

(b) Notwithstanding the provisions of subsection (a), the court may enter a protective order for a period of one year if the court finds by a preponderance of the evidence, after a hearing that any of the following aggravating factors are present:

(1) That there has been a material violation of a previously entered protective order;

(2) That two or more protective orders have been entered against the respondent within the previous five years;

(3) That respondent has one or more prior convictions for domestic battery or assault or a felony crime of violence where the victim was a family or household member;

(4) That the respondent has committed a violation of the provisions of section nine-a, article two, chapter sixty-one of this code against a person protected by an existing order of protection; or

(5) That the totality of the circumstances presented to the court require a one year period in order to protect the physical safety of the petitioner or those persons for whom a petition may be filed as provided in subdivision (2), section three hundred five of this article.

(c) The court may extend a protective order entered pursuant to subsection (b) of this section for whatever period the court considers necessary to protect the physical safety of the petitioner or those persons for whom a petition may be filed as provided in subdivision (2), section three hundred five of this article, if the court finds by a preponderance of evidence, after a hearing of which respondent has been given notice, that:

(1) A material violation of the existing protective order has occurred; or

(2) Respondent has committed a material violation of a provision of a final order entered pursuant to subsection (c), section six hundred eight, article five of this chapter has occurred.

(d) To be effective, a written request to renew a ninety or one hundred eighty-day order must be submitted to the court prior to the expiration of the original order period. A notice of the extension shall be sent by the clerk of the court to the respondent by first-class mail, addressed to the last known address of the respondent as indicated by the court file. The extension of time is effective upon mailing of the notice.

(e) Certified copies of any order entered or extension notice made under the provisions of this section shall be

53 served upon the respondent by first class mail, addressed to
54 the last known address of the respondent as indicated by the
55 court file, and delivered to the petitioner and any law-
56 enforcement agency having jurisdiction to enforce the order,
57 including the city police, the county sheriff's office or local
58 office of the West Virginia State Police within twenty-four
59 hours of the entry of the order. The protective order shall be
60 in full force and effect in every county of this state.

61 (f) The family court may modify the terms of a protective
62 order upon motion of either party.

63 (g) The clerk of the circuit court shall cause a copy of any
64 protective order entered by the family court pursuant to the
65 provisions of this article or pursuant to the provisions of
66 chapter forty-eight of this code to be forwarded to the
67 magistrate or magistrate court clerk and the magistrate or
68 magistrate court clerk shall forward a copy of the protective
69 order to the appropriate state and federal agencies for
70 registration of domestic violence offenders as required by
71 state and federal law.

PART 9. SANCTIONS.

§48-27-901. Civil contempt; violation of protective orders; order to show cause.

1 (a) Any party to a protective order or a legal guardian or
2 guardian ad litem may file a petition for civil contempt
3 alleging a violation of an order issued pursuant to the
4 provisions of this article. The petition shall be filed in the
5 family court, if a family court entered an order or in the
6 circuit court, if a circuit court entered the order, in the county
7 in which the violation occurred or the county in which the
8 order was issued.

9 (b) When a petition for an order to show cause is filed, a
10 hearing on the petition shall be held within five days from the

filing of the petition. Any order to show cause which is issued shall be served upon the alleged violator.

(c) Upon a finding of contempt, the court may order the violator to comply with specific provisions of the protective order and post a bond as surety for faithful compliance with the order. The bond may not be a personal recognizance bond and shall be in an amount that does not exceed the ability of the violator to post. The bond may not be waived by a fee waiver pursuant to the provisions of section one, article two, chapter fifty-nine of this code.

§48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.

(a) Any person who knowingly and willfully violates:

(1) A provision of an emergency or final protective order entered pursuant to:

(A) Subsection (a) or (b) of section five hundred two of this article;

(B) If the court has ordered such relief; subsection (2), (7), (9), or (14) of section five hundred three of this article;

(C) Subsection (b) or (c) of section five hundred nine, article five of this chapter; or (D) subsection (b) or (c) of section six hundred eight, article five of this chapter; or

(2) A condition of bail, probation or parole which has the express intent or effect of protecting the personal safety of a particular person or persons; is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than $250 nor more than $2,000.

(b) Any person who is convicted of a second offense under subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months nor more than one year, which jail term shall include actual confinement of not less than thirty days, and fined not less than $500 nor more than $3,000, or both.

(c) A respondent who is convicted of a third or subsequent offense under subsection (a) which the violation occurs within ten years of a prior conviction of this offense is guilty of a misdemeanor, and upon conviction thereof, shall be confined in jail not less than six months nor more than one year, which jail term shall include actual confinement of not less than six months, and fined not less than $500 nor more than $4,000.

CHAPTER 55

(Com. Sub. for S. B. 396 - By Senators Unger, Kessler and Chafin)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §17B-2-1a, §17B-2-4 and §17B-2-5a of the Code of West Virginia, 1931, as amended; and to amend and reenact §17E-1-3, §17E-1-4, §17E-1-6, §17E-1-7, §17E-1-12, §17E-1-13 and §17E-1-25 of said code, all relating to the issuance, suspension and revocation of driver's licenses; conducting background checks for employees involved in the issuance of driver's licenses; surrendering driver's licenses; suspending commercial driver's licenses; adding definitions;

clarifying requirements for school bus drivers; clarifying certain endorsements or restrictions; requiring the completion of skills test before obtaining a commercial driver's license to operate vehicles equipped with air brakes; updating the criteria for issuance, renewal, disqualification, surrender, reinstatement and maintenance of a commercial driver's license; updating and increasing fines and penalties for certain offenses; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §17B-2-1a, §17B-2-4 and §17B-2-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17E-1-3, §17E-1-4, §17E-1-6, §17E-1-7, §17E-1-12, §17E-1-13 and §17E-1-25 of said code be amended and reenacted, all to read as follows:

Chapter

17B. Motor Vehicle Driver's Licenses.
17E. Uniform Commercial Driver's License Act.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.
§17B-2-4. Persons prohibited from driving school buses or transporting persons or property for compensation.
§17B-2-5a. Training, certification and monitoring of license examiners.

§17B-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.

1 (a) The Division of Motor Vehicles may not issue a
2 driver's license to a person who holds a valid license to
3 operate a motor vehicle issued by another state or jurisdiction
4 subject to a reciprocal agreement governing the licensing of

drivers operating commercial motor vehicles or party to a reciprocal driver's license exchange agreement with this state unless or until the applicant surrenders to the division the foreign license, or the person has signed and submitted to the division an affidavit to the effect that the person has surrendered all valid licenses issued to him or her by other states or jurisdictions. Any surrendered license issued by any other state or jurisdiction shall be destroyed or at the discretion of the division retained by the division and the division shall notify the original state of licensure that the person who surrendered the license has been licensed in this state. It is unlawful for a person to possess more than one valid driver's license at any time.

(b) Every driver shall, within thirty days after taking up residence in this state, apply to the division for a driver's license as prescribed in this article. For the purposes of this chapter the presumption that a natural person is a resident of this state is based on the provisions of section one-a, article three, chapter seventeen-a of this code. The division may assign the driver's license class, type, endorsements or restrictions based on the applicant's prior licensing status, age and the type of licensing system used by the state of prior licensing.

(c) All other applicable provisions of this article relating to issuance, fees, expiration and renewal of licenses, and driver examination of applicants apply to this section.

§17B-2-4. Persons prohibited from driving school buses or transporting persons or property for compensation.

No person may drive any school bus transporting school children or any motor vehicle when in use for the transportation of persons or property for compensation nor in either event until the person has been licensed as a Class A, B, C or D driver for either purpose and the license so

6 indicates and until he or she is in compliance with the
7 provisions of chapter seventeen-e of this code and rules
8 promulgated by the State Board of Education, if applicable.

§17B-2-5a. Training, certification and monitoring of license examiners.

1 (a) The commissioner shall train, certify and monitor
2 those employees of the Division of Motor Vehicles
3 designated by the commissioner as license examiners
4 regarding the administration of licensing application and
5 testing procedures for the purpose of ensuring compliance
6 with statutory and regulatory requirements.

7 (b) In order to determine an applicant's suitability for
8 employment, the commissioner shall require every applicant
9 or employee who is or may be in a position involved in the
10 examination, processing or issuance of a driver's license or
11 identification card, or who would have access to affect any
12 document or record related to an applicant or holder of a
13 driver's license or identification to furnish a full set of
14 fingerprints to facilitate a criminal background check of the
15 applicant. The commissioner shall submit the fingerprints to
16 the state Criminal Identification Bureau along with the
17 applicant's identifying information. Prior to hiring a
18 prospective applicant the commissioner shall request that the
19 State Police submit the fingerprints and identifying
20 information to the Federal Bureau of Investigation for a
21 national criminal history record check and that the
22 commissioner may not hire the prospective applicant until the
23 results of the national background check are available for
24 evaluation.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-3. Definitions.
§17E-1-4. Limitation on number of driver's licenses.
§17E-1-6. Employer responsibilities.
§17E-1-7. Commercial driver's license required; disqualification for driving without valid license.
§17E-1-12. Classifications, endorsements and restrictions.
§17E-1-13. Disqualification.
§17E-1-25. Penalties.

§17E-1-3. Definitions.

1 Notwithstanding any other provision of this code, the
2 following definitions apply to this article:

3 (1) "Alcohol" means:

4 (A) Any substance containing any form of alcohol,
5 including, but not limited to, ethanol, methanol, propenyl and
6 isopropanol;

7 (B) Beer, ale, port or stout and other similar fermented
8 beverages (including sake or similar products) of any name
9 or description containing one half of one percent or more of
10 alcohol by volume, brewed or produced from malt, wholly or
11 in part, or from any substitute for malt;

12 (C) Distilled spirits or that substance known as ethyl
13 alcohol, ethanol or spirits of wine in any form (including all
14 dilutions and mixtures thereof from whatever source or by
15 whatever process produced); or

16 (D) Wine of not less than one half of one percent of
17 alcohol by volume.

18 (2) "Alcohol concentration" means:

19 (A) The number of grams of alcohol per one hundred
20 milliliters of blood;

21 (B) The number of grams of alcohol per two hundred ten
22 liters of breath; or

(C) The number of grams of alcohol per sixty-seven milliliters of urine.

(D) The number of grams of alcohol per eighty-six milliliters of serum.

(3) "At fault traffic accident" means for the purposes of waiving the road test, a determination, by the official filing the accident report, of fault as evidenced by an indication of contributing circumstances in the accident report.

(4) "Commercial driver's license" means a license issued in accordance with the requirements of this article to an individual which authorizes the individual to drive a class of commercial motor vehicle.

(5) "Commercial driver's license information system" is the information system established pursuant to the Federal Commercial Motor Vehicle Safety Act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(6) "Commercial driver instruction permit" means a permit issued pursuant to subsection (d), section nine of this article.

(7) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

(A) If the vehicle has a gross combination vehicle weight rating of twenty-six thousand one pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating of more than ten thousand pounds;

(B) If the vehicle has a gross vehicle weight rating of more than twenty-six thousand one pounds or more;

(C) If the vehicle is designed to transport sixteen or more passengers, including the driver; or

(D) If the vehicle is of any size transporting hazardous materials as defined in this section.

(8) "Commissioner" means the Commissioner of Motor Vehicles of this state.

(9) "Controlled substance" means any substance classified under the provisions of chapter sixty-a of this code (Uniform Controlled Substances Act) and includes all substances listed on Schedules I through V, inclusive, article two of said chapter sixty-a, as they are revised. The term "controlled substance" also has the meaning such term has under 21 U.S.C. §802.6 and includes all substances listed on Schedules I through V of 21 C.F.R. §1308 as they may be amended by the United States Department of Justice.

(10) "Conviction" means an unvacated adjudication of guilt; a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal or proceeding; an unvacated forfeiture of bail or collateral deposited to secure the persons appearance in court; a plea of guilty or nolo contendere accepted by the court or the payment of a fine or court cost, or violation of a condition of release without bail regardless of whether or not the penalty is rebated, suspended, or probated.

(11) "Division" means the Division of Motor Vehicles.

(12) "Disqualification" means any of the following three actions:

(A) The suspension, revocation, or cancellation of a driver's license by the state or jurisdiction of issuance.

(B) Any withdrawal of a person's privilege to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control other than parking or vehicle weight except as to violations committed by a special permittee on the coal resource transportation system or vehicle defect violations.

(C) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. Part §391 (2004).

(13) "Drive" means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For the purposes of sections twelve, thirteen and fourteen of this article, "drive" includes operation or physical control of a motor vehicle anywhere in this state.

(14) "Driver" means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver's license.

(15) "Driver's license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.

(16) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly employed by or under lease to drive a commercial motor vehicle for an employer.

112 (17) "Employer" means any person, including the United
113 States, a state or a political subdivision of a state, who owns
114 or leases a commercial motor vehicle or assigns a person to
115 drive a commercial motor vehicle.

116 (18) "Endorsement" means an authorization to a person
117 to operate certain types of commercial motor vehicles.

118 (19) "Farm vehicle" includes a motor vehicle or
119 combination vehicle registered to the farm owner or entity
120 operating the farm and used exclusively in the transportation
121 of agricultural or horticultural products, livestock, poultry
122 and dairy products from the farm or orchard on which they
123 are raised or produced to markets, processing plants, packing
124 houses, canneries, railway shipping points and cold storage
125 plants and in the transportation of agricultural or horticultural
126 supplies and machinery to the farms or orchards to be used
127 on the farms or orchards.

128 (20) "Farmer" includes an owner, tenant, lessee, occupant
129 or person in control of the premises used substantially for
130 agricultural or horticultural pursuits who is at least eighteen
131 years of age with two years' licensed driving experience.

132 (21) "Farmer vehicle driver" means the person employed
133 and designated by the "farmer" to drive a "farm vehicle" as
134 long as driving is not his or her sole or principal function on
135 the farm who is at least eighteen years of age with two years'
136 licensed driving experience.

137 (22) "Felony" means an offense under state or federal law
138 that is punishable by death or imprisonment for a term
139 exceeding one year.

140 (23) "Gross combination weight rating (GCWR)" means
141 the value specified by the manufacturer as the loaded weight
142 of a combination (articulated) vehicle. In the absence of a

143 value specified by the manufacturer, GCWR will be
144 determined by adding the GVWR of the power unit and the
145 total weight of the towed unit and any load thereon.

146 (24) "Gross vehicle weight rating (GVWR)" means the
147 value specified by the manufacturer as the loaded weight of
148 a single vehicle. In the absence of a value specified by the
149 manufacturer the GVWR will be determined by the total
150 weight of the vehicle and any load thereon.

151 (25) "Hazardous materials" means any material that has
152 been designated as hazardous under 49 U.S.C. §5103 and is
153 required to be placarded under subpart F of 49 C.F.R. Part
154 §172 or any quantity of a material listed as a select agent or
155 toxin in 42 C.F.R. Part §73.

156 (26) "Imminent Hazard" means existence of a condition
157 that presents a substantial likelihood that death, serious
158 illness, severe personal injury or a substantial endangerment
159 to health, property or the environment may occur before the
160 reasonably foreseeable completion date of a formal
161 proceeding begun to lessen the risk of that death, illness,
162 injury or endangerment.

163 (27) "Issuance of a license" means the completion of a
164 transaction signifying that the applicant has met all the
165 requirements incumbent in qualifying for, including, but not
166 limited to: the initial issuance of a driver's license, the
167 renewal of a driver's license, the issuance of a duplicate
168 license as a replacement to a lost or stolen driver's license,
169 the transfer of any level of driving privileges including the
170 privilege of operating a commercial motor vehicle from
171 another state or jurisdiction, the changing of driver's license
172 class, restrictions or endorsements or the change of any other
173 information pertaining to an applicant either appearing on the
174 face of a driver's license or within the driver record of the
175 licensee maintained by the division.

176 (28) "Motor vehicle" means every vehicle which is self-
177 propelled and every vehicle which is propelled by electric
178 power obtained from overhead trolley wires but not operated
179 upon rails.

180 (29) "Noncommercial motor vehicle" means a motor
181 vehicle or combination of motor vehicles not defined by the
182 term "commercial motor vehicle".

183 (30) "Out-of-service order" means a temporary
184 prohibition against driving a commercial motor vehicle as a
185 result of a determination by a law-enforcement officer, an
186 authorized enforcement officer of a federal, state, Canadian,
187 Mexican, county or local jurisdiction including any special
188 agent of the Federal Motor Carrier Safety Administration
189 pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or
190 compatible laws or the North American uniform out-of-
191 service criteria that an imminent hazard exists.

192 (31) "Violation of an out-of-service order" means:

193 (A) The operation of a commercial motor vehicle during
194 the period the driver was placed out-of-service; or

195 (B) The operation of a commercial motor vehicle by a
196 driver after the vehicle was placed out of service and before
197 the required repairs are made.

198 (32) "School bus" means a commercial motor vehicle
199 used to transport preprimary, primary or secondary school
200 students from home-to-school, from school-to-home, or to
201 and from school sponsored events. School bus does not
202 include a bus used as a common carrier.

203 (33) "Serious traffic violation" means conviction for any
204 of the following offenses when operating a commercial motor
205 vehicle:

(A) Excessive speeding involving any single offense for any speed of fifteen miles per hour or more above the posted limits;

(B) Reckless driving as defined in section three, article five, chapter seventeen-c of this code and careless or negligent driving, including, but not limited to, the offenses of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(C) Erratic or improper traffic lane changes including, but not limited to, passing a school bus when prohibited, improper lane changes and other passing violations;

(D) Following the vehicle ahead too closely;

(E) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(F) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession. However, any person who provides proof to the law-enforcement agency that issued the citation, by the date the person must appear in court or pay any fine for such violation, that the person held a valid commercial driver's license on the date the citation was issued, shall not be guilty of this offense;

(G) Driving a commercial motor vehicle without the proper class of commercial driver's license and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported;

(H) A violation of state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal traffic accident; or

(I) Any other serious violations determined by the United States Secretary of Transportation.

(J) Vehicle defects are excluded as serious traffic violations, except as to violations committed by a special permittee on the coal resource transportation road system.

(34) "State" means a state of the United States and the District of Columbia or a province or territory of Canada or a state of the United Mexican States.

(35) "State of Domicile" means the state where a person has his or her true, fixed and permanent home and principle residence and to which he or she has the intention of returning whenever absent in accordance with chapter seventeen-a, article three, section one-a.

(36) "Suspension, revocation or cancellation" of a driver's license, or a commercial driver's license means the privilege to operate any type of motor vehicle on the roads and highways of this state is withdrawn.

(37) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. These vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in 49 C. F. R. Part 171 (1998). However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

(38) "Transportation Security Administration" means the United States Department of Homeland Security Transportation Security Administration.

(39) "United States" means the fifty states and the District of Columbia.

(40) "Vehicle Group" means a class or type of vehicle with certain operating characteristics.

§17E-1-4. Limitation on number of driver's licenses.

No person who drives a commercial motor vehicle may have more than one driver's license at one time. The division shall require the surrender of any previously issued driver's license before issuing a renewed or duplicate driver's license with updated information.

§17E-1-6. Employer responsibilities.

(a) Each employer shall require the applicant to provide the information specified in section five of this article.

(b) No employer may knowingly allow, permit, require or authorize a driver to drive a commercial motor vehicle during any period in which the driver:

(1) Has a driver's license suspended, revoked or canceled by a state; has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle;

(2) Has more than one driver's license at one time;

(3) Or the commercial motor vehicle he or she is driving or the motor carrier operation is subject to an out-of-service order;

(4) Is in violation of federal, state or local law or regulation pertaining to railroad highway grade crossings; or

(5) Is in violation of any provision of 49 C.F.R., Part §382 related to controlled substances and alcohol use and testing.

(c) The division shall impose a civil penalty, in addition to any penalty required under the provisions of section twenty-five of this article, on any employer who knowingly allows, permits, requires or authorizes a driver to drive a commercial motor vehicle in violation of subdivision three or four of subsection (b) of this section.

(1) If the conviction is for a violation of subdivision three of subsection (b) of this section, the penalty is $2,750.

(2) If the conviction is for a violation of subdivision four of subsection (b) of this section, the penalty shall be no more than $25,000.

§17E-1-7. Commercial driver's license required; disqualification for driving without valid license.

(a) On or after the first day of April, one thousand nine hundred ninety-two, except when driving under a commercial driver's instruction permit accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds a commercial driver's license and applicable endorsements valid for the vehicle they are driving.

(b) No person may drive a commercial motor vehicle while their driving privilege is suspended, revoked, canceled, expired, subject to a disqualification or in violation of an out-of-service order.

(c) Drivers of a commercial motor vehicle shall have a commercial driver's license in their possession at all times while driving.

(d) The Commissioner shall suspend for a period of sixty days the driving privileges of any person who is convicted of operating a commercial motor vehicle:

(1) Without holding a valid commercial driver's license and the applicable endorsements valid for the vehicle he or she is driving in accordance with subsection (a) of this section, or

(2) For any conviction for operating a commercial motor vehicle while his or her privilege to operate a motor vehicle were suspended, revoked, canceled or while disqualified from operating a commercial motor vehicle in accordance with subsection (b) of this section.

(e) Any person not holding a commercial driver's license who is convicted of an offense that requires disqualification from operating a commercial motor vehicle shall also be disqualified from eligibility for a commercial driver's license for the same time periods as prescribed in federal law or rule or section thirteen of this article for commercial driver's license holders.

(f) The Commissioner shall suspend the driver's license or the privilege to drive in this state of any holder of a commercial driver's license or operator of a commercial motor vehicle upon receiving notice from another state or jurisdiction of failure to pay fines, costs, forfeitures or penalties imposed or failure to appear or failure to respond for any violation of a state or local law relating to motor vehicle traffic control in accordance with 49 C.F.R. §384.225 (2009). A suspension under this section will continue until the person provides proof of compliance from the court and pays the reinstatement fee provided in section nine, article three, chapter seventeen-b of this Code.

17E-1-12. Classifications, endorsements and restrictions.

(a) Commercial driver's licenses may be issued with the following classifications:

(1) *Class A combination vehicle.* -- Any combination of vehicles with a gross combined vehicle weight rating of twenty-six thousand one pounds or more, provided the gross vehicle weight rating of the vehicle being towed is in excess of ten thousand pounds.

(2) *Class B heavy straight vehicle.* -- Any single vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more and any vehicle towing a vehicle not in excess of ten thousand pounds.

(3) *Class C small vehicle.* -- Any single vehicle or combination vehicle that does not fall under either Class A or Class B but are:

(A) Vehicles designed to transport sixteen or more passengers, including the driver; and

(B) Vehicles used in the transportation of hazardous materials which requires the vehicle to be placarded under 49 C.F.R. Part §172, Subpart F (2004).

(4) Each applicant who desires to operate a vehicle in a classification different from the class in which the applicant is authorized is required to retake and pass all related tests except the following:

(A) A driver who has passed the knowledge and skills test for a combination vehicle in Class A may operate a heavy straight vehicle in Class B or a small vehicle in Class C provided he or she possesses the required endorsements; and

(B) A driver who has passed the knowledge and skills test for a vehicle in Class B may operate any small vehicle in

Class C provided he or she possesses the required endorsements.

(b) *Endorsements and restrictions.* -- The Commissioner upon issuing a commercial driver's license may impose endorsements and or restrictions determined by the Commissioner to be appropriate to assure the safe operation of a specific class, type or category of motor vehicle or a specifically equipped motor vehicle and to comply with 49 U.S.C., et seq., and 49 C.F.R. §383.93 (2004) including, but not limited to endorsements or restrictions to operate:

(1) Double or triple trailers which requires successful completion of a knowledge test;

(2) Passenger vehicles which requires successful completion of a knowledge and skills test;

(3) Tank vehicles which requires successful completion of a knowledge test;

(4) Vehicles used for the transportation of hazardous materials as defined in section three of this article which requires the completion of a knowledge test and a background security risk check in accordance with 49 C.F.R. §1572.5 (2004);

(5) School buses which requires successful completion of a knowledge and skills test unless the applicant meets the criteria for waiver of the skills test in accordance with 49 C.F.R. §383.123(b) (2004); or

(6) Vehicles equipped with air brakes which requires the completion of a skills test.

(c) *Applicant record check.* -- Before issuing a commercial driver's license, the Commissioner shall obtain

driving record information through the commercial driver's license information system, the national driver register and from each state in which the person has been licensed.

(d) *Notification of license issuance.* -- Within ten days after issuing a commercial driver's license, the Commissioner shall notify the commercial driver's license information system of that fact, providing all information required to ensure identification of the person.

(e) *Expiration of license.* --

(1) Every commercial driver's license issued to persons who have attained their twenty-first birthday expires on the applicant's birthday in those years in which the applicant's age is evenly divisible by five. Except as provided in subdivision two of this subsection, no commercial driver's license may be issued for less than three years nor more than seven years and the commercial driver's license shall be renewed by the applicant's birthday and is valid for a period of five years, expiring on the applicant's birthday and in a year in which the applicant's age is evenly divisible by five. No commercial driver's license with a hazardous materials endorsement may be issued for more than five years.

(2) Every commercial driver's license issued to persons who have not attained their twenty-first birthday expires thirty days after the applicant's birthday in the year in which the applicant attains the age of twenty-one years.

(3) Commercial driver's licenses held by any person in the Armed Forces which expire while that person is on active duty remains valid for thirty days from the date on which that person reestablishes residence in West Virginia.

(4) Any person applying to renew a commercial driver's license which has been expired for six months or more shall

91 follow the procedures for an initial issuance of a commercial
92 driver's license, including the testing provisions.

93 (f) When applying for renewal of a commercial driver's
94 license, the applicant shall complete the application form and
95 provide updated information and required certifications.

96 (g) If the applicant wishes to obtain or retain a hazardous
97 materials endorsement, the applicant shall comply with a
98 background check in accordance with 49 U.S.C. §5103a and
99 49 C.F.R. Part §1572 (2004) and subject to the following:

100 (1) The applicant is a citizen of the United States or a
101 lawful permanent resident of the United States;

102 (2) The applicant completes the application prescribed by
103 the division and submits fingerprints in a form and manner
104 prescribed by the division and the United States Department
105 of Homeland Security-Transportation Security
106 Administration at the time of application or at any other time
107 in accordance with 49 C.F.R. §1572.5 (2004);

108 (3) The applicant pays all fees prescribed by the
109 Transportation Security Administration or its agent and the
110 division;

111 (4) The applicant has not been adjudicated as a mental
112 defective or committed to a mental institution as prescribed
113 in 49 C.F.R. §1572.109 (2004);

114 (5) The applicant has not committed a disqualifying
115 criminal offense as described in 49 C.F.R. §1572.103
116 (2004);

117 (6) The applicant has passed the Transportation Security
118 Administration security threat assessment and the Division
119 has received a final notification of threat assessment or

notification of no security threat from the Transportation Security Administration: *Provided,* That any appeal of any decision, determination or ruling of the Federal Bureau of Investigation or the Transportation Security Agency shall be directed to that agency; and

(7) The applicant has successfully passed the written test for the issuance or renewal of a hazardous material endorsement.

§17E-1-13. Disqualification.

(a) A person may not operate a commercial motor vehicle if his or her privilege to operate a commercial motor vehicle is disqualified under the provisions of the Federal Motor Carrier Safety Improvement Act of 1999 (public law 106-159 §1748), 49 C.F.R. Part §383, Subpart D (2004) or in accordance with the provisions of this section.

(1) For the purposes of determining first and subsequent violations of the offenses listed in this section, each conviction for any offense listed in this section resulting from a separate incident includes convictions for offenses committed in a commercial motor vehicle or a noncommercial motor vehicle.

(2) Any person disqualified from operating a commercial motor vehicle for life under the provisions of this chapter for offenses described in subsection (b) subdivisions (4) and (6) of this section is eligible for reinstatement of privileges to operate a commercial motor vehicle after ten years and after completion of the safety and treatment program or other appropriate program prescribed by the division. Any person whose lifetime disqualification has been amended under the provisions of this subdivision and who is subsequently convicted of a disqualifying offense described in subsection (b), subdivisions (1) through (8) of this section is not eligible for reinstatement.

(3) Any disqualification imposed by this section is in addition to any action to suspend, revoke or cancel the driver's license or driving privileges if suspension, revocation or cancellation is required under another provision of this code.

(4) The provisions of this section apply to any person operating a commercial motor vehicle and to any person holding a commercial driver's license.

(b) Any person is disqualified from driving a commercial motor vehicle for the following offenses and time periods if convicted of:

(1) Driving a motor vehicle under the influence of alcohol or a controlled substance;

(A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one year.

(B) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of one year.

(C) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction or for refusal to submit to any designated secondary chemical test in a separate incident

of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for life.

(2) Driving a commercial motor vehicle while the person's alcohol concentration of the person's blood, breath or urine is four hundredths of one percent or more, by weight;

(A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, a driver is disqualified from operating a commercial motor vehicle for three years.

(C) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(3) Refusing to submit to any designated secondary chemical test required by the provisions of this code or the provisions of 49 C.F.R. §383.72 (2004);

87 (A) For the first conviction or refusal to submit to any
88 designated secondary chemical test while operating a
89 commercial motor vehicle, a driver is disqualified from
90 operating a commercial motor vehicle for one year.

91 (B) For the first conviction or refusal to submit to any
92 designated secondary chemical test while operating a
93 noncommercial motor vehicle, a commercial driver's license
94 holder is disqualified from operating a commercial motor
95 vehicle for one year.

96 (C) For the first conviction or for refusal to submit to any
97 designated secondary chemical test while operating a
98 commercial motor vehicle transporting hazardous materials
99 required to be placarded under 49 C.F.R. Part §172, Subpart
100 F (2004), a driver is disqualified from operating a
101 commercial motor vehicle for a period of three years.

102 (D) For a second conviction or refusal to submit to any
103 designated secondary chemical test in a separate incident of
104 any combination of offenses in this subsection while
105 operating a commercial motor vehicle, a driver is disqualified
106 from operating a commercial motor vehicle for life.

107 (E) For a second conviction or refusal to submit to any
108 designated secondary chemical test in a separate incident of
109 any combination of offenses in this subsection while
110 operating a noncommercial motor vehicle, a commercial
111 driver's license holder is disqualified from operating a
112 commercial motor vehicle for life.

113 (4) Leaving the scene of an accident;

114 (A) For the first conviction while operating a commercial
115 motor vehicle, a driver is disqualified from operating a
116 commercial motor vehicle for one year.

(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for life.

(5) Using a motor vehicle in the commission of any felony as defined in section three, article one of this chapter: *Provided,* That the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance falls under the provisions of subdivision eight of this subsection;

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for one year.

148 (C) For the first conviction while operating a commercial
149 motor vehicle transporting hazardous materials required to be
150 placarded under 49 C.F.R. Part §172, Subpart F,(2004), a
151 driver is disqualified from operating a commercial motor
152 vehicle for a period of three years.

153 (D) For a second conviction in a separate incident of any
154 combination of offenses in this subsection while operating a
155 commercial motor vehicle, a driver is disqualified from
156 operating a commercial motor vehicle for life.

157 (E) For a second conviction in a separate incident of any
158 combination of offenses in this subsection while operating a
159 noncommercial motor vehicle, a commercial motor vehicle
160 license holder is disqualified from operating a commercial
161 motor vehicle for life.

162 (6) Operating a commercial motor vehicle when, as a
163 result of prior violations committed operating a commercial
164 motor vehicle, the driver's privilege to operate a motor
165 vehicle has been suspended, revoked or canceled, or the
166 driver's privilege to operate a commercial motor vehicle has
167 been disqualified.

168 (A) For the first conviction while operating a commercial
169 motor vehicle, a driver is disqualified from operating a
170 commercial motor vehicle for one year.

171 (B) For the first conviction while operating a commercial
172 motor vehicle transporting hazardous materials required to be
173 placarded under 49 C.F.R. Part §172, Subpart F,(2004), a
174 driver is disqualified from operating a commercial motor
175 vehicle for a period of three years.

176 (C) For a second conviction in a separate incident of any
177 combination of offenses in this subsection while operating a
178 commercial motor vehicle, a driver is disqualified from
179 operating a commercial motor vehicle for life.

(7) Causing a fatality through the negligent operation of a commercial motor vehicle, including, but not limited to, the crimes of motor vehicle manslaughter, homicide and negligent homicide as defined in section five, article three, chapter seventeen-b, and section one, article five, chapter seventeen-c of this code;

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F,(2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(C) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(8) Using a motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance, a driver is disqualified from operating a commercial motor vehicle for life and shall not be eligible for reinstatement.

(c) Any person is disqualified from driving a commercial motor vehicle if convicted of;

(1) Speeding excessively involving any speed of fifteen miles per hour or more above the posted speed limit;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a

three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(2) Reckless driving as defined in section three, article five, chapter seventeen-c of this code, careless, or negligent driving including, but not limited to, the offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a

three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(3) Making improper or erratic traffic lane changes;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(4) Following the vehicle ahead too closely;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle,

307 if the conviction results in the suspension, revocation, or
308 cancellation of the commercial driver's license holder's
309 privilege to operate any motor vehicle, a commercial driver's
310 license holder is disqualified from operating a commercial
311 motor vehicle for a period of sixty days.

312 (C) For a third or subsequent conviction of any
313 combination of the offenses in this subsection in a separate
314 incident in a three-year period while operating a commercial
315 motor vehicle, a driver is disqualified from operating a
316 commercial motor vehicle for a period of one hundred twenty
317 days.

318 (D) For a third or subsequent conviction of any
319 combination of offenses in this subsection in a separate
320 incident within a three-year period while operating a
321 noncommercial motor vehicle, if the conviction results in the
322 suspension, revocation or cancellation of the commercial
323 driver's license holder's privilege to operate any motor
324 vehicle, a commercial driver's license holder is disqualified
325 from operating a commercial motor vehicle for a period of
326 one hundred twenty days.

327 (5) Violating any law relating to traffic control arising in
328 connection with a fatal accident, other than a parking
329 violation;

330 (A) For a second conviction of any combination of
331 offenses in this subsection in a separate incident within a
332 three-year period while operating a commercial motor
333 vehicle, a driver is disqualified from operating a commercial
334 motor vehicle for a period of sixty days.

335 (B) For a second conviction of any combination of
336 offenses in this section in a separate incident within a three-
337 year period while operating a noncommercial motor vehicle,

if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(6) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a

commercial motor vehicle for a period of one hundred twenty days.

(7) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession, provided that any person who provides proof of possession of a commercial driver's license to the enforcement agency that issued the citation, by the court appearance or fine payment deadline shall not be guilty of this offense;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(8) Driving a commercial motor vehicle without the proper class of commercial driver's license or the proper endorsements for the specific vehicle group being operated, or for the passengers or type of cargo being transported;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(d) Any person convicted of operating a commercial motor vehicle in violation of any federal, state or local law or ordinance pertaining to any of the railroad crossing violations described in subdivisions one through six of this subsection is disqualified from operating a commercial motor vehicle for the period of time specified;

(1) Failing to slow down and check that the tracks are clear of an approaching train, if not required to stop in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(2) Failing to stop before reaching the crossing, if the tracks are not clear, if not required to stop, in accordance with the provisions of section one, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(3) Failing to stop before driving onto the crossing, if required to stop in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, the driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(4) Failing to have sufficient space to drive completely through the crossing without stopping in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(5) Failing to obey a traffic control device or the directions of an enforcement official at the crossing in accordance with the provisions of section one, article twelve, chapter seventeen-c of this code; or

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(6) Failing to negotiate a crossing because of insufficient undercarriage clearance in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code.

488 (A) For the first conviction, a driver is disqualified from
489 operating a commercial motor vehicle for a period of sixty
490 days;

491 (B) For a second conviction of any combination of
492 offenses in this subsection within a three-year period, a driver
493 is disqualified from operating a commercial motor vehicle for
494 one hundred twenty days; and

495 (C) For a third or subsequent conviction of any
496 combination of offenses in this subsection within a three-year
497 period, a driver is disqualified from operating a commercial
498 motor vehicle for one year.

499 (e) Any person who is convicted of violating an out-of-
500 service order while operating a commercial motor vehicle
501 is disqualified for the following periods of time if:

502 (1) Convicted of violating a driver or vehicle out-of-
503 service order while transporting nonhazardous materials;

504 (A) For the first conviction of violating an out-of-service
505 order while operating a commercial motor vehicle, a driver
506 is disqualified from operating a commercial motor vehicle for
507 one hundred eighty days.

508 (B) For a second conviction in a separate incident within
509 a ten-year period for violating an out of service order while
510 operating a commercial motor vehicle, a driver is disqualified
511 from operating a commercial motor vehicle for two years.

512 (C) For a third or subsequent conviction in a separate
513 incident within a ten-year period for violating an out-of-
514 service order while operating a commercial motor vehicle, a
515 driver is disqualified from operating a commercial motor
516 vehicle for three years.

517 (2) Convicted of violating a driver or vehicle out-of-
518 service order while transporting hazardous materials required
519 to be placarded under 49 C.F.R. Part §172, Subpart F (2004),
520 or while operating a vehicle designed to transport sixteen or
521 more passengers including the driver;

522 (A) For the first conviction of violating an out of service
523 order while operating a commercial motor vehicle, a driver
524 is disqualified from operating a commercial motor vehicle for
525 one hundred eighty days.

526 (B) For a second conviction in a separate incident within
527 a ten-year period for violating an out-of-service order while
528 operating a commercial motor vehicle, a driver is disqualified
529 from operating a commercial motor vehicle for three years.

530 (C) For a third or subsequent conviction in a separate
531 incident within a ten-year period for violating an out-of-
532 service order while operating a commercial motor vehicle, a
533 driver is disqualified from operating a commercial motor
534 vehicle for three years.

535 (f) After disqualifying, suspending, revoking or canceling
536 a commercial driver's license, the division shall update its
537 records to reflect that action within ten days.

538 (g) In accordance with the provisions of 49 U.S.C.
539 §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), and
540 notwithstanding the provisions of section twenty-five, article
541 eleven, chapter sixty-one of this code, no record of
542 conviction, revocation, suspension or disqualification related
543 to any type of motor vehicle traffic control offense, other
544 than a parking violation, of a commercial driver's license
545 holder or a person operating a commercial motor vehicle may
546 be masked, expunged, deferred, or be subject to any
547 diversion program.

548 (h) Notwithstanding any provision in this code to the
549 contrary, the division may not issue any temporary driving
550 permit, work-only driving permit or hardship license or
551 permit that authorizes a person to operate a commercial
552 motor vehicle when his or her privilege to operate any motor
553 vehicle has been revoked, suspended, disqualified or
554 otherwise canceled for any reason.

555 (i) In accordance with the provisions of 49 C.F.R.
556 §391.15(b), a driver is disqualified from operating a
557 commercial motor vehicle for the duration of any suspension,
558 revocation or cancellation of his or her driver's license or
559 privilege to operate a motor vehicle by this state or by any
560 other state or jurisdiction until the driver complies with the
561 terms and conditions for reinstatement set by this state or by
562 another state or jurisdiction.

563 (j) In accordance with the provisions of 49 C.F.R. 353.52
564 (2006), the division shall immediately disqualify a driver's
565 privilege to operate a commercial motor vehicle upon a
566 notice from the Assistant Administrator of the Federal Motor
567 Carrier Safety Administration that the driver poses an
568 imminent hazard. Any disqualification period imposed under
569 the provisions of this subsection shall be served concurrently
570 with any other period of disqualification if applicable.

571 (k) In accordance with the provisions of 49 C.F.R.
572 1572.11(a), the division shall immediately disqualify a
573 driver's privilege to operate a commercial motor vehicle if
574 the driver fails to surrender his or her driver's license with a
575 hazardous material endorsement to the division upon proper
576 notice by the division to the driver that the division received
577 notice from the Department of Homeland Security
578 Transportation Security Administration of an initial
579 determination of threat assessment and immediate revocation
580 that the driver does not meet the standards for security threat

assessment provided in 49 C.F.R. 1572.5. The disqualification remains in effect until the driver either surrenders the driver's license to the division or provides the division with an affidavit attesting to the fact that the driver has lost or is otherwise unable to surrender the license.

§17E-1-25. Penalties.

(a) It is a misdemeanor for any person to violate any of the provisions of this chapter unless the violation is by this chapter or other law of this state, declared to be a felony.

(b) Unless another penalty is provided in this chapter or by the laws of this state, every person convicted of a misdemeanor for the violation of any provisions of this chapter shall be fined not less than $100 nor more than $1,000, or confined for not more than six months in jail, or both fined and confined, except that for the second violation of section seven of this article and, upon conviction thereof, the offender shall be fined not less than $500 nor more than $2,000 or confined for not less than six months nor more than nine months in jail, or both fined and confined. For the third or any subsequent conviction for violation of section seven of this article, upon conviction thereof, the offender shall be fined not less than one $1,000 nor more than $2,500, or confined for not less than nine months nor more than one year in the county jail, or both fined and confined.

(c) The division shall impose a civil penalty, in addition to any penalty required under the provisions of this section on any driver who is convicted of violating subsection (e), section thirteen of this article. The penalty shall be $2,500 for the first offense and $5,000 for each subsequent offense.

CHAPTER 56

(H. B. 4026 - By Delegates M. Poling, Paxton, Williams, Beach, Louisos, Smith, D. Walker, Andes, Canterbury, Ireland and Romine)

[Passed March 12, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2010.]

AN ACT to repeal §18-23-1, §18-23-2, §18-23-3, §18-23-4, §18-23-5, §18-23-13, §18-23-14, §18-23-15, §18-23-18, §18-23-22, §18-23-23 and §18-23-24 of the Code of West Virginia, 1931, as amended; to repeal §18B-14-1, §18B-14-2, §18B-14-3, §18B-14-4, §18B-14-5, §18B-14-5a, §18B-14-6 and §18B-14-7 of said code; to amend and reenact §5-6-4a of said code; to amend and reenact §18B-1B-4 of said code; to amend and reenact §18B-2A-4 of said code; to amend and reenact §18B-2B-6 of said code; to amend and reenact §18B-4-6 of said code; to amend and reenact §18B-5-4 of said code; to amend and reenact §18B-10-8 of said code; and to amend said code by adding thereto a new article, designated §18B-19-1, §18B-19-2, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-8, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-12, §18B-19-13, §18B-19-14, §18B-19-15, §18B-19-16, §18B-19-17 and §18B-19-18, all relating to higher education capital facilities generally; repealing certain specific duties of governing boards of higher education institutions; eliminating condemnation rights of those boards; eliminating execution of contracts and deeds by those boards; eliminating certain obligation concerning capital construction and repair duties; eliminating the authority of certain state institutions from

selling certain properties and lease-back provisions; replacing those duties that are being repealed with similar responsibilities; setting forth certain specific responsibilities of the Higher Education Policy Commission and the Council for Community and Technical College Education; reviewing tuition and fee increases; reviewing and approving capital project planning, financing, management and maintenance; permitting the acquisition, sale, transfer, exchange, lease, conveyance and condemnation of real property; permitting the construction and operation of capital facilities; permitting the collection and use of certain capital fees; establishing in the State Treasury a capital maintenance fund for each state institution of higher education; setting forth legislative findings and intent; defining terms; requiring rulemaking; providing for system facilities institution and facilities planning; designating Marshall Community and Technical College as Mountwest Community and Technical College; making certain technical corrections; and deleting certain obsolete language.

Be it enacted by the Legislature of West Virginia:

That §18-23-1, §18-23-2, §18-23-3, §18-23-4, §18-23-5, §18-23-13, §18-23-14, §18-23-15, §18-23-18, §18-23-22, §18-23-23 and §18-23-24 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-14-1, §18B-14-2, §18B-14-3, §18B-14-4, §18B-14-5, §18B-14-5a, §18B-14-6 and §18B-14-7 of said code be repealed; that §5-6-4a of said code be amended and reenacted; that §18B-1B-4 of said code be amended and reenacted; that §18B-2A-4 of said code be amended and reenacted; that §18B-2B-6 of said code be amended and reenacted; that §18B-4-6 of said code be amended and reenacted; that §18B-5-4 of said code be amended and reenacted; that §18B-10-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §18B-19-1, §18B-19-2, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-8, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-12, §18B-19-13, §18B-19-14, §18B-19-15, §18B-19-16, §18B-19-17 and §18B-19-18, all to read as follows:

Chapter
5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.
18B. Higher Education.

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

ARTICLE 6. STATE BUILDINGS.

§5-6-4a. Review of real property contracts and agreements; master plan for office space.

(a) The Secretary of Administration shall provide to the Joint Committee on Government and Finance a copy of a contract or agreement for real property exceeding $1 million and a report setting forth a detailed summary of the terms of the contract or agreement, including the name of the owner of the property and the agent involved in the sale, at least thirty days prior to any sale, exchange, transfer, purchase, lease purchase, lease or rental of real property, any refundings of lease purchases, leases or rental agreements, any construction of new buildings and any other acquisition or lease of buildings, office space or grounds by any state agency, but excepting the transactions of the Higher Education Policy Commission, Council for Community and Technical College Education, state institutions of higher education and the Division of Highways for state road purposes pursuant to article two-a, chapter seventeen of this code: *Provided,* That a contract or agreement for the lease purchase, lease or rental of real property by any state agency, where the costs of real property acquisition and improvements are to be financed, in whole or in part, with bond proceeds, may contain a preliminary schedule of rents and leases for purposes of review by the committee.

22 (b) For renewals of contracts or agreements required to
23 be reported by this section, the Secretary of Administration
24 shall provide a report setting forth a detailed summary of the
25 terms of the contract or agreement, including the name of the
26 owner of the property.

27 (c) Within thirty days after receipt of the contract,
28 agreement or report, the committee shall meet and review the
29 contract, agreement or report.

CHAPTER 18B. HIGHER EDUCATION.

Article

1B. Higher Education Policy Commission.
2A. Board of Governors.
2B. West Virginia Council for Community and Technical College Education.
4. General Administration.
5. Higher Education Budgets and Expenditures.
10. Fees and Other Money Collected at State Institutions of Higher Education.
19. Capital Projects and Facilities Needs.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

*§18B-1B-4. Powers and duties of Higher Education Policy Commission.

1 (a) The primary responsibility of the commission is to
2 develop, establish and implement policy that will achieve the
3 goals and objectives found in section one-a, article one and
4 article one-d of this chapter. The commission shall exercise
5 its authority and carry out its responsibilities in a manner that
6 is consistent and not in conflict with the powers and duties
7 assigned by law to the West Virginia Council for Community
8 and Technical College Education and the powers and duties
9 assigned to the governing boards of Marshall University and
10 West Virginia University, respectively. To that end, the

*CLERK'S NOTE: This section was also amended by S. B. 611 (Chapter 68) which passed subsequent to this act.

11 commission, has the following powers and duties relating to
12 the institutions under its jurisdiction:

13 (1) Develop, oversee and advance the public policy
14 agenda pursuant to section one, article one-a of this chapter
15 to address major challenges facing the state, including, but
16 not limited to, the goals and objectives found in section one-
17 a, article one of this chapter and article one-d of this chapter
18 and including specifically those goals and objectives
19 pertaining to the compacts created pursuant to section seven,
20 article one-d of this chapter and to develop and implement
21 the master plan described in section five, article one-d of this
22 chapter for the purpose of accomplishing the mandates of this
23 section;

24 (2) Develop, oversee and advance the promulgation and
25 implementation of a financing rule for state institutions of
26 higher education under its jurisdiction. The rule shall meet
27 the following criteria:

28 (A) Provide for an adequate level of educational and
29 general funding for institutions pursuant to section five,
30 article one-a of this chapter;

31 (B) Serve to maintain institutional assets, including, but
32 not limited to, human and physical resources and eliminating
33 deferred maintenance;

34 (C) Invest and provide incentives for achieving the
35 priority goals in the public policy agenda, including, but not
36 limited to, those found in section one-a, article one of this
37 chapter; and

38 (D) Evaluate institutions' requests for tuition and fee
39 increases except Marshall University and West Virginia
40 University which are subject to the provisions of section one,
41 article ten of this chapter;

(3) In collaboration with the council, create a policy leadership structure capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission and council shall seek input from the Legislature and the Governor and specifically from the State Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding the higher education institutions and the higher education systems as a whole accountable for accomplishing their missions and implementing the provisions of the compacts;

(4) Develop and adopt each institutional compact;

(5) Review and adopt the annual updates of the institutional compacts;

(6) Serve as the accountability point to state policymakers:

(A) The Governor for implementation of the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the

Legislative Oversight Commission on Education Accountability;

(7) Jointly with the council, promulgate legislative rules pursuant to article three-a, chapter twenty-nine-a of this code to fulfill the purposes of section five, article one-a of this chapter;

(8) Establish and implement a peer group for each institution as described in section three, article one-a of this chapter;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to section seven, article one-d of this chapter;

(10) Report to the Legislature and to the Legislative Oversight Commission on Education Accountability annually during the January interim meeting period on a date and at a time and location to be determined by the President of the Senate and the Speaker of the House of Delegates. The report shall address at least the following:

(A) The performance of its system of higher education during the previous fiscal year, including, but not limited to, progress in meeting the goals, objectives, and priorities set forth in article one and article one-d of this chapter and in the commission's master plan and institutional compacts;

(B) The commission's priorities for new operating and capital investments and the justification for the priority;

(C) Recommendations of the commission for statutory changes necessary or expedient to achieve state goals and objectives;

(11) Establish a formal process for identifying capital investment needs and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to article nineteen of this chapter;

(12) Develop standards and evaluate governing board requests for capital project financing in accordance with article nineteen of this chapter;

(13) Ensure that governing boards manage capital projects and facilities needs effectively, including review and approval or disapproval of capital projects, in accordance with article nineteen of this chapter;

(14) Acquire legal services that are considered necessary, including representation of the commission, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(15) Employ a Chancellor for Higher Education pursuant to section five of this article;

(16) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission and the council, in accordance with article four of this chapter;

(17) Provide suitable offices in Charleston for the chancellor, vice chancellors and other staff;

(18) Advise and consent in the appointment of the presidents of the institutions of higher education under its

132 jurisdiction pursuant to section six of this article. The role of
133 the commission in approving an institutional president is to
134 assure through personal interview that the person selected
135 understands and is committed to achieving the goals and
136 objectives as set forth in the institutional compact and in
137 section one-a, article one of this chapter;

138 (19) Approve the total compensation package from all
139 sources for presidents of institutions under its jurisdiction, as
140 proposed by the governing boards. The governing boards
141 shall obtain approval from the commission of the total
142 compensation package both when institutional presidents are
143 employed initially and afterward when any change is made in
144 the amount of the total compensation package;

145 (20) Establish and implement the policy of the state to
146 assure that parents and students have sufficient information
147 at the earliest possible age on which to base academic
148 decisions about what is required for students to be successful
149 in college, other post-secondary education and careers
150 related, as far as possible, to results from current assessment
151 tools in use in West Virginia;

152 (21) Approve and implement a uniform standard jointly
153 with the council to determine which students shall be placed
154 in remedial or developmental courses. The standard shall be
155 aligned with college admission tests and assessment tools
156 used in West Virginia and shall be applied uniformly by the
157 governing boards throughout the public higher education
158 system. The chancellors shall develop a clear, concise
159 explanation of the standard which they shall communicate to
160 the State Board of Education and the State Superintendent of
161 Schools;

162 (22) Jointly with the council, develop and implement an
163 oversight plan to manage systemwide technology by:

(A) Expanding distance learning and technology networks to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort; and

(B) Increasing the delivery of instruction to nontraditional students, to provide services to business and industry and increase the management capabilities of the higher education system;

(C) Notwithstanding any other provision of law or this code to the contrary, the council, commission and state institutions of higher education are not subject to the jurisdiction of the Chief Technology Officer for any purpose;

(23) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a bachelor's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state community and technical college with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(24) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(25) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a master's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(26) Establish and implement policies and programs, in cooperation with the council and the institutions of higher education, through which a student who has gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or Internet-based education programs, may demonstrate by competency-based assessment that he or she has the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate's degree or a bachelor's degree at a state institution of higher education;

(27) Seek out and attend regional, national and international meetings and forums on education and workforce development-related topics, as in the commission's discretion is critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals and objectives pursuant to section one-a, article one of this chapter and article one-d of this chapter;

(28) Promulgate and implement a rule for higher education governing boards and institutions to follow when considering capital projects pursuant to article nineteen of this chapter;

(29) Consider and submit to the appropriate agencies of the executive and legislative branches of state government an appropriation request that reflects recommended appropriations for the commission and the institutions under its jurisdiction. The commission shall submit as part of its appropriation request the separate recommended appropriation request received from the council, both for the council and the institutions under the council's jurisdiction. The commission annually shall submit the proposed institutional allocations based on each institution's progress toward meeting the goals of its institutional compact;

(30) The commission may assess institutions under its jurisdiction, including the state institutions of higher education known as Marshall University and West Virginia University, for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives related to the goals set forth for the provision of public higher education in the state;

(31) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to institutions of higher education for qualifying noncapital expenditures incurred in providing services to students with physical, learning or severe sensory disabilities;

(32) Make appointments to boards and commissions where this code requires appointments from the State College System Board of Directors or the University of West Virginia System Board of Trustees which were abolished effective June 30, 2000, except in those cases where the required appointment has a specific and direct connection to the provision of community and technical college education, the appointment shall be made by the council. Notwithstanding any provisions of this code to the contrary, the commission or the council may appoint one of its own members or any other citizen of the state as its designee. The commission and council shall appoint the total number of persons in the aggregate required to be appointed by these previous governing boards;

(33) Pursuant to article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules necessary or expedient to fulfill the purposes of this chapter. The commission and the council shall promulgate a uniform joint legislative rule for the purpose of standardizing, as much as possible, the administration of personnel matters among the state institutions of higher education;

266 (34) Determine when a joint rule among the governing
267 boards of the institutions under its jurisdiction is necessary or
268 required by law and, in those instances, in consultation with
269 the governing boards of all the institutions under its
270 jurisdiction, promulgate the joint rule;

271 (35) Promulgate and implement a rule jointly with the
272 council whereby course credit earned at a community and
273 technical college transfers for program credit at any other
274 state institution of higher education and is not limited to
275 fulfilling a general education requirement;

276 (36) By November 1, 2010, promulgate a rule pursuant
277 to section one, article ten of this chapter, establishing tuition
278 and fee policy for all institutions of higher education under
279 the jurisdiction of the commission, including Marshall
280 University and West Virginia University. The rule shall
281 include, but is not limited to, the following:

282 (A) Comparisons with peer institutions;

283 (B) Differences among institutional missions;

284 (C) Strategies for promoting student access;

285 (D) Consideration of charges to out-of-state students; and

286 (E) Such other policies as the commission and council
287 consider appropriate;

288 (37) Implement general disease awareness initiatives to
289 educate parents and students, particularly dormitory
290 residents, about meningococcal meningitis; the potentially
291 life-threatening dangers of contracting the infection;
292 behaviors and activities that can increase risks; measures that
293 can be taken to prevent contact or infection; and potential
294 benefits of vaccination. The commission shall encourage

295 institutions that provide medical care to students to provide
296 access to the vaccine for those who wish to receive it; and

297 (38) Notwithstanding any other provision of this code to
298 the contrary, sell, lease, convey or otherwise dispose of all or
299 part of any real property that it owns, in accordance with
300 article nineteen of this chapter.

301 (b) In addition to the powers and duties listed in
302 subsection (a) of this section, the commission has the
303 following general powers and duties related to its role in
304 developing, articulating and overseeing the implementation
305 of the public policy agenda:

306 (1) Planning and policy leadership, including a distinct
307 and visible role in setting the state's policy agenda and in
308 serving as an agent of change;

309 (2) Policy analysis and research focused on issues
310 affecting the system as a whole or a geographical region of
311 the system;

312 (3) Development and implementation of institutional
313 mission definitions, including use of incentive funds to
314 influence institutional behavior in ways that are consistent
315 with public priorities;

316 (4) Academic program review and approval for
317 institutions under its jurisdiction, including the use of
318 institutional missions as a template to judge the
319 appropriateness of both new and existing programs and the
320 authority to implement needed changes. The commission's
321 authority to review and approve academic programs for either
322 the state institution of higher education known as Marshall
323 University or West Virginia University is limited to programs
324 that are proposed to be offered at a new location not presently
325 served by that institution;

(5) Distribution of funds appropriated to the commission, including incentive and performance-based funding;

(6) Administration of state and federal student aid programs under the supervision of the Vice Chancellor for Administration, including promulgation of any rules necessary to administer those programs;

(7) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(8) Developing, establishing and implementing information, assessment and accountability systems, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(9) Jointly with the council, promulgating and implementing rules for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state pursuant to the findings and policy recommendations required by section eleven of this article;

(10) Developing, implementing and overseeing statewide and regional projects and initiatives related to providing post-secondary education at the baccalaureate level and above such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

(11) Quality assurance that intersects with all other duties of the commission particularly in the areas of research, data collection and analysis, planning, policy analysis, program review and approval, budgeting and information and accountability systems.

(c) In addition to the powers and duties provided in subsections (a) and (b) of this section and any other powers and duties as may be assigned to it by law, the commission has any other powers and duties necessary or expedient to accomplish the purposes of this article.

(d) The commission may withdraw specific powers of a governing board of an institution under its jurisdiction for a period not to exceed two years, if the commission makes a determination that any of the following conditions exist:

(1) The governing board has failed for two consecutive years to develop or implement an institutional compact as required in article one-d of this chapter;

(2) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the board of governors according to state law; or

(3) Other circumstances which, in the view of the commission, severely limit the capacity of the board of governors to carry out its duties and responsibilities.

Specific powers of a governing board may not be withdrawn for a period exceeding two years. During that time the commission may take all steps necessary to restore sound, stable and responsible institutional governance.

ARTICLE 2A. BOARDS OF GOVERNORS.

§18B-2A-4. Powers and duties of governing boards generally.

Each governing board separately has the following powers and duties:

(a) Determine, control, supervise and manage the financial, business and education policies and affairs of the state institution of higher education under its jurisdiction;

(b) Develop a master plan for the institution under its jurisdiction.

(1) The ultimate responsibility for developing and updating each master plan at the institutional level resides with the board of governors, but the ultimate responsibility for approving the final version of each institutional master plan, including periodic updates, resides with the commission or council, as appropriate.

(2) Each institutional master plan shall include, but not be limited to, the following:

(A) A detailed demonstration of how the institutional master plan will be used to meet the goals and objectives of the institutional compact;

(B) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in a plan to assure that the needs of the institution's area of responsibility for a quality system of higher education are addressed;

(C) Documentation showing how the governing board involved the commission or council, as appropriate, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

(3) The plan shall be established for periods of not fewer than three nor more than five years and shall be revised periodically as necessary, including adding or deleting degree

33 programs as the governing board in its discretion determines
34 is necessary;

35 (c) Develop a ten-year campus development plan in
36 accordance with article nineteen of this chapter;

37 (d) Prescribe for the institution, under its jurisdiction, in
38 accordance with its master plan and compact, specific
39 functions and responsibilities to achieve the goals, objectives
40 and priorities established in articles one and one-d of this
41 chapter to meet the higher education needs of its area of
42 responsibility and to avoid unnecessary duplication;

43 (e) Direct the preparation of an appropriation request for
44 the institution under its jurisdiction, which relates directly to
45 missions, goals and projections as found in the institutional
46 master plan and the institutional compact;

47 (f) Consider, revise and submit to the commission or
48 council, as appropriate, an appropriation request on behalf of
49 the institution under its jurisdiction;

50 (g) Review, at least every five years, all academic
51 programs offered at the institution under its jurisdiction. The
52 review shall address the viability, adequacy and necessity of
53 the programs in relation to established state goals, objectives
54 and priorities, the institutional master plan, the institutional
55 compact and the education and workforce needs of its
56 responsibility district. As a part of the review, each
57 governing board shall require the institution under its
58 jurisdiction to conduct periodic studies of its graduates and
59 their employers to determine placement patterns and the
60 effectiveness of the education experience. Where
61 appropriate, these studies should coincide with the studies
62 required of many academic disciplines by their accrediting
63 bodies;

(h) Ensure that the sequence and availability of academic programs and courses offered by the institution under its jurisdiction is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion. Each governing board is responsible to see that the needs of nontraditional college-age students are appropriately addressed and, to the extent it is possible for the individual governing board to control, to assure core course work completed at the institution is transferable to any other state institution of higher education for credit with the grade earned;

(i) Subject to article one-b of this chapter, approve the teacher education programs offered in the institution under its control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the commission may select and use one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation;

(j) Involve faculty, students and classified employees in institutional-level planning and decisionmaking when those groups are affected;

(k) Subject to the provisions of federal law and pursuant to articles seven, eight and nine of this chapter and to rules adopted by the commission and the council, administer a system for the management of personnel matters, including, but not limited to, personnel classification, compensation and discipline for employees at the institution under its jurisdiction;

(l) Administer a system for hearing employee grievances and appeals. Notwithstanding any other provision of this code to the contrary, the procedure established in article two, chapter six-c of this code is the exclusive mechanism for hearing prospective employee grievances and appeals;

(m) Solicit and use or expend voluntary support, including financial contributions and support services, for the institution under its jurisdiction;

(n) Appoint a president for the institution under its jurisdiction subject to section six, article one-b of this chapter;

(o) Conduct written performance evaluations of the president pursuant to section six, article one-b of this chapter;

(p) Employ all faculty and staff at the institution under its jurisdiction. The employees operate under the supervision of the president, but are employees of the governing board;

(q) Submit to the commission or council, as appropriate, any data or reports requested by the commission or council, as appropriate, within the time frame set by the commission or council;

(r) Enter into contracts or consortium agreements with the public schools, private schools or private industry to provide technical, vocational, college preparatory, remedial and customized training courses at locations either on campuses of the state institutions of higher education or at off-campus locations in the institution's responsibility district. To accomplish this goal, the boards may share resources among the various groups in the community;

(s) Provide and transfer funding and property to certain corporations pursuant to section ten, article twelve of this chapter;

(t) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of the institution to the president in any case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious manner and to

meet the requirements of its master plan and compact. If a governing board elects to delegate any of its power and control under this subsection, it shall enter the delegation in the minutes of the meeting when the decision was made and shall notify the commission or council, as appropriate. Any delegation of power and control may be rescinded by the appropriate governing board, the commission or council, as appropriate, at any time, in whole or in part, except that the commission may not revoke delegations of authority made by the governing boards of Marshall University or West Virginia University as they relate to the state institutions of higher education known as Marshall University and West Virginia University;

(u) Unless changed by the commission or the council, as appropriate, continue to abide by existing rules setting forth standards for acceptance of advanced placement credit for the institution under its jurisdiction. Individual departments at a state institution of higher education may, upon approval of the institutional faculty senate, require higher scores on the advanced placement test than scores designated by the governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department;

(v) Consult, cooperate and work with the State Treasurer and the State Auditor to update as necessary and maintain an efficient and cost-effective system for the financial management and expenditure of appropriated and nonappropriated revenue at the institution under its jurisdiction that ensures that properly submitted requests for payment be paid on or before the due date but, in any event, within fifteen days of receipt in the State Auditor's office;

(w) In consultation with the appropriate chancellor and the Secretary of the Department of Administration, develop, update as necessary and maintain a plan to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions and transfers at the

institution under its jurisdiction. Each personnel transaction shall be accompanied by the appropriate standardized system or forms, which shall be submitted to the respective governing board and the Department of Finance and Administration;

(x) Notwithstanding any other provision of this code to the contrary, transfer funds from any account specifically appropriated for its use to any corresponding line item in a general revenue account at any agency or institution under its jurisdiction as long as the transferred funds are used for the purposes appropriated;

(y) Transfer funds from appropriated special revenue accounts for capital improvements under its jurisdiction to special revenue accounts at agencies or institutions under its jurisdiction as long as the transferred funds are used for the purposes appropriated in accordance with article nineteen of this chapter;

(z) Notwithstanding any other provision of this code to the contrary, acquire legal services that are necessary, including representation of the governing board, its institution, employees and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing board may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law; and

(aa) Contract and pay for disability insurance for a class or classes of employees at a state institution of higher education under its jurisdiction.

ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.

***§18B-2B-6. Powers and duties of the council.**

1 (a) The council is the sole agency responsible for
2 administration of vocational-technical-occupational
3 education and community and technical college education in
4 the state. The council has jurisdiction and authority over the
5 community and technical colleges and the statewide network
6 of independently accredited community and technical
7 colleges as a whole, including community and technical
8 college education programs as defined in section two, article
9 one of this chapter.

10 (b) The council shall propose rules pursuant to section six,
11 article one of this chapter and article three-a, chapter twenty-
12 nine-a of this code to implement this section and applicable
13 provisions of article one-d of this chapter. To implement
14 article one-d of this chapter relevant to community and
15 technical colleges, the council may propose rules jointly with
16 the commission or separately and may choose to address all
17 components of the accountability system in a single rule or
18 may propose additional rules to cover specific components.

19 (c) The council has the following powers and duties
20 relating to the authority established in subsection (a) of this
21 section:

22 (1) Develop, oversee and advance the public policy
23 agenda for community and technical college education for the
24 purpose of accomplishing the mandates of this section,
25 including, but not limited to, the following:

26 (A) Achieving the goals and objectives established in
27 articles one and one-d of this chapter;

***CLERK'S NOTE:** This section was also amended by S. B. 611 (Chapter 68) which passed subsequent to this act.

28 (B) Addressing the goals and objectives contained in the
29 institutional compacts created pursuant to section seven,
30 article one-d of this chapter; and

31 (C) Developing and implementing the master plan
32 described in section five, article one-d of this chapter;

33 (2) Propose a legislative rule pursuant to subsection (b)
34 of this section and article three-a, chapter twenty-nine-a of
35 this code to develop and implement a financing policy for
36 community and technical college education in West Virginia.
37 The rule shall meet the following criteria:

38 (A) Provide for an adequate level of educational and
39 general funding for institutions pursuant to section five,
40 article one-a of this chapter;

41 (B) Serve to maintain institutional assets, including, but
42 not limited to, human and physical resources and deferred
43 maintenance;

44 (C) Establish a plan for strategic funding to strengthen
45 capacity for support of community and technical college
46 education;

47 (D) Establish a plan that measures progress and provides
48 performance-based funding to institutions which make
49 significant progress in the following specific areas:

50 (i) Achieving the objectives and priorities established in
51 article one-d of this chapter;

52 (ii) Serving targeted populations, especially working age
53 adults twenty-five years of age and over;

54 (iii) Providing access to high-cost, high-demand technical
55 programs in every region of the state;

(iv) Increasing the percentage of functionally literate adults in every region of the state; and

(v) Providing high-quality community and technical college education services to residents of every region of the state; and

(E) Evaluate institutions' requests for tuition and fee increases subject to section one, article ten of this chapter;

(3) Create a policy leadership structure relating to community and technical college education capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the council shall seek input from the Legislature and the Governor and specifically from the State Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards of the institutions under the council's jurisdiction carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding each community and technical college and the statewide network of independently accredited community and technical colleges as a whole accountable for accomplishing their missions and achieving the goals and objectives established in articles one, one-d and three-c of this chapter;

86 (4) Develop for inclusion in the statewide public agenda,
87 a plan for raising education attainment, increasing adult
88 literacy, promoting workforce and economic development
89 and ensuring access to advanced education for the citizens of
90 West Virginia;

91 (5) Provide statewide leadership, coordination, support
92 and technical assistance to the community and technical
93 colleges and to provide a focal point for visible and effective
94 advocacy for their work and for the public policy agendas
95 approved by the commission and council.

96 (6) Review and adopt annually all institutional compacts
97 for the community and technical colleges pursuant to section
98 seven, article one-d of this chapter;

99 (7) Fulfill the mandates of the accountability system
100 established in article one-d of this chapter and report on
101 progress in meeting established goals, objectives and
102 priorities to the elected leadership of the state;

103 (8) Propose a legislative rule pursuant to subsection (b)
104 of this section and article three-a, chapter twenty-nine-a of
105 this code to establish benchmarks and indicators in
106 accordance with this subsection;

107 (9) Establish and implement the benchmarks and
108 performance indicators necessary to measure institutional
109 progress:

110 (A) In meeting state goals, objectives and priorities
111 established in articles one and one-d of this chapter;

112 (B) In carrying out institutional missions; and

113 (C) In meeting the essential conditions established in
114 article three-c of this chapter;

(10) Collect and analyze data relating to the performance of community and technical colleges in every region of West Virginia and report periodically or as directed to the Legislative Oversight Commission on Education Accountability on the progress in meeting the goals and objectives established in articles one and one-d of this chapter.

Additionally, the council shall report annually during the January interim meeting period on a date and at a time and location to be determined by the President of the Senate and the Speaker of the House of Delegates.

The annual report shall address at least the following:

(A) The performance of the community and technical college network during the previous fiscal year, including, but not limited to, progress in meeting the goals, objectives and priorities established in articles one and one-d of this chapter and in the council's master plan and institution compacts;

(B) The priorities of the council for new operating and capital investments and the justification for the priority; and

(C) Recommendations of the council for statutory changes necessary or expedient to achieve established state goals and objectives;

(11) In accordance with article nineteen of this chapter:

(A) Establish a formal process for identifying needs for capital investments and for determining priorities for these needs for consideration by the Governor and the Legislature as part of the appropriation request process;

(B) Ensure that the governing boards adhere to the capital construction and maintenance provisions of article nineteen of this chapter; and

(C) Notwithstanding any other provision of this code to the contrary, sell, lease, convey or otherwise dispose of all or part of any real property that it owns.

(12) Draw upon the expertise available within Workforce West Virginia and the West Virginia Development Office as a resource in the area of workforce development and training;

(13) Acquire legal services that are considered necessary, including representation of the council, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the council may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(14) Employ a chancellor for community and technical college education pursuant to section three of this article;

(15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council consistent with section two, article four of this chapter;

(16) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council who are employed solely by the council;

(17) Provide suitable offices in Charleston for the chancellor and other staff;

(18) Approve the total compensation package from all sources for presidents of community and technical colleges, as proposed by the governing boards. The governing boards shall obtain approval from the council of the total compensation package both when presidents are employed initially and subsequently when any change is made in the amount of the total compensation package;

(19) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(20) Establish and implement policies and programs, jointly with the community and technical colleges, through which a student who has gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or Internet-based education programs, may demonstrate by competency-based assessment the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate's degree or a bachelor's degree at a state institution of higher education;

(21) Seek out and attend regional and national meetings and forums on education and workforce development-related topics, that council members consider critical for the performance of their duties. The council shall keep abreast of national and regional community and technical college education trends and policies to aid members in developing the policies for this state that meet the education goals and objectives established in articles one and one-d of this chapter;

(22) Assess community and technical colleges for the payment of expenses of the council or for the funding of statewide services, obligations or initiatives related specifically to the provision of community and technical college education;

(23) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to

community and technical colleges for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities;

(24) Assume the prior authority of the commission in examining and approving tuition and fee increase proposals submitted by community and technical college governing boards as provided in section one, article ten of this chapter.

(25) Develop and submit to the commission, a single appropriation request for community and technical college education that reflects recommended appropriations for community and technical colleges and that meets the following conditions:

(A) Incorporates the provisions of the financing rule mandated by this section to measure and provide performance funding to institutions that achieve or make significant progress toward achieving established state goals, objectives and priorities;

(B) Considers the progress of each institution toward meeting the essential conditions set forth in section three, article three-c of this chapter, including independent accreditation; and

(C) Considers the progress of each institution toward meeting the goals, objectives and priorities established in article one-d of this chapter and its approved institutional compact.

(26) Administer and distribute the independently accredited community and technical college development account;

(27) Establish a plan of strategic funding to strengthen capacity for support and assure delivery of high quality

community and technical college education in all regions of the state;

(28) Foster coordination among all state-level, regional and local entities providing post-secondary vocational education or workforce development and coordinate all public institutions and entities that have a community and technical college mission;

(29) Assume the principal responsibility for oversight of those community and technical colleges seeking independent accreditation and for holding governing boards accountable for meeting the essential conditions pursuant to article three-c of this chapter;

(30) Advise and consent in the appointment of the presidents of the community and technical colleges pursuant to section six, article one-b of this chapter. The role of the council in approving a president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives established in the institutional compact and in articles one, one-d and three-c of this chapter;

(31) Provide a single, statewide link for current and prospective employers whose needs extend beyond one locality;

(32) Provide a mechanism capable of serving two or more institutions to facilitate joint problemsolving in areas including, but not limited to, the following:

(A) Defining faculty roles and personnel policies;

(B) Delivering high-cost technical education programs across the state;

(C) Providing one-stop service for workforce training to be delivered by multiple institutions; and

(D) Providing opportunities for resource-sharing and collaborative ventures;

(33) Provide support and technical assistance to develop, coordinate and deliver effective and efficient community and technical college education programs and services in all regions of the state;

(34) Assist the community and technical colleges in establishing and promoting links with business, industry and labor in the geographic areas for which each community and technical college is responsible;

(35) Develop alliances among the community and technical colleges for resource sharing, joint development of courses and courseware, and sharing of expertise and staff development;

(36) Serve aggressively as an advocate for development of a seamless curriculum;

(37) Cooperate with all providers of education services in the state to remove barriers relating to a seamless system of public and higher education and to transfer and articulation between and among community and technical colleges, state colleges and universities and public education, preschool through grade twelve;

(38) Encourage the most efficient use of available resources;

(39) Coordinate with the commission in informing public school students, their parents and teachers of the academic preparation that students need in order to be prepared adequately to succeed in their selected fields of study and career plans, including presentation of academic career fairs;

298 (40) Jointly with the commission, approve and implement
299 a uniform standard, as developed by the chancellors, to
300 determine which students shall be placed in remedial or
301 developmental courses. The standard shall be aligned with
302 college admission tests and assessment tools used in West
303 Virginia and shall be applied uniformly by the governing
304 boards throughout the public higher education system. The
305 chancellors shall develop a clear, concise explanation of the
306 standard which the governing boards shall communicate to
307 the State Board of Education and the State Superintendent of
308 Schools;

309 (41) Develop and implement strategies and curriculum
310 for providing developmental education which shall be
311 applied by any state institution of higher education providing
312 developmental education.

313 (42) Develop a statewide system of community and
314 technical college programs and services in every region of
315 West Virginia for competency-based certification of
316 knowledge and skills, including a statewide competency-
317 based associate degree program;

318 (43) Review and approve all institutional master plans for
319 the community and technical colleges pursuant to section
320 four, article two-a of this chapter;

321 (44) Propose rules for promulgation pursuant to
322 subsection (b) of this section and article three-a, chapter
323 twenty-nine-a of this code that are necessary or expedient for
324 the effective and efficient performance of community and
325 technical colleges in the state;

326 (45) In its sole discretion, transfer any rule under its
327 jurisdiction, other than a legislative rule, to the jurisdiction of
328 the governing boards, which may rescind, revise, alter or
329 amend any rule transferred pursuant to rules adopted by the

council, and provide technical assistance to the institutions under its jurisdiction to aid them in promulgating rules;

(46) Develop for inclusion in the higher education report card, as defined in section eight, article one-d of this chapter, a separate section on community and technical colleges. This section shall include, but is not limited to, evaluation of the institutions based upon the benchmarks and indicators developed in subdivision (9) of this subsection;

(47) Facilitate continuation of the Advantage Valley Community College Network under the leadership and direction of Mountwest Community and Technical College;

(48) Initiate and facilitate creation of other regional networks of affiliated community and technical colleges that the council finds to be appropriate and in the best interests of the citizens to be served;

(49) Develop with the State Board of Education plans for secondary and post-secondary vocational-technical-occupational and adult basic education, including, but not limited to, the following:

(A) Policies to strengthen vocational-technical-occupational and adult basic education; and

(B) Programs and methods to assist in the improvement, modernization and expanded delivery of vocational-technical-occupational and adult basic education programs;

(50) Distribute federal vocational education funding provided under the Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, with an emphasis on distributing financial assistance among secondary and post-secondary vocational- technical-occupational and adult basic education programs to help meet the public policy agenda.

In distributing funds the council shall use the following guidelines:

(A) The State Board of Education shall continue to be the fiscal agent for federal vocational education funding;

(B) The percentage split between the State Board of Education and the council shall be determined by rule promulgated by the council under article three-a, chapter twenty-nine-a of this code;

(51) Collaborate, cooperate and interact with all secondary and post-secondary vocational-technical-occupational and adult basic education programs in the state, including the programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, and the Workforce Investment Act of 1998, to promote the development of seamless curriculum and the elimination of duplicative programs;

(52) Coordinate the delivery of vocational-technical occupational and adult basic education in a manner designed to make the most effective use of available public funds to increase accessibility for students;

(53) Analyze and report to the State Board of Education on the distribution of spending for vocational-technical-occupational and adult basic education in the state and on the availability of vocational-technical-occupational and adult basic education activities and services within the state;

(54) Promote the delivery of vocational-technical-occupational education, adult basic education and community and technical college education programs in the state that emphasize the involvement of business, industry and labor organizations;

(55) Promote public participation in the provision of vocational-technical-occupational education, adult basic education and community and technical education at the local level, emphasizing programs which involve the participation of local employers and labor organizations;

(56) Promote equal access to quality vocational-technical-occupational education, adult basic education and community and technical college education programs to handicapped and disadvantaged individuals, adults in need of training and retraining, single parents, homemakers, participants in programs designed to eliminate sexual bias and stereotyping and criminal offenders serving in correctional institutions;

(57) Meet annually between the months of October and December with the Advisory Committee of Community and Technical College Presidents created pursuant to section eight of this article to discuss those matters relating to community and technical college education in which advisory committee members or the council may have an interest;

(58) Accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article;

(59) Assume the powers set out in section nine of this article. The rules previously promulgated by the state College System Board of Directors pursuant to that section and transferred to the commission are hereby transferred to the council and shall continue in effect until rescinded, revised, altered or amended by the council;

(60) Pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code, promulgate a uniform joint legislative rule with the commission for the purpose of standardizing, as much as possible, the

422 administration of personnel matters among the institutions of
423 higher education;

424 (61) Determine when a joint rule among the governing
425 boards of the community and technical colleges is necessary
426 or required by law and, in those instances and in consultation
427 with the governing boards, promulgate the joint rule;

428 (62) Subject to section one, article ten of this chapter,
429 promulgate a rule establishing tuition and fee policy for all
430 governing boards under its jurisdiction. The rule shall
431 include, but is not limited to, the following:

432 (A) Comparisons with peer institutions;

433 (B) Differences among institutional missions;

434 (C) Strategies for promoting student access;

435 (D) Consideration of charges to out-of-state students; and

436 (E) Any other policies the council considers appropriate;

437 (63) In cooperation with the West Virginia Division of
438 Highways, study a method for increasing the signage
439 signifying community and technical college locations along
440 the state interstate highways, and report to the Legislative
441 Oversight Commission on Education Accountability
442 regarding any recommendations and required costs; and

443 (64) Promulgate and implement a rule jointly with the
444 commission whereby any course credit earned at a
445 community and technical college transfers for program credit
446 at any other state institution of higher education and is not
447 limited to fulfilling a general education requirement.

448 (d) In addition to the powers and duties listed in
449 subsections (a), (b) and (c) of this section, the council has the

following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda for community and technical colleges:

(1) Planning and policy leadership including a distinct and visible role in setting the state's policy agenda for the delivery of community and technical college education and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the community and technical college network as a whole or a geographical region of the network;

(3) Development and implementation of each community and technical college mission definition including use of incentive and performance funds to influence institutional behavior in ways that are consistent with achieving established state goals, objectives and priorities;

(4) Academic program review and approval for the institutions under its jurisdiction, including the use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes;

(5) Development of budget and allocation of resources for institutions delivering community and technical college education, including reviewing and approving institutional operating and capital budgets and distributing incentive and performance-based funding;

(6) Acting as the agent to receive and disburse public funds related to community and technical college education when a governmental entity requires designation of a statewide higher education agency for this purpose;

(7) Development, establishment and implementation of information, assessment and internal accountability systems, including maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators for community and technical colleges;

(8) Jointly with the commission, development, establishment and implementation of policies for licensing and oversight of both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs;

(9) Development, implementation and oversight of statewide and regional projects and initiatives related specifically to providing community and technical college education such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

(10) Quality assurance that intersects with all other duties of the council particularly in the areas of planning, policy analysis, program review and approval, budgeting and information and accountability systems.

(e) The council may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years if the council makes a determination that any of the following conditions exist:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in section seven, article one-d of this chapter;

(2) The council has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the board of governors according to state law; or

(3) Other circumstances which, in the view of the council, severely limit the capacity of the board of governors to carry out its duties and responsibilities.

The period of withdrawal of specific powers may not exceed two years during which time the council may take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

(f) In addition to the powers and duties provided in subsections (a), (b), (c) and (d) of this section and any others assigned to it by law, the council has those powers and duties necessary or expedient to accomplish the purposes of this article.

(g) When the council and commission, each, is required to consent, cooperate, collaborate or provide input into the actions of the other the following conditions apply:

(1) The body acting first shall convey its decision in the matter to the other body with a request for concurrence in the action;

(2) The commission or the council, as the receiving body, shall place the proposal on its agenda and shall take final action within sixty days of the date when the request for concurrence is received; and

(3) If the receiving body fails to take final action within sixty days, the original proposal stands and is binding on both the commission and the council.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-6. Regulation of parking, speed flow of traffic on campus roads and driveways; civil and criminal penalties; disposition of revenue.

(a) Notwithstanding any other motor vehicle or traffic law or regulation to the contrary, a governing board may regulate and control at any state institution under its jurisdiction the speed, flow and parking of vehicles on campus roads, driveways and parking facilities or areas.

(1) Rules for this purpose shall be promulgated by the governing boards in the manner prescribed in section six, article one of this chapter; and

(2) When so promulgated, the rules have the force and effect of law.

(3) The governing board shall post in a conspicuous location in each parking facility or area, a summary of the rules governing the use of the facility or area including, but not limited to, the availability of temporary parking permits and where these permits may be obtained and the penalties which may be imposed for violations of the rules.

(4) The governing board shall post in a conspicuous location along each campus road and driveway notice signs pertaining to the speed of vehicles, spaces available for parking, directional flow of traffic and penalties which may be imposed for violations of the rules.

(b) Any person parking or operating a vehicle in violation of the rules shall be issued a citation:

(1) Describing the offense charged; and

(2) Ordering an appearance:

(A) Within ten days, excluding Saturdays, Sundays and holidays observed by the state institution, before a designated official of the institution;

(B) Before a magistrate located in the county if the person cited fails to appear within the ten days; or

(C) Before the judge of the municipal court, if the state institution is located within a municipality having such an official and the person cited fails to appear within the ten days.

(c) The designated official of the state institution has exclusive jurisdiction of the offense during the ten-day period until the citation is forwarded to a magistrate. For the state institutions of higher education under the jurisdiction of the governing board of Marshall University and for the state institution of higher education known as West Virginia University only, the designated official of the institution has exclusive jurisdiction of the offense for thirty days following the violation. After thirty days the official shall forward the citation to a magistrate. Any person cited may plead no contest to the offense and, by so pleading, is subject to a civil penalty to be determined uniformly by the designated official and commensurate with the severity of the offense. For the state institutions under the jurisdiction of the governing board of Marshall University and for the state institution of higher education known as West Virginia University only, the amount imposed may not exceed $20. For all other institutions the amount may not exceed $10, for each offense as partial reimbursement to the state institution of higher education for the cost of regulating traffic and parking. In the case of the state institutions under the jurisdiction of the governing board of Marshall University and in the case of the state institution of higher education known as West Virginia University only, the designated official shall determine the penalty uniformly, commensurate with the severity of the offense, and may apply academic restrictions in lieu of requiring a student to appear in court and receive penalties otherwise provided in this section. Moneys derived from civil penalties imposed in this subsection shall be deposited in the institution's auxiliary and auxiliary capital fees fund.

(d) Upon expiration of the ten-day or thirty-day period, as applicable, or upon a pleading of not guilty before the designated official of the state institution within the applicable period, the magistrate or judge of the municipal court has jurisdiction of the offense. Any person cited under this section, upon a finding of guilty by the magistrate or municipal judge, is subject to a fine for each offense by the state institutions under the jurisdiction of the governing board of Marshall University and for the state institution of higher education known as West Virginia University only, of up to $40, and at all other state institutions not less than $10 nor more than $20, the amount to be commensurate with the severity of the offense.

(e) Each designated official of a state institution presiding over a case under this section shall keep a record of every citation which alleges a violation of the provisions, or the rules promulgated in accordance with this section, and shall keep a record of every official action in reference to the citation including, but not limited to, a record of every plea of no contest, conviction or acquittal, of the offense charged, and the amount of the fine or civil penalty resulting from each citation.

(f) Whenever a vehicle is parked on any state institution campus road, driveway or parking facility or area in a manner which violates posted rules and substantially impedes the flow of traffic or endangers the health and safety, in addition to issuing a citation and any procedures set forth in this section, the institution may remove the vehicle, by towing or otherwise, to an area owned by the institution or areas designated for this purpose. The vehicle, having been towed to the designated area or areas, may be rendered immovable by use of locking wheel blocks or other device not damaging to the vehicle. The state institution of higher education shall maintain any vehicle towed in the same condition as it was immediately prior to being towed, but is not liable for any

damage to a vehicle towed to, or kept in, a designated area pursuant to this section. The state institution of higher education shall pay for the cost of removing the vehicle and has a right to reimbursement from the owner for this cost and for the reasonable cost of keeping the vehicle in the designated area. Until payment of these costs, the state institution of higher education may retain possession of the vehicle and the institution shall have a lien on the vehicle for the amount due. The state institution of higher education may enforce this lien in the manner provided in section fourteen, article eleven, chapter thirty-eight of this code for the enforcement of other liens. For the state institutions of higher education under the jurisdiction of the governing board of Marshall University and for the state institution of higher education known as West Virginia University only, this subsection also applies when a vehicle is subject to three or more unpaid citations.

(g) If, at any time, Mountwest Community and Technical College ceases to share a physical campus location with Marshall University, it may not be included as an institution under the jurisdiction of the governing board of Marshall University for the purposes of subsections (c), (d) and (f) of this section.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

(a) The council, commission and each governing board shall purchase or acquire all materials, supplies, equipment, services and printing required for that governing board or the council or commission, as appropriate, and the state institutions of higher education under their jurisdiction, except the governing boards of Marshall University and West

Virginia University, respectively, are subject to subsection (d) of this section.

(b) The commission and council jointly shall adopt rules governing and controlling acquisitions and purchases in accordance with this section. The rules shall ensure that the following procedures are followed:

(1) No person is precluded from participating and making sales thereof to the council, commission or governing board except as otherwise provided in section five of this article. Providing consulting services such as strategic planning services does not preclude or inhibit the governing boards, council or commission from considering a qualified bid or response for delivery of a product or a commodity from the individual providing the services;

(2) Specifications are established and prescribed for materials, supplies, equipment, services and printing to be purchased;

(3) Purchase order, requisition or other forms as may be required are adopted and prescribed;

(4) Purchases and acquisitions in such quantities, at such times and under contract, are negotiated for and made in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law;

(5) Bids are advertised on all purchases exceeding $25,000, and made by means of sealed or electronically-submitted bids and competitive bidding or advantageous purchases effected through other accepted governmental methods and practices. Competitive bids are not required for purchases of $25,000 or less.

(6) Notices for acquisitions and purchases for which competitive bids are being solicited are posted in the purchasing office of the specified institution involved in the purchase, at least two weeks prior to making the purchases. The rules shall ensure that the notice is available to the public during business hours;

(7) Purchases are made in the open market;

(8) Vendors are notified of bid solicitation and emergency purchasing; and

(9) No fewer than three bids are obtained when bidding is required, except if fewer than three bids are submitted, an award may be made from among those received.

(c) When a state institution of higher education submits a contract, agreement or other document to the Attorney General for approval as to form as required by this chapter the following conditions apply:

(1) "Form" means compliance with the Constitution and statutes of the State of West Virginia;

(2) The Attorney General does not have the authority to reject a contract, agreement or other document based on the substantive provisions in the contract, agreement or document or any extrinsic matter as long as it complies with the Constitution and statutes of this state;

(3) Within fifteen days of receipt, the Attorney General shall notify the appropriate state institution of higher education in writing that the contract, agreement or other document is approved or disapproved as to form. If the contract, agreement or other document is disapproved as to form, the notice of disapproval shall identify each defect that supports the disapproval; and

(4) If the state institution elects to challenge the disapproval by filing a writ of mandamus or other action and prevails, then the Attorney General shall pay reasonable attorney fees and costs incurred.

(d) Pursuant to this subsection, the governing boards of Marshall University and West Virginia University, respectively, may carry out the following actions:

(1) Purchase or acquire all materials, supplies, equipment, services and printing required for the governing board without approval from the commission or the Vice Chancellor for Administration and may issue checks in advance to cover postage as provided in subsection (f) of this section;

(2) Make purchases from cooperative buying groups, consortia, the federal government or from federal government contracts if the materials, supplies, services, equipment or printing to be purchased is available from these groups and if this would be the most financially advantageous manner of making the purchase;

(3) Select and acquire by contract or lease all grounds, buildings, office space or other space, and capital improvements, including equipment, if the rental is necessarily required by the governing board; and

(4) Use purchase cards under terms approved for the commission, the council and governing boards of state institutions of higher education and participate in any expanded program of use as provided in subsection (u) of this section.

(e) The governing boards shall adopt sufficient accounting and auditing procedures and promulgate and adopt appropriate rules subject to section six, article one of

this chapter to govern and control acquisitions, purchases, leases and other instruments for grounds, buildings, office or other space, and capital improvements, including equipment, or lease-purchase agreements.

(f) The council, commission or each governing board may issue a check in advance to a company supplying postage meters for postage used by that board, the council or commission and by the state institutions of higher education under their jurisdiction.

(g) When a purchase is to be made by bid, any or all bids may be rejected. However, all purchases based on advertised bid requests shall be awarded to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the governing boards, council or commission and delivery terms. The preference for resident vendors as provided in section thirty-seven, article three, chapter five-a of this code applies to the competitive bids made pursuant to this section.

(h) The governing boards, council and commission shall maintain a purchase file, which shall be a public record and open for public inspection.

(1) After the award of the order or contract, the governing boards, council and commission shall indicate upon the successful bid the following information:

(A) Designation as the successful bid;

(B) The reason any bids were rejected; and

(C) The reason for rejection, if the mathematical low vendor was not awarded the order or contract.

(2) A record in the purchase file may not be destroyed without the written consent of the Legislative Auditor. Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without the written consent of the Legislative Auditor.

(3) All files, no matter the storage method, shall be open for inspection by the Legislative Auditor upon request.

(i) The commission and council, also jointly, shall promulgate rules to prescribe qualifications to be met by any person who is to be employed as a buyer pursuant to this section. These rules shall require that a person may not be employed as a buyer unless that person, at the time of employment has one of the following qualifications:

(1) Is a graduate of an accredited college or university; or

(2) Has at least four years' experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

(j) Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of $50,000, payable to the State of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the Attorney General and conditioned upon the faithful performance of all duties in accordance with this section and sections five through eight, inclusive, of this article and the rules of the governing board and the council and commission. In lieu of separate bonds for these buyers, a blanket surety bond may be obtained. The bond shall be filed with the Secretary of State and the cost of the bond shall be paid from funds appropriated to the applicable governing board or the council or commission.

(k) All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of article two, chapter five-a of this code relating to expenditure schedules and quarterly allotments of funds. Notwithstanding any other provision of this code to the contrary, only those purchases exceeding the dollar amount for competitive sealed bids in this section are required to be encumbered and they may be entered into the state's centralized accounting system by the staff of the commission, council or governing boards to satisfy the requirements of article two, chapter five-a of this code to determine whether the amount of the purchase is within the quarterly allotment of the commission, council or governing board, is in accordance with the approved expenditure schedule and otherwise conforms to the article.

(l) The governing boards, council and commission may make requisitions upon the State Auditor for a sum to be known as an advance allowance account, not to exceed five percent of the total of the appropriations for the governing board, council or commission, and the State Auditor shall draw a warrant upon the Treasurer for those accounts. All advance allowance accounts shall be accounted for by the applicable governing board or the council or commission once every thirty days or more often if required by the State Auditor.

(m) Contracts entered into pursuant to this section shall be signed by the applicable governing board or the council or commission in the name of the state and shall be approved as to form by the Attorney General. A contract which requires approval as to form by the Attorney General is considered approved if the Attorney General has not responded within fifteen days of presentation of the contract. A contract or a change order for that contract and notwithstanding any other provision of this code to the contrary, associated documents

195 such as performance and labor/material payments, bonds and
196 certificates of insurance which use terms and conditions or
197 standardized forms previously approved by the Attorney
198 General and do not make substantive changes in the terms
199 and conditions of the contract do not require approval as to
200 form by the Attorney General. The Attorney General shall
201 make a list of those changes which he or she considers to be
202 substantive and the list, and any changes to the list, shall be
203 published in the State Register. A contract that exceeds the
204 dollar amount requiring competitive sealed bids in this
205 section shall be filed with the State Auditor. If requested to
206 do so, the governing boards, council or commission shall
207 make all contracts available for inspection by the State
208 Auditor. The governing board, council or commission, as
209 appropriate, shall prescribe the amount of deposit or bond to
210 be submitted with a bid or contract, if any, and the amount of
211 deposit or bond to be given for the faithful performance of a
212 contract.

213 (n) If the governing board, council or commission
214 purchases or contracts for materials, supplies, equipment,
215 services and printing contrary to sections four through seven
216 of this article or the rules pursuant to this article, the purchase
217 or contract is void and of no effect.

218 (o) A governing board or the council or commission, as
219 appropriate, may request the director of purchasing to make
220 available the facilities and services of that department to the
221 governing boards, council or commission in the purchase and
222 acquisition of materials, supplies, equipment, services and
223 printing. The director of purchasing shall cooperate with that
224 governing board, council or commission, as appropriate, in
225 all such purchases and acquisitions upon that request.

226 (p) Each governing board or the council or commission,
227 as appropriate, may permit private institutions of higher
228 education to join as purchasers on purchase contracts for

materials, supplies, services and equipment entered into by that governing board or the council or commission. A private institution desiring to join as purchaser on purchase contracts shall file with that governing board or the council or commission, as appropriate, an affidavit signed by the president or designee of the private institution requesting that it be authorized to join as purchaser on purchase contracts of that governing board or the council or commission, as appropriate. The private institution shall agree that it is bound by such terms and conditions as that governing board or the council or commission may prescribe and that it will be responsible for payment directly to the vendor under each purchase contract.

(q) Notwithstanding any other provision of this code to the contrary, the governing boards, council and commission, as appropriate, may make purchases from cooperative buying groups, consortia, the federal government or from federal government contracts if the materials, supplies, services, equipment or printing to be purchased is available from that source, and purchasing from that source would be the most financially advantageous manner of making the purchase.

(r) An independent performance audit of all purchasing functions and duties which are performed at any state institution of higher education, except Marshall University and West Virginia University, shall be performed each fiscal year. The Joint Committee on Government and Finance shall conduct the performance audit and the governing boards, council and commission, as appropriate, are responsible for paying the cost of the audit from funds appropriated to the governing boards, council or commission.

(1) The governing boards of Marshall University and West Virginia University, respectively, shall provide for independent performance audits of all purchasing functions and duties on their campuses at least once in each three-year period.

(2) Each audit shall be inclusive of the entire time period that has elapsed since the date of the preceding audit.

(3) Copies of all appropriate documents relating to any audit performed by the governing boards of Marshall University and West Virginia University shall be furnished to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability within thirty days of the date the audit report is completed.

(s) The governing boards shall require each institution under their respective jurisdictions to notify and inform every vendor doing business with that institution of section fifty-four, article three, chapter five-a of this code, also known as the Prompt Pay Act of 1990.

(t) Consultant services, such as strategic planning services, do not preclude or inhibit the governing boards, council or commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services.

(u) Purchasing card use may be expanded by the council, commission and state institutions of higher education pursuant to this subsection.

(1) The council and commission jointly shall establish procedures to be implemented by the council, commission and any institution under their respective jurisdictions using purchasing cards. The procedures shall ensure that each meets the following conditions:

(A) Appropriate use of the purchasing card system;

(B) Full compliance with article three, chapter twelve of this code relating to the purchasing card program; and

(C) Sufficient accounting and auditing procedures for all purchasing card transactions.

(2) Notwithstanding any other provision of this code to the contrary, the council, commission and any institution authorized pursuant to subdivision (3) of this subsection may use purchasing cards for the following purposes:

(A) Payment of travel expenses directly related to the job duties of the traveling employee, including, but not limited to, fuel and food; and

(B) Payment of any routine, regularly scheduled payment, including, but not limited to, utility payments and real property rental fees.

(3) The commission and council each shall evaluate the capacity of each institution under its jurisdiction for complying with the procedures established pursuant to subdivision (2) of this subsection. The commission and council each shall authorize expanded use of purchasing cards pursuant to that subdivision for any institution it determines has the capacity to comply.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-8. Collection; disposition and use of capital and auxiliary capital fees; creation of special capital and auxiliary capital improvements funds; revenue bonds.

(a) This section and any rules adopted by the commission, council or both, in accordance with this section and article three-a, chapter twenty-nine-a of this code, govern the collection, disposition and use of the capital and auxiliary

5 capital fees authorized by section one of this article. The
6 statutory provisions governing collection and disposition of
7 capital funds in place prior to the enactment of this section
8 remain in effect.

9 (b) *Fees for full-time students.* -- The governing boards
10 shall fix capital and auxiliary capital fees for full-time
11 students at each state institution of higher education per
12 semester. For institutions under its jurisdiction, a governing
13 board may fix the fees at higher rates for students who are not
14 residents of this state.

15 (c) *Fees for part-time students.* -- For all part-time
16 students and for all summer school students, the governing
17 boards shall impose and collect the fees in proportion to, but
18 not exceeding, the fees paid by full-time students. Refunds
19 of the fees may be made in the same manner as any other fee
20 collected at state institutions of higher education.

21 (d) There is continued in the State Treasury a special
22 capital improvements fund and special auxiliary capital
23 improvements fund for each state institution of higher
24 education and the commission into which shall be paid all
25 proceeds, respectively, of the following:

26 (1) The capital and auxiliary capital fees collected from
27 students at all state institutions of higher education pursuant
28 to this section; and

29 (2) The fees collected from the students pursuant to
30 section one of this article. The fees shall be expended by the
31 commission and governing boards for the payment of the
32 principal of or interest on any revenue bonds issued by the
33 board of regents or the succeeding governing boards for
34 which the fees were pledged prior to the enactment of this
35 section.

(e) The governing boards may make expenditures from any of the special capital improvements funds or special auxiliary capital improvement funds established in this section to finance or fund on a cash basis, in whole or in part, in combination with any federal, state or other grants or contributions, for any one or more of the following projects:

(1) The acquisition of land or any rights or interest in land;

(2) The construction or acquisition of new buildings;

(3) The renovation or construction of additions to existing buildings;

(4) The acquisition of furnishings and equipment for the buildings; and

(5) The construction or acquisition of any other capital improvements or capital education facilities at the state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of the buildings, capital improvements or capital education facilities, including student unions, dormitories, housing facilities, food service facilities, motor vehicle parking facilities and athletic facilities.

(f) The commission, when singly or jointly requested by the council or governing boards, periodically may issue revenue bonds of the state as provided in this section to finance all or part of the purposes and pledge all or any part of the moneys in the special funds for the payment of the principal of and interest on the revenue bonds, and for reserves for the revenue bonds. Any pledge of the special funds for the revenue bonds shall be a prior and superior

charge on the special funds over the use of any of the moneys in the funds to pay for the cost of any of the purposes on a cash basis. Any expenditures from the special funds, other than for the retirement of revenue bonds, may be made by the commission or governing boards only to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in the order of priority agreed upon by the governing board or boards and the commission and for which the aggregate revenue collections projected are presented to the Governor for inclusion in the annual budget bill, and are approved by the Legislature for expenditure. Any expenditure made pursuant to subsection (e) of this section shall be part of the ten-year campus development plan approved by the governing board pursuant to section three, article nineteen of this chapter.

(g) The revenue bonds periodically may be authorized and issued by the commission or governing boards to finance, in whole or in part, the purposes provided in this section in an aggregate principal amount not exceeding the amount which the commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in the special funds.

(h) The issuance of the revenue bonds shall be authorized by a resolution adopted by the governing board receiving the proceeds and the commission, and the revenue bonds shall bear the date or dates; mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and have the other terms and provisions determined by the governing board receiving the proceeds and by the commission. The revenue bonds shall be

signed by the Governor and by the chancellor of the commission or the chair of the governing boards authorizing the issuance of the revenue bonds, under the Great Seal of the State, attested by the Secretary of State, and the coupons attached to the revenue bonds shall bear the facsimile signature of the chancellor of the commission or the chair of the appropriate governing boards. The revenue bonds shall be sold in the manner the commission or governing board determines is in the best interests of the state.

(i) The commission or governing boards may enter into trust agreements with banks or trust companies, within or without the state, and in the trust agreements or the resolutions authorizing the issuance of the bonds may enter into valid and legally binding covenants with the holders of the revenue bonds as to the custody, safeguarding and disposition of the proceeds of the revenue bonds, the moneys in the special funds, sinking funds, reserve funds or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the commission or governing boards under this section; as to the maintenance or revision of the amounts of the fees; as to the extent to which swap agreements, as defined in subsection (h), section two, article two-g, chapter thirteen of this code shall be used in connection with the revenue bonds, including such provisions as payment, term, security, default and remedy provisions as the commission considers necessary or desirable, if any, under which the fees may be reduced; and as to any other matters or provisions which are considered necessary and advisable by the commission or governing boards in the best interests of the state and to enhance the marketability of the revenue bonds.

(j) After the issuance of any revenue bonds, the fees at the state institutions of higher education pledged to the payment of the revenue bonds may not be reduced as long as any of the revenue bonds are outstanding and unpaid except

under the terms, provisions and conditions contained in the resolution, trust agreement or other proceedings under which the revenue bonds were issued. The revenue bonds are and constitute negotiable instruments under the Uniform Commercial Code of this state; together with the interest thereon, be exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof; and the revenue bonds may not be considered to be obligations or debts of the state and the credit or taxing power of the state may not be pledged therefor, but the revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

(k) Additional revenue bonds may be issued by the commission or governing boards pursuant to this section and financed by additional revenues or funds dedicated from other sources. The special revenue fund in the State Treasury known as the Community and Technical College Capital Improvement Fund into which shall be deposited the amounts specified in subsection (j), section eighteen, article twenty-two, chapter twenty-nine of this code is continued. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by the commission for community and technical college capital improvements or used by the council on a cash basis as provided under subdivision (4), subsection (j), section eighteen, article twenty-two, chapter twenty-nine of this code for community and technical college capital improvements or capital projects.

(l) Funding of systemwide and campus-specific revenue bonds under any other section of this code is continued and authorized pursuant to the terms of this section. Revenues of any state institution of higher education pledged to the repayment of any revenue bonds issued pursuant to this code shall remain pledged.

(m) Any revenue bonds for state institutions of higher education proposed to be issued under this section or other sections of this code first must be approved by the commission.

(n) Revenue bonds issued pursuant to this code may be issued by the commission or governing boards, either singly or jointly.

(o) Fees pledged for repayment of revenue bonds issued under this section or article twelve-b, chapter eighteen prior to or after the effective date of this section shall be transferred to the commission in a manner prescribed by the commission. The commission may transfer funds from the accounts of institutions pledged for the repayment of revenue bonds issued prior to the effective date of this section or issued subsequently by the commission upon the request of institutions, if an institution fails to transfer the pledged revenues to the commission in a timely manner.

(p) Effective July 1, 2004, the capital and auxiliary capital fees authorized by this section and section one of this article are in lieu of any other fees set out in this code for capital and auxiliary capital projects to benefit public higher education institutions. Notwithstanding any other provisions of this code to the contrary, in the event any capital, tuition, registration or auxiliary fees are pledged to the payment of any revenue bonds issued pursuant to any general bond resolutions of the commission, any of its predecessors or any institution, adopted prior to the effective date of this section, the fees shall remain in effect in amounts not less than the amounts in effect as of that date, until the revenue bonds payable from any of the fees have been paid or the pledge of the fees is otherwise legally discharged.

ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.

§18B-19-1. Legislative findings and intent.
§18B-19-2. Definitions.
§18B-19-3. System capital development planning.
§18B-19-4. Campus development plans.
§18B-19-5. Capital appropriation requests.
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§18B-19-10. Authorization to sell property; use of proceeds.
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§18B-19-12. Authorization to lease.
§18B-19-13. Real property contracts and agreements.
§18B-19-14. Authorization for sale lease-back.
§18B-19-15. Construction and operation of auxiliary facilities; fees for auxiliary enterprises.
§18B-19-16. Condemnation generally.
§18B-19-17. Legislative rule.
§18B-19-18. Reporting.

§18B-19-1. Legislative findings and intent.

(a) The Legislature makes the following findings:

(1) State institutions of higher education vary widely in the conditions of their facilities infrastructure.

(2) State institutions of higher education vary widely in their ability to incur debt for capital improvements. It is nearly impossible for community and technical colleges and some smaller baccalaureate institutions to fund significant capital improvements in the absence of state funding.

(3) A student enrolled at a community and technical college that previously was administratively linked to another state institution of higher education pays substantially higher tuition and mandatory fees than a student enrolled at a freestanding community and technical college. This cost discrepancy is due in large part to the significantly higher capital fees charged to these students to pay debt service for capital improvements.

(4) The substantial amount of capital fees that students must pay at the institution level contributes significantly to

the poor grade the state receives in the category of "Affordability" in *Measuring Up: The National Report Card on Higher Education.*

(5) It is beneficial for the state to provide additional ongoing capital funding to reduce the obligation of students and parents to bear the cost of higher education capital improvements and facilities maintenance.

(6) West Virginia is one of only a few states that does not address higher education capital improvements and facilities maintenance needs through a statewide plan.

(7) State funding for capital improvements should align with state and system higher education goals, objectives and priorities as set forth in article one-d of this chapter.

(8) State capital funding should focus primarily on educational and general capital improvements, not auxiliary capital improvements.

(9) Renovations of existing buildings generally deserve greater consideration for state funding than new construction. However, new construction may deserve greater consideration than renovation when a state or system goal, objective or priority is implicated.

(10) As the Legislature increases funding for new educational and general capital improvements and major renovations, and supplants existing educational and general debt, institutions should target funds for maintenance and deferred maintenance needs.

(11) If community and technical colleges are to keep the cost of education affordable, they cannot be expected to fund maintenance obligations entirely from student capital fees.

(12) The commission and council should scrutinize carefully all requests from institutions to incur additional debt in order to determine their effect on institution debt capacity and the impact that incurring additional debt will have on students.

(13) State institutions of higher education ultimately should target adequate state capital contributions and capital fees to address maintenance and deferred maintenance needs.

(14) Until institutions are able to generate sufficient revenue to address maintenance and deferred maintenance needs, the Legislature should provide periodic funding to assist institutions in addressing these needs. Funding priority should be given to projects that address building code requirements and critical maintenance needs.

(15) In supporting future high priority capital needs, the Legislature, commission and council should not reward institutions with state funding if they neglect to address facilities maintenance needs or do not prudently manage their capital resources.

(16) Once an institution's capital development plan has been approved by the governing board and the commission or council, as appropriate, project priorities should not change significantly from year to year.

(17) Commission and council staff should participate to a greater extent in managing capital projects at smaller institutions than at larger institutions since smaller institutions often lack the expertise necessary to plan, design and complete projects at or under budget.

(b) The intent of the Legislature relating to this article includes, but is not limited to, the following:

(1) Dedicated state funding sources shall be designated to finance construction and renovation of educational and general facilities at state institutions of higher education from time to time;

(2) Capital project lists submitted by institutions to the commission or council, as appropriate, and capital project lists submitted by the commission and council to the state budget office, Legislative Oversight Commission on Education Accountability, and Joint Committee on Government and Finance for consideration for state funding shall be reasonable requests that align with state and system goals, objectives and priorities and ones which reasonably could be funded if approved;

(3) As the Legislature increases its responsibility for financing new educational and general facilities and major renovations, the commission, council and institutions shall ensure that sufficient capital revenues are available for maintenance and that the facilities are maintained adequately;

(4) Ongoing state funding shall be dedicated to supplement capital fees available for maintenance at community and technical colleges; and

(5) Once a system capital plan is in place, institutions shall set aside adequate funding annually to ensure that ongoing facilities maintenance needs are met.

§18B-19-2. Definitions.

As used in this article, the following terms have the meanings ascribed to them.

(a) "ADA" means the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*

5 (b) "Auxiliary enterprise" means an entity that exists to
6 furnish goods or services to students, faculty, staff or others;
7 charges a fee directly related to, although not necessarily
8 equal to, the cost of the goods or services; and is managed as
9 essentially self-supporting.

10 (c) "Auxiliary facility" means a building or structure that
11 is used for an auxiliary enterprise including, but not limited
12 to, residence halls, food services, parking, intercollegiate
13 athletics, faculty and staff housing, student unions,
14 bookstores and other service centers.

15 (d) "Auxiliary fees" means funds derived from, but not
16 limited to, the following sources:

17 (1) Parking fees received from any source;

18 (2) Revenues received from athletic events, including
19 ticket sales, television revenues and skybox fees;

20 (3) Bookstore revenues;

21 (4) Student union vendor and user fees;

22 (5) Donations or grants from any external source;

23 (6) Facility rental fees; and

24 (7) Fees assessed to students to support auxiliary
25 enterprises.

26 (e) "Capital planning" means a purposeful activity that
27 focuses attention on long term physical plant objectives
28 which should be accomplished in a logical sequence over
29 time as opportunities arise and resources become available.

30 (f) "Capital project management" means planning,
31 designing, bidding and providing construction administration

and oversight of architectural, engineering and construction contracts and projects.

(g) "Deferred maintenance" means repair, maintenance and renewal of capital facilities which should be part of normal maintenance management, but which have been postponed to a future budget cycle or until funds become available.

(h) "Educational and general capital fees" means the fees collected from students to pay debt service for capital improvement bonds issued by the commission and governing boards for educational and general facilities, for the maintenance of those facilities and to fund capital improvements in those facilities on a cash basis.

(i) "Educational and general facility" means a building or structure used for instruction and instructional support purposes, and includes classroom, laboratory, library, computer laboratory, faculty and administrative office and other academic support spaces.

(j) "Extraordinary circumstance" or "extraordinary circumstances" means, a situation involving life-safety issues, issues that would result in extensive damage to a facility if not addressed immediately, any unforeseen opportunity to use external funds and any other situation the commission or council determines should warrant special consideration.

(k) "Life-safety" means a condition existing on a campus that, if not corrected immediately, would jeopardize the safety and property of students, faculty, staff and the visiting public.

(l) "Maintenance" means the work necessary within a budget cycle to realize the originally anticipated life of a

63 fixed asset, including buildings, fixed equipment and
64 infrastructure.

65 (m) "Governing board", "state institution of higher
66 education" and "institution under the jurisdiction of the
67 commission" means all state institutions of higher education
68 including Marshall University and West Virginia University
69 and their respective governing boards.

§18B-19-3. System capital development planning.

1 (a) By December 31, 2011, the commission and council,
2 jointly or separately, shall develop a system capital
3 development plan for approval by the Legislative Oversight
4 Commission on Education Accountability. At a minimum
5 the initial plan shall include the following:

6 (1) System goals for capital development;

7 (2) An explanation of how system capital development
8 goals align with state goals, objectives and priorities
9 established in articles one and one-d of this chapter and with
10 system master plans;

11 (3) A process for prioritizing capital projects for state
12 funding based on their ability to further state goals, objectives
13 and priorities and system capital development goals;

14 (4) A building renewal formula to calculate a dollar
15 benchmark that shall be collected annually and invested in
16 facilities to minimize deferred maintenance and to provide
17 the commission and council objective information to
18 determine if the investments in maintenance are occurring;

19 (5) A process for governing boards to follow in
20 developing and submitting campus development plans to the
21 commission or council, as appropriate, for approval;

22 (6) A process for governing boards to follow to ensure
23 that sufficient revenue is generated for and applied toward
24 facilities maintenance; and

25 (7) A discussion addressing how capital fees dedicated to
26 debt service for the bond issue to be paid off in 2012 will be
27 used after the payoff date.

28 (b) The system capital development plan shall be
29 developed in consultation with governing boards and
30 appropriate institution staff. Before approving the capital
31 development plan, the commission and council shall afford
32 interested parties an opportunity to comment on the plan
33 through a notice-and-comment period of at least thirty days.

34 (c) The commission and council shall update its system
35 capital development plan at least once in each ten-year
36 period.

§18B-19-4. Campus development plans.

1 (a) Each governing board shall update its current campus
2 development plan and submit the updated plan to the
3 commission or council, as appropriate, for approval by June
4 30, 2013. A campus development plan shall be developed for
5 a ten-year period and shall align with criteria specified in the
6 following sources:

7 (1) The system capital development plan;

8 (2) The institution's approved master plan and compact;
9 and

10 (3) The current campus development plan objectives.

11 (b) Campus development plans are intended to be
12 aspirational; however, an institution's plan shall be

13 appropriate to its size, mission, and enrollment and to the
14 fiscal constraints within which the institution operates. At a
15 minimum the campus development plan shall include the
16 following:

17 (1) The governing board's development strategy;

18 (2) An assessment of the general condition and suitability
19 of buildings and facilities, including deferred maintenance,
20 life-safety and building code issues, ADA requirements and
21 energy efficiency;

22 (3) An assessment of the impact of projected enrollment
23 and demographic changes on building and facility needs;

24 (4) A comprehensive list of deferred maintenance
25 projects that need to be addressed for each campus by
26 building or facility including an estimated cost for each;

27 (5) A list of existing buildings and facilities in need of
28 renovations, additions, demolition or any combination
29 thereof;

30 (6) A list of major site improvements that are needed,
31 including vehicular and pedestrian circulation, parking and
32 landscaping;

33 (7) A list of telecommunications, utilities and other
34 infrastructure improvements that are needed;

35 (8) A delineation of clear property acquisition boundaries
36 that are reasonably appropriate for campus expansion;

37 (9) A list of proposed new facilities and building sites;

38 (10) A list of capital projects in priority order;

39 (11) Estimates of the timing, phasing and projected costs
40 associated with individual projects;

41 (12) If an institution has multiple campuses in close
42 proximity, a delineation of how the campuses should interact
43 and support each other to minimize duplication of facilities,
44 improve efficiency and be aesthetically compatible;

45 (13) A statement of the impact of the plan upon the local
46 community and the input afforded local and regional
47 government entities and the public with respect to its
48 implementation; and

49 (14) Any other requirement established by the
50 commission and council in the rules required by section
51 seventeen of this article.

52 (c) Campus development plans shall incorporate all
53 current and proposed facilities, including educational and
54 general and auxiliary facilities.

55 (d) At the next regularly scheduled meeting of the
56 commission or council, as applicable, following the fifth
57 anniversary date after the commission or council approves
58 the development plan of a governing board, the governing
59 board shall report on the progress made in the first five years
60 to implement the campus development plan for each campus
61 under its jurisdiction. In addition, the governing board shall
62 report on its plans to implement the remaining five-year
63 period of its campus development plan.

64 (e) Each governing board shall update its campus
65 development plan at least once during each ten-year period
66 and any update is subject to the approval of the commission
67 or council, as appropriate.

(f) A governing board may not implement a campus development plan or plan update that has not been approved by the commission or council, as appropriate.

§18B-19-5. Capital appropriation requests.

(a) The commission and council each shall submit a prioritized capital appropriation request annually to the state budget office as required by article two, chapter eleven-b of this code consisting of major capital projects and maintenance projects.

(b) The commission and council each shall develop a process for governing boards to follow in submitting a list of major educational and general capital projects so that a prioritized major capital project list, approved by the commission or council, as appropriate, may be submitted to the state budget office by the applicable deadline.

(1) The governing board's major capital project list shall include the following items:

(A) Projects identified in the governing board's approved campus development plan or plans. A project may not be included which is not contained in the approved plan, except when extraordinary circumstances otherwise warrant;

(B) A current estimate of each project's estimated cost accounting for inflation since completion of the campus development plan. The size and scope of the project may not change unless the campus development plan has been updated and approved as provided in section three of this article; and

(C) Any additional information required to be provided by the commission, council or state budget office.

(2) The commission and council each shall rank the major capital projects submitted by the governing boards according to priority consistent with the criteria outlined in the system capital development plan. The council and commission may not submit to the state budget office a request for an institution which the commission or council determines reasonably could not secure funding through the appropriation process during the following fiscal year.

(c) The commission and council each shall develop a process for governing boards to follow in submitting a list of maintenance projects so that a prioritized maintenance project list, approved by the commission or council, as appropriate, may be submitted to the state budget office by the applicable deadline.

(1) No later than April 1, 2011, and annually thereafter, the commission and council, as appropriate, shall provide each governing board a building renewal calculation that identifies the funds that should be collected and invested in its buildings and facilities during the next fiscal year to maintain them and minimize deferred maintenance.

(2) As soon as it receives the building renewal calculation, each governing board shall make realistic revenue estimates of the funds available for maintenance projects from educational and general capital fees, from auxiliary and auxiliary capital fees and from any other revenue that may be used for maintenance projects, as well as any anticipated reserves. The governing boards then shall identify and submit proposed maintenance projects, consistent with its campus development plan or plans, to be funded from these revenues.

(3) The commission and council each shall report to the Legislative Oversight Commission on Education Accountability on the revenue available to governing boards

for educational and general and auxiliary maintenance projects, as well as any shortfalls based on building renewal formula calculation, and major maintenance projects that institutions propose to undertake during the upcoming fiscal year.

(4) The commission shall work with institutions under its jurisdiction to ensure that adequate funds are generated to fund maintenance and build adequate reserves from educational and general and auxiliary capital fees and other revenue consistent with the building renewal formula. The Legislature recognizes that it may take several years for this to be accomplished fully.

(5) The council shall work with the Legislature and institutions under its jurisdiction to ensure that a combination of appropriated and nonappropriated revenue is available to fund maintenance and build adequate reserves at community and technical colleges consistent with the building renewal formula.

§18B-19-6. Capital project financing.

(a) The commission and governing boards, jointly or singly, may issue revenue bonds for capital project financing in accordance with section eight, article ten of this chapter.

(b) A governing board may seek funding for and initiate construction or renovation work only for projects contained in an approved campus development plan.

(c) A governing board may fund capital improvements on a cash basis, through bonding or through another financing method that is approved by the commission and by the council, if appropriate.

(1) If the cost of an improvement project for any institution, except Marshall University or West Virginia

University, exceeds $1 million, the governing board first shall obtain the approval of the commission or council, as appropriate. If the cost of an improvement project for Marshall University or West Virginia University exceeds $15 million, the governing board first shall obtain the approval of the commission.

(2) Prior to approving bonding or any alternative financing method, the commission, and council if appropriate, shall evaluate the following issues:

(A) The institution's debt capacity and ability to meet the debt service payments for the full term of the financing;

(B) The institution's capacity to generate revenue sufficient to complete the project;

(C) The institution's ability to fund ongoing operations and maintenance;

(D) The impact of the financing arrangement on students; and

(E) Any other factor considered appropriate.

(d) A governing board shall notify the Joint Committee on Government and Finance at least thirty days before beginning construction or renovation work on any capital project in excess of $1 million.

(e) The commission may pledge all or part of the fees of any or all state institutions of higher education as part of a system bond issue.

(f) Any fee or revenue source pledged prior to the effective date of this section for payment of any outstanding debt remains in effect until the debt is fully repaid or refunded.

§18B-19-7. Capital project management.

1 (a) The commission, council and governing boards shall
2 ensure that capital funds are spent appropriately and that
3 capital projects are managed effectively. Project
4 management shall be conducted in all respects according to
5 sound business practices and applicable laws, and rules.

6 (b) The commission shall employ a sufficient number of
7 competent facilities staff experienced in capital project
8 development and management that is suitable for the number,
9 size and complexity of the capital projects being managed.
10 By December 31, 2011, and continuing thereafter, at least
11 one employee shall be Leadership in Energy and
12 Environmental Design (LEED) certified.

13 (c) An institution that has entered into construction
14 contracts averaging more than $50 million over the most
15 recent rolling five-year period is responsible for capital
16 project management at that institution if it meets the
17 following additional conditions:

18 (1) The governing board shall employ a facilities staff
19 experienced in capital project development and management
20 that is suitable for the number, size and complexity of the
21 capital projects being managed and, by December 31, 2011,
22 and continuing thereafter, at least one of these employees
23 shall be Leadership in Energy and Environmental Design
24 (LEED) certified;

25 (2) The governing board shall promulgate and adopt a
26 capital project management rule in accordance with section
27 six, article one of this chapter which is consistent with the
28 capital management rules of the commission and council.
29 The capital project management rule shall include at least the
30 following items:

(A) Delineation of the governing board's responsibilities with respect to capital project management and the responsibilities delegated to the institution's president;

(B) A requirement for the use of the state's standard contract documents for architectural, engineering, construction, construction management and design-build services as appropriate to a particular project;

(C) The governing board's requirements for the following procedures:

(i) Monitoring and approving project designs to ensure conformance with the state and system goals, objectives and priorities and the governing board's master plan, compact and campus development plan;

(ii) Approving project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

(iii) Approving architectural, engineering and construction contracts exceeding an amount to be determined by the governing board;

(iv) Approving contract modifications and construction change orders; and

(v) Providing a method for project closeout and final acceptance of the project by the governing board.

(3) The institutional capital project management rule shall be filed with the commission no later than one hundred eighty days following the effective date of the rule required of the commission and council in section seventeen of this article.

59 (4) The commission may review or audit projects greater
60 than $5 million periodically to ascertain that appropriate
61 capital project management practices are being employed.

62 (d) For institutions that have entered into construction
63 contracts averaging at least $20 million, but not more than
64 $50 million, over the most recent rolling five-year period:

65 (1) The governing board, with assistance as requested
66 from the commission, shall manage all capital projects if the
67 governing board meets the following conditions:

68 (A) Employs at least one individual experienced in
69 capital project development and management; and

70 (B) Promulgates and adopts a capital project management
71 rule in accordance with section six, article one of this chapter
72 that is approved by the commission. The capital project
73 management rule may be amended at the discretion of the
74 governing board, but amendments shall be submitted to the
75 commission for review and approval before becoming effective.

76 (2) The capital project management rule of the governing
77 board shall include at least the following items:

78 (A) Delineation of the governing board's responsibilities
79 with respect to capital project management and the
80 responsibilities delegated to the institution's president;

81 (B) A requirement for the use of the state's standard
82 contract documents for architectural, engineering,
83 construction, construction management and design-build
84 services as appropriate to a particular project; and

85 (C) The governing board's requirements for the following
86 procedures:

(i) Monitoring and approving project designs to ensure conformance with the state and system goals, objectives and priorities and the governing board's master plan, compact and campus development plan;

(ii) Approving project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

(iii) Approving architectural, engineering, construction and other capital contracts exceeding an amount to be determined by the governing board;

(iv) Approving contract modifications and construction change orders; and

(v) Providing a method for project closeout and final acceptance of the project by the governing board.

(3) If an institution does not meet the provisions of this subsection, the commission shall manage all capital projects exceeding $1 million.

(4) The commission staff shall review and audit periodically all projects greater than $1 million to ascertain that appropriate project management practices are being employed. If serious deficiencies are identified and not addressed sufficiently within ninety days, commission staff may assume management of all projects.

(e) For institutions that have entered into construction contracts averaging less than $20 million over the most recent rolling five-year period and for all community and technical colleges, the commission and council shall manage capital projects exceeding $1 million. In the rule required by section seventeen of this article, the commission and council, as appropriate, shall adopt procedures to afford participation

by the governing boards and staff in the planning, development and execution of capital projects.

§18B-19-8. Maintenance.

(a) Each governing board shall ensure that facilities under its jurisdiction are maintained and that a listing of any major deferred maintenance projects is provided annually to the commission or council, as appropriate.

(b) Each governing board shall strive to invest annually an amount for maintenance that is consistent with the building renewal formula developed and approved by the commission and council and to generate a reserve sufficient to address unexpected maintenance needs.

(c) The commission and council shall determine whether a governing board is devoting sufficient resources for maintenance based on the following criteria:

(1) The amount of maintenance expenditures compared to building renewal formula estimates of appropriate expenditures; and

(2) Periodic evaluations of the conditions of facilities at the institution and its performance and effectiveness in maintaining its facilities.

§18B-19-9. Higher education facilities information system.

(a) The commission and council jointly shall develop and maintain a higher education facilities information system. The higher education facilities information system shall serve as a vehicle for carrying out the following functions:

(1) Acquisition of statewide data;

6 (2) Statewide standardization of space use and
7 classification based on nationally recognized standards and
8 measurements to facilitate comparisons among post-
9 secondary education institutions within the state and in the
10 region and nation; and

11 (3) Other purposes as determined by the commission and
12 council.

13 (b) At a minimum the higher education facilities
14 information system shall serve the following purposes:

15 (1) Develop and maintain a statewide inventory of higher
16 education facilities, including those acquired by long-term
17 lease, lease-purchase or other arrangement whereby the
18 institution has long-term beneficial use. The inventory shall
19 include, but is not limited to, the institution and campus
20 location of the facility, the construction date, the original
21 cost, square footage, floor plans, type of construction,
22 ownership status, the purposes for which it is used, the
23 current replacement cost and any other data the commission
24 and council consider appropriate;

25 (2) Develop and maintain an inventory of all rooms
26 within each facility, which includes, but is not limited to, the
27 room number, the square footage, room usage, number of
28 student stations and any other data the commission and
29 council consider appropriate;

30 (3) Provide a vehicle for institutions to submit capital
31 appropriation requests to the commission and council;

32 (4) Provide a vehicle to track the status and cost of
33 institution capital projects from inception to completion,
34 including major maintenance and deferred maintenance
35 projects; and

(5) Provide information on facilities needed to calculate the building renewal formula.

(c) The commission and council shall establish benchmarks for classroom and class laboratory use including an analysis of utilization for the fall and spring semesters of each academic year. The efficient use of classrooms and class laboratories is a factor in determining whether an institution needs additional classroom and laboratory facilities.

(d) Each governing board and any institution under its jurisdiction shall participate and cooperate with the commission and council in all respects in the development and maintenance of the higher education facilities information system.

(e) The higher education facilities information system may be used for other purposes set forth by the commission and council in the rules required by section seventeen of this article.

§18B-19-10. Authorization to sell property; use of proceeds.

(a) Notwithstanding any other provision of law or this code to the contrary, the commission, council and governing boards each may sell, lease, convey or otherwise dispose of all or part of any real property that it owns, either by contract or at public auction, and retain the proceeds of the transaction.

(1) The commission, council and governing boards may not sell, lease, convey or otherwise dispose of any real property without first performing the following steps:

(A) Providing for property appraisal by two independent licensed appraisers. The property may not be sold for less than the average of the two appraisals;

13 (B) Providing notice to the public in the county in which
14 the real property is located by a Class II legal advertisement
15 pursuant to section two, article three, chapter fifty-nine of
16 this code;

17 (C) Holding a public hearing on the issue in the county in
18 which the real property is located; and

19 (D) In the case of the commission, notifying the Joint
20 Committee on Government and Finance.

21 (2) Any proceeds from the sale, lease, conveyance or
22 other disposal of real property that is used jointly by
23 institutions or for statewide programs under the jurisdiction
24 of the commission or the council shall be transferred to the
25 General Revenue Fund of the state.

26 (b) The commission, council or a governing board shall
27 deposit the net proceeds from the sale, lease, conveyance or
28 other disposal of real property into a special revenue account
29 in the State Treasury to be appropriated by the Legislature in
30 the annual budget bill for the purchase of additional real
31 property, equipment or technology, or for capital
32 improvements or maintenance at the institution that sold the
33 surplus real property.

§18B-19-11. Authorization to lease-purchase.

1 (a) The commission or council may enter into lease-
2 purchase agreements for capital improvements, including
3 equipment, on behalf of, or for the benefit of, a state
4 institution of higher education, the commission or council.

5 (b) After the commission or council, as appropriate, has
6 granted approval for a lease-purchase agreement by a
7 governing board, the board may enter into a lease-purchase
8 agreement for capital improvements, including equipment.

(c) The governing boards of Marshall University and West Virginia University may enter into lease-purchase agreements without seeking the approval of the commission.

(d) A lease-purchase agreement constitutes a special obligation of the State of West Virginia. The obligation may be met from any funds legally available to the commission, council or the institution and shall be cancelable at the option of the commission, council, or governing board at the end of any fiscal year. The obligation, or any assignment or securitization of the obligation, never constitutes an indebtedness of the State of West Virginia or any department, agency or political subdivision of the state, within the meaning of any constitutional provision or statutory limitation, and may not be a charge against the general credit or taxing powers of the state or any political subdivision of the state. The facts shall be plainly stated in any lease-purchase agreement.

(e) A lease-purchase agreement shall prohibit assignment or securitization without consent of the lessee and the approval of the agreement as to form by the Attorney General. Proposals for any agreement shall be requested in accordance with the requirements of this section and rules of the commission and council. In addition, any lease-purchase agreement that exceeds $100,000 total shall be approved as to form by the Attorney General.

(f) The interest component of any lease-purchase obligation is exempt from all taxation of the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of any lease-purchase obligation also is exempt from the gross income of the recipient for purposes of federal income taxation and may be designated by the governing

board or the president of the institution as a bank-qualified obligation.

§18B-19-12. Authorization to lease.

(a) Notwithstanding any other provision of this code to the contrary, the commission, council and governing boards may lease, or offer to lease, as lessee, any grounds, buildings, office or other space in the name of the state.

(b) The commission, council and governing boards have sole authority to select and to acquire by contract or lease all grounds, buildings, office space or other space, the rental of which is required necessarily by the commission, council or institutions.

(c) Before executing any rental contract or lease, the commission, council or a governing board shall determine the fair market value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist, and shall contract for or lease the premises at a price not to exceed the fair market value.

(d) The commission, council and each governing board may enter into long-term agreements for buildings land and space for periods longer than one fiscal year but not to exceed forty years.

(e) Any lease shall contain, in substance, all the following provisions:

(1) The commission, council or governing board, as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the lessor at least thirty days prior to the last day of the succeeding month;

(2) The lease is considered canceled without further obligation on the part of the lessee if the Legislature or the federal government fails to appropriate sufficient funds for the lease or otherwise acts to impair the lease or cause it to be canceled; and

(3) The lease is considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the commission, council or governing board before the end of the then-current fiscal year.

(f) The commission, council or institution that is granted any grounds, buildings, office space or other space leased in accordance with this section may not order or make permanent changes of any type thereto, unless the commission, council or governing board, as appropriate, has first determined that the change is necessary for the proper, efficient and economically sound operation of the institution. For purposes of this section, a "permanent change" means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing that cannot be economically removed from the grounds, buildings, office space or other space when vacated by the institution.

(g) Leases and other instruments for grounds, buildings, office or other space, once approved by the commission, council or governing board, may be signed by the chief executive officer, or designee, of the commission, council or institution.

(h) Any lease or instrument exceeding $100,000 annually shall be approved as to form by the Attorney General. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.

§18B-19-13. Real property contracts and agreements.

(a) Except as provided elsewhere in this article, any purchase of real estate, any lease-purchase agreement and any construction of new buildings or other acquisition of buildings, office space or grounds resulting from these transactions, shall be approved by the commission or council, as appropriate, and provided to the Joint Committee on Government and Finance for prior review, if the transaction exceeds $1 million.

(b) The commission, council and each governing board shall provide the following to the Joint Committee on Government and Finance:

(1) A copy of any contract or agreement to which it is a party for real property if the contract or agreement exceeds $1 million; and

(2) A report setting forth a detailed summary of the terms of the contract or agreement, including the name of the property owner and the agent involved in the sale.

(c) The copy and report required by subsection (b) of this section shall be provided at least thirty days before any sale, exchange, transfer, purchase, lease-purchase, lease or rental of real property, refundings of lease-purchases, leases or rental agreements, construction of new buildings, and any other acquisition or lease of buildings, office space or grounds.

(d) A contract or agreement that is for the lease purchase, lease or rental of real property, where the costs of real property acquisition and improvements are to be financed, in whole or in part, with bond proceeds, may contain a preliminary schedule of rents and leases for purposes of review by the committee.

(e) For renewals of contracts or agreements required by this section to be reported, the commission, council or governing board shall provide a report setting forth a detailed summary of the terms of the contract or agreement, including the name of the property owner.

(f) The Joint Committee on Government and Finance shall meet and review any contract, agreement or report within thirty days of receipt.

(g) Each governing board shall provide to the commission or council, as appropriate, a copy of any contract or agreement submitted to the Joint Committee on Government and Finance pursuant to this section.

§18B-19-14. Authorization for sale lease-back.

(a) Notwithstanding any other provision of this code to the contrary, a governing board may sell any building that is on unencumbered real property to which the board holds title and may lease back the same building if the governing board obtains approval of the commission or council, as appropriate, before incurring any obligation. The board shall deposit the net proceeds of the transaction into a special revenue account in the State Treasury to be appropriated by the Legislature for the use of the institution at which the real property is located. Prior to such action, the board shall take the following steps:

(1) Provide for the property to be appraised by two licensed appraisers. The board may not sell the property for less than the average of the two appraisals; and

(2) Retain independent financial and legal services to examine fully all aspects of the transaction.

(b) The sale may be made only to a special purpose entity that exists primarily for the purpose of supporting the institution at which the building is located.

§18B-19-15. Construction and operation of auxiliary facilities; fees for auxiliary enterprises.

(a) A governing board may provide, construct, erect, improve, equip, maintain and operate auxiliary facilities, as defined in section two of this article, for students, employees and visitors on land it owns or leases.

(b) The cost of construction, erection, improvement or equipment may be paid with the proceeds of revenue bonds authorized by this code or by any other financing method provided in this article.

(c) A governing board may engage experts in engineering, architecture and construction and other experts as it considers necessary and may specify the payment and contract terms which are included in the cost of the project.

(d) A governing board may promulgate and adopt rules and charge fees for use of its facilities. The fees charged shall be structured so as to generate funds sufficient for the following purposes:

(1) To maintain payment of the principal of and interest on any revenue bonds, and for reserves for the revenue bonds;

(2) To operate the auxiliary enterprise;

(3) To satisfy annual building renewal formula requirements; and

(4) To build a reserve for major renovation or replacement.

(e) All moneys collected for the use of auxiliary facilities shall be paid to the credit of and expended by the governing board of that institution in accordance with section thirteen, article ten of this chapter.

§18B-19-16. Condemnation generally.

(a) The commission, council and governing boards each may acquire land or buildings by condemnation for the use and benefit of any state institution under its jurisdiction. A condemnation proceeding conducted pursuant to this section is governed by chapter fifty-four of this code.

(b) The commission, council and governing boards each may condemn any interest, right or privilege, land or improvement, which in its opinion is necessary, in the manner provided by law for the acquisition by this state of property for public purposes. The state is under no obligation to accept and pay for any property condemned and may pay for the property only from the funds provided for that purpose.

(c) In any proceeding to condemn, the order shall be made by the court having jurisdiction of the suit, action or proceedings. A bond or other security may be required by the court securing the property owner against any loss or damage to be sustained by reason of the state's failure to accept and pay for the property. The bond or security may not impose liability or debt on or of the state as contemplated by the Constitution of the State in relation to state debt.

§18B-19-17. Legislative rule.

The commission and council jointly shall propose a rule or rules for legislative approval in accordance with article three-a, chapter twenty-nine-a of this code, to implement this article.

§18B-19-18. Reporting.

1 (a) By July 1, 2013, and annually thereafter, the
2 commission and council shall provide a general status report
3 to the Legislative Oversight Commission on Education
4 Accountability on the progress being made in implementing
5 the state-wide capital development plan and on the progress
6 of the governing boards in implementing the objectives of
7 institutions' campus development plans.

8 (b) The process required by the commission and council
9 for reporting by the governing boards shall be included in the
10 rules required by section seventeen of this article.

CHAPTER 57

(Com. Sub. for S. B. 631 - By Senators Plymale, Wells and Browning)

[Passed March 8, 2010; in effect July 1, 2010.]
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §18-2A-1, §18-2A-2, §18-2A-3, §18-2A-4, §18-2A-5, §18-2A-6, §18-2A-7, §18-2A-8 and §18-2A-9 of the Code of West Virginia, 1931, as amended, all relating generally to instructional resources; process for approval and adoption of instructional resources in public schools; replacing the terms "textbooks", "instructional materials" and "learning technologies" with "instructional resources" and modifying affected code provisions accordingly; modifying limit on adoption cycles; providing for listing of instructional resources on the state multiple list;

requiring a method for review and adding new and substantially revised resources to the multiple list; providing for county waivers of adoption cycles; providing method for counties to select new or different resource before end of a contract period; providing a method for vendor update of resources; revising the bidding, selection and approval process; permitting the multiple list to be published in an electronic format; requiring contracts to be filed pursuant to the state board process; providing for review of electronic instructional resources; providing for regional education service agency level selection teams; and ensuring equity of access to electronic instructional resources for all students.

Be it enacted by the Legislature of West Virginia:

That §18-2A-1, §18-2A-2, §18-2A-3, §18-2A-4, §18-2A-5, §18-2A-6, §18-2A-7, §18-2A-8 and §18-2A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. ADOPTION OF INSTRUCTIONAL RESOURCES.

§18-2A-1. Definition; adoption groups; adoption schedule.
§18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.
§18-2A-3. Disposition of and requests for samples.
§18-2A-4. Execution of contracts; bond.
§18-2A-5. Selection by county boards; school curriculum teams.
§18-2A-6. Retail prices; limitation on profit; violation; penalty.
§18-2A-7. Exchange privilege; use of supplementary items; state-approved depositories authorized.
§18-2A-8. Instructional resources must be approved and listed; when changes may be effected; rules.
§18-2A-9. Gifts and bribes to influence adoption of instructional resources a felony; penalty.

§18-2A-1. Definition; adoption groups; adoption schedule.

(a) "Instructional Resources" include print materials, electronic resources and systems, or combinations of such instructional resources which convey information to the pupil.

(b) Instructional resources approved for adoption and listed on the state multiple list shall substantially cover the required content and skills for the subject as approved by the state board . The instructional resources shall be current and the information shall be presented accurately. The instructional resources may consist of a single resource, print or electronic, or a compilation of resources, print or electronic, that together cover the required criteria established for approval as a primary instructional resource. The resources may be updated or otherwise changed and improved on an ongoing basis to ensure that they are current and accurate.

(c) On or before July 1 of each year, the state board shall classify the elementary and secondary school subjects required to be taught in the schools of our state into adoption groups by related subject fields as nearly as possible. A schedule for the periods of adoption, not to exceed six years, shall be determined by the state board. However, during the school year beginning on July 1, 2010, the state board shall develop a method by which newly developed and substantially revised instructional materials submitted by vendors or available as open resources may be reviewed for compliance with established criteria. When an instructional resource is found to be in compliance with established criteria, it may be added to the official multiple list and thereafter be available for adoption by a county board. County board instructional resources adoption committees may request a waiver of the adoption cycles from the state board. Software, print and electronic magazines, print and electronic newspapers and other print and electronic periodicals and other licensed or subscription-based instructional resources may be purchased county board for classroom use to supplement those items adopted on the state multiple list without having to comply with the adoption procedures provided in this article.

(d) Software, print and electronic magazines, print and electronic newspapers and print and electronic periodicals are considered to be instructional resources for purposes of special excess levies subject to the provisions of section sixteen, article eight, chapter eleven of this code when the described purpose under that section is for textbooks or instructional resources.

(e) A county board that selects an electronic instructional resource may, subject to the approval by the state board of its request to do so, choose not to renew that option before the end of the established contract period and select a new or different instructional resource from the official multiple listing before the end of the established contract period.

(f) The vendor of an adopted electronic resource, after notice of explanation to the state board, may offer an update to the navigational features or management system, or both, related to the learning technology and may update the content of the learning technology as needed to accurately reflect current knowledge or information without charge. Vendor changes to the electronic resources may not require the purchase of a new operating system during the established contract period. Vendors shall continue to provide support for the version adopted.

(g) The state board shall adopt guidelines and procedures for updates and changes to electronic instructional resources submitted by vendors.

§18-2A-2. Request for samples and bids; deposit by bidder; selection, approval and publication of multiple list.

(a) Prior to each adoption year, and not later than August 1, the state board by written request or otherwise shall ask the various vendors of instructional resources, print or electronic, or any combination thereof, to submit samples and prices on

5 items considered appropriate by the state board to teach the
6 curriculum in the public elementary and secondary schools of
7 the state for the current adoption period. The state board also
8 shall accept for consideration newly developed and
9 substantially revised instructional resources for content areas
10 not in the current adoption cycle.

11 (b) All bids or proposals shall be under seal, and each
12 bidder shall deposit in the State Treasury such sum of money
13 as the state board may designate, such deposit to be not less
14 than $1,000, and not more than $3,000 and such deposit shall
15 be forfeited to the general school fund if such bidder shall fail
16 or refuse to make and execute such contract and bond as are
17 herein required in case of acceptance of all or part of the
18 vendor's bid, and otherwise shall be returned to such bidder
19 after the contract has been made. The state board reserves
20 the right to set the sum of money a vendor is required to
21 deposit in the State Treasury upon submitting a bid:
22 *Provided,* That the vendor has a previous history of failure or
23 refusal to execute contracts or bonds with the State of West
24 Virginia. The state board may set and collect review fees
25 from publishers and vendors participating in the state
26 instructional resources approval and adoption process.

27 (c) All bids shall be opened by the state board, or its
28 designee, in public session. After considering the subject
29 matter, product quality, general suitableness, and prices of
30 items submitted, the state board shall, prior to March 1 of
31 each year in which approvals for adoption are made by it,
32 establish a committee of teachers and other educational
33 specialists, including a sufficient number with experience
34 with electronic instructional resources, and with the aid of the
35 committee, shall on or before December 1, prior to county
36 adoptions, select, approve and publish a list of items in each
37 subject and grade in the elementary and secondary subjects
38 required to be taught by the state board. The committee of
39 teachers and other educational specialists shall report their

40 recommendations to the state board on or before November
41 15, of the year preceding the adoption by the county board.
42 The state board may create a standing committee of teachers
43 and other education specialists, including a sufficient number
44 with experience with electronic instructional resources, for
45 each subject and grade level to review all new or revised
46 instructional resources submitted after the initial approvals
47 for adoption.

§18-2A-3. Disposition of and requests for samples.

1 (a) Items to be reviewed in excess of the official sample
2 submitted to the state board for examination shall remain the
3 property of the vendor submitting them if claimed within
4 thirty days after state board adoption of the multiple list. If
5 not claimed within that period, the items may be sold by the
6 state board and the money credited to the Department of
7 Education Instructional Resources Fund or items may be
8 distributed to state educational agencies.

9 (b) Sample items submitted to county boards or regional
10 education service agency selection teams remain the property
11 of the vendor submitting them if claimed within thirty days
12 after instructional materials have been formally adopted.
13 Unclaimed items may be distributed free of charge by the
14 respective county board or regional educational service
15 agency to any school, library or individual who may have
16 need for the sample items.

17 (c) Vendors claiming samples within the thirty-day
18 period shall notify the respective board of education or
19 regional education service agency at the time samples are
20 submitted for study of their intent to recall the samples. All
21 costs shall be borne by the vendors.

22 (d) No county or regional education service agency
23 adoption committee is entitled to request or receive more
24 than eight free samples of any multigrade program being

25 considered for adoption. Any single grade level subject area
26 items used above grade six shall be limited to five free
27 samples per county selection committee. Any individual
28 requesting samples in excess of these limits shall be billed by
29 the vendor at the lowest wholesale price plus shipping. In the
30 case of electronic instructional resources, it is sufficient for
31 vendors to provide access for the purpose of reviewing the
32 resources via a user name and password to a web-based
33 resource or through on-line file transfer or download.

§18-2A-4. Execution of contracts; bond.

1 (a) When the selection and approval of the multiple list
2 have been properly made, it is the duty of the state board to
3 furnish contracts for the selected items with the vendors
4 within thirty days of the approval and adoption of the
5 multiple list, prepare a list of the adopted resources on the
6 multiple list and publish it in electronic format and make the
7 list available through a page on the West Virginia
8 Department of Education web page. The contract for
9 adoption shall run for a period of time as designated by the
10 state board.

11 (b) Each vendor awarded a contract by the West
12 Virginia Department of Education shall enter into a bond
13 payable to the State of West Virginia in the penal sum of not
14 less than $2,000 and not more than $10,000 to be approved
15 by the state board of public works. The bond shall be
16 executed as surety by a responsible surety company
17 authorized to carry on its business in West Virginia. The
18 contract shall be prepared by the Attorney General in
19 accordance with the terms and provisions of this article.
20 The contract shall be executed in triplicate, one copy to be
21 held by the vendor, one by the state board and one attached
22 to the bond filed with the board of public works.

23 (c) Bonds required of successful vendors shall provide
24 that:

(1) The vendor will furnish any of the instructional resources on the multiple list under vendors contract for the period of the adoption, from the date of the bond, to any county school unit, a dealer appointed by the county, or any state board approved depository or depositories as defined in section seven of this article, at the lowest wholesale price contained in the bids or contracts made to any other county school unit, dealer, county, school or depository in any other state, like conditions prevailing. The state board shall determine, from time to time, the terms of the bids and contracts and may require the vendor to bear the costs of shipping, mail or transportation or offer any other financial benefit available in the highest amount paid by a vendor to any other county school unit, dealer, county or depository in any other state: *Provided*, That the state board shall decide whether from time to time bids and contracts for instructional resources are to be for the delivery directly to each county school unit, dealer appointed by the county, county or to each depository or depositories, or any combination thereof, under this section.

(2) The vendor will automatically reduce the prices in West Virginia when prices are reduced anywhere in the United States, so that no such item or items shall at any time be sold in West Virginia at a higher wholesale price than received for items elsewhere in the United States, like conditions prevailing.

(3) All items sold in West Virginia will be identical with the official samples submitted to the state board as regards quality standards, specifications, subject matter, and other particulars which may affect the value of the items. The state board may, however, during the period of the contract approve revised editions of adopted items, which will authorize a vendor to furnish such revisions. All contracts and bonds shall be filed in accordance with the appropriate state board process prior to July 1.

§18-2A-5. Selection by county boards; school curriculum teams.

(a) Vendors, upon requests of county superintendents, shall furnish to county boards the requested sample copies of resources that were selected and placed on the state multiple list by the state board in accordance with the provisions of section three of this article. In the case of electronic instructional resources, it is sufficient for vendors to provide access for the purpose of reviewing the resources via a web-hosted online format.

(b) School curriculum teams shall make their curriculum and instructional needs known to the county superintendent and selection committees prior to the consideration of any adopted grouping in accordance with the provisions of section three of this article. The county board shall, upon recommendation of the county superintendent with the aid of a committee of teachers and not later than May 1 of the year following that in which the multiple list for the group was made and approved, select from the state multiple list one or more resources to deliver instruction for a period as provided for elsewhere in this article. Counties are authorized to include nonvoting advisors from the general public in the adoption process, but shall require advisors to provide their assessment of the resources appropriate for the subject before the voting committee commences the selection process.

(c) In order to avoid duplication and to maximize resources, with agreement of all county superintendents within a regional education service agency area and subsequent regional education service agency actions, a regional education service agency instructional resources selection team may be established to conduct a review of selected resources placed on the state multiple list by the state board. The membership of the selection team will be established through agreement of the county superintendents

with representation of all counties, including any nonvoting advisors from the general public. The resource selection team will provide recommendations to each county superintendent for consideration, review and adoption by each county board.

(d) County boards adopting electronic instructional resources shall ensure equity of access for all students at school and shall have a plan to provide equity of access at home if necessary through alternate avenues including, but not limited to, print, software, and hardware support.

§18-2A-6. Retail prices; limitation on profit; violation; penalty.

It shall be the duty of the state board to fix prices at which the various instructional resources on the state multiple list shall be sold to patrons, the excess of which above contract price shall represent the profit to the retailer; but in no case shall such profit exceed twenty percent of the contract price. The state board shall notify each county superintendent of the instructional resources on the state multiple list and the prices at which they are to be sold, and any person selling such resources at a higher price than that fixed by the state board shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $10 nor more than $50.

§18-2A-7. Exchange privilege; use of supplementary items; state-approved depositories authorized.

Contractors shall arrange for the exchange of items, allowing pupils or boards of education an exchange price as liberal as granted on the same items to any city, county, or state in the United States, like conditions prevailing. The exchange privilege shall extend through one entire school year. Nothing in this article prevents the use of supplementary instructional resources, print or electronic,

8 provided they do not displace the adopted instructional
9 resources, nor the use of more advanced items in such
10 schools as may be ready for the same. The state Board of
11 Education is authorized to approve any depository or
12 depositories, either public or private, to serve any county or
13 several counties, whose purpose includes, but is not limited
14 to, offering the savings and services generally associated
15 with local distribution of instructional resources or
16 electronic instructional resources that are not web-based, or
17 any combination thereof, to counties and schools.

§18-2A-8. Instructional resources must be approved and listed; when changes may be effected; rules.

1 (a) No instructional resource, print or electronic, may be
2 used in any public elementary or secondary school in West
3 Virginia as the primary source to deliver the instructional
4 goals and objectives for state required courses unless it has
5 been approved and listed on the state multiple list by the state
6 board, except as otherwise provided in this section. Any
7 changes of items made by the state board shall become
8 effective upon approval. The state board may upon request
9 by a county board and upon justification of that request, and
10 subsequent to the adoption by a county board approve the
11 adoption of additional items to meet the needs of specific
12 children which were not provided for in the original adoption,
13 or waive the requirement to adopt and use resources in a
14 particular school as provided for in section six, article five-a
15 of this chapter. Nothing in this section shall apply to the
16 supplementary items that are needed from time to time.

17 (b) The state board may grant permission to county
18 boards for the continued use of previously adopted resources
19 that are listed on the most recently expired multiple list
20 appropriate for the subject category under consideration. The
21 continued use shall not exceed a period as designated by the
22 state board. The state board may make such rules as it may

23 deem necessary and expedient to carry out the provisions of
24 this article.

§18-2A-9. Gifts and bribes to influence adoption of instructional resources a felony; penalty.

1 Any member of the state board, any county
2 superintendent, any member of a county board or any other
3 person who shall receive, solicit, or accept any gift, present,
4 or thing of value to influence that individual in the vote for
5 the adoption of instructional resources, print or electronic, or
6 any combination thereof, or any person who shall either
7 directly or indirectly give or offer to give any such gift,
8 present, or thing of value to any person to influence that
9 individual in voting for the adoption of instructional
10 resources, print or electronic, or any combination thereof,
11 shall be guilty of a felony and, upon conviction thereof, shall
12 be confined in a correctional facility for not less than one
13 year nor more than three years.

CHAPTER 58

(Com. Sub. for H. B. 4436 - By Delegates Shaver, M. Poling, Perry, Williams, Ennis, Beach, Lawrence, Romine, Pethtel, Paxton and Cann)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2010.]

AN ACT to amend and reenact §18-2E-5 and §18-5A-6 of the Code of West Virginia, 1931, as amended, relating to promoting student achievement; revising accountability finding; clarifying

optional usage of certain testing or assessment instruments; publishing and making such instruments available to curriculum teams and teacher collaborations; making exclusions from accreditation and evaluations for failure to use or exercise of discretion in using certain assessments, strategies and programs; adding circumstance to definition of low performing school; providing for state system of support for low performing schools and modifying process and time lines for improvement; requiring schools and school systems to work collaboratively with state system of support in certain circumstances; requiring school curriculum teams to review certain non required tests and assessments and providing it discretion to determine usage; authorizing team to request waiver of state and county requirements to use certain assessments, instructional strategies or programs; updating waivers for instructional resources; providing for optional adoption by schools of process for teacher collaboration to replace or in addition to school curriculum team; and providing for membership, mission and structure.

Be it enacted by the Legislature of West Virginia:

That §18-2E-5 and §18-5A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

Article

2E. High Quality Educational Programs.

5A. Local School Improvement.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. Process for improving education; education standards; statewide assessment program; accountability measures; Office of Education Performance Audits; school accreditation and school system approval; intervention to correct low performance.

(a) *Legislative findings, purpose and intent.* -- The Legislature makes the following findings with respect to the process for improving education and its purpose and intent in the enactment of this section:

(1) The process for improving education includes four primary elements, these being:

(A) Standards which set forth the knowledge and skills that students should know and be able to do as the result of a thorough and efficient education that prepares them for the twenty-first century, including measurable criteria to evaluate student performance and progress;

(B) Assessments of student performance and progress toward meeting the standards;

(C) A system of accountability for continuous improvement defined by high quality standards for schools and school systems articulated by a rule promulgated by the state board and outlined in subsection (c) of this section that will build capacity in schools and districts to meet rigorous outcomes that assure student performance and progress toward obtaining the knowledge and skills intrinsic to a high quality education rather than monitoring for compliance with specific laws and regulations; and

(D) A method for building the capacity and improving the efficiency of schools and school systems to improve student performance and progress.

(2) As the Constitutional body charged with the general supervision of schools as provided by general law, the state board has the authority and the responsibility to establish the standards, assess the performance and progress of students against the standards, hold schools and school systems accountable and assist schools and school systems to build

capacity and improve efficiency so that the standards are met, including, when necessary, seeking additional resources in consultation with the Legislature and the Governor.

(3) As the Constitutional body charged with providing for a thorough and efficient system of schools, the Legislature has the authority and the responsibility to establish and be engaged constructively in the determination of the knowledge and skills that students should know and be able to do as the result of a thorough and efficient education. This determination is made by using the process for improving education to determine when school improvement is needed, by evaluating the results and the efficiency of the system of schools, by ensuring accountability and by providing for the necessary capacity and its efficient use.

(4) In consideration of these findings, the purpose of this section is to establish a process for improving education that includes the four primary elements as set forth in subdivision (1) of this subsection to provide assurances that the high quality standards are, at a minimum, being met and that a thorough and efficient system of schools is being provided for all West Virginia public school students on an equal education opportunity basis.

(5) The intent of the Legislature in enacting this section and section five-c of this article is to establish a process through which the Legislature, the Governor and the state board can work in the spirit of cooperation and collaboration intended in the process for improving education to consult and examine the performance and progress of students, schools and school systems and, when necessary, to consider alternative measures to ensure that all students continue to receive the thorough and efficient education to which they are entitled. However, nothing in this section requires any specific level of funding by the Legislature.

65 (b) *Electronic county and school strategic improvement*
66 *plans*. -- The state board shall promulgate a rule consistent
67 with the provisions of this section and in accordance with
68 article three-b, chapter twenty-nine-a of this code establishing
69 an electronic county strategic improvement plan for each
70 county board and an electronic school strategic improvement
71 plan for each public school in this state. Each respective plan
72 shall be a five-year plan that includes the mission and goals
73 of the school or school system to improve student, school or
74 school system performance and progress, as applicable. The
75 strategic plan shall be revised annually in each area in which
76 the school or system is below the standard on the annual
77 performance measures. The revised annual plan also shall
78 identify any deficiency which is reported on the check lists
79 identified in paragraph (G), subdivision (5), subsection (l) of
80 this section including any deficit more than a casual deficit
81 by the county board. The plan shall be revised when required
82 pursuant to this section to include each annual performance
83 measure upon which the school or school system fails to meet
84 the standard for performance and progress, the action to be
85 taken to meet each measure, a separate time line and a date
86 certain for meeting each measure, a cost estimate and, when
87 applicable, the assistance to be provided by the department
88 and other education agencies to improve student, school or
89 school system performance and progress to meet the annual
90 performance measure.

91 The department shall make available to all public schools
92 through its website or the West Virginia Education
93 Information System an electronic school strategic improvement
94 plan boilerplate designed for use by all schools to develop an
95 electronic school strategic improvement plan which
96 incorporates all required aspects and satisfies all improvement
97 plan requirements of the No Child Left Behind Act.

98 (c) *High quality education standards and efficiency*
99 *standards*. -- In accordance with the provisions of article

100 three-b, chapter twenty-nine-a of this code, the state board
101 shall adopt and periodically review and update high quality
102 education standards for student, school and school system
103 performance and processes in the following areas:

104 (1) Curriculum;

105 (2) Workplace readiness skills;

106 (3) Finance;

107 (4) Transportation;

108 (5) Special education;

109 (6) Facilities;

110 (7) Administrative practices;

111 (8) Training of county board members and administrators;

112 (9) Personnel qualifications;

113 (10) Professional development and evaluation;

114 (11) Student performance and progress;

115 (12) School and school system performance and progress;

116 (13) A code of conduct for students and employees;

117 (14) Indicators of efficiency; and

118 (15) Any other areas determined by the state board.

119 The standards, as applicable, shall incorporate the state's
120 21st Century Skills Initiative and shall assure that graduates

121 are prepared for continuing post-secondary education,
122 training and work and that schools and school systems are
123 making progress toward achieving the education goals of the
124 state.

125 (d) *Comprehensive statewide student assessment*
126 *program.* -- The state board shall promulgate a rule in
127 accordance with the provisions of article three-b, chapter
128 twenty-nine-a of this code establishing a comprehensive
129 statewide student assessment program to assess student
130 performance and progress in grades three through twelve.
131 The state board may require that student proficiencies be
132 measured through the ACT EXPLORE and the ACT PLAN
133 assessments or other comparable assessments, which are
134 approved by the state board and provided by future vendors.
135 The state board may require that student proficiencies be
136 measured through the West Virginia writing assessment at
137 any of the grade levels four, seven and ten determined by the
138 state board to be appropriate: *Provided,* That, effective July
139 1, 2008, the state board may require that student proficiencies
140 be measured through the West Virginia writing assessment at
141 any of the grade levels four, seven and eleven determined by
142 the state board to be appropriate. The state board may
143 provide through the statewide assessment program other
144 optional testing or assessment instruments applicable to grade
145 levels kindergarten through grade twelve which may be used
146 by each school to promote student achievement upon
147 approval by the school curriculum team or the process for
148 teacher collaboration to improve instruction and learning
149 established by the faculty senate as provided in section six,
150 article five-a of this chapter. The state board shall annually
151 publish and make available, electronically or otherwise, to
152 school curriculum teams and teacher collaborative processes
153 the optional testing and assessment instruments. The failure
154 of a school to use any optional testing and assessment may
155 not be cited as a deficiency in any accreditation review of the
156 school; nor may the exercise of its discretion, as provided in

section six, article five-a of this chapter, in using the assessments and implementing the instructional strategies and programs that it determines best to promote student achievement at the school be cited as a deficiency in any accreditation review of the school or in the personnel evaluation of the principal. The use of assessment results are subject to the following:

(1) The assessment results for grade levels three through eight and eleven are the only assessment results which may be used for determining whether any school or school system has made adequate yearly progress (AYP);

(2) Only the assessment results in the subject areas of reading/language arts and mathematics may be used for determining whether a school or school system has made adequate yearly progress (AYP);

(3) The results of the West Virginia writing assessment, the ACT EXPLORE assessments and the ACT PLAN assessments may not be used for determining whether a school or school system has made adequate yearly progress (AYP);

(4) The results of testing or assessment instruments provided by the state board for optional use by schools and school systems to promote student achievement may not be used for determining whether a school or school system has made adequate yearly progress (AYP); and

(5) All assessment provisions of the comprehensive statewide student assessment program in effect for the school year 2006-2007 shall remain in effect until replaced by the state board rule.

(e) *Annual performance measures for Public Law 107-110, the Elementary and Secondary Education Act of 1965,*

188 *as amended (No Child Left Behind Act of 2001).* -- The
189 standards shall include annual measures of student, school
190 and school system performance and progress for the grade
191 levels and the content areas defined by the act. The
192 following annual measures of student, school and school
193 system performance and progress shall be the only measures
194 for determining whether adequately yearly progress under the
195 No Child Left Behind Act has been achieved:

196 (1) The acquisition of student proficiencies as indicated
197 by student performance and progress on the required
198 accountability assessments at the grade levels and content
199 areas as required by the act subject to the limitations set forth
200 in subsection (d) of this section.

201 (2) The student participation rate in the uniform statewide
202 assessment must be at least ninety-five percent or the average
203 of the participation rate for the current and the preceding two
204 years is ninety-five percent for the school, county and state;

205 (3) Only for schools that do not include grade twelve, the
206 school attendance rate which shall be no less than ninety
207 percent in attendance for the school, county and state. The
208 following absences are excluded:

209 (A) Student absences excused in accordance with the
210 state board rule promulgated pursuant to section four, article
211 eight of this chapter;

212 (B) Students not in attendance due to disciplinary
213 measures; and

214 (C) Absent students for whom the attendance director has
215 pursued judicial remedies compelling attendance to the extent
216 of his or her authority; and

217 (4) The high school graduation rate which shall be no less
218 than eighty percent for the school, county and state; or if the

high school graduation rate is less than eighty percent, the high school graduation rate shall be higher than the high school graduation rate of the preceding year as determined from information on the West Virginia Education Information System on August 15.

(f) *State annual performance measures for school and school system accreditation.* -- The state board shall establish a system to assess and weigh annual performance measures for state accreditation of schools and school systems in a manner that gives credit or points such as an index to prevent any one measure alone from causing a school to achieve less than full accreditation status or a school system from achieving less than full approval status: *Provided,* That a school or school system that achieves adequate yearly progress is eligible for no less than full accreditation or approval status, as applicable, and the system established pursuant to this subsection applies only to schools and school systems that do not achieve adequate yearly progress.

The following types of measures, as may be appropriate at the various programmatic levels, may be approved by the state board for the school and school system accreditation:

(1) The acquisition of student proficiencies as indicated by student performance and progress on the uniform statewide assessment program at the grade levels as provided in subsection (d) of this section. The state board may approve providing bonus points or credits for students scoring at or above mastery and distinguished levels;

(2) Writing assessment results in grades tested;

(3) School attendance rates;

(4) Percentage of courses taught by highly qualified teachers;

(5) Percentage of students scoring at benchmarks on the currently tested ACT EXPLORE and ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors;

(6) Graduation rates;

(7) Job placement rates for vocational programs;

(8) Percent of students passing end-of-course career/technical tests;

(9) Percent of students not requiring college remediation classes; and

(10) Bonus points or credits for subgroup improvement, advanced placement percentages, dual credit completers and international baccalaureate completers.

(g) *Indicators of exemplary performance and progress.* -- The standards shall include indicators of exemplary student, school and school system performance and progress. The indicators of exemplary student, school and school system performance and progress shall be used only as indicators for determining whether accredited and approved schools and school systems should be granted exemplary status. These indicators shall include, but are not limited to, the following:

(1) The percentage of graduates who declare their intent to enroll in college and other post-secondary education and training following high school graduation;

(2) The percentage of graduates who receive additional certification of their skills, competence and readiness for college, other post-secondary education or employment above the level required for graduation; and

(3) The percentage of students who successfully complete advanced placement, dual credit and honors classes.

(h) *Indicators of efficiency.* -- In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall adopt by rule and periodically review and update indicators of efficiency for use by the appropriate divisions within the department to ensure efficient management and use of resources in the public schools in the following areas:

(1) Curriculum delivery including, but not limited to, the use of distance learning;

(2) Transportation;

(3) Facilities;

(4) Administrative practices;

(5) Personnel;

(6) Use of regional educational service agency programs and services, including programs and services that may be established by their assigned regional educational service agency or other regional services that may be initiated between and among participating county boards; and

(7) Any other indicators as determined by the state board.

(i) *Assessment and accountability of school and school system performance and processes.* -- In accordance with the provisions of article three-b, chapter twenty-nine-a of this code, the state board shall establish by rule a system of education performance audits which measures the quality of education and the preparation of students based on the annual measures of student, school and school system performance

306 and progress. The system of education performance audits
307 shall provide information to the state board, the Legislature
308 and the Governor, individually and collectively as the
309 Process for Improving Education Council, upon which they
310 may determine whether a thorough and efficient system of
311 schools is being provided. The system of education
312 performance audits shall include:

313 (1) The assessment of student, school and school system
314 performance and progress based on the annual measures set
315 forth in subsection (d) of this section;

316 (2) The evaluation of records, reports and other
317 information collected by the department upon which the
318 quality of education and compliance with statutes, policies
319 and standards may be determined;

320 (3) The review of school and school system electronic
321 strategic improvement plans; and

322 (4) The on-site review of the processes in place in
323 schools and school systems to enable school and school
324 system performance and progress and compliance with the
325 standards.

326 (j) *Uses of school and school system assessment*
327 *information.* -- The state board and the Process for Improving
328 Education Council established pursuant to section five-c of
329 this article shall use information from the system of
330 education performance audits to assist them in ensuring that
331 a thorough and efficient system of schools is being provided
332 and to improve student, school and school system
333 performance and progress. Information from the system of
334 education performance audits further shall be used by the
335 state board for these purposes, including, but not limited to,
336 the following:

(1) Determining school accreditation and school system approval status;

(2) Holding schools and school systems accountable for the efficient use of existing resources to meet or exceed the standards; and

(3) Targeting additional resources when necessary to improve performance and progress.

The state board shall make accreditation information available to the Legislature, the Governor, the general public and to any individual who requests the information, subject to the provisions of any act or rule restricting the release of information.

(k) *Early detection and intervention programs*. -- Based on the assessment of student, school and school system performance and progress, the state board shall establish early detection and intervention programs using the available resources of the Department of Education, the regional educational service agencies, the Center for Professional Development and the Principals Academy, as appropriate, to assist underachieving schools and school systems to improve performance before conditions become so grave as to warrant more substantive state intervention. Assistance shall include, but is not limited to, providing additional technical assistance and programmatic, professional staff development, providing monetary, staffing and other resources where appropriate, and, if necessary, making appropriate recommendations to the Process for Improving Education Council.

(l) *Office of Education Performance Audits*. --

(1) To assist the state board and the Process for Improving Education Council in the operation of a system of education performance audits, the state board shall establish

an Office of Education Performance Audits consistent with the provisions of this section. The Office of Education Performance Audits shall be operated under the direction of the state board independently of the functions and supervision of the State Department of Education and state superintendent. The Office of Education Performance Audits shall report directly to and be responsible to the state board and the Process for Improving Education Council created in section five-c of this article in carrying out its duties under the provisions of this section.

(2) The office shall be headed by a director who shall be appointed by the state board and who shall serve at the will and pleasure of the state board. The annual salary of the director shall be set by the state board and may not exceed eighty percent of the salary cap of the State Superintendent of Schools.

(3) The state board shall organize and sufficiently staff the office to fulfill the duties assigned to it by law and by the state board. Employees of the State Department of Education who are transferred to the Office of Education Performance Audits shall retain their benefits and seniority status with the Department of Education.

(4) Under the direction of the state board, the Office of Education Performance Audits shall receive from the West Virginia education information system staff research and analysis data on the performance and progress of students, schools and school systems, and shall receive assistance, as determined by the state board, from staff at the State Department of Education, the regional education service agencies, the Center for Professional Development, the Principals Academy and the School Building Authority to carry out the duties assigned to the office.

(5) In addition to other duties which may be assigned to it by the state board or by statute, the Office of Education Performance Audits also shall:

402 (A) Assure that all statewide assessments of student
403 performance used as annual performance measures are secure
404 as required in section one-a of this article;

405 (B) Administer all accountability measures as assigned
406 by the state board, including, but not limited to, the
407 following:

408 (i) Processes for the accreditation of schools and the
409 approval of school systems; and

410 (ii) Recommendations to the state board on appropriate
411 action, including, but not limited to, accreditation and
412 approval action;

413 (C) Determine, in conjunction with the assessment and
414 accountability processes, what capacity may be needed by
415 schools and school systems to meet the standards established
416 by the state board and recommend to the state board and the
417 Process for Improving Education Council plans to establish
418 those needed capacities;

419 (D) Determine, in conjunction with the assessment and
420 accountability processes, whether statewide system
421 deficiencies exist in the capacity of schools and school
422 systems to meet the standards established by the state board,
423 including the identification of trends and the need for
424 continuing improvements in education, and report those
425 deficiencies and trends to the state board and the Process for
426 Improving Education Council;

427 (E) Determine, in conjunction with the assessment and
428 accountability processes, staff development needs of schools
429 and school systems to meet the standards established by the
430 state board and make recommendations to the state board, the
431 Process for Improving Education Council, the Center for
432 Professional Development, the regional educational service

agencies, the Higher Education Policy Commission and the county boards;

(F) Identify, in conjunction with the assessment and accountability processes, exemplary schools and school systems and best practices that improve student, school and school system performance and make recommendations to the state board and the Process for Improving Education Council for recognizing and rewarding exemplary schools and school systems and promoting the use of best practices. The state board shall provide information on best practices to county school systems and shall use information identified through the assessment and accountability processes to select schools of excellence; and

(G) Develop reporting formats, such as check lists, which shall be used by the appropriate administrative personnel in schools and school systems to document compliance with various of the applicable laws, policies and process standards as considered appropriate and approved by the state board, including, but not limited to, the following:

(i) The use of a policy for the evaluation of all school personnel that meets the requirements of sections twelve and twelve-a, article two, chapter eighteen-a of this code;

(ii) The participation of students in appropriate physical assessments as determined by the state board, which assessment may not be used as a part of the assessment and accountability system;

(iii) The appropriate licensure of school personnel; and

(iv) The school provides multicultural activities.

Information contained in the reporting formats is subject to examination during an on-site review to determine

compliance with laws, policies and standards. Intentional and grossly negligent reporting of false information are grounds for dismissal.

(m) *On-site reviews.* --

(1) The system of education performance audits shall include on-site reviews of schools and school systems which shall be conducted only at the specific direction of the state board upon its determination that the performance and progress of the school or school system are persistently below standard or that other circumstances exist that warrant an on-site review. Any discussion by the state board of schools to be subject to an on-site review or dates for which on-site reviews will be conducted may be held in executive session and is not subject to the provisions of article nine-a, chapter six of this code relating to open governmental proceedings. An on-site review shall be conducted by the Office of Education Performance Audits of a school or school system for the purpose of investigating the reasons for performance and progress that are persistently below standard and making recommendations to the school and school system, as appropriate, and to the state board on such measures as it considers necessary to improve performance and progress to meet the standard. The investigation may include, but is not limited to, the following:

(A) Verifying data reported by the school or county board;

(B) Examining compliance with the laws and policies affecting student, school and school system performance and progress;

(C) Evaluating the effectiveness and implementation status of school and school system electronic strategic improvement plans;

(D) Investigating official complaints submitted to the state board that allege serious impairments in the quality of education in schools or school systems;

(E) Investigating official complaints submitted to the state board that allege that a school or county board is in violation of policies or laws under which schools and county boards operate; and

(F) Determining and reporting whether required reviews and inspections have been conducted by the appropriate agencies, including, but not limited to, the State Fire Marshal, the Health Department, the School Building Authority and the responsible divisions within the Department of Education, and whether noted deficiencies have been or are in the process of being corrected. The Office of Education Performance Audits may not conduct a duplicate review or inspection of any compliance reviews or inspections conducted by the department or its agents or other duly authorized agencies of the state, nor may it mandate more stringent compliance measures.

(2) The Director of the Office of Education Performance Audits shall notify the county superintendent of schools five school days prior to commencing an on-site review of the county school system and shall notify both the county superintendent and the principal five school days before commencing an on-site review of an individual school: *Provided,* That the state board may direct the Office of Education Performance Audits to conduct an unannounced on-site review of a school or school system if the state board believes circumstances warrant an unannounced on-site review.

(3) The Office of Education Performance Audits shall conduct on-site reviews which are limited in scope to specific areas in which performance and progress are persistently

528 below standard as determined by the state board unless
529 specifically directed by the state board to conduct a review
530 which covers additional areas.

531 (4) An on-site review of a school or school system shall
532 include a person or persons from the Department of
533 Education or a public education agency in the state who has
534 expert knowledge and experience in the area or areas to be
535 reviewed and who has been trained and designated by the
536 state board to perform such functions. If the size of the
537 school or school system and issues being reviewed
538 necessitate the use of an on-site review team or teams, the
539 person or persons designated by the state board shall advise
540 and assist the director to appoint the team or teams. The
541 person or persons designated by the state board shall be the
542 team leaders.

543 The persons designated by the state board shall be
544 responsible for completing the report on the findings and
545 recommendations of the on-site review in their area of
546 expertise. It is the intent of the Legislature that the persons
547 designated by the state board participate in all on-site reviews
548 that involve their area of expertise, to the extent practicable,
549 so that the on-site review process will evaluate compliance
550 with the standards in a uniform, consistent and expert
551 manner.

552 (5) The Office of Education Performance Audits shall
553 reimburse a county board for the costs of substitutes required
554 to replace county board employees while they are serving on
555 a review team.

556 (6) At the conclusion of an on-site review of a school
557 system, the director and team leaders shall hold an exit
558 conference with the superintendent and shall provide an
559 opportunity for principals to be present for at least the portion
560 of the conference pertaining to their respective schools. In

561 the case of an on-site review of a school, the exit conference
562 shall be held with the principal and curriculum team of the
563 school and the superintendent shall be provided the
564 opportunity to be present. The purpose of the exit conference
565 is to review the initial findings of the on-site review, clarify
566 and correct any inaccuracies and allow the opportunity for
567 dialogue between the reviewers and the school or school
568 system to promote a better understanding of the findings.

569 (7) The Office of Education Performance Audits shall
570 report the findings of an on-site review to the county
571 superintendent and the principals whose schools were
572 reviewed within thirty days following the conclusion of the
573 on-site review. The Office of Education Performance Audits
574 shall report the findings of the on-site review to the state
575 board within forty-five days after the conclusion of the on-
576 site review. A copy of the report shall be provided to the
577 Process for Improving Education Council at its request. A
578 school or county that believes one or more findings of a
579 review are clearly inaccurate, incomplete or misleading,
580 misrepresent or fail to reflect the true quality of education in
581 the school or county or address issues unrelated to the health,
582 safety and welfare of students and the quality of education,
583 may appeal to the state board for removal of the findings.
584 The state board shall establish a process for it to receive,
585 review and act upon the appeals. The state board shall report
586 to the Legislative Oversight Commission on Education
587 Accountability during its July interim meetings, or as soon
588 thereafter as practical, on each appeal during the preceding
589 school year.

590 (8) The Legislature finds that the accountability and
591 oversight of the following activities and programmatic areas
592 in the public schools is controlled through other mechanisms
593 and that additional accountability and oversight are not only
594 unnecessary but counterproductive in distracting necessary
595 resources from teaching and learning. Therefore,

596 notwithstanding any other provision of this section to the
597 contrary, the following activities and programmatic areas are
598 not subject to review by the Office of Education Performance
599 Audits:

600 (A) Work-based learning;

601 (B) Use of advisory councils;

602 (C) Program accreditation and student credentials;

603 (D) Student transition plans;

604 (E) Graduate assessment form;

605 (F) Casual deficit;

606 (G) Accounting practices;

607 (H) Transportation services;

608 (I) Special education services;

609 (J) Safe, healthy and accessible facilities;

610 (K) Health services;

611 (L) Attendance director;

612 (M) Business/community partnerships;

613 (N) Pupil-teacher ratio/split grade classes;

614 (O) Local school improvement council, faculty senate,
615 student assistance team and curriculum team;

616 (P) Planning and lunch periods;

(Q) Skill improvement program;

(R) Certificate of proficiency;

(S) Training of county board members;

(T) Excellence in job performance;

(U) Staff development; and

(V) Preventive discipline, character education and student and parental involvement.

(n) *School accreditation.* -- The state board annually shall review the information from the system of education performance audits submitted for each school and shall issue to every school one of the following approval levels: Exemplary accreditation status, distinction accreditation status, full accreditation status, temporary accreditation status, conditional accreditation status or low performing accreditation status.

(1) Full accreditation status shall be given to a school when the school's performance and progress meet or exceed the standards adopted by the state board pursuant to subsection (e) or (f), as applicable, of this section and it does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A school that meets or exceeds the performance and progress standards but has the other deficiencies shall remain on full accreditation status for the remainder of the accreditation period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary accreditation status shall be given to a school when the school's performance and progress are

below the level required for full accreditation status. Whenever a school is given temporary accreditation status, the county board shall ensure that the school's electronic strategic improvement plan is revised in accordance with subsection (b) of this section to increase the performance and progress of the school to a full accreditation status level. The revised plan shall be submitted to the state board for approval.

(3) Conditional accreditation status shall be given to a school when the school's performance and progress are below the level required for full accreditation, but the school's electronic strategic improvement plan meets the following criteria:

(A) The plan has been revised to improve performance and progress on the standard or standards by a date or dates certain;

(B) The plan has been approved by the state board; and

(C) The school is meeting the objectives and time line specified in the revised plan.

(4) Exemplary accreditation status shall be given to a school when the school's performance and progress substantially exceed the standards adopted by the state board pursuant to subsections (f) and (g) of this section. The state board shall promulgate legislative rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code designated to establish standards of performance and progress to identify exemplary schools.

(5) Distinction accreditation status shall be given to a school when the school's performance and progress exceed the standards adopted by the state board. The state board shall promulgate legislative rules in accordance with the

677 provisions of article three-b, chapter twenty-nine-a of this
678 code establishing standards of performance and progress to
679 identify schools of distinction.

680 (6) Low-performing accreditation status shall be given to
681 a school whenever extraordinary circumstances exist as
682 defined by the state board.

683 (A) These circumstances shall include, but are not limited
684 to, any one or more of the following:

685 (i) The failure of a school on temporary accreditation
686 status to obtain approval of its revised electronic school
687 strategic improvement plan within a reasonable time period
688 as defined by the state board;

689 (ii) The failure of a school on conditional accreditation
690 status to meet the objectives and time line of its revised
691 electronic school strategic improvement plan;

692 (iii) The failure of a school to meet a standard by the date
693 specified in the revised plan; and

694 (iv) The results of the most recent statewide assessment
695 in reading and math or other multiple measures as determined
696 by the state board that identify the school as low performing
697 at its programmatic level in three of the last five years.

698 (B) Whenever the state board determines that the quality
699 of education in a school is low performing, the state board
700 shall appoint a team of improvement consultants from the
701 West Virginia Department of Education State System of
702 Support to make recommendations for correction of the low
703 performance. These recommendations shall be communicated to
704 the county board and a process shall be established in
705 conjunction with the State System of Support to correct the
706 identified deficiencies. If progress in correcting the low

707 performance as determined by the state board is not made
708 within one year following the implementation of the
709 measures adopted to correct the identified deficiencies or by
710 a date certain established by the state board after at least one
711 year of implementation, the state board shall place the county
712 board on temporary approval status and provide consultation
713 and assistance to the county board to assist it in the following
714 areas:

715 (i) Improving personnel management;

716 (ii) Establishing more efficient financial management
717 practices;

718 (iii) Improving instructional programs and rules; or

719 (iv) Making any other improvements that are necessary
720 to correct the low performance.

721 (C) If the low performance is not corrected by a date
722 certain as set by the state board:

723 (i) The state board shall appoint a monitor who shall be
724 paid at county expense to cause improvements to be made at
725 the school to bring it to full accreditation status within a
726 reasonable time period as determined by the state board. The
727 monitor's work location shall be at the school and the
728 monitor shall work collaboratively with the principal. The
729 monitor shall, at a minimum, report monthly to the state
730 board on the measures being taken to improve the school's
731 performance and the progress being made. The reports may
732 include requests for additional assistance and
733 recommendations required in the judgment of the monitor to
734 improve the school's performance, including, but not limited
735 to, the need for targeting resources strategically to eliminate
736 deficiencies;

737 (ii) The state board may make a determination, in its sole
738 judgment, that the improvements necessary to provide a
739 thorough and efficient education to the students at the school
740 cannot be made without additional targeted resources, in
741 which case it shall establish a plan in consultation with the
742 county board that includes targeted resources from sources
743 under the control of the state board and the county board to
744 accomplish the needed improvements. Nothing in this
745 subsection shall be construed to allow a change in personnel
746 at the school to improve school performance and progress,
747 except as provided by law;

748 (iii) If the low performance is not corrected within one
749 year after the appointment of a monitor, the state board may
750 make a determination, in its sole judgment, that continuing a
751 monitor arrangement is not sufficient to correct the low
752 performance and may intervene in the operation of the school
753 to cause improvements to be made that will provide
754 assurances that a thorough and efficient system of schools
755 will be provided. This intervention may include, but is not
756 limited to, establishing instructional programs, taking such
757 direct action as may be necessary to correct the low
758 performance, declaring the position of principal is vacant and
759 assigning a principal for the school who shall serve at the will
760 and pleasure of and, under the sole supervision of, the state
761 board: *Provided,* That prior to declaring that the position of
762 the principal is vacant, the state board must make a
763 determination that all other resources needed to correct the
764 low performance are present at the school. If the principal
765 who was removed elects not to remain an employee of the
766 county board, then the principal assigned by the state board
767 shall be paid by the county board. If the principal who was
768 removed elects to remain an employee of the county board,
769 then the following procedure applies:

770 (I) The principal assigned by the state board shall be paid
771 by the state board until the next school term, at which time

the principal assigned by the state board shall be paid by the county board;

(II) The principal who was removed is eligible for all positions in the county, including teaching positions, for which the principal is certified, by either being placed on the transfer list in accordance with section seven, article two, chapter eighteen-a of this code, or by being placed on the preferred recall list in accordance with section seven-a, article four, chapter eighteen-a of this code; and

(III) The principal who was removed shall be paid by the county board and may be assigned to administrative duties, without the county board being required to post that position until the end of the school term.

(6) The county board shall take no action nor refuse any action if the effect would be to impair further the school in which the state board has intervened.

(7) The state board may appoint a monitor pursuant to the provisions of this subsection to assist the school principal after intervention in the operation of a school is completed.

(o) *Transfers from low-performing schools.* -- Whenever a school is determined to be low performing and fails to improve its status within one year, following state intervention in the operation of the school to correct the low performance, any student attending the school may transfer once to the nearest fully accredited school in the county, subject to approval of the fully accredited school and at the expense of the school from which the student transferred.

(p) *School system approval.* -- The state board annually shall review the information submitted for each school system from the system of education performance audits and issue one of the following approval levels to each county

board: Full approval, temporary approval, conditional approval or nonapproval.

(1) Full approval shall be given to a county board whose schools have all been given full, temporary or conditional accreditation status and which does not have any deficiencies which would endanger student health or safety or other extraordinary circumstances as defined by the state board. A fully approved school system in which other deficiencies are discovered shall remain on full accreditation status for the remainder of the approval period and shall have an opportunity to correct those deficiencies, notwithstanding other provisions of this subsection.

(2) Temporary approval shall be given to a county board whose education system is below the level required for full approval. Whenever a county board is given temporary approval status, the county board shall revise its electronic county strategic improvement plan in accordance with subsection (b) of this section to increase the performance and progress of the school system to a full approval status level. The revised plan shall be submitted to the state board for approval.

(3) Conditional approval shall be given to a county board whose education system is below the level required for full approval, but whose electronic county strategic improvement plan meets the following criteria:

(i) The plan has been revised in accordance with subsection (b) of this section;

(ii) The plan has been approved by the state board; and

(iii) The county board is meeting the objectives and time line specified in the revised plan.

(4) Nonapproval status shall be given to a county board which fails to submit and gain approval for its electronic county strategic improvement plan or revised electronic county strategic improvement plan within a reasonable time period as defined by the state board or which fails to meet the objectives and time line of its revised electronic county strategic improvement plan or fails to achieve full approval by the date specified in the revised plan.

(A) The state board shall establish and adopt additional standards to identify school systems in which the program may be nonapproved and the state board may issue nonapproval status whenever extraordinary circumstances exist as defined by the state board.

(B) Whenever a county board has more than a casual deficit, as defined in section one, article one of this chapter, the county board shall submit a plan to the state board specifying the county board's strategy for eliminating the casual deficit. The state board either shall approve or reject the plan. If the plan is rejected, the state board shall communicate to the county board the reason or reasons for the rejection of the plan. The county board may resubmit the plan any number of times. However, any county board that fails to submit a plan and gain approval for the plan from the state board before the end of the fiscal year after a deficit greater than a casual deficit occurred or any county board which, in the opinion of the state board, fails to comply with an approved plan may be designated as having nonapproval status.

(C) Whenever nonapproval status is given to a school system, the state board shall declare a state of emergency in the school system and shall appoint a team of improvement consultants to make recommendations within sixty days of appointment for correcting the emergency. When the state board approves the recommendations, they shall be

867 communicated to the county board. If progress in correcting
868 the emergency, as determined by the state board, is not made
869 within six months from the time the county board receives
870 the recommendations, the state board shall intervene in the
871 operation of the school system to cause improvements to be
872 made that will provide assurances that a thorough and
873 efficient system of schools will be provided. This
874 intervention may include, but is not limited to, the following:

875 (i) Limiting the authority of the county superintendent
876 and county board as to the expenditure of funds, the
877 employment and dismissal of personnel, the establishment
878 and operation of the school calendar, the establishment of
879 instructional programs and rules and any other areas
880 designated by the state board by rule, which may include
881 delegating decision-making authority regarding these matters
882 to the state superintendent;

883 (ii) Declaring that the office of the county superintendent
884 is vacant;

885 (iii) Delegating to the state superintendent both the
886 authority to conduct hearings on personnel matters and
887 school closure or consolidation matters and, subsequently, to
888 render the resulting decisions and the authority to appoint a
889 designee for the limited purpose of conducting hearings while
890 reserving to the state superintendent the authority to render
891 the resulting decisions;

892 (iv) Functioning in lieu of the county board of education
893 in a transfer, sale, purchase or other transaction regarding real
894 property; and

895 (v) Taking any direct action necessary to correct the
896 emergency including, but not limited to, the following:

897 (I) Delegating to the state superintendent the authority to
898 replace administrators and principals in low performing

899 schools and to transfer them into alternate professional
900 positions within the county at his or her discretion; and

901 (II) Delegating to the state superintendent the authority to
902 fill positions of administrators and principals with individuals
903 determined by the state superintendent to be the most
904 qualified for the positions. Any authority related to
905 intervention in the operation of a county board granted under
906 this paragraph is not subject to the provisions of article four,
907 chapter eighteen-a of this code;

908 (q) Notwithstanding any other provision of this section,
909 the state board may intervene immediately in the operation of
910 the county school system with all the powers, duties and
911 responsibilities contained in subsection (p) of this section, if
912 the state board finds the following:

913 (1) That the conditions precedent to intervention exist as
914 provided in this section; and that delaying intervention for
915 any period of time would not be in the best interests of the
916 students of the county school system; or

917 (2) That the conditions precedent to intervention exist as
918 provided in this section and that the state board had
919 previously intervened in the operation of the same school
920 system and had concluded that intervention within the
921 preceding five years.

922 (r) *Capacity*. -- The process for improving education
923 includes a process for targeting resources strategically to
924 improve the teaching and learning process. Development of
925 electronic school and school system strategic improvement
926 plans, pursuant to subsection (b) of this section, is intended,
927 in part, to provide mechanisms to target resources
928 strategically to the teaching and learning process to improve
929 student, school and school system performance. When
930 deficiencies are detected through the assessment and
931 accountability processes, the revision and approval of school

and school system electronic strategic improvement plans shall ensure that schools and school systems are efficiently using existing resources to correct the deficiencies. When the state board determines that schools and school systems do not have the capacity to correct deficiencies, the state board shall work with the county board to develop or secure the resources necessary to increase the capacity of schools and school systems to meet the standards and, when necessary, seek additional resources in consultation with the Legislature and the Governor.

The state board shall recommend to the appropriate body including, but not limited to, the Process for Improving Education Council, the Legislature, county boards, schools and communities methods for targeting resources strategically to eliminate deficiencies identified in the assessment and accountability processes. When making determinations on recommendations, the state board shall include, but is not limited to, the following methods:

(1) Examining reports and electronic strategic improvement plans regarding the performance and progress of students, schools and school systems relative to the standards and identifying the areas in which improvement is needed;

(2) Determining the areas of weakness and of ineffectiveness that appear to have contributed to the substandard performance and progress of students or the deficiencies of the school or school system and requiring the school or school system to work collaboratively with the West Virginia Department of Education State System of Support to correct the deficiencies;

(3) Determining the areas of strength that appear to have contributed to exceptional student, school and school system performance and progress and promoting their emulation throughout the system;

(4) Requesting technical assistance from the School Building Authority in assessing or designing comprehensive educational facilities plans;

(5) Recommending priority funding from the School Building Authority based on identified needs;

(6) Requesting special staff development programs from the Center for Professional Development, the Principals Academy, higher education, regional educational service agencies and county boards based on identified needs;

(7) Submitting requests to the Legislature for appropriations to meet the identified needs for improving education;

(8) Directing county boards to target their funds strategically toward alleviating deficiencies;

(9) Ensuring that the need for facilities in counties with increased enrollment are appropriately reflected and recommended for funding;

(10) Ensuring that the appropriate person or entity is held accountable for eliminating deficiencies; and

(11) Ensuring that the needed capacity is available from the state and local level to assist the school or school system in achieving the standards and alleviating the deficiencies.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-6. Establishment of school curriculum teams; process for teacher collaboration to improve learning.

(a) There shall be established at each school in the state a school curriculum team composed of the school principal, the counselor designated to serve that school and no fewer

than three teachers representative of the grades taught at the school and chosen by the faculty senate: *Provided,* That for a school curriculum team established at an elementary school or a combination elementary and middle school, when the counselor is not assigned to the school on at least a one-half time basis, the curriculum team may meet on days when the counselor is not at the school and the principal shall consult with the counselor on the issues relevant to the meeting agenda.

The school curriculum team shall establish the programs and methods for implementing a curriculum based on state-approved content standards based on the needs of the individual school with a focus on reading, composition, mathematics, science and technology. The curriculum thus established shall be submitted to the county board for approval or for return to the school for reconsideration.

The school curriculum team shall review the list of other non required testing and assessment instruments provided by the state board through the statewide assessment program as provided in section five, article two-e of this chapter and may select one or more of them that are applicable to the grade levels at the school for use at the school to improve student learning. The school has the discretion to use the assessments and implement the instructional strategies and programs, upon approval by the school curriculum team, that it determines best to promote student achievement at the school. The school curriculum team may apply for a waiver of any state or county policy requiring it to assess students using any specific assessment except the WESTEST2, the Alternative Performance Task Assessment, the Online Writing Assessment, and the National Assessment of Educational Progress (NAEP), or to employ any specific instructional strategy or program to achieve content standards for courses required by the state board. Attainment by the school of at least full accreditation status for the previous

year shall be the factor considered for granting the waiver request.

The school curriculum team also may apply for a waiver for instructional resources approved and adopted pursuant to article two-a of this chapter if, in the judgment of the team, the instructional resources necessary for the implementation of the instructional strategies and programs best suited to teach the school's curriculum are not available through the normal adoption process.

School curriculum teams may request waivers of non-state mandated tests listed in their county board policies. The determination of whether to grant the request shall be based on the school's accreditation status. Waivers are in effect for one year only. School curriculum teams may resubmit the same or additional waiver requests the following year.

The school team may apply for a grant from the state board for the development or implementation, or both, of remedial and accelerated programs to meet the needs of the students at the individual school.

(b) Each faculty senate with approval of the principal may, in addition to or as an alternative to the school curriculum team provided for in subsection (a) of this section, establish a process for teacher collaboration to improve instruction and learning. The mission of the collaboration process is to review student academic performance based on multiple measures, to identify strategies to improve student performance and make recommendations for improvement to be implemented subject to approval of the principal. The collaborative process shall include such members as determined necessary by the faculty senate to address the needed improvements in the academic performance of students at the school and, if applicable, may consist of multiple subject area subcommittees which may meet independently.

CHAPTER 59

(S. B. 391 - By Senators Palumbo, Yost and Green)

[Passed February 22, 2010; in effect from passage.]
[Approved by the Governor on March 3, 2010.]

AN ACT to amend and reenact §18-5-1a of the Code of West Virginia, 1931, as amended, relating to county boards of education; modifying eligibility requirements for a candidate for membership on a board and for a member-elect of a board; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18-5-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members; training requirements.

(a) A person who is a member of a county board:

(1) Shall be a citizen and resident in the county in which he or she serves on the county board. Also, a person who is a candidate for membership on a county board or who is a member-elect of a county board shall be a citizen and resident in the county in which he or she seeks to serve on the county board;

8 (2) May not be employed by the county board on which
9 he or she serves, including employment as a teacher or
10 service person;

11 (3) May not engage in the following political activities:

12 (A) Become a candidate for or hold any other public
13 office, other than to succeed him or herself as a member of a
14 county board subject to the following:

15 (i) A candidate for a county board, who is not currently
16 serving on a county board, may hold another public office
17 while a candidate if he or she resigns from the other public
18 office prior to taking the oath of office as a county board
19 member.

20 (ii) The term "public office" as used in this section does
21 not include service on any other board, elected or appointed,
22 profit or nonprofit, under the following conditions:

23 (I) The person does not receive compensation; and

24 (II) The primary scope of the board is not related to
25 public schools.

26 (B) Become a candidate for, or serve as, an elected
27 member of any political party executive committee;

28 (C) Become a candidate for, or serve as, a delegate,
29 alternate or proxy to a national political party convention;

30 (D) Solicit or receive political contributions to support
31 the election of, or to retire the campaign debt of, any
32 candidate for partisan office;

33 (4) May engage in any or all of the following political
34 activities:

(A) Make campaign contributions to partisan or bipartisan candidates;

(B) Attend political fund raisers for partisan or bipartisan candidates;

(C) Serve as an unpaid volunteer on a partisan campaign;

(D) Politically endorse any candidate in a partisan or bipartisan election; or

(E) Attend a county, state or national political party convention.

(b) A member or member-elect of a county board, or a person desiring to become a member of a county board, may make a written request to the West Virginia Ethics Commission for an advisory opinion to determine if another elected or appointed position held or sought by the person is an office or public office which would bar service on a county board pursuant to subsection (a) of this section.

(1) Within thirty days of receipt of the request, the Ethics Commission shall issue a written advisory opinion in response to the request and also shall publish the opinion in a manner which, to the fullest extent possible, does not reveal the identity of the person making the request.

(2) A county board member who relies in good faith upon an advisory opinion issued by the West Virginia Ethics Commission to the effect that holding a particular office or public office is not a bar from membership on a county board and against whom proceedings are subsequently brought for removal from the county board on the basis of holding that office or offices is entitled to reimbursement by the county board for reasonable attorney's fees and court costs incurred by the member in defending against these proceedings, regardless of the outcome of the proceedings.

66 (3) A vote cast by the member at a meeting of the county
67 board may not be invalidated due to a subsequent finding that
68 holding the particular office or public office is a bar to
69 membership on the county board.

70 (4) Good faith reliance on a written advisory opinion of
71 the West Virginia Ethics Commission that a particular office
72 or public office is not a bar to membership on a county board
73 is an absolute defense to any civil suit or criminal prosecution
74 arising from any proper action taken within the scope of
75 membership on the county board, becoming a member-elect
76 of the county board or seeking election to the county board.

77 (c) To be eligible for election or appointment as a
78 member of a county board, a person shall possess at least a
79 high school diploma or a general educational development
80 (GED) diploma. This provision does not apply to members
81 or members-elect who have taken office prior to May 5,
82 1992, and who serve continuously from that date forward.

83 (d) A person elected to a county board after July 1, 1990,
84 may not assume the duties of county board member unless he
85 or she has first attended and completed a course of
86 orientation relating to boardsmanship and governance
87 effectiveness which shall be given between the date of
88 election and the beginning of the member's term of office
89 under the following conditions:

90 (1) A portion or portions of subsequent training such as
91 that offered in orientation may be provided to members after
92 they have commenced their term of office;

93 (2) Attendance at the session of orientation given
94 between the date of election and the beginning of the
95 member's term of office permits the member-elect to assume
96 the duties of county board member, as specified in this
97 section;

98 (3) Members appointed to the county board shall attend
99 and complete the next orientation course offered following
100 their appointment; and

101 (4) The provisions of this subsection relating to
102 orientation do not apply to members who have taken office
103 prior to July 1, 1988, and who serve continuously from that
104 date forward.

105 (e) Annually, each member of a county board shall
106 receive seven clock hours of training in areas relating to
107 boardsmanship, governance effectiveness, and school
108 performance issues including, but not limited to, pertinent
109 state and federal statutes such as the "Process for Improving
110 Education" set forth in section five, article two-e of this
111 chapter and the "No Child Left Behind Act" and their
112 respective administrative rules.

113 (1) The orientation and training shall be approved by the
114 state board and conducted by the West Virginia School Board
115 Association or other organization or organizations approved
116 by the state board:

117 (A) The state board may exclude time spent in training on
118 school performance issues from the requisite seven hours
119 herein required; and

120 (B) If the state board elects to exclude time spent in
121 training on school performance issues from the requisite
122 seven hours, the state board shall limit the training to a
123 feasible and practicable amount of time.

124 (2) Failure to attend and complete the approved course of
125 orientation and training relating to boardsmanship and
126 governance effectiveness without good cause as determined
127 by the state board by duly promulgated legislative rules
128 constitutes neglect of duty under section seven, article six,
129 chapter six of this code.

130 (f) In the final year of any four-year term of office, a
131 member shall satisfy the annual training requirement before
132 January 1. Failure to comply with the training requirements
133 of this section without good cause as defined by the state
134 board by duly promulgated legislative rules constitutes
135 neglect of duty under section seven, article six, chapter six of
136 this code.

137 (g) The state board shall appoint a committee named the
138 "county board member training standards review committee"
139 whose members shall meet at least annually. Subject to state
140 board approval, the committee shall determine which
141 particular trainings and training organizations shall be
142 approved and whether county board members have satisfied
143 the annual training requirement. Members of the committee
144 serve without compensation, but may be reimbursed by their
145 agencies or employers for all reasonable and necessary
146 expenses actually incurred in the performance of their duties
147 under this subsection.

CHAPTER 60

(H. B. 4040 - By Mr. Speaker,
Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed January 26, 2010; in effect July 1, 2010.]
[Approved by the Governor on February 4, 2010.]

AN ACT to amend amend and reenact §18-5-45 of the Code of West Virginia, 1931, as amended, relating to requiring county boards to adopt contingency plans designed to guarantee one hundred eighty separate days of instruction for students; authorizing county boards of education to select the beginning

date and ending date of the instructional term of the school calendar; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18-5-45 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-45. School calendar.

(a) As used in this section, the following terms have the following meanings:

(1) "Instructional day" means a day within the instructional term which meets the following criteria:

(A) Instruction is offered to students for at least the minimum amounts of time provided by state board rule;

(B) Instructional time is used for instruction, cocurricular activities and approved extracurricular activities and, pursuant to the provisions of subdivision twelve, subsection (b), section five, article five-a of this chapter, faculty senates; and

(C) Such other criteria as the state board determines appropriate.

(2) "Accrued instructional time" means instructional time accruing during the instructional term from time added to the instructional day beyond the time required by state board rule for an instructional day. Accrued instructional time may be accumulated and used in larger blocks of time during the school year for instructional or noninstructional activities as further defined by the state board.

(3) "Extracurricular activities" are activities under the supervision of the school such as athletics, noninstructional assemblies, social programs, entertainment and other similar activities as further defined by the state board.

(4) "Cocurricular activities" are activities that are closely related to identifiable academic programs or areas of study that serve to complement academic curricula as further defined by the state board.

(b) *Findings*. --

(1) The primary purpose of the school system is to provide instruction for students.

(2) The school calendar, as defined in this section, is designed to define the school term both for employees and for instruction.

(3) The school calendar traditionally has provided for one hundred eighty actual days of instruction but numerous circumstances have combined to cause the actual number of instructional days to be less than one hundred eighty.

(4) The quality and amount of instruction offered during the instructional term is affected by the extracurricular and cocurricular activities allowed to occur during scheduled instructional time.

(5) Within reasonable guidelines, the school calendar should be designed at least to guarantee that one hundred eighty actual days of instruction are possible.

(c) The county board shall provide a school term for its schools that contains the following:

(1) An employment term for teachers of no less than two hundred days, exclusive of Saturdays and Sundays; and

(2) Within the employment term, an instructional term for students of no less than one hundred eighty separate instructional days, which shall include an icy conditions and emergencies plan designed to guarantee an instructional term for students of no less than one hundred eighty separate instructional days.

(d) The instructional term for students shall include one instructional day in each of the months of October, December, February, April and June which is an instructional support and enhancement day scheduled by the board to include both instructional activities for students and professional activities for teachers to improve student instruction. Instructional support and enhancement days are subject to the following provisions:

(1) Two hours of the instructional support and enhancement day shall be used for instructional activities for students. The instructional activities for students are subject to the following provisions:

(A) The instructional activities for students require the direct supervision or involvement by teachers;

(B) The instructional activities for students shall be limited to two hours;

(C) The instructional activities for students shall be determined and scheduled at the local school level;

(D) The instructional activities for students may include, but are not limited to, both in-school and outside of school activities such as student mentoring, tutoring, counseling, student research and other projects or activities of an instructional nature, community service, career exploration, parent and teacher conferences, visits to the homes of students, college and financial aid workshops and college visits;

(E) To ensure that the students who attend are properly supervised, the instructional activities for students shall be arranged by appointment with the individual school through the principal, a teacher or other professional personnel at the school; and

(F) Each school shall establish a policy relating to the use of the two-hour block scheduled for instructional activities for students;

(2) The instructional support and enhancement day shall include a two-hour block of time for professional activities for teachers during which the faculty senate shall have the opportunity to meet;

(3) All time remaining in the school day after meeting the requirements of subdivisions (1) and (2) of this subsection, not including the duty-free lunch period, shall be used for other professional activities for teachers to improve student instruction which may include, but are not limited to, professional staff development, curriculum team meetings, individualized education plan meetings and other meetings between teachers, principals, aides and paraprofessionals to improve student instruction as determined and scheduled at the local school level;

(4) Notwithstanding any other provision of law or policy to the contrary, the presence of any specific number of students in attendance at the school for any specific period of time shall not be required on instructional support and enhancement days and the transportation of students to the school shall not be required;

(5) Instructional support and enhancement days are also a scheduled work day for all service personnel and shall be used for training or other tasks related to their job classification if their normal duties are not required; and

(6) Nothing in this section may be construed to require that the instructional activities for students, faculty senate meetings and other professional activities for teachers be scheduled in any certain order.

(e) The instructional term shall commence on a date selected by the county board and terminate on a date selected by the county board.

(f) Noninstructional days shall total twenty and shall be comprised of the following:

(1) Seven holidays as specified in section two, article five, chapter eighteen-a of this code;

(2) Election day as specified in section two, article five, chapter eighteen-a of this code;

(3) Six days to be designated by the county board to be used by the employees outside the school environment; and

(4) Six days to be designated by the county board for any of the following purposes:

(A) Curriculum development;

(B) Preparation for opening and closing school;

(C) Professional development;

(D) Teacher-pupil-parent conferences;

(E) Professional meetings; and

(F) Making up days when instruction was scheduled but not conducted.

(g) Three of the days described in subdivision (4), subsection (f) of this section shall be scheduled prior to the commencement of the instructional term for the purposes of preparing for the opening of school and staff development.

(h) At least one of the days described in subdivision (4), subsection (f) of this section shall be scheduled after the termination of the instructional term for the purpose of preparing for the closing of school.

(i) At least four of the days described in subdivision (3), subsection (f) of this section shall be scheduled after March 1.

(j) At least two of the days described in subdivision (4), subsection (f) of this section will be scheduled for professional development. The professional development conducted on these days will be consistent with the goals established by the state board pursuant to the provisions of section twenty-three-a, article two of this chapter.

(k) Subject to the provisions of subsection (h) of this section, all noninstructional days will be scheduled prior to the termination of the instructional term.

(l) The state board may not schedule the primary statewide assessment program prior to May 15 of the instructional year unless the state board determines that the nature of the test mandates an earlier testing date.

(m) If, on or after March 1, the county board determines that it is not possible to complete one hundred eighty separate days of instruction, the county board shall schedule instruction on any available noninstructional day, regardless of the purpose for which the day originally was scheduled, and the day will be used for instruction, subject to the following:

167 (1) The noninstructional days scheduled for professional
168 development shall be the last available noninstructional days
169 to be rescheduled as instructional days;

170 (2) On or after March 1, the county board also may
171 require additional minutes of instruction in the school day to
172 make up for lost instructional days in excess of the days
173 available through rescheduling and, if in its judgment it is
174 reasonable and necessary to improve student performance, to
175 avoid scheduling instruction on noninstructional days
176 previously scheduled for professional development; and

177 (3) The provisions of this subsection do not apply to:

178 (1) Holidays; and

179 (2) Election day.

180 (n) The following applies to accrued instructional time:

181 (1) Except as provided in subsection (m) of this section,
182 accrued instructional time may not be used to avoid one
183 hundred eighty separate days of instruction;

184 (2) Accrued instructional time may not be used to
185 lengthen the time provided in law for faculty senates;

186 (3) The use of accrued instructional time for
187 extracurricular activities will be limited by the state board;

188 (4) Accrued instructional time may be used by schools
189 and counties to provide additional time for professional staff
190 development and continuing education as may be needed to
191 improve student performance and meet the requirements of
192 the federal mandates affecting elementary and secondary

education. The amount of accrued instructional time used for this purpose may not exceed three instructional days; and

(5) Other requirements or restrictions the state board may provide in the rule required to be promulgated by this section.

(o) The following applies to cocurricular activities:

(1) The state board shall determine what activities may be considered cocurricular;

(2) The state board shall determine the amount of instructional time that may be consumed by cocurricular activities; and

(3) Other requirements or restrictions the state board may provide in the rule required to be promulgated by this section.

(p) The following applies to extracurricular activities:

(1) Except as provided by subdivision (3) of this subsection, extracurricular activities may not be scheduled during instructional time;

(2) The use of accrued instructional time for extracurricular activities will be limited by the state board; and

(3) The state board shall provide for the attendance by students of certain activities sanctioned by the Secondary School Activities Commission when those activities are related to statewide tournaments or playoffs or are programs required for Secondary School Activities Commission approval.

(q) Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach.

(r) Nothing in this section prohibits establishing year-round schools in accordance with rules to be established by the state board.

(s) Prior to implementing the school calendar, the county board shall secure approval of its proposed calendar from the state board or, if so designated by the state board, from the state superintendent.

(t) The county board may contract with all or part of the personnel for a longer term.

(u) The minimum instructional term may be decreased by order of the state superintendent in any county declared a federal disaster area and where the event causing the declaration is substantially related to a reduction of instructional days.

(v) Where the employment term overlaps a teacher's or service personnel's participation in a summer institute or institution of higher education for the purpose of advancement or professional growth, the teacher or service personnel may substitute, with the approval of the county superintendent, the participation for up to five of the noninstructional days of the employment term.

(w) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section.

CHAPTER 61

(H. B. 4669 - By Delegates Shaver, D. Walker, Lawrence, Canterbury, Shott, Sumner, Smith, Stowers, Rodighiero, Ireland and Rowan)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2010.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5B-10, relating to granting exceptions to certain statutes to innovation zone plans approved by state board; specifying scope, limitations and conditions on exceptions granted.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5B-10, to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-10. Exceptions to statutes granted to innovation zones; limitations.

(a) The Legislature hereby grants an exception to the statute or statutes indicated for the following schools pursuant to and for the purposes enumerated in their innovation zone plans approved by the state board at its meeting on the date specified. The grant of an exception to

a statute means that the school or schools granted the exception may implement the actions as specifically described in their approved innovation zone plan notwithstanding the provisions of the statute from which they are specifically excepted. These exceptions are limited to the purposes as specifically described in the plan approved on the date indicated and are expressly repealed for any plan modification or plan implementation which changes those purposes. However, nothing in this section prohibits a school or schools with an approved innovation zone plan from requesting plan modifications, subject to approval of the state board, and if the modifications change the purposes for which an exception to a statute was granted, the state board shall request an exception to achieve the new purposes in the manner provided in section five of this article for requesting exceptions to a statute. If the approved innovation zone plan of a school or schools is withdrawn by the state board, or the innovation zone designation of a school or schools is revoked by the state board, the exception granted to that school or those schools is expressly repealed.

(b) The following exceptions are granted:

(1) Piedmont Elementary School, Kanawha County, is excepted from subsection (3), section fourteen, article four, chapter eighteen-a of this code for the purpose of allowing specialist teachers to take their planning period before and after school totaling one hour, three days per week, and from section eighteen-a, article five of this chapter for the purpose of permitting a number of students in music and physical education classes in excess of the class size limits to provide the time and structure for teams to meet in professional learning communities, which purposes are as more specifically described in the school's innovation zone plan approved by the state board on January 13, 2010;

(2) Putnam County High Schools Consortium comprised of Buffalo High School, Hurricane High School, Poca High School, Winfield High School and Putnam Career & Technical Center, Putnam County, is excepted from section forty-five, article five of this chapter only to the extent necessary for the purpose of establishing a structured transition program for freshman only one day prior to the beginning of the regular instructional term, and for the purpose of permitting the creation of not more than three hours each month during the school term of structured, regularly scheduled time for all teachers to work in professional learning communities, which purposes are as more specifically described in the schools' innovation zone plan approved by the state board on January 13, 2010;

(3) Nellis Elementary School, Boone County, is excepted from subsection (a), section two, article five-a of this chapter, for the purpose of expanding the membership of its local school improvement council, which purpose is as more specifically described in the school's innovation zone plan approved by the state board on January 13, 2010; and

(4) Cabell County Secondary School Consortium comprised of Cabell County Career Technical Center, Cabell Midland High School and Huntington High School, Cabell County, is excepted from sections one and one-a, article eight of this chapter for the purpose of raising the compulsory school attendance age to eighteen years old, and from section two-b, article three, chapter eighteen-a of this code for the purpose of providing a customized high quality beginning teacher induction program developed at the county level, which purposes are as more specifically described in the schools' innovation zone plan approved by the state board on January 13, 2010.

CHAPTER 62

(S. B. 553 - By Senators Foster, White, Browning and Plymale)

[Passed March 5, 2010; in effect from passage.]
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §18-7D-6 of the Code of West Virginia, 1931, as amended, relating to the State Teachers Retirement System; and extending the time for certain members to purchase additional service credit for service in the Teachers' Defined Contribution Retirement System.

Be it enacted by the Legislature of West Virginia:

That §18-7D-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7D. VOLUNTARY TRANSFER FROM TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM TO STATE TEACHERS RETIREMENT SYSTEM.

§18-7D-6. Service credit in State Teachers Retirement System following transfer; conversion of assets; adjustments.

(a) Any member who has affirmatively elected to transfer to the State Teachers Retirement System within the period provided in section seven of this article whose assets have

been transferred from the Teachers' Defined Contribution Retirement System to the State Teachers Retirement System pursuant to the provisions of this article and who has not made any withdrawals or cash-outs from his or her assets is, depending upon the percentage of actively contributing members affirmatively electing to transfer, entitled to service credit in the State Teachers Retirement System in accordance with the provisions of subsection (c) of this section.

(b) Any member who has made withdrawals or cash-outs will receive service credit based upon the amounts transferred. The board shall make the appropriate adjustment to the service credit the member will receive.

(c) More than seventy-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elected to transfer to the State Teachers Retirement System within the period provided in section seven of this article. Therefore, any member of the Defined Contribution Retirement System who decides to transfer to the State Teachers Retirement System, calculates his or her service credit in the State Teachers Retirement System as follows:

(1) For any member affirmatively electing to transfer, the member's State Teachers Retirement System credit shall be seventy-five percent of the member's Teachers' Defined Contribution Retirement System service credit, less any service previously withdrawn by the member or due to a qualified domestic relations order and not repaid;

(2) To receive full credit in the State Teachers Retirement System for service in the Teachers' Defined Contribution Retirement System for which assets are transferred, members who affirmatively elected to transfer and who provided to the board a signed verification of cost for service credit purchase form by the effective date of the amendments to this section

enacted in the 2009 regular legislative session shall pay into the State Teachers Retirement System a one and one-half percent contribution by no later than June 30, 2009, or no later than ninety days after the postmarked date on a final and definitive contribution calculation from the board, whichever is later. This contribution shall be calculated as one and one-half percent of the member's estimated total earnings for which assets are transferred, plus interest of four percent per annum accumulated from the date of the member's initial participation in the Defined Contribution Retirement System through June 30, 2009: *Provided,* That any member who transferred and provided to the board a signed verification of cost for service credit purchase form by June 30, 2009 but was unable to complete the purchase of the one and one-half percent contribution, or any member who did not request a verification of cost letter but attempted to purchase the one and one-half percent contribution and was denied in writing by the board on or before December 31, 2009, may request the board on or before April 15, 2010, to recalculate the contribution for 2010. To receive full credit, the member shall pay into the State Teachers Retirement System the recalculated purchase amount by June 30, 2010, or no later than sixty days after the postmarked date on a contribution recalculation from the board, whichever is later. The recalculated contribution shall include the interest loss at the actuarial rate of seven and one-half percent. The board's executive director may correct clerical errors.

(A) For a member contributing to the Defined Contribution Retirement System at any time during the 2008 fiscal year and commencing membership in the State Teachers Retirement System on July 1, 2008, or August 1, 2008, as the case may be:

(i) The estimated total earnings shall be calculated based on the member's salary and the member's age nearest birthday on June 30, 2008;

(ii) This calculation shall apply both an annual backward salary scale from that date for prior years' salaries and a forward salary scale for the salary for the 2008 fiscal year.

(B) The calculations in paragraph (A) of this subdivision are based upon the salary scale assumption applied in the West Virginia Teachers Retirement System actuarial valuation as of July 1, 2007, prepared for the Consolidated Public Retirement Board. This salary scale shall be applied regardless of breaks in service.

(d) All service previously transferred from the State Teachers Retirement System to the Teachers' Defined Contribution Retirement System is considered Teachers' Defined Contribution Retirement System service for the purposes of this article.

(e) Notwithstanding any provision of this code to the contrary, the retirement of a member who becomes eligible to retire after the member's assets are transferred to the State Teachers Retirement System pursuant to the provisions of this article may not commence before September 1, 2008: *Provided,* That the Consolidated Public Retirement Board may not retire any member who is eligible to retire during the calendar year 2008 unless the member has provided a written notice to his or her county board of education by July 1, 2008, of his or her intent to retire.

(f) The provisions of section twenty-eight-e, article seven-a of this chapter do not apply to the amendments to this section enacted during the 2009 regular legislative session.

CHAPTER 63

(H. B. 4593 - By Delegates Stowers, Perry, M. Poling, Paxton, D. Walker and Duke)

[Passed March 13, 2010; in effect July 1, 2010.]
[Approved by the Governor on March 26, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-8-6; to amend and reenact §18-8-1, §18-8-1a and §18-8-4 of said code; to amend and reenact §18-9A-21 of said code; and to amend and reenact §62-15-4 of said code, all relating to improving student participation, success and high school graduation rates; increasing the minimum age for ending compulsory school attendance; reducing the number of days of unexcused absences at which proceedings to enforce attendance begin; establishing the "High School Graduation Improvement Act"; establishing legislative findings and intent; requiring county board of education plan for improving student retention and increasing graduation rate; requiring state board of education to develop, expand and assist certain programs; requiring certain state superintendent reports to Legislative Oversight Commission on Education Accountability; increasing funding for alternative education programs; and authorizing establishment of additional juvenile drug courts.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-8-6; that §18-8-1, §18-8-1a and §18-8-4 of said code be amended and reenacted; that

§18-9A-21 of said code be amended and reenacted; and that §62-15-4 of said code be amended and reenacted, all to read as follows:

Chapter
18. Education.
62. Criminal Procedure.

CHAPTER 18. EDUCATION.

Article
8. Compulsory School Attendance.
9A. Public School Support.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-1. Compulsory school attendance; exemptions.
§18-8-1a. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions.
§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.
§18-8-6. The High School Graduation Improvement Act.

§18-8-1. Compulsory school attendance; exemptions.

(a) Exemption from the requirements of compulsory public school attendance established in section one-a of this article shall be made on behalf of any child for the causes or conditions set forth in this section. Each cause or condition set forth in this section is subject to confirmation by the attendance authority of the county.

(b) A child is exempt from the compulsory school attendance requirement set forth in section one-a of this article if the requirements of this subsection, relating to instruction in a private, parochial or other approved school, are met. The instruction shall be in a school approved by the county board and for a time equal to the instructional term set forth in section forty-five, article five of this chapter. In all private, parochial or other schools approved pursuant to this subsection it is the duty of the principal or other person in control, upon the request of the county superintendent, to

17 furnish to the county board such information and records as
18 may be required with respect to attendance, instruction and
19 progress of students enrolled.

20 (c) A child is exempt from the compulsory school
21 attendance requirement set forth in section one-a of this
22 article if the requirements of either subdivision (1) or
23 subdivision (2) of this subsection, both relating to home
24 instruction, are met.

25 (1) The instruction shall be in the home of the child or
26 children or at some other place approved by the county board
27 and for a time equal to the instructional term set forth in
28 section forty-five, article five of this chapter. If the request
29 for home instruction is denied by the county board, good and
30 reasonable justification for the denial shall be furnished in
31 writing to the applicant by the county board. The instruction
32 shall be conducted by a person or persons who, in the
33 judgment of the county superintendent and county board, are
34 qualified to give instruction in subjects required to be taught
35 in public elementary schools in the state. The person or
36 persons providing the instruction, upon request of the county
37 superintendent, shall furnish to the county board information
38 and records as may be required periodically with respect to
39 attendance, instruction and progress of students receiving the
40 instruction. The state board shall develop guidelines for the
41 home schooling of special education students including
42 alternative assessment measures to assure that satisfactory
43 academic progress is achieved.

44 (2) The child meets the requirements set forth in this
45 subdivision: *Provided*, That the county superintendent may
46 seek from the circuit court of the county an order denying
47 home instruction of the child. The order may be granted
48 upon a showing of clear and convincing evidence that the
49 child will suffer neglect in his or her education or that there
50 are other compelling reasons to deny home instruction.

(A) Annually, the person or persons providing home instruction shall present to the county superintendent or county board a notice of intent to provide home instruction and the name, address, age and grade level of any child of compulsory school age to be instructed: *Provided*, That if a child is enrolled in a public school, notice of intent to provide home instruction shall be given at least two weeks prior to withdrawing the child from public school;

(B) The person or persons providing home instruction shall submit satisfactory evidence of a high school diploma or equivalent;

(C) The person or persons providing home instruction shall outline a plan of instruction for the ensuing school year; and

(D) On or before June 30 annually, the person or persons providing home instruction shall obtain an academic assessment of the child for the previous school year and submit the results to the county superintendent. When the academic assessment takes place outside of a public school, the parent or legal guardian shall pay the cost. The requirement of an academic assessment is satisfied in one of the following ways:

(i) The child receiving home instruction takes a nationally normed standardized achievement test to be administered under standardized conditions as set forth by the published instructions of the selected test in the subjects of reading, language, mathematics, science and social studies. The child's parent or legal guardian may not administer the test in any event. The publication date of the chosen test may not be more than ten years from the date the test is administered. The child is considered to have made acceptable progress when the mean of the child's test results in the required subject areas for any single year meets or exceeds the fiftieth

percentile or, if below the fiftieth percentile, shows improvement from the previous year's results;

(ii) The child participates in the testing program currently in use in the state's public schools. The test shall be administered to the child at a public school in the county of residence. Determination of acceptable progress shall be based on current guidelines of the state testing program;

(iii) The county superintendent is provided with a written narrative indicating that a portfolio of samples of the child's work has been reviewed and that the child's academic progress for the year is in accordance with the child's abilities. If the narrative indicates that the child's academic progress for the year is in accordance with the child's abilities, the child is considered to have made acceptable progress. This narrative shall be prepared by a certified teacher whose certification number shall be provided. The narrative shall include a statement about the child's progress in the areas of reading, language, mathematics, science and social studies and shall note any areas which, in the professional opinion of the reviewer, show need for improvement or remediation; or

(iv) The child completes an alternative academic assessment of proficiency that is mutually agreed upon by the parent or legal guardian and the county superintendent. Criteria for acceptable progress shall be mutually agreed upon by the same parties; and

(E) When the annual assessment fails to show acceptable progress as defined under the appropriate assessment option set forth in paragraph (D) of this subdivision, the person or persons providing home instruction shall initiate a remedial program to foster acceptable progress. The county board shall notify the parents or legal guardian of the child, in writing, of the services available to assist in the assessment

117 of the child's eligibility for special education services.
118 Identification of a disability does not preclude the
119 continuation of home schooling. In the event that the child
120 does not achieve acceptable progress as defined under the
121 appropriate assessment option set forth in paragraph (D) of
122 this subdivision for a second consecutive year, the person or
123 persons providing instruction shall submit to the county
124 superintendent additional evidence that appropriate instruction is
125 being provided.

126 (3) This subdivision applies to both home instruction
127 exemptions set forth in subdivisions (1) and (2) of this
128 subsection. The county superintendent or a designee shall
129 offer such assistance, including textbooks, other teaching
130 materials and available resources, all subject to availability,
131 as may assist the person or persons providing home
132 instruction. Any child receiving home instruction may upon
133 approval of the county board exercise the option to attend any
134 class offered by the county board as the person or persons
135 providing home instruction may consider appropriate subject
136 to normal registration and attendance requirements.

137 (d) A child is exempt from the compulsory school
138 attendance requirement set forth in section one-a of this
139 article if the requirements of this subsection, relating to
140 physical or mental incapacity, are met. Physical or mental
141 incapacity consists of incapacity for school attendance and
142 the performance of school work. In all cases of prolonged
143 absence from school due to incapacity of the child to attend,
144 the written statement of a licensed physician or authorized
145 school nurse is required., Incapacity shall be narrowly
146 defined and in any case the provisions of this article may not
147 allow for the exclusion of the mentally, physically,
148 emotionally or behaviorally handicapped child otherwise
149 entitled to a free appropriate education.

150 (e) A child is exempt from the compulsory school
151 attendance requirement set forth in section one-a of this
152 article if conditions rendering school attendance impossible
153 or hazardous to the life, health or safety of the child exist.

154 (f) A child is exempt from the compulsory school
155 attendance requirement set forth in section one-a of this
156 article upon regular graduation from a standard senior high
157 school or alternate secondary program completion as
158 determined by the state board.

159 (g) A child is exempt from the compulsory school
160 attendance requirement set forth in section one-a of this
161 article if the child is granted a work permit pursuant to the
162 subsection. After due investigation the county superintendent
163 may grant work permits to youths under the termination age
164 designated in section one-a of this article, subject to state and
165 federal labor laws and regulations. A work permit may not be
166 granted on behalf of any youth who has not completed the
167 eighth grade of school.

168 (h) A child is exempt from the compulsory school
169 attendance requirement set forth in section one-a of this
170 article if a serious illness or death in the immediate family of
171 the child has occurred. It is expected that the county
172 attendance director will ascertain the facts in all cases of such
173 absences about which information is inadequate and report
174 the facts to the county superintendent.

175 (i) A child is exempt from the compulsory school
176 attendance requirement set forth in section one-a of this
177 article if the requirements of this subsection, relating to
178 destitution in the home, are met. Exemption based on a
179 condition of extreme destitution in the home may be granted
180 only upon the written recommendation of the county
181 attendance director to the county superintendent following
182 careful investigation of the case. A copy of the report

confirming the condition and school exemption shall be placed with the county director of public assistance. This enactment contemplates every reasonable effort that may properly be taken on the part of both school and public assistance authorities for the relief of home conditions officially recognized as being so destitute as to deprive children of the privilege of school attendance. Exemption for this cause is not allowed when the destitution is relieved through public or private means.

(j) A child is exempt from the compulsory school attendance requirement set forth in section one-a of this article if the requirements of this subsection, relating to church ordinances and observances of regular church ordinances, are met. The county board may approve exemption for religious instruction upon written request of the person having legal or actual charge of a child or children. This exemption is subject to the rules prescribed by the county superintendent and approved by the county board.

(k) A child is exempt from the compulsory school attendance requirement set forth in section one-a of this article if the requirements of this subsection, relating to alternative private, parochial, church or religious school instruction, are met. Exemption shall be made for any child attending any private school, parochial school, church school, school operated by a religious order or other nonpublic school which elects to comply with the provisions of article twenty-eight of this chapter.

(l) Completion of the eighth grade does not exempt any child under the termination age designated in section one-a of this article from the compulsory attendance provision of this article.

§18-8-1a. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions.

(a) Notwithstanding the provisions of section one of this article, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to September 1 of such year or upon enrolling in a publicly supported kindergarten program and, subject to subdivision (3) of this subsection, continues to the sixteenth birthday or for as long as the student continues to be enrolled in a school system after the sixteenth birthday.

(1) A child may be removed from such kindergarten program when the principal, teacher and parent or guardian concur that the best interest of the child would not be served by requiring further attendance: *Provided*, That the principal shall make the final determination with regard to compulsory school attendance in a publicly supported kindergarten program.

(2) The compulsory school attendance provision of this article shall be enforced against a person eighteen years of age or older for as long as the person continues to be enrolled in a school system, and may not be enforced against the parent, guardian, or custodian of the person.

(3) Beginning with the 2011-2012 high school freshman cohort class of students, and notwithstanding the provisions of section one of this article, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to September 1 of such year or upon enrolling in a publicly supported kindergarten program and continues to the seventeenth birthday or for as long as the student continues to be enrolled in a school system after the seventeenth birthday.

(4) Beginning with the December 2010 interim meeting period, and semiannually thereafter, the state superintendent shall report to the Legislative Oversight Commission on Education Accountability on the impact of the increased age

requirement of subdivision (3) of this subsection, and the progress of the state board and the county boards in implementing the requirements of section six of this article.

(b) Attendance at a state-approved or Montessori kindergarten, as provided in section eighteen, article five of this chapter, is deemed school attendance for purposes of this section. Prior to entrance into the first grade in accordance with section five, article two of this chapter, each child must have either:

(1) Successfully completed such publicly or privately supported, state-approved kindergarten program or Montessori kindergarten program; or

(2) Successfully completed an entrance test of basic readiness skills approved by the county in which the school is located. The test may be administered in lieu of kindergarten attendance only under extraordinary circumstances to be determined by the county board.

(c) Notwithstanding the provisions of this section and of section five, article two of this chapter and section eighteen, article five of this chapter, a county board may provide for advanced entrance or placement under policies adopted by said board for any child who has demonstrated sufficient mental and physical competency for such entrance or placement.

(d) This section does not prevent a student from another state from enrolling in the same grade in a public school in West Virginia as the student was enrolled at the school from which the student transferred.

§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.

(a) The county attendance director and the assistants shall diligently promote regular school attendance. The director and assistants shall:

(1) Ascertain reasons for inexcusable absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age as defined under section one-a of this article; and

(2) Take such steps as are, in their discretion, best calculated to correct attitudes of parents and students which result in absences from school even though not clearly in violation of law.

(b) In the case of five total unexcused absences of a student during a school year, the attendance director or assistant shall:

(1) Serve written notice to the parent, guardian or custodian of the student that the attendance of the student at school is required and that within ten days of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report in person to the school the student attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the inexcusable absences of the student; and if the parent, guardian or custodian does not comply with the provisions of this article, then the attendance director or assistant shall make complaint against the parent, guardian or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent, guardian or custodian may be charged in a complaint.

Initial service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within ten calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

(c) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in section eight, article one, chapter fifty of this code, shall assign the case to a magistrate within ten days of execution of the summons or warrant. The hearing shall be held within twenty days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least ten days' advance notice of the date, time and place of the hearing.

(d) When any doubt exists as to the age of a student absent from school, the attendance director has authority to require a properly attested birth certificate or an affidavit from the parent, guardian or custodian of the student, stating age of the student. In the performance of his or her duties, the county attendance director has authority to take without warrant any student absent from school in violation of the provisions of this article and to place the student in the school in which he or she is or should be enrolled.

(e) The county attendance director shall devote such time as is required by section three of this article to the duties of attendance director in accordance with this section during the instructional term and at such other times as the duties of an attendance director are required. All attendance directors hired for more than two hundred days may be assigned other duties determined by the superintendent during the period in excess of two hundred days. The county attendance director is responsible under direction of the county superintendent for efficiently administering school attendance in the county.

(f) In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant directors also shall perform the following duties:

(1) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

(2) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;

(3) Cooperate with existing state and federal agencies charged with enforcing child labor laws;

(4) Prepare a report for submission by the county superintendent to the State Superintendent of Schools on school attendance, at such times and in such detail as may be required. The state board shall promulgate a legislative rule pursuant to article three-b, chapter twenty-nine-a of this code that sets forth student absences that are excluded for accountability purposes. The absences that are excluded by the rule include, but are not be limited to, excused student absences, students not in attendance due to disciplinary measures and absent students for whom the attendance director has pursued judicial remedies to compel attendance to the extent of his or her authority. The attendance director shall file with the county superintendent and county board at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

(5) Promote attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(6) Participate in school teachers' conferences with parents and students;

(7) Assist in such other ways as the county superintendent may direct for improving school attendance;

(8) Make home visits of students who have excessive unexcused absences, as provided above, or if requested by the chief administrator, principal or assistant principal; and

(9) Serve as the liaison for homeless children and youth.

§18-8-6. The High School Graduation Improvement Act.

(a) This section is known and may be cited as "The High School Graduation Improvement Act."

(b) The Legislature makes the following findings:

(1) West Virginia has a dire need to implement a comprehensive approach to addressing the high school drop-out crisis, and to develop policies and strategies that successfully assist at-risk students to stay in school, earn a high school diploma, and ultimately become productively contributing members of society;

(2) The current demands for a highly skilled workforce require a high school diploma at the very minimum;

(3) The state has several dynamic programs that are capable of actively engaging students in learning, providing students with a sense of relevancy in academics, and motivating students to succeed in school and ultimately earn a high school diploma;

17 (4) Raising the compulsory school attendance age alone
18 will neither increase the graduation rate nor decrease the
19 drop-out rate. It is imperative that the state shift the focus
20 from merely compelling students to attend school to instead
21 providing vibrant and engaging programs that allow students
22 to recognize the value of a high school diploma or workforce
23 credential and inspire students to graduate from high school,
24 especially those students who are at risk of dropping out of
25 school;

26 (5) Investing financially in this focus shift will result in
27 the need for fewer resources to be committed to enforcing
28 compulsory attendance laws and fewer incidents of disruptive
29 student behavior;

30 (6) Absenteeism is proven to be the highest predictor of
31 course failure. Truant students face low self-confidence in
32 their ability to succeed in school because their absences cause
33 them to fall behind their classmates, and the students find
34 dropping out easier than catching up;

35 (7) There is a strong relationship between truancy and
36 dropping out of high school. Frequent absences are one of
37 the most common indicators that a student is disengaging
38 from the learning process and likely to drop out of school
39 early. Intervention after fewer absences is likely to have a
40 positive impact on a student's persistence to graduation;

41 (8) Students cite many reasons for dropping out of
42 school, some of which include engaging in drug culture, lack
43 of positive influence, role model or parental involvement,
44 absence of boundaries and direction, lack of a positive home
45 environment, peer pressure, and poor community
46 expectations;

47 (9) Dropping out of school has a profound negative
48 impact on an individual's future, resulting in limited job

choices, substantially lower wages and less earned over a life-time than high school graduates, and a greater likelihood of depending on public assistance and engaging in criminal activity;

(10) Career-technical education is a dynamic system in West Virginia which offers numerous concentrations that provide students with industry-recognized credentials, while also preparing them for post-secondary education;

(11) All career-technical education students in the state have an opportunity to earn free college credit through the Earn a Degree-Graduate Early (EDGE) program;

(12) The current high school graduation rate for secondary career-technical education completers is significantly higher than the state graduation rate;

(13) Students involved in career-technical education learn a marketable skill, are likely to find jobs, and become prepared for post-secondary education;

(14) A significant number of students who could benefit from participating in a career-technical program are denied access due to a number of factors, such as dropping out of high school prior to enrolling in career-technical education, requirements that students repeat academic courses that they have failed, and scheduling conflicts with the high schools;

(15) There has been a dramatic change over the years from vocational education, which was very basic and lacked high level skills, to the career-technical programs of today which are computer based, require national tests and certification, and often result in jobs with high salaries;

(16) West Virginia's employers and technical education job placement rates show that the state needs graduates with technical skills to compete in the current and future job markets;

(17) The job placement rate for students graduating from career-technical programs statewide is greater than ninety-five percent;

(18) Among the reasons students cite for dropping out of school are feelings of hopelessness when they have failed classes and can not recover credits in order to graduate;

(19) The state offers full-day programs consisting of credit recovery, hands on experiences in career-technical programs and basic education, which are valuable resources for re-engaging students who have dropped out of school, or have a potential for or are at risk of dropping out;

(20) A student is significantly more likely to graduate from high school if he or she completes four units of training in technical education;

(21) Learning is increased and retained at a higher level if the content is taught through a relevant and applied experience, and students who are able to experience academics through real life projects have a higher probability of mastering the appropriate concepts;

(22) Programs such as "GED Option" and "Techademics" are valuable resources for providing relevant and applied experience for students;

(23) The Techademics programs administered by the department of education has embedded math competencies in career-technical program curricula whereby students

simultaneously earn credit for mastery of math competencies and career-technical courses;

(24) Students would greatly benefit if West Virginia were designated as a "GED Option" state. Currently a student is ineligible to take the General Educational Development (GED) exam if he or she is enrolled in school, which requires the student to drop out of high school in order to participate in a GED preparation program or take the exam, even if the student desires to remain enrolled;

(25) A GED Option state designation by the American Council on Education would allow students in this state to remain enrolled in school and continue acquiring academic and career-technical credits while pursuing a GED diploma. The GED Option would be blended with the West Virginia virtual schools or a career-technical education pathway. Upon completion, rather than being a dropout, the student would have a GED diploma and a certification in the chosen career-technical or virtual school pathway;

(26) The Mountaineer Challenge Academy is a positive option for students at risk of dropping out of school, as it provides students with structure, stability, and a focus on positive change, all in an environment where negative influences and distractions can be left behind;

(27) Students attending the Mountaineer Challenge Academy would greatly benefit if the GED Option were implemented at the Academy;

(28) The Health Sciences and Technology Academy (HSTA) program prepares rural, minority and economically disadvantaged students for college and careers in the health sciences, and demonstrates tremendous success in its high percentage of students who graduate from high school and participate in post-secondary education.

138 (29) The West Virginia GEAR UP (Gaining Early
139 Awareness and Readiness for Undergraduate Programs)
140 program is aimed at increasing the academic performance
141 and rigorous preparation of students, increasing the number
142 of high-poverty, at-risk students who are prepared to enter
143 and succeed in post-secondary education, and increasing the
144 high school graduation rate;

145 (30) The GEAR UP program successfully aids students
146 in planning, applying and paying for education and training
147 beyond high school;

148 (31) Each dropout involved in drugs or crime or
149 dependent on public assistance creates a huge fiscal burden
150 on society;

151 (32) The intense treatment and individual monitoring
152 provided through the state's juvenile drug courts have proven
153 to be highly effective in treating drug addictions, and
154 rehabilitating drug addicted youth and improving their
155 educational outcomes;

156 (33) Services provided by juvenile drug courts include
157 substance abuse treatment, intervention, assessment, juvenile
158 and family counseling, heavy supervision by probation
159 officers including school-based probation officers who
160 provide early intervention and diversion services, and
161 addressing some of the underlying reasons why students are
162 not successful in school;

163 (34) School participation and attendance are required for
164 students participating in juvenile drug courts, and along with
165 academic progress are closely monitored by the courts;

166 (35) Juvenile drug courts are an important strategy to
167 improve substance abuse treatment outcomes, and serve to

168 save the state significant cost on incarceration of the
169 juveniles, along with the future costs to society of individuals
170 who remain substance abusers;

171 (36) Juvenile drug courts produce greater cost benefits
172 than other strategies that address criminal activity related to
173 substance abuse and addiction that bring individuals into the
174 criminal justice system;

175 (37) Funding for the increased number of students
176 enrolled in school during the 2010-2011 school year due to
177 the compulsory school attendance age increase established by
178 this act will not be reflected in the state aid formula allocation
179 until the 2011-2012 school year, which will require
180 additional funds to be provided to county boards for the
181 2010-2011 school year to accommodate the increased
182 enrollment;

183 (38) The state will benefit both fiscally and through
184 improved quality of life if scarce state resources are targeted
185 toward programs that result in providing a competitive
186 advantage as adults for those students who are at risk of
187 dropping out of school;

188 (39) Funds invested toward education and ensuring that
189 students complete high school pay tremendous dividends
190 through the moneys saved on incarceration, unemployment
191 and underemployment as those students reach adulthood; and

192 (40) Increasing the compulsory school attendance age
193 will have little effect in aiding students to complete high
194 school if additional resources, both fiscal and programmatic,
195 are not dedicated to supporting student achievement,
196 providing real-life relevancy in curriculum, and engaging
197 students in learning, particularly for those students who have
198 become so disengaged from school and learning that they are
199 at risk of dropping out of school.

(c) The Legislature intends as follows:

(1) The state will continue to explore diverse instructional delivery strategies to accommodate various learning styles and will focus on a state-wide dropout intervention and prevention program to provide support for students having academic difficulty;

(2) A general credit recovery program shall be implemented statewide, including delivery through West Virginia virtual schools;

(3) The state board will continue to improve the way career-technical education is offered, including expansion of the Techademics program;

(4) Up to five additional juvenile drug courts shall be established by January 1, 2012;

(5) The state will invest additional state funds and other resources in strategies and programs that engage disconnected and discouraged students in a positive learning environment as a critical first step to ensuring that students persist and graduate; and

(6) County boards will develop plans to demonstrate how they will use available funds to implement the intent of this section.

(d) Each county board shall include in its alternative education program plan required by section six, article two, of this chapter a plan to improve student retention and increase the graduation rate in the county. The plan is subject to approval of the state board, and shall include strategies the county board will implement to achieve the following goals:

(1) Increasing the graduation rate for the county;

(2) Identifying at the earliest age possible those students who are at risk of dropping out of school prior to graduation; and

(3) Providing additional options for delivering to at-risk students academic credentials and career-technical training if appropriate or desired by the student. The options may include such programs as Techademics, Earn a Degree-Graduate Early (EDGE), Health Sciences and Technology Academy (HSTA), Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), truancy diversion, early intervention, dropout prevention, prevention resource officers, GED option, credit recovery, alternative learning environments, or any other program or strategy approved by the state board.

(e) As soon as is practicable the state superintendent or his or her designee shall pursue designation of West Virginia as a "GED Option" state by the American Council on Education. If so designated, the state board shall:

(1) Develop and implement a program whereby a student may pursue a GED diploma while remaining enrolled in high school; and

(2) Ensure that the GED Option is offered to students attending the Mountaineer Challenge Academy.

(f) The state board shall continue to expand:

(1) The Techademics program to include each major academic subject and increase the academic credit available through the program to students; and

256 (2) The Health Sciences and Technology Academy to
257 ensure that the program is available for any school containing
258 any of the grade levels of eligible students.

259 (g) The state board shall ensure that the dropout
260 information required by section twenty-four, article one-b,
261 chapter fifteen of this code is provided annually to the
262 Mountaineer Challenge Academy.

263 (h) Some career and technical education programs only
264 except students in certain upper high school grade levels due
265 to lack of capacity to accept the students in the lower high
266 school grade levels. This can be detrimental to efforts to keep
267 students identified as at risk of dropping out of school prior
268 to graduation in school. Therefore, those career and technical
269 education programs that only students in certain upper high
270 school grade levels to enroll may make exceptions for those
271 at risk students and enroll any of those at risk students who
272 are in grades nine and above.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-21. Funding for alternative education programs.

1 (a) An appropriation may be made to the state department
2 to be distributed to county boards for the operation of
3 alternative education and prevention programs established in
4 accordance with policies and procedures adopted by the state
5 board under section six, article two of this chapter. The
6 appropriation shall be an amount equal to $18 per student in
7 net enrollment, subject to appropriation by the Legislature.
8 The state board shall distribute ninety-eight percent of the
9 total appropriation to the county boards proportionate to each
10 county's net enrollment. The remaining two percent of the
11 appropriation shall be retained by the state department to
12 support the provision of services to the county boards in

13 administering programs established in accordance with
14 policies and procedures adopted by the state board under
15 section six, article two of this chapter.

16 (b) Nothing in this section may be construed to require
17 any specific level of funding by the Legislature.

18 (c) The increase from $12 per student in net enrollment
19 to $18 per student in net enrollment pursuant to the
20 amendment and enactment of this section during the 2010
21 regular session of the Legislature is not subject to the
22 provisions of section three-a.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.

§62-15-4. Court authorization and structure.

1 (a) Each judicial circuit or two or more adjoining judicial
2 circuits may establish a drug court or regional drug court
3 program under which drug offenders will be processed to
4 address appropriately, the identified substance abuse problem
5 as a condition of pretrial release, probation, incarceration,
6 parole or other release from a correctional facility.

7 (b) The structure, method, and operation of each drug
8 court program may differ and should be based upon the
9 specific needs of and resources available to the judicial
10 circuit or circuits where the drug court program is located.

11 (c) A drug court program may be preadjudication or post-
12 adjudication for an adult offender.

(d) Participation in drug court, with the consent of the prosecution and the court, shall be pursuant to a written agreement.

(e) A drug court may grant reasonable incentives under the written agreement if it finds that the drug offender:

(1) Is performing satisfactorily in drug court;

(2) Is benefitting from education, treatment and rehabilitation;

(3) Has not engaged in criminal conduct; or

(4) Has not violated the terms and conditions of the agreement.

(f) A drug court may impose reasonable sanctions on the drug offender, including incarceration for the underlying offense or expulsion from the program, pursuant to the written agreement, if it finds that the drug offender:

(1) Is not performing satisfactorily in drug court;

(2) Is not benefitting from education, treatment or rehabilitation;

(3) Has engaged in conduct rendering him or her unsuitable for the program;

(4) Has otherwise violated the terms and conditions of the agreement; or

(5) Is for any reason unable to participate.

(g) Upon successful completion of drug court, a drug offender's case shall be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the drug court. This may include, but is not limited to, withholding criminal charges, dismissal of charges, probation, deferred sentencing, suspended sentencing, split sentencing, or a reduced period of incarceration.

(h) Drug court shall include the Ten Key Components and the drug court team shall act to ensure compliance with them.

(i) Nothing contained in this article confers a right or an expectation of a right to participate in a drug court nor does it obligate a drug court to accept every drug offender.

(j) Neither the establishment of a drug court nor anything herein may be construed as limiting the discretion of the jurisdiction's prosecutor to act on any criminal case which he or she deems advisable to prosecute.

(k) Each drug court judge may establish rules and may make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals which has administrative authority over the courts. The Supreme Court of Appeals shall provide uniform referral, procedure and order forms that shall be used in all drug courts in this state.

(l) In addition to the number of juvenile drug courts operating on the effective date of this section, up to five additional juvenile drug courts or regional juvenile drug court programs may be established by January 1, 2012, as determined by the Supreme Court of Appeals.

CHAPTER 64

(Com. Sub. for H. B. 4031 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed March 13, 2010; in effect July 1, 2010.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §18-9A-8a of the Code of West Virginia, 1931, as amended, relating to the maximum foundation allowance for regional education service agencies.

Be it enacted by the Legislature of West Virginia:

That §18-9A-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-8a. Foundation allowance for regional education service agencies.

For the fiscal year beginning on July 1, 2006, and for each fiscal year thereafter, the foundation allowance for regional education service agencies shall be equal to sixty-three one-hundredths percent of the allocation for professional educators as determined in section four of this article, but not more than $3,990,000 million. The allowance shall be distributed to the regional education service agencies in accordance with rules adopted by the state board. The allowance for regional education service agencies shall be excluded from the computation of total basic state aid as provided in section twelve of this article.

CHAPTER 65

(Com. Sub. for H. B. 4211 - By Delegates Lawrence, M. Poling, Perry, Shaver, Phillips, Stowers and Duke)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-9A-22, relating to providing supplemental funding for providing alternative programs for limited English proficient students; and granting the State Board of Education rule-making authority.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-9A-22, to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-22. Supplemental funding for the provision of programs required for Limited English Proficient (LEP) students.

1 Any funds appropriated by the Legislature to the
2 Department of Education for distribution to the county boards
3 of education to supplement programs required for Limited
4 English Proficient students as defined by state board policy

5 in accordance with federal law shall be used to supplement a
6 program when the cost of the program exceeds the capacity
7 of a county board to provide the program with funds
8 available. Any appropriation made pursuant to this section
9 shall be distributed to the county boards in a manner that
10 takes into account the varying proficiency levels of the
11 students and the capacity of the county board to deliver the
12 needed programs. In order to receive the funding, a county
13 board must apply to the state superintendent. The state board
14 shall promulgate a rule in accordance with the provisions of
15 article three-b, chapter twenty-nine-a of this code that sets
16 forth the manner in which county boards apply for the
17 funding and to implement the other provisions of this section.

CHAPTER 66

(Com. Sub. for S. B. 229 - By Senators Tomblin (Mr. President) and Caruth) [By Request of the Executive]

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §18-9D-4b, §18-9D-6 and §18-9D-8 of the Code of West Virginia, 1931, as amended, all relating to authorizing the School Building Authority to issue bonds in the maximum aggregate amount of $500 million outstanding at any time; authorizing the School Building Authority to receive and expend federal subsidies received with respect to bonds issued by the School Building Authority; authorizing the expenditure of surpluses in certain debt service funds; requiring that copies of resolutions authorizing revenue bonds be provided to the Governor, the President of the Senate and the Speaker of the

House of Delegates; changing the persons required to sign the bonds; and removing obsolete provisions.

Be it enacted by the Legislature of West Virginia:

That §18-9D-4b, §18-9D-6 and §18-9D-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-4b. School Building Authority authorized to issue bonds and pay debt service on bonds with funds distributed from State Excess Lottery Fund.
§18-9D-6. School Building Capital Improvements Fund in State Treasury; School Construction Fund in State Treasury; School Building Debt Service Fund in State Treasury; School Improvement Fund in State Treasury; collections to be paid into special funds; Excess Lottery School Building Debt Service Fund in State Treasury; authority to pledge the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.
§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

§18-9D-4b. School Building Authority authorized to issue bonds and pay debt service on bonds with funds distributed from State Excess Lottery Fund.

The School Building Authority is expressly authorized to issue bonds and pay debt service on bonds pursuant to the provisions of this article with funds distributed from the State Excess Lottery Fund under section eighteen-a, article twenty-two, chapter twenty-nine of this code and deposited into the Excess Lottery School Building Debt Service Fund and any federal subsidies received by the School Building Authority and deposited into the Excess Lottery School Building Debt Service Fund with respect to bonds authorized by this section.

§18-9D-6. School Building Capital Improvements Fund in State Treasury; School Construction Fund in State Treasury; School Building Debt Service Fund in State Treasury; School Improvement Fund in State

Treasury; collections to be paid into special funds; Excess Lottery School Building Debt Service Fund in State Treasury; authority to pledge the collections as security for refunding revenue bonds; authority to finance projects on a cash basis.

1 (a) There is continued in the State Treasury a School
2 Building Capital Improvements Fund to be expended by the
3 authority as provided in this article. The School Building
4 Capital Improvements Fund shall be an interest-bearing
5 account with interest credited to and deposited in the School
6 Building Capital Improvements Fund and expended in
7 accordance with the provisions of this article.

8 The School Building Authority may pledge all or any part
9 of the revenues paid into the School Building Capital
10 Improvements Fund that are needed to meet the requirements
11 of any revenue bond issue or issues authorized by this article
12 prior to July 20, 1993, or revenue bonds issued to refund
13 revenue bonds issued prior to that date, including the
14 payment of principal of, interest and redemption premium, if
15 any, on the revenue bonds and the establishing and
16 maintaining of a reserve fund or funds for the payment of the
17 principal of, interest and redemption premium, if any, on the
18 revenue bond issue or issues when other moneys pledged
19 may be insufficient for the payment of the principal, interest
20 and redemption premium, including any additional protective
21 pledge of revenues that the authority in its discretion has
22 provided by resolution authorizing the issuance of the bonds
23 or in any trust agreement made in connection with the bond
24 issue. Additionally, the authority may provide in the
25 resolution and in the trust agreement for priorities on the
26 revenues paid into the School Building Capital Improvements
27 Fund that are necessary for the protection of the prior rights
28 of the holders of bonds issued at different times under the
29 provisions of this article.

Any balance remaining in the School Building Capital Improvements Fund after the authority has issued bonds authorized by this article and after the requirements of all funds, including reserve funds established in connection with the bonds issued prior to July 20, 1993, pursuant to this article have been satisfied may be used for the redemption of any of the outstanding bonds issued under this article which by their terms are then redeemable, or for the purchase of the bonds at the market price, but not exceeding the price, if any, at which the bonds are in the same year redeemable and all bonds redeemed or purchased shall immediately be canceled and shall not again be issued.

The School Building Authority, in its discretion, may use the moneys in the School Building Capital Improvements Fund to finance the cost of projects authorized in accordance with the provisions of section sixteen of this article on a cash basis. Any pledge of moneys in the fund for revenue bonds issued prior to July 20, 1993, is a prior and superior charge on the fund over the use of any of the moneys in the fund to pay for the cost of any project on a cash basis: *Provided,* That any expenditures from the fund, other than for the retirement of revenue bonds, may only be made by the authority in accordance with the provisions of this article.

(b) There is continued in the State Treasury a special revenue fund named the School Building Debt Service Fund into which shall be deposited the amounts specified in section eighteen, article twenty-two, chapter twenty-nine of this code together with any federal subsidies received by the authority with respect to bonds authorized by this article for which moneys deposited in the School Building Debt Service Fund have been pledged. If the amounts deposited in the School Building Debt Service Fund exceed the amount which the authority is authorized to expend, the excess shall be set aside

in a special surplus fund for the authority. Expenditures from this special surplus fund shall be made only in accordance with the procedures established in section eighteen, article two, chapter eleven-b. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this article for which moneys deposited in the School Building Debt Service Fund have been pledged by the authority: *Provided,* That deposited moneys may not be pledged to the repayment of any revenue bonds issued prior to January 1, 1994, or with respect to revenue bonds issued for the purpose of refunding revenue bonds issued prior to January 1, 1994. Additionally, the authority may provide in the resolution and in the trust agreement for priorities on the revenues paid into the School Building Debt Service Fund that are necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article. On or prior to May 1 of each year, the authority shall certify to the State Lottery Director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued on or after January 1, 1994, and for which moneys deposited in the School Building Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

After the authority has issued bonds authorized by this article for which moneys deposited in the School Building Debt Service Fund have been pledged and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the School Building Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this article, for which moneys deposited in the School

Building Debt Service Fund have been pledged, which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued: *Provided,* That after the authority has issued bonds authorized by this article and after the requirements of debt service and all associated funds have been satisfied for the fiscal year for which moneys deposited in the School Building Debt Service Fund have been pledged, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any remaining balance in the School Building Debt Service Fund may be transferred to the School Construction Fund created in subsection (c) of this section and used by the School Building Authority in its discretion to finance the cost of school construction or improvement projects authorized in accordance with the provisions of section sixteen of this article on a cash basis.

(c) There is continued in the State Treasury a special revenue fund named the School Construction Fund into which shall be deposited the amounts specified in section thirty, article fifteen, chapter eleven of this code, together with any moneys appropriated to the fund by the Legislature.

Expenditures from the School Construction Fund shall be for the purposes set forth in this article, including lease-purchase payments under agreements made pursuant to subsection (e), section fifteen of this article and section nine, article five of this chapter and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code pursuant to the provisions set forth

in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The School Construction Fund shall be an interest-bearing account, with the interest credited to and deposited in the School Construction Fund and expended in accordance with the provisions of this article. Deposits to and expenditures from the School Construction Fund are subject to the provisions of subsection (k), section fifteen of this article.

(d) There is continued in the State Treasury a special revenue fund named the School Major Improvement Fund into which shall be deposited the amounts specified in section thirty, article fifteen, chapter eleven of this code, together with any moneys appropriated to the fund by the Legislature. Expenditures from the School Major Improvement Fund shall be for the purposes set forth in this article and are authorized from collections in accordance with the provisions of article three, chapter twelve of this code and from other revenues annually appropriated by the Legislature from lottery revenues as authorized by section eighteen, article twenty-two, chapter twenty-nine of this code pursuant to the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The School Major Improvement Fund shall be an interest-bearing account, with interest being credited to and deposited in the School Major Improvement Fund and expended in accordance with the provisions of this article.

(e) There is created in the State Treasury a special revenue fund named the Excess Lottery School Building Debt Service Fund into which shall be deposited the amounts specified in section eighteen-a, article twenty-two, chapter

twenty-nine of this code, together with any federal subsidies received by the authority with respect to bonds authorized by section four-b, article nine-d, chapter eighteen of this code. If the amounts deposited in the Excess Lottery School Building Debt Service Fund exceed the amount which the authority is authorized to expend, the excess shall be set aside in a special surplus fund for the authority. Expenditures from this special surplus fund shall be made only in accordance with the procedures established in section eighteen, article two, chapter eleven-b. All amounts deposited in the fund shall be pledged, as designated by the authority, to the repayment of the principal, interest and redemption premium, if any, on revenue bonds or refunding revenue bonds authorized by section four-b of this article. On or prior to May 1 of each year, the authority shall certify to the State Lottery Director the principal and interest and coverage ratio requirements for the following fiscal year on any revenue bonds issued for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

After the authority has issued bonds authorized by this article for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged and after the requirements of all funds have been satisfied, including coverage and reserve funds established in connection with the bonds issued pursuant to this article, any balance remaining in the Excess Lottery School Building Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this article, for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged, which, by their terms, are then redeemable or for the purchase of the outstanding bonds at the market price, but not to exceed the price, if any, at which the bonds are redeemable and all bonds redeemed or purchased shall be immediately canceled and shall not again

be issued: *Provided,* That after the authority has issued bonds authorized by this article and after the requirements of debt service and all associated funds have been satisfied for the fiscal year, including coverage and reserve funds established in connection with the bonds issued pursuant to this article for which moneys deposited in the Excess Lottery School Building Debt Service Fund have been pledged, any remaining balance in the Excess Lottery School Building Debt Service Fund may be transferred to the School Construction Fund created in subsection (c) of this section and used by the School Building Authority in its discretion to finance the cost of school construction or improvement projects authorized in accordance with the provisions of section sixteen of this article on a cash basis.

(f) The Legislature finds and declares that the Supreme Court of Appeals of West Virginia has held that the issuance of additional revenue bonds authorized under the School Building Authority Act, as enacted in this article prior to July 12, 1993, constituted an indebtedness of the state in violation of section four, article X of the Constitution of West Virginia, but that revenue bonds issued under this article prior to July 12, 1993, are not invalid.

The Legislature further finds and declares that the financial capacity of a county to construct, lease and improve school facilities depends upon the county's bonding capacity (local property wealth), voter willingness to pass bond issues and the county's ability to reallocate other available county funds instead of criteria related to educational needs or upon the ability of the School Building Authority created in this article to issue bonds that comply with the holding of the West Virginia Supreme Court of Appeals or otherwise assist counties with the financing of facilities construction and improvement. The Legislature further finds and declares that this section, as well as section eighteen, article twenty-two,

chapter twenty-nine of this code, had been reenacted during the first extraordinary session of the West Virginia Legislature in the year 1994 in an attempt to comply with the holding of the Supreme Court of Appeals of West Virginia.

The Legislature further finds and declares that it intends, through the reenactment of this section and section eighteen, article twenty-two, chapter twenty-nine of this code, to dedicate a source of state revenues to special revenue funds for the purposes of paying the debt service on bonds and refunding bonds issued subsequent to January 1, 1994, the proceeds of which will be used for the construction and improvement of school building facilities. The Legislature further finds and declares that it intends, through the reenactment of this section and section thirty, article fifteen, chapter eleven of this code and section eighteen, article twenty-two, chapter twenty-nine of this code, to appropriate revenues to two special revenue funds for the purposes of construction and improvement of school building facilities. Furthermore, the Legislature intends to encourage county boards to maintain existing levels of county funding for construction, improvement and maintenance of school building facilities and to generate additional county funds for those purposes through bonds and special levies whenever possible. The Legislature further encourages the School Building Authority, the state board and county boards to propose uniform project specifications for comparable projects whenever possible to meet county needs at the lowest possible cost.

The Legislature further finds and declares that it intends, through the reenactment of this section and section eighteen, article twenty-two, chapter twenty-nine of this code, to comply with the provisions of sections four and six, article X of the Constitution of West Virginia; and section one, article XII of said constitution.

§18-9D-8. Use of proceeds of bonds; bonds exempt from taxation.

(a) The maximum aggregate amount of bonds outstanding at any time, for which the moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are to be pledged, is $500 million; however, any amount of bonds for which moneys have been deposited in a sinking fund, reserve fund or other fund established to provide payment of principal or interest on the bonds shall be excluded from the calculation of the maximum aggregate amount of bonds outstanding at any time. The issuance of revenue bonds under the provisions of this article shall be authorized, from time to time, by resolution or resolutions of the School Building Authority, copies of which shall be provided to the Governor, the President of the Senate and the Speaker of the House of Delegates within five days of their approval, which shall set forth the proposed projects authorized in accordance with the provisions of section sixteen of this article and provide for the issuance of bonds in amounts sufficient, when sold as provided in this section, to provide moneys considered sufficient by the authority to pay the costs, less the amounts of any other funds available for the costs or from any appropriation, grant or gift for the costs: *Provided,* That bond issues from which bond revenues are to be distributed in accordance with section fifteen of this article for projects authorized pursuant to the provisions of section sixteen of this article are not required to set forth the proposed projects in the resolution. The resolution shall prescribe the rights and duties of the bondholders and the School Building Authority and, for that purpose, may prescribe the form of the trust agreement referred to in this section. The bonds may be issued, from time to time, in such amounts; shall be of such series; bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; bear interest at such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability

privileges; be payable in such medium of payment and at such place or places within or without the state; be subject to such terms of redemption at such prices not exceeding one hundred five percent of the principal amount of the bonds; and be entitled to such priorities on the revenues paid into the fund pledged for repayment of the bonds as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection with the bonds: *Provided, however,* That revenue bonds issued on or after January 1, 1994, and prior to January 1, 2008, which are secured by lottery proceeds from section eighteen, article twenty-two, chapter twenty-nine of this code shall mature at such time or times not exceeding ten years from their respective dates: *Provided further,* That revenue bonds issued on or after January 1, 2008, which are secured by lottery proceeds from section eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code, shall mature at such time or times not exceeding twenty years from their respective dates.

(b) The bonds shall be signed by the Governor, his or her designee or the vice chair of the authority, under the great seal of the state, attested by the Secretary of State, and the coupons attached to the bonds shall bear the facsimile signature of the Governor, his or her designee or the vice chair of the authority. In case any of the officers whose signatures appear on the bonds or coupons cease to be officers before the delivery of the bonds, the signatures shall nevertheless be valid and sufficient for all purposes the same as if the officers had remained in office until the delivery. The revenue bonds shall be sold in the manner determined by the authority to be for the best interests of the state.

(c) Any pledge of revenues made by the School Building Authority for revenue bonds issued prior to July 20, 1993, pursuant to this article is valid and binding between the parties from the time the pledge is made; and the revenues

pledged shall immediately be subject to the lien of the pledge without any further physical delivery of the revenues pledged or further act. The lien of the pledge is valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether the parties have notice of the lien of the pledge and the pledge shall be a prior and superior charge over any other use of the revenues pledged.

(d) The proceeds of any bonds shall be used solely for the purpose or purposes as may be generally or specifically set forth in the resolution authorizing those bonds and shall be disbursed in the manner and with the restrictions, if any, that the authority provides in the resolution authorizing the issuance of the bonds or in the trust agreement referred to in this section securing the bonds. If the proceeds of the bonds, by error in calculations or otherwise, are less than the cost of any projects specifically set forth in the resolution, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, the additional bonds shall be considered to be of the same issue and are entitled to payment from the same fund, without preference or priority, as the bonds before issued for the projects. If the proceeds of bonds issued for the projects specifically set forth in the resolution authorizing the bonds issued by the authority exceed the cost of the bonds, the surplus may be used for any other projects authorized in accordance with the provisions of section sixteen of this article or in any other manner that the resolution authorizing the bonds provides. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the definitive bonds.

(e) After the issuance of any revenue bonds, the revenues pledged for the revenue bonds shall not be reduced as long as any of the revenue bonds are outstanding and unpaid except under the terms, provisions and conditions that are contained

in the resolution, trust agreement or other proceedings under which the revenue bonds were issued.

(f) The revenue bonds and the revenue refunding bonds and bonds issued for combined purposes, together with the interest on the bonds, are exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof.

(g) To meet the operational costs of the School Building Authority, the School Building Authority may transfer to a special revenue account in the State Treasury interest on any debt service reserve funds created within any resolution authorizing the issue of bonds or any trust agreement made in connection with the bonds for expenditure in accordance with legislative appropriation or allocation of appropriation.

(h) Any school construction bonds issued under this section shall be issued on parity with any existing School Building Authority bonds previously issued under this article.

CHAPTER 67

(Com. Sub. for H. B. 4512 - By Delegates Caputo, Paxton, Perry, Fragale and D. Walker)

[Passed March 13, 2010; in effect July 1, 2010.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §18A-4-8, §18A-4-8b and §18A-4-8e of the Code of West Virginia, 1931, as amended, all relating to school service personnel; limiting assignments of director or coordinator of services; requiring school bus supervisor to be certified to operate a bus or previously certified to operate a bus;

requiring supervisor of transportation and multiclassification position that includes this title first employed after certain date to have five years of experience working in transportation department and defining experience; defining itinerant status, assignments, posting, limit on positions, and exclusions; requiring additional content of notice of a job vacancy generally and aide classification category specifically; and modifying test frequency for re-certifying a bus operators.

Be it enacted by the Legislature of West Virginia:

That §18A-4-8, §18A-4-8b and §18A-4-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.
§18A-4-8b. Seniority rights for school service personnel.
§18A-4-8e. Competency testing for service personnel; and recertification testing for bus operators.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than ten months. A month is defined as twenty employment days. The county board may contract with all or part of these service personnel for a longer term. The beginning and closing dates of the ten-month employment term may not exceed forty-three weeks.

(b) Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the two hundred-day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred-day minimum employment term.

(d) A service person may not be required to report for work more than five days per week without his or her agreement, and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) If a service person whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the service person shall be paid for at least one-half day of work for each day he or she reports for work. If the service person works more than three and one-half hours on any Saturday or Sunday, he or she shall be paid for at least a full day of work for each day.

(f) A custodian, aide, maintenance, office and school lunch service person required to work a daily work schedule that is interrupted shall be paid additional compensation in accordance with this subsection.

(1) A maintenance person means a person who holds a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in section one, article one of this chapter.

(2) A service person's schedule is considered to be interrupted if he or she does not work a continuous period in one day. Aides are not regarded as working an interrupted schedule when engaged exclusively in the duties of transporting students;

(3) The additional compensation provided for in this subsection:

(A) Is equal to at least one-eighth of a service person's total salary as provided by the state minimum pay scale and any county pay supplement; and

(B) Is payable entirely from county board funds.

(g) When there is a change in classification or when a service person meets the requirements of an advanced classification, his or her salary shall be made to comply with the requirements of this article and any county salary schedule in excess of the minimum requirements of this article, based upon the service person's advanced classification and allowable years of employment.

(h) A service person's contract, as provided in section five, article two of this chapter, shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and on any county salary schedule in excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:

(1) "Pay grade" means the monthly salary applicable to class titles of service personnel;

(2) "Years of employment" means the number of years which an employee classified as a service person has been employed by a county board in any position prior to or subsequent to the effective date of this section and includes service in the Armed Forces of the United States, if the employee was employed at the time of his or her induction.

For the purpose of section eight-a of this article, years of employment is limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article;

(3) "Class title" means the name of the position or job held by a service person;

(4) "Accountant I" means a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

(5) "Accountant II" means a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

(6) "Accountant III" means a person employed in the county board office to manage and supervise accounts payable, payroll procedures, or both;

(7) "Accounts payable supervisor" means a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed twelve college hours of accounting courses from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(8) "Aide I" means a person selected and trained for a teacher-aide classification such as monitor aide, clerical aide, classroom aide or general aide;

(9) "Aide II" means a service person referred to in the "Aide I" classification who has completed a training program approved by the state board, or who holds a high school

105 diploma or has received a general educational development
106 certificate. Only a person classified in an Aide II class title
107 may be employed as an aide in any special education
108 program;

109 (10) "Aide III" means a service person referred to in the
110 "Aide I" classification who holds a high school diploma or a
111 general educational development certificate; and

112 (A) Has completed six semester hours of college credit at
113 an institution of higher education; or

114 (B) Is employed as an aide in a special education program
115 and has one year's experience as an aide in special education;

116 (11) "Aide IV" means a service person referred to in the
117 "Aide I" classification who holds a high school diploma or a
118 general educational development certificate; and

119 (A) Has completed eighteen hours of state board-approved
120 college credit at a regionally accredited institution of higher
121 education; or

122 (B) Has completed fifteen hours of state board-approved
123 college credit at a regionally accredited institution of higher
124 education; and has successfully completed an in-service
125 training program determined by the state board to be the
126 equivalent of three hours of college credit;

127 (12) "Audiovisual technician" means a person employed
128 to perform minor maintenance on audiovisual equipment,
129 films, and supplies and who fills requests for equipment;

130 (13) "Auditor" means a person employed to examine and
131 verify accounts of individual schools and to assist schools
132 and school personnel in maintaining complete and accurate
133 records of their accounts;

134 (14) "Autism mentor" means a person who works with
135 autistic students and who meets standards and experience to
136 be determined by the state board. A person who has held or
137 holds an aide title and becomes employed as an autism
138 mentor shall hold a multiclassification status that includes
139 both aide and autism mentor titles, in accordance with section
140 eight-b of this article;

141 (15) "Braille or sign language specialist" means a person
142 employed to provide braille and/or sign language assistance
143 to students. A service person who has held or holds an aide
144 title and becomes employed as a braille or sign language
145 specialist shall hold a multiclassification status that includes
146 both aide and braille or sign language specialist title, in
147 accordance with section eight-b of this article;

148 (16) "Bus operator" means a person employed to operate
149 school buses and other school transportation vehicles as
150 provided by the state board;

151 (17) "Buyer" means a person employed to review and
152 write specifications, negotiate purchase bids and recommend
153 purchase agreements for materials and services that meet
154 predetermined specifications at the lowest available costs;

155 (18) "Cabinetmaker" means a person employed to
156 construct cabinets, tables, bookcases and other furniture;

157 (19) "Cafeteria manager" means a person employed to
158 direct the operation of a food services program in a school,
159 including assigning duties to employees, approving
160 requisitions for supplies and repairs, keeping inventories,
161 inspecting areas to maintain high standards of sanitation,
162 preparing financial reports and keeping records pertinent to
163 food services of a school;

164 (20) "Carpenter I" means a person classified as a
165 carpenter's helper;

166 (21) "Carpenter II" means a person classified as a
167 journeyman carpenter;

168 (22) "Chief mechanic" means a person employed to be
169 responsible for directing activities which ensure that student
170 transportation or other county board-owned vehicles are
171 properly and safely maintained;

172 (23) "Clerk I" means a person employed to perform
173 clerical tasks;

174 (24) "Clerk II" means a person employed to perform
175 general clerical tasks, prepare reports and tabulations and
176 operate office machines;

177 (25) "Computer operator" means a qualified person
178 employed to operate computers;

179 (26) "Cook I" means a person employed as a cook's
180 helper;

181 (27) "Cook II" means a person employed to interpret
182 menus and to prepare and serve meals in a food service
183 program of a school. This definition includes a service
184 person who has been employed as a "Cook I" for a period of
185 four years;

186 (28) "Cook III" means a person employed to prepare and
187 serve meals, make reports, prepare requisitions for supplies,
188 order equipment and repairs for a food service program of a
189 school system;

190 (29) "Crew leader" means a person employed to organize
191 the work for a crew of maintenance employees to carry out
192 assigned projects;

193 (30) "Custodian I" means a person employed to keep
194 buildings clean and free of refuse;

(31) "Custodian II" means a person employed as a watchman or groundsman;

(32) "Custodian III" means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;

(33) "Custodian IV" means a person employed as head custodians. In addition to providing services as defined in "custodian III," duties may include supervising other custodian personnel;

(34) "Director or coordinator of services" means an employee of a county board who is assigned to direct a department or division.

(A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title;

(B) Professional personnel holding this class title may not be defined or classified as service personnel unless the professional person held a service personnel title under this section prior to holding the class title of "director or coordinator of services."

(C) The director or coordinator of services shall be classified either as a professional person or a service person for state aid formula funding purposes;

(D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person; and

(E) A person employed under the class title "director or coordinator of services" may not be exclusively assigned to perform the duties ascribed to any other class title as defined

in this subsection: *Provided*, That nothing in this paragraph prohibits a person in this position from being multiclassified;

(35) "Draftsman" means a person employed to plan, design and produce detailed architectural/engineering drawings;

(36) "Electrician I" means a person employed as an apprentice electrician helper or one who holds an electrician helper license issued by the State Fire Marshal;

(37) "Electrician II" means a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the State Fire Marshal;

(38) "Electronic technician I" means a person employed at the apprentice level to repair and maintain electronic equipment;

(39) "Electronic technician II" means a person employed at the journeyman level to repair and maintain electronic equipment;

(40) "Executive secretary" means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;

(41) "Food services supervisor" means a qualified person who is not a professional person or professional educator as defined in section one, article one of this chapter. The food services supervisor is employed to manage and supervise a county school system's food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

(42) "Foreman" means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment;

(43) "General maintenance" means a person employed as a helper to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system;

(44) "Glazier" means a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

(45) "Graphic artist" means a person employed to prepare graphic illustrations;

(46) "Groundsman" means a person employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;

(47) "Handyman" means a person employed to perform routine manual tasks in any operation of the county school system;

(48) "Heating and air conditioning mechanic I" means a person employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(49) "Heating and air conditioning mechanic II" means a person employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment;

(50) "Heavy equipment operator" means a person employed to operate heavy equipment;

(51) "Inventory supervisor" means a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;

(52) "Key punch operator" means a qualified person employed to operate key punch machines or verifying machines;

(53) "Licensed practical nurse" means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;

(54) "Locksmith" means a person employed to repair and maintain locks and safes;

(55) "Lubrication man" means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

(56) "Machinist" means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;

(57) "Mail clerk" means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail;

(58) "Maintenance clerk" means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

(59) "Mason" means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;

(60) "Mechanic" means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

(61) "Mechanic assistant" means a person employed as a mechanic apprentice and helper;

(62) "Multiclassification" means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances the minimum salary scale shall be the higher pay grade of the class titles involved;

(63) "Office equipment repairman I" means a person employed as an office equipment repairman apprentice or helper;

(64) "Office equipment repairman II" means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;

(65) "Painter" means a person employed to perform duties painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

(66) "Paraprofessional" means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.

(A) A person employed on the effective date of this section in the position of an aide may not be subject to a

reduction in force or transferred to create a vacancy for the employment of a paraprofessional;

(B) A person who has held or holds an aide title and becomes employed as a paraprofessional shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with section eight-b of this article; and

(C) When a service person who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

(67) "Payroll supervisor" means a person employed in the county board office who has primary responsibility for the payroll function and who either has completed twelve college hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

(68) "Plumber I" means a person employed as an apprentice plumber and helper;

(69) "Plumber II" means a person employed as a journeyman plumber;

(70) "Printing operator" means a person employed to operate duplication equipment, and to cut, collate, staple, bind and shelve materials as required;

(71) "Printing supervisor" means a person employed to supervise the operation of a print shop;

(72) "Programmer" means a person employed to design and prepare programs for computer operation;

(73) "Roofing/sheet metal mechanic" means a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

(74) "Sanitation plant operator" means a person employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

(75) "School bus supervisor" means a qualified person:

(A) Employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, students, bus operators and other employees; and

(B) Certified to operate a bus or previously certified to operate a bus;

(76) "Secretary I" means a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines;

(77) "Secretary II" means a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes, stenotype, mechanical equipment or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification;

(78) "Secretary III" means a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities in purchasing and financial control or any person who has served for eight years in a position which meets the definition of "secretary II" or "secretary III";

(79) "Supervisor of maintenance" means a skilled person who is not a professional person or professional educator as defined in section one, article one of this chapter. The responsibilities include directing the upkeep of buildings and shops, and issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a county board;

(80) "Supervisor of transportation" means a qualified person employed to direct school transportation activities properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system. After July 1, 2010, all persons employed for the first time in a position with this classification title or in a multi-classification position that includes this title shall have five years of experience working in the transportation department of a county board. Experience working in the transportation department shall consist of serving as a bus operator, bus aide, assistant mechanic, mechanic, chief mechanic or in a clerical position within the transportation department;

(81) "Switchboard operator-receptionist" means a person employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

(82) "Truck driver" means a person employed to operate light or heavy duty gasoline and diesel-powered vehicles;

(83) "Warehouse clerk" means a person employed to be responsible for receiving, storing, packing and shipping goods;

(84) "Watchman" means a person employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties;

(85) "Welder" means a person employed to provide acetylene or electric welding services for a school system; and

(86) "WVEIS data entry and administrative clerk" means a person employed to work under the direction of a school principal to assist the school counselor or counselors in the performance of administrative duties, to perform data entry tasks on the West Virginia Education Information System, and to perform other administrative duties assigned by the principal.

(j) Notwithstanding any provision in this code to the contrary, and in addition to the compensation provided for service personnel in section eight-a of this article, each service person is entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee's hours of employment or the methods or sources of compensation.

(k) A service person whose years of employment exceeds the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article may not be paid less than the amount shown for the

maximum years of employment shown and provided for in the classification in which he or she is employed.

(l) Each county board shall review each service person's job classification annually and shall reclassify all service persons as required by the job classifications. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order a county board to correct immediately any improper classification matter and, with the assistance of the Attorney General, shall take any legal action necessary against any county board to enforce the order.

(m) Without his or her written consent, a service person may not be:

(1) Reclassified by class title; or

(2) Relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year; or for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(o) Notwithstanding any provision of this code to the contrary, a service person who holds a continuing contract in a specific job classification and who is physically unable to perform the job's duties as confirmed by a physician chosen by the employee, shall be given priority status over any

499 employee not holding a continuing contract in filling other
500 service personnel job vacancies if the service person is
501 qualified as provided in section eight-e of this article.

502 (p) Any person employed in an aide position on the
503 effective date of this section may not be transferred or subject
504 to a reduction in force for the purpose of creating a vacancy
505 for the employment of a licensed practical nurse.

506 (q) Without the written consent of the service person, a
507 county board may not establish the beginning work station
508 for a bus operator or transportation aide at any site other than
509 a county board-owned facility with available parking. The
510 workday of the bus operator or transportation aide
511 commences at the bus at the designated beginning work
512 station and ends when the employee is able to leave the bus
513 at the designated beginning work station, unless he or she
514 agrees otherwise in writing. The application or acceptance of
515 a posted position may not be construed as the written consent
516 referred to in this subsection.

517 (r) Itinerant status means a service person who does not
518 have a fixed work site and may be involuntarily reassigned to
519 another work site. A service person is considered to hold
520 itinerant status if he or she has bid upon a position posted as
521 itinerant or has agreed to accept this status. A county board
522 may establish positions with itinerant status only within the
523 aide and autism mentor classification categories and only
524 when the job duties involve exceptional students. A service
525 person with itinerant status may be assigned to a different
526 work site upon written notice ten days prior to the
527 reassignment without the consent of the employee and
528 without posting the vacancy. A service person with itinerant
529 status may be involuntarily reassigned no more than twice
530 during the school year. At the conclusion of each school
531 year, the county board shall post and fill, pursuant to section
532 eight-b of this article, all positions that have been filled

without posting by a service person with itinerant status. A service person who is assigned to a beginning and ending work site and travels at the expense of the county board to other work sites during the daily schedule, shall not be considered to hold itinerant status.

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

(a) A county board shall make decisions affecting promotions and the filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight of this article, on the basis of seniority, qualifications and evaluation of past service.

(b) Qualifications means the applicant holds a classification title in his or her category of employment as provided in this section and is given first opportunity for promotion and filling vacancies. Other employees then shall be considered and shall qualify by meeting the definition of the job title that relates to the promotion or vacancy, as defined in section eight of this article. If requested by the employee, the county board shall show valid cause why a service person with the most seniority is not promoted or employed in the position for which he or she applies. Qualified applicants shall be considered in the following order:

(1) Regularly employed service personnel who hold a classification title within the classification category of the vacancy;

(2) Service personnel who have held a classification title within the classification category of the vacancy whose employment has been discontinued in accordance with this section;

(3) Regularly employed service personnel who do not hold a classification title within the classification category of vacancy;

(4) Service personnel who have not held a classification title within the classification category of the vacancy and whose employment has been discontinued in accordance with this section;

(5) Substitute service personnel who hold a classification title within the classification category of the vacancy;

(6) Substitute service personnel who do not hold a classification title within the classification category of the vacancy; and

(7) New service personnel.

(c) The county board may not prohibit a service person from retaining or continuing his or her employment in any positions or jobs held prior to the effective date of this section and thereafter.

(d) A promotion means any change in employment that the service person considers to improve his or her working circumstance within the classification category of employment.

(1) A promotion includes a transfer to another classification category or place of employment if the position is not filled by an employee who holds a title within that classification category of employment.

(2) Each class title listed in section eight of this article is considered a separate classification category of employment for service personnel, except for those class titles having Roman numeral designations, which are considered a single classification of employment:

(A) The cafeteria manager class title is included in the same classification category as cooks;

(B) The executive secretary class title is included in the same classification category as secretaries;

(C) Paraprofessional, autism mentor and braille or sign language specialist class titles are included in the same classification category as aides; and

(D) The mechanic assistant and chief mechanic class titles are included in the same classification category as mechanics.

(3) The assignment of an aide to a particular position within a school is based on seniority within the aide classification category if the aide is qualified for the position.

(4) Assignment of a custodian to work shifts in a school or work site is based on seniority within the custodian classification category.

(e) For purposes of determining seniority under this section a service person's seniority begins on the date that he or she enters into the assigned duties.

(f) *Extra-duty assignments.* --

(1) For the purpose of this section, "extra-duty assignment" means an irregular job that occurs periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

(2) Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments are made in the following manner:

(A) A service person with the greatest length of service time in a particular category of employment is given priority in accepting extra duty assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all employees have had an opportunity to perform similar assignments. The cycle then is repeated.

(B) An alternative procedure for making extra-duty assignments within a particular classification category of employment may be used if the alternative procedure is approved both by the county board and by an affirmative vote of two-thirds of the employees within that classification category of employment.

(g) County boards shall post and date notices of all job vacancies of existing or newly created positions in conspicuous places for all school service personnel to observe for at least five working days.

(1) Posting locations include any website maintained by or available for the use of the county board.

(2) Notice of a job vacancy shall include the job description, the period of employment, the work site, the starting and ending time of the daily shift, the amount of pay and any benefits and other information that is helpful to prospective applicants to understand the particulars of the job. The notice of a job vacancy in the aide classification categories shall include the program or primary assignment of the position. Job postings for vacancies made pursuant to this section shall be written to ensure that the largest possible pool of qualified applicants may apply. Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant.

(3) After the five-day minimum posting period, all vacancies shall be filled within twenty working days from the

posting date notice of any job vacancies of existing or newly created positions.

(4) The county board shall notify any person who has applied for a job posted pursuant to this section of the status of his or her application as soon as possible after the county board makes a hiring decision regarding the posted position.

(h) All decisions by county boards concerning reduction in work force of service personnel shall be made on the basis of seniority, as provided in this section.

(i) The seniority of a service person is determined on the basis of the length of time the employee has been employed by the county board within a particular job classification. For the purpose of establishing seniority for a preferred recall list as provided in this section, a service person who has been employed in one or more classifications retains the seniority accrued in each previous classification.

(j) If a county board is required to reduce the number of service personnel within a particular job classification, the following conditions apply:

(1) The employee with the least amount of seniority within that classification or grades of classification is properly released and employed in a different grade of that classification if there is a job vacancy;

(2) If there is no job vacancy for employment within that classification or grades of classification, the service person is employed in any other job classification which he or she previously held with the county board if there is a vacancy and retains any seniority accrued in the job classification or grade of classification.

(k) After a reduction in force or transfer is approved, but prior to August 1, a county board in its sole and exclusive

judgment may determine that the reason for any particular reduction in force or transfer no longer exists.

(1) If the board makes this determination, it shall rescind the reduction in force or transfer and notify the affected employee in writing of the right to be restored to his or her former position of employment.

(2) The affected employee shall notify the county board of his or her intent to return to the former position of employment within five days of being notified or lose the right to be restored to the former position.

(3) The county board may not rescind the reduction in force of an employee until all service personnel with more seniority in the classification category on the preferred recall list have been offered the opportunity for recall to regular employment as provided in this section.

(4) If there are insufficient vacant positions to permit reemployment of all more senior employees on the preferred recall list within the classification category of the service person who was subject to reduction in force, the position of the released service person shall be posted and filled in accordance with this section.

(l) If two or more service persons accumulate identical seniority, the priority is determined by a random selection system established by the employees and approved by the county board.

(m) All service personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force are placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

(n) A service person placed upon the preferred recall list shall be recalled to any position openings by the county board within the classification(s) where he or she had previously been employed, to any lateral position for which the service person is qualified or to a lateral area for which a service person has certification and/or licensure.

(o) A service person on the preferred recall list does not forfeit the right to recall by the county board if compelling reasons require him or her to refuse an offer of reemployment by the county board.

(p) The county board shall notify all service personnel on the preferred recall list of all position openings that exist from time to time. The notice shall be sent by certified mail to the last known address of the service person. Each service person shall notify the county board of any change of address.

(q) No position openings may be filled by the county board, whether temporary or permanent, until all service personnel on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(r) A service person released from employment for lack of need as provided in sections six and eight-a, article two of this chapter is accorded preferred recall status on July 1 of the succeeding school year if he or she has not been reemployed as a regular employee.

(s) A county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(1) A service person denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactively to the date of the violation and shall be paid entirely from local funds.

(2) The county board is liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

§18A-4-8e. Competency testing for service personnel; and recertification testing for bus operators.

(a) The State Board of Education shall develop and make available competency tests for all of the classification titles defined in section eight of this article and listed in section eight-a of this article for service personnel. Each classification title defined and listed is considered a separate classification category of employment for service personnel and has a separate competency test, except for those class titles having Roman numeral designations, which are considered a single classification of employment and have a single competency test.

(1) The cafeteria manager class title is included in the same classification category as cooks and has the same competency test.

(2) The executive secretary class title is included in the same classification category as secretaries and has the same competency test.

(3) The classification titles of chief mechanic, mechanic and assistant mechanic are included in one classification title and have the same competency test.

(b) The purpose of these tests is to provide county boards a uniform means of determining whether school service

22 personnel who do not hold a classification title in a particular
23 category of employment meet the definition of the
24 classification title in another category of employment as
25 defined in section eight of this article. Competency tests may
26 not be used to evaluate employees who hold the classification
27 title in the category of their employment.

28 (c) The competency test consists of an objective written
29 or performance test, or both. Applicants may take the written
30 test orally if requested. Oral tests are recorded mechanically
31 and kept on file. The oral test is administered by persons
32 who do not know the applicant personally.

33 (1) The performance test for all classifications and
34 categories other than bus operator is administered by an
35 employee of the county board or an employee of a
36 multicounty vocational school that serves the county at a
37 location designated by the superintendent and approved by
38 the board. The location may be a vocational school that
39 serves the county.

40 (2) A standard passing score is established by the state
41 Department of Education for each test and is used by county
42 boards.

43 (3) The subject matter of each competency test is
44 commensurate with the requirements of the definitions of the
45 classification titles as provided in section eight of this article.
46 The subject matter of each competency test is designed in
47 such a manner that achieving a passing grade does not require
48 knowledge and skill in excess of the requirements of the
49 definitions of the classification titles. Achieving a passing
50 score conclusively demonstrates the qualification of an
51 applicant for a classification title.

(4) Once an employee passes the competency test of a classification title, the applicant is fully qualified to fill vacancies in that classification category of employment as provided in section eight-b of this article and may not be required to take the competency test again.

(d) An applicant who fails to achieve a passing score is given other opportunities to pass the competency test when making application for another vacancy within the classification category.

(e) Competency tests are administered to applicants in a uniform manner under uniform testing conditions. County boards are responsible for scheduling competency tests, notifying applicants of the date and time of the one day of training prior to taking the test, and the date and time of the test. County boards may not use a competency test other than the test authorized by this section.

(f) When scheduling of the competency test conflicts with the work schedule of a school employee who has applied for a vacancy, the employee is excused from work to take the competency test without loss of pay.

(g) A minimum of one day of appropriate in-service training is provided to employees to assist them in preparing to take the competency tests.

(h) Competency tests are used to determine the qualification of new applicants seeking initial employment in a particular classification title as either a regular or substitute employee.

(i) Notwithstanding any provisions in this code to the contrary, once an employee holds or has held a classification title in a category of employment, that employee is

82 considered qualified for the classification title even though
83 that employee no longer holds that classification.

84 (j) The requirements of this section do not alter the
85 definitions of class titles as provided in section eight of this
86 article or the procedure and requirements of section eight-b
87 of this article.

88 (k) Notwithstanding any other provision of this code to
89 the contrary and notwithstanding any rules of the school
90 board concerning school bus operator certification in effect
91 on the effective date of this section, the certification test for
92 school bus operators shall be required as follows, and school
93 bus operators shall not be required to take the certification
94 test more frequently:

95 (1) For substitute school bus operators and for school bus
96 operators with regular employee status but on a probationary
97 contract, the certification test shall be administered annually;

98 (2) For school bus operators with regular employee status
99 and continuing contract status, the certification test shall be
100 administered triennially; and

101 (3) For substitute school bus operators who are retired
102 from a county board and who at the time of retirement had
103 ten years of experience as a regular full-time bus operator,
104 the certification test shall be administered triennially.

105 The state board shall promulgate in accordance with
106 article three-b, chapter twenty-nine-a of this code, revised
107 rules in compliance with this subsection.

CHAPTER 68

(S. B. 611 - By Senators Helmick, McCabe, Bowman, Edgell, Facemire, Fanning, Green, Prezioso, Unger, Wells, Boley, Facemyer, Guills and Sypolt)

[Passed March 12, 2010; in effect from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §18B-1B-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-2B-6 of said code; and to amend and reenact §18B-4-1 of said code, all relating to the location of the offices of the Higher Education Policy Commission, the Vice Chancellor for Administration, the West Virginia Council for Community and Technical College Education, and WVNET.

Be it enacted by the Legislature of West Virginia:

That §18B-1B-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18B-2B-6 of said code be amended and reenacted; and that §18B-4-1 of said code be amended and reenacted, all to read as follows:

Article

1B. High Education Policy Commission.
2B. West Virginia Council for Community and Technical College Education.
4. General Administration.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

*§18B-1B-4. Powers and duties of Higher Education Policy Commission.

1 (a) The primary responsibility of the commission is to
2 develop, establish and implement policy that will achieve the
3 goals and objectives found in section one-a, article one of this
4 chapter. The commission shall exercise its authority and
5 carry out its responsibilities in a manner that is consistent and
6 not in conflict with the powers and duties assigned by law to
7 the West Virginia Council for Community and Technical
8 College Education and the powers and duties assigned to the
9 governing boards of Marshall University and West Virginia
10 University, respectively. To that end, the commission has the
11 following powers and duties relating to the institutions under
12 its jurisdiction:

13 (1) Develop, oversee and advance the public policy
14 agenda pursuant to section one, article one-a of this chapter
15 to address major challenges facing the state, including, but
16 not limited to, the goals and objectives found in section one-
17 a, article one of this chapter and including specifically those
18 goals and objectives pertaining to the compacts created
19 pursuant to section two, article one-a of this chapter and to
20 develop and implement the master plan described in section
21 nine of this article for the purpose of accomplishing the
22 mandates of this section;

23 (2) Develop, oversee and advance the implementation
24 jointly with the council of a financing policy for higher
25 education in West Virginia. The policy shall meet the
26 following criteria:

27 (A) Provide an adequate level of education and general
28 funding for institutions pursuant to section five, article one-a
29 of this chapter;

*CLERK'S NOTE: This section was also amended by H. B. 4026 (Chapter 56) which passed prior to this act.

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and deferred maintenance;

(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one of this chapter; and

(D) Incorporate the plan for strategic funding to strengthen capacity for support of community and technical college education established by the West Virginia Council for Community and Technical College Education pursuant to the provisions of section six, article two-b of this chapter;

(3) In collaboration with the council, create a policy leadership structure capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission and council shall seek input from the Legislature and the Governor and specifically from the State Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding the higher education institutions and the higher education systems as a whole accountable for accomplishing their missions and implementing the provisions of the compacts;

(4) Develop and adopt each institutional compact;

(5) Review and adopt the annual updates of the institutional compacts;

(6) Serve as the accountability point to:

(A) The Governor for implementation of the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability;

(7) Jointly with the council, promulgate legislative rules pursuant to article three-a, chapter twenty-nine-a of this code to fulfill the purposes of section five, article one-a of this chapter;

(8) Establish and implement a peer group for each institution as described in section three, article one-a of this chapter;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional achievement towards state policy priorities and institutional missions pursuant to section two, article one-a of this chapter;

(10) Annually report to the Legislature and to the Legislative Oversight Commission on Education Accountability during the January interim meetings on a date and at a time and location to be determined by the President of the Senate and the Speaker of the House of Delegates. The report shall address at least the following:

(A) The performance of its system of higher education during the previous fiscal year, including, but not limited to, progress in meeting goals stated in the compacts and progress of the institutions and the higher education system as a whole in meeting the goals and objectives set forth in section one-a, article one of this chapter;

(B) An analysis of enrollment data collected pursuant to section one, article ten of this chapter and recommendations for any changes necessary to assure access to high-quality, high-demand education programs for West Virginia residents;

(C) The priorities established for capital investment needs pursuant to subdivision (11) of this subsection and the justification for such priority;

(D) Recommendations of the commission for statutory changes needed to further the goals and objectives set forth in section one-a, article one of this chapter;

(11) Establish a formal process for identifying needs for capital investments and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process. It is the responsibility of the commission to assure a fair distribution of funds for capital projects between the commission and the council. To that end the commission shall take the following steps:

(A) Receive the list of priorities developed by the council for capital investment for the institutions under the council's jurisdiction pursuant to subsection (b), section six, article two-b of this chapter;

(B) Place the ranked list of projects on the agenda for action within sixty days of the date on which the list was received;

(C) Select a minimum of three projects from the list submitted by the council to be included on the ranked list established by the commission. At least one of the three projects selected must come from the top two priorities established by the council;

(12) Maintain guidelines for institutions to follow concerning extensive capital project management except the governing boards of Marshall University and West Virginia University are not subject to the provisions of this subdivision as it relates to the state institutions of higher education known as Marshall University and West Virginia University. The guidelines shall provide a process for developing capital projects, including, but not limited to, the notification by an institution to the commission of any proposed capital project which has the potential to exceed $1 million in cost. Such a project may not be pursued by an institution without the approval of the commission. An institution may not participate directly or indirectly with any public or private entity in any capital project which has the potential to exceed $1 million in cost;

(13) Acquire legal services as are considered necessary, including representation of the commission, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(14) Employ a Chancellor for Higher Education pursuant to section five of this article;

(15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission

and the council, in accordance with the provisions of article four of this chapter;

(16) Provide suitable offices in Kanawha County for the chancellor, vice chancellors and other staff;

(17) Advise and consent in the appointment of the presidents of the institutions of higher education under its jurisdiction pursuant to section six of this article. The role of the commission in approving an institutional president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compact and in section one-a, article one of this chapter;

(18) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, as proposed by the governing boards. The governing boards must obtain approval from the commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package;

(19) Establish and implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

(20) Approve and implement a uniform standard jointly with the council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education

system. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the State Board of Education and the State Superintendent of Schools;

(21) Review and approve or disapprove capital projects as described in subdivision (11) of this subsection;

(22) Jointly with the council, develop and implement an oversight plan to manage systemwide technology such as the following:

(A) Expanding distance learning and technology networks to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort; and

(B) Increasing the delivery of instruction to nontraditional students, to provide services to business and industry and increase the management capabilities of the higher education system.

(C) Notwithstanding any other provision of law or this code to the contrary, the council, commission and state institutions of higher education are not subject to the jurisdiction of the Chief Technology Officer for any purpose;

(23) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a bachelor's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state community and technical college with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(24) Establish and implement policies and procedures to ensure that students may transfer and apply toward the

requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(25) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a master's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(26) Establish and implement policies and programs, in cooperation with the council and the institutions of higher education, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor's degree at a state institution of higher education;

(27) Seek out and attend regional, national and international meetings and forums on education and workforce development-related topics, as in the commission's discretion is critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals and objectives pursuant to section one-a, article one of this chapter;

(28) Develop, establish and implement a rule for higher education governing boards and institutions to follow when

considering capital projects. The guidelines shall assure that the governing boards and institutions do not approve or promote capital projects involving private sector businesses which would have the effect of reducing property taxes on existing properties or avoiding, in whole or in part, the full amount of taxes which would be due on newly developed or future properties;

(29) Consider and submit to the appropriate agencies of the executive and legislative branches of state government a budget that reflects recommended appropriations from the commission and the institutions under its jurisdiction. The commission shall submit as part of its budget proposal the separate recommended appropriations it received from the council, both for the council and the institutions under the council's jurisdiction. The commission annually shall submit the proposed institutional allocations based on each institution's progress toward meeting the goals of its institutional compact;

(30) The commission has the authority to assess institutions under its jurisdiction, including the state institutions of higher education known as Marshall University and West Virginia University, for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives related to the goals set forth for the provision of public higher education in the state;

(31) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to institutions of higher education for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities;

(32) Make appointments to boards and commissions where this code requires appointments from the State College

System Board of Directors or the University of West Virginia System Board of Trustees which were abolished effective June 30, 2000, except in those cases where the required appointment has a specific and direct connection to the provision of community and technical college education, the appointment shall be made by the council. Notwithstanding any provisions of this code to the contrary, the commission or the council may appoint one of its own members or any other citizen of the state as its designee. The commission and council shall appoint the total number of persons in the aggregate required to be appointed by these previous governing boards;

(33) Pursuant to the provisions of article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules as necessary or expedient to fulfill the purposes of this chapter. The commission and the council shall promulgate a uniform joint legislative rule for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

(34) Determine when a joint rule among the governing boards of the institutions under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards of all the institutions under its jurisdiction, promulgate the joint rule;

(35) In consultation with the governing boards of Marshall University and West Virginia University, implement a policy jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;

(36) Promulgate a joint rule with the council establishing tuition and fee policy for all institutions of higher education,

other than state institutions of higher education known as Marshall University and West Virginia University which are subject to the provisions of section one, article ten of this chapter. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

(D) Consideration of charges to out-of-state students; and

(E) Such other policies as the commission and council consider appropriate;

(37) Implement general disease awareness initiatives to educate parents and students, particularly dormitory residents, about meningococcal meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and activities that can increase risks; measures that can be taken to prevent contact or infection; and potential benefits of vaccination. The commission shall encourage institutions that provide medical care to students to provide access to the vaccine for those who wish to receive it; and

(38) Notwithstanding any other provision of this code to the contrary, sell, lease, convey or otherwise dispose of all or part of any real property which it may own, either by contract or at public auction, and to retain the proceeds of any such sale or lease: *Provided*, That:

(A) The commission may not sell, lease, convey or otherwise dispose of any real property without first:

(i) Providing notice to the public in the county in which the real property is located by a Class II legal advertisement

346 pursuant to section two, article three, chapter fifty-nine of
347 this code;

348 (ii) Holding a public hearing on the issue in the county in
349 which the real property is located; and

350 (iii) Providing notice to the Joint Committee on
351 Government and Finance; and

352 (B) Any proceeds from the sale, lease, conveyance or
353 other disposal of real property that is used jointly by
354 institutions or for statewide programs under the jurisdiction
355 of the commission or the council shall be transferred to the
356 General Revenue Fund of the state.

357 (b) In addition to the powers and duties listed in
358 subsection (a) of this section, the commission has the
359 following general powers and duties related to its role in
360 developing, articulating and overseeing the implementation
361 of the public policy agenda:

362 (1) Planning and policy leadership, including a distinct
363 and visible role in setting the state's policy agenda and in
364 serving as an agent of change;

365 (2) Policy analysis and research focused on issues
366 affecting the system as a whole or a geographical region
367 thereof;

368 (3) Development and implementation of institutional
369 mission definitions, including use of incentive funds to
370 influence institutional behavior in ways that are consistent
371 with public priorities;

372 (4) Academic program review and approval for
373 institutions under its jurisdiction, including the use of
374 institutional missions as a template to judge the

appropriateness of both new and existing programs and the authority to implement needed changes. The commission's authority to review and approve academic programs for either the state institution of higher education known as Marshall University or West Virginia University is limited to programs that are proposed to be offered at a new location not presently served by that institution;

(5) Distribution of funds appropriated to the commission, including incentive and performance-based funding;

(6) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of any rules necessary to administer those programs;

(7) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(8) Development, establishment and implementation of information, assessment and accountability systems, including maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(9) Jointly with the council, developing, establishing and implementing policies for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state pursuant to the findings and policy recommendations required by section eleven of this article;

(10) Development, implementation and oversight of statewide and regionwide projects and initiatives related to providing post-secondary education at the baccalaureate level and above such as those using funds from federal categorical

programs or those using incentive and performance-based funding from any source; and

(11) Quality assurance that intersects with all other duties of the commission particularly in the areas of research, data collection and analysis, planning, policy analysis, program review and approval, budgeting and information and accountability systems.

(c) In addition to the powers and duties provided in subsections (a) and (b) of this section and any other powers and duties as may be assigned to it by law, the commission has such other powers and duties as may be necessary or expedient to accomplish the purposes of this article.

(d) The commission is authorized to withdraw specific powers of any governing board of an institution under its jurisdiction for a period not to exceed two years, if the commission makes a determination that:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in article one of this chapter;

(2) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the board of governors according to state law; or

(3) Other circumstances which, in the view of the commission, severely limit the capacity of the board of governors to carry out its duties and responsibilities.

The period of withdrawal of specific powers may not exceed two years during which time the commission is authorized to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.

*§18B-2B-6. Powers and duties of the council.

1 (a) The council is the sole agency responsible for
2 administration of vocational-technical-occupational education
3 and community and technical college education in the state.
4 The council has jurisdiction and authority over the
5 community and technical colleges and the statewide network
6 of independently accredited community and technical
7 colleges as a whole, including community and technical
8 college education programs as defined in section two, article
9 one of this chapter.

10 (b) The council shall propose rules pursuant to section
11 six, article one of this chapter and article three-a, chapter
12 twenty-nine-a of this code to implement the provisions of this
13 section and applicable provisions of article one-d of this
14 chapter:

15 (1) To implement the provisions of article one-d of this
16 chapter relevant to community and technical colleges, the
17 council may propose rules jointly with the commission or
18 separately and may choose to address all components of the
19 accountability system in a single rule or may propose
20 additional rules to cover specific components;

21 (2) The rules pertaining to financing policy and
22 benchmarks and indicators required by this section shall be
23 filed with the Legislative Oversight Commission on
24 Education Accountability by October 1, 2008. Nothing in
25 this subsection requires other rules of the council to be

*CLERK'S NOTE: This section was also amended by H. B. 4026 (Chapter 56) which passed prior to this act.

26 promulgated again under the procedure set forth in article
27 three-a, chapter twenty-nine-a of this code unless such rules
28 are rescinded, revised, altered or amended; and

29 (3) The Legislature finds that an emergency exists and,
30 therefore, the council shall propose an emergency rule or
31 rules to implement the provisions of this section relating to
32 the financing policy and benchmarks and indicators in
33 accordance with section six, article one of this chapter and
34 article three-a, chapter twenty-nine-a of this code by October
35 1, 2008. The emergency rule or rules may not be
36 implemented without prior approval of the Legislative
37 Oversight Commission on Education Accountability.

38 (c) The council has the following powers and duties
39 relating to the authority established in subsection (a) of this
40 section:

41 (1) Develop, oversee and advance the public policy
42 agenda for community and technical college education for the
43 purpose of accomplishing the mandates of this section,
44 including, but not limited to, the following:

45 (A) Achieving the goals and objectives established in
46 articles one and one-d of this chapter;

47 (B) Addressing the goals and objectives contained in the
48 institutional compacts created pursuant to section seven,
49 article one-d of this chapter; and

50 (C) Developing and implementing the master plan
51 described in section five, article one-d of this chapter;

52 (2) Propose a legislative rule pursuant to subsection (b)
53 of this section and article three-a, chapter twenty-nine-a of
54 this code to develop and implement a financing policy for
55 community and technical college education in West Virginia.
56 The rule shall meet the following criteria:

57 (A) Provide an adequate level of education and general
58 funding for institutions pursuant to section five, article one-a
59 of this chapter;

60 (B) Serve to maintain institutional assets, including, but
61 not limited to, human and physical resources and deferred
62 maintenance;

63 (C) Establish a plan for strategic funding to strengthen
64 capacity for support of community and technical college
65 education; and

66 (D) Establish a plan that measures progress and provides
67 performance-based funding to institutions which make
68 significant progress in the following specific areas:

69 (i) Achieving the objectives and priorities established in
70 article one-d of this chapter;

71 (ii) Serving targeted populations, especially working age
72 adults twenty-five years of age and over;

73 (iii) Providing access to high cost, high demand technical
74 programs in every region of the state;

75 (iv) Increasing the percentage of functionally literate
76 adults in every region of the state; and

77 (v) Providing high quality community and technical
78 college education services to residents of every region of the
79 state.

80 (3) Create a policy leadership structure relating to
81 community and technical college education capable of the
82 following actions:

83 (A) Developing, building public consensus around and
84 sustaining attention to a long-range public policy agenda. In

85 developing the agenda, the council shall seek input from the
86 Legislature and the Governor and specifically from the State
87 Board of Education and local school districts in order to
88 create the necessary linkages to assure smooth, effective and
89 seamless movement of students through the public education
90 and post-secondary education systems and to ensure that the
91 needs of public school courses and programs can be fulfilled
92 by the graduates produced and the programs offered;

93 (B) Ensuring that the governing boards of the institutions
94 under the council's jurisdiction carry out their duty
95 effectively to govern the individual institutions of higher
96 education; and

97 (C) Holding each community and technical college and
98 the statewide network of independently accredited
99 community and technical colleges as a whole accountable for
100 accomplishing their missions and achieving the goals and
101 objectives established in articles one, one-d, and three-c of
102 this chapter;

103 (4) Develop for inclusion in the statewide public agenda,
104 a plan for raising education attainment, increasing adult
105 literacy, promoting workforce and economic development
106 and ensuring access to advanced education for the citizens of
107 West Virginia;

108 (5) Provide statewide leadership, coordination, support,
109 and technical assistance to the community and technical
110 colleges and to provide a focal point for visible and effective
111 advocacy for their work and for the public policy agendas
112 approved by the commission and council;

113 (6) Review and adopt annually all institutional compacts
114 for the community and technical colleges pursuant to the
115 provisions of section seven, article one-d of this chapter;

116 (7) Fulfill the mandates of the accountability system
117 established in article one-d of this chapter and report on
118 progress in meeting established goals, objectives, and
119 priorities to the elected leadership of the state;

120 (8) Propose a legislative rule pursuant to subsection (b)
121 of this section and article three-a, chapter twenty-nine-a of
122 this code to establish benchmarks and indicators in
123 accordance with the provisions of this subsection;

124 (9) Establish and implement the benchmarks and
125 performance indicators necessary to measure institutional
126 progress:

127 (A) In meeting state goals, objectives, and priorities
128 established in articles one and one-d of this chapter;

129 (B) In carrying out institutional missions; and

130 (C) In meeting the essential conditions established in
131 article three-c of this chapter;

132 (10) Collect and analyze data relating to the performance
133 of community and technical colleges in every region of West
134 Virginia and report periodically or as directed to the
135 Legislative Oversight Commission on Education
136 Accountability on the progress in meeting the goals and
137 objectives established in articles one and one-d of this
138 chapter.

139 Additionally, the council shall report annually during the
140 January interim meetings on a date and at a time and location
141 to be determined by the President of the Senate and the
142 Speaker of the House of Delegates.

143 The annual report shall address at least the following:

(A) The performance of the community and technical college network during the previous fiscal year, including, but not limited to, progress in meeting goals stated in the compacts and progress of the institutions and the network as a whole in meeting the goals and objectives established in articles one and one-d of this chapter;

(B) The priorities established for capital investment needs pursuant to subdivision (11) of this subsection and the justification for such priority; and

(C) Recommendations of the council for statutory changes necessary or expedient to achieve established state goals and objectives.

(11) Establish a formal process for identifying needs for capital investments and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process. Notwithstanding the language in subdivision eleven, subsection a, section four, article one-b of this chapter, the commission is not a part of the process for identifying needs for capital investments for the statewide network of independently accredited community and technical colleges;

(12) Draw upon the expertise available within the Governor's Workforce Investment Office and the West Virginia Development Office as a resource in the area of workforce development and training;

(13) Acquire legal services that are considered necessary, including representation of the council, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the council may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(14) Employ a chancellor for community and technical college education pursuant to section three of this article;

(15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council consistent with the provisions of section two, article four of this chapter;

(16) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the council who are employed solely by the council;

(17) Provide suitable offices in Charleston for the chancellor and other staff: *Provided,* That the offices may be located outside of Charleston at a technology and research center: *Provided, however,* That the current employees of WVNET shall not be moved from Monongalia County without legislative approval;

(18) Approve the total compensation package from all sources for presidents of community and technical colleges, as proposed by the governing boards. The governing boards must obtain approval from the council of the total compensation package both when presidents are employed initially and subsequently when any change is made in the amount of the total compensation package;

(19) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(20) Establish and implement policies and programs, jointly with the community and technical colleges, through

which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor's degree at a state institution of higher education;

(21) Seek out and attend regional and national meetings and forums on education and workforce development-related topics, as council members consider critical for the performance of their duties. The council shall keep abreast of national and regional community and technical college education trends and policies to aid members in developing the policies for this state that meet the education goals and objectives established in articles one and one-d of this chapter;

(22) Assess community and technical colleges for the payment of expenses of the council or for the funding of statewide services, obligations or initiatives related specifically to the provision of community and technical college education;

(23) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to community and technical colleges for qualifying noncapital expenditures incurred in the provision of services to students with physical, learning or severe sensory disabilities;

(24) Assume the prior authority of the commission in examining and approving tuition and fee increase proposals submitted by community and technical college governing boards as provided in section one, article ten of this chapter;

(25) Develop and submit to the commission, a single budget for community and technical college education that reflects recommended appropriations for community and technical colleges and that meets the following conditions:

(A) Incorporates the provisions of the financing rule mandated by this section to measure and provide performance funding to institutions which achieve or make significant progress toward achieving established state objectives and priorities;

(B) Considers the progress of each institution toward meeting the essential conditions set forth in section three, article three-c of this chapter, including independent accreditation; and

(C) Considers the progress of each institution toward meeting the goals, objectives, and priorities established in article one-d of this chapter and its approved institutional compact.

(26) Administer and distribute the independently accredited community and technical college development account;

(27) Establish a plan of strategic funding to strengthen capacity for support and assure delivery of high quality community and technical college education in all regions of the state;

(28) Foster coordination among all state-level, regional and local entities providing post-secondary vocational education or workforce development and coordinate all public institutions and entities that have a community and technical college mission;

(29) Assume the principal responsibility for oversight of those community and technical colleges seeking independent

accreditation and for holding governing boards accountable for meeting the essential conditions pursuant to article three-c of this chapter;

(30) Advise and consent in the appointment of the presidents of the community and technical colleges pursuant to section six, article one-b of this chapter. The role of the council in approving a president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives established in the institutional compact and in articles one, one-d, and three-c of this chapter;

(31) Provide a single, statewide link for current and prospective employers whose needs extend beyond one locality;

(32) Provide a mechanism capable of serving two or more institutions to facilitate joint problem-solving in areas including, but not limited to the following:

(A) Defining faculty roles and personnel policies;

(B) Delivering high-cost technical education programs across the state;

(C) Providing one-stop service for workforce training to be delivered by multiple institutions; and

(D) Providing opportunities for resource-sharing and collaborative ventures;

(33) Provide support and technical assistance to develop, coordinate, and deliver effective and efficient community and technical college education programs and services in all regions of the state;

(34) Assist the community and technical colleges in establishing and promoting links with business, industry and labor in the geographic areas for which each community and technical college is responsible;

(35) Develop alliances among the community and technical colleges for resource sharing, joint development of courses and courseware, and sharing of expertise and staff development;

(36) Serve aggressively as an advocate for development of a seamless curriculum;

(37) Cooperate with all providers of education services in the state to remove barriers relating to a seamless system of public and higher education and to transfer and articulation between and among community and technical colleges, state colleges and universities and public education, preschool through grade twelve;

(38) Encourage the most efficient use of available resources;

(39) Coordinate with the commission in informing public school students, their parents and teachers of the academic preparation that students need in order to be prepared adequately to succeed in their selected fields of study and career plans, including presentation of academic career fairs;

(40) Jointly with the commission, approve and implement a uniform standard, as developed by the chancellors, to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the

standard which the governing boards shall communicate to the State Board of Education and the State Superintendent of Schools;

(41) Develop and implement strategies and curriculum for providing developmental education which shall be applied by any state institution of higher education providing developmental education;

(42) Develop a statewide system of community and technical college programs and services in every region of West Virginia for competency-based certification of knowledge and skills, including a statewide competency-based associate degree program;

(43) Review and approve all institutional master plans for the community and technical colleges pursuant to section four, article two-a of this chapter;

(44) Propose rules for promulgation pursuant to subsection (b) of this section and article three-a, chapter twenty-nine-a of this code that are necessary or expedient for the effective and efficient performance of community and technical colleges in the state;

(45) In its sole discretion, transfer any rule under its jurisdiction, other than a legislative rule, to the jurisdiction of the governing boards who may rescind, revise, alter or amend any rule transferred pursuant to rules adopted by the council and provide technical assistance to the institutions under its jurisdiction to aid them in promulgating rules;

(46) Develop for inclusion in the higher education report card, as defined in section eight, article one-d of this chapter, a separate section on community and technical colleges. This section shall include, but is not limited to, evaluation of the institutions based upon the benchmarks and indicators developed in subdivision (9) of this subsection;

(47) Facilitate continuation of the Advantage Valley Community College Network under the leadership and direction of Marshall Community and Technical College;

(48) Initiate and facilitate creation of other regional networks of affiliated community and technical colleges that the council finds to be appropriate and in the best interests of the citizens to be served;

(49) Develop with the State Board of Education plans for secondary and post-secondary vocational-technical-occupational and adult basic education, including, but not limited to the following:

(A) Policies to strengthen vocational-technical-occupational and adult basic education; and

(B) Programs and methods to assist in the improvement, modernization and expanded delivery of vocational-technical-occupational and adult basic education programs;

(50) Distribute federal vocational education funding provided under the Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, with an emphasis on distributing financial assistance among secondary and post-secondary vocational-technical-occupational and adult basic education programs to help meet the public policy agenda.

In distributing funds the council shall use the following guidelines:

(A) The State Board of Education shall continue to be the fiscal agent for federal vocational education funding;

(B) The percentage split between the State Board of Education and the council shall be determined by rule promulgated by the council under the provisions of article

three-a, chapter twenty-nine-a of this code. The council shall first obtain the approval of the State Board of Education before proposing a rule;

(51) Collaborate, cooperate and interact with all secondary and post-secondary vocational-technical-occupational and adult basic education programs in the state, including the programs assisted under the federal Carl D. Perkins Vocational and Technical Education Act of 1998, PL 105-332, and the Workforce Investment Act of 1998, to promote the development of seamless curriculum and the elimination of duplicative programs;

(52) Coordinate the delivery of vocational-technical-occupational and adult basic education in a manner designed to make the most effective use of available public funds to increase accessibility for students;

(53) Analyze and report to the State Board of Education on the distribution of spending for vocational-technical-occupational and adult basic education in the state and on the availability of vocational-technical-occupational and adult basic education activities and services within the state;

(54) Promote the delivery of vocational-technical-occupational education, adult basic education and community and technical college education programs in the state which emphasize the involvement of business, industry and labor organizations;

(55) Promote public participation in the provision of vocational-technical-occupational education, adult basic education and community and technical education at the local level, emphasizing programs which involve the participation of local employers and labor organizations;

(56) Promote equal access to quality vocational-technical-occupational education, adult basic education and

community and technical college education programs to handicapped and disadvantaged individuals, adults in need of training and retraining, single parents, homemakers, participants in programs designed to eliminate sexual bias and stereotyping and criminal offenders serving in correctional institutions;

(57) Meet annually between the months of October and December with the Advisory Committee of Community and Technical College Presidents created pursuant to section eight of this article to discuss those matters relating to community and technical college education in which advisory committee members or the council may have an interest;

(58) Accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article;

(59) Assume the powers set out in section nine of this article. The rules previously promulgated by the State College System Board of Directors pursuant to that section and transferred to the commission are hereby transferred to the council and shall continue in effect until rescinded, revised, altered or amended by the council;

(60) Pursuant to the provisions of subsection (b) of this section and article three-a, chapter twenty-nine-a of this code, promulgate a uniform joint legislative rule with the commission for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

(61) Determine when a joint rule among the governing boards of the community and technical colleges is necessary or required by law and, in those instances and in consultation with the governing boards, promulgate the joint rule;

(62) Promulgate a joint rule with the commission establishing tuition and fee policy for all institutions of higher education. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

(D) Consideration of charges to out-of-state students; and

(E) Any other policies the commission and council consider appropriate;

(63) In cooperation with the West Virginia Division of Highways, study a method for increasing the signage signifying community and technical college locations along the state interstate highways, and report to the Legislative Oversight Commission on Education Accountability regarding any recommendations and required costs; and

(64) Implement a policy jointly with the commission whereby any course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement.

(d) In addition to the powers and duties listed in subsections (a), (b) and (c) of this section, the council has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda for community and technical colleges:

(1) Planning and policy leadership including a distinct and visible role in setting the state's policy agenda for the

484 delivery of community and technical college education and
485 in serving as an agent of change;

486 (2) Policy analysis and research focused on issues
487 affecting the community and technical college network as a
488 whole or a geographical region thereof;

489 (3) Development and implementation of each community
490 and technical college mission definition including use of
491 incentive and performance funds to influence institutional
492 behavior in ways that are consistent with achieving
493 established state goals, objectives, and priorities;

494 (4) Academic program review and approval for the
495 institutions under its jurisdiction, including the use of
496 institutional missions as a template to judge the
497 appropriateness of both new and existing programs and the
498 authority to implement needed changes;

499 (5) Development of budget and allocation of resources
500 for institutions delivering community and technical college
501 education, including reviewing and approving institutional
502 operating and capital budgets and distributing incentive and
503 performance-based funding;

504 (6) Acting as the agent to receive and disburse public
505 funds related to community and technical college education
506 when a governmental entity requires designation of a
507 statewide higher education agency for this purpose;

508 (7) Development, establishment and implementation of
509 information, assessment and internal accountability systems,
510 including maintenance of statewide data systems that
511 facilitate long-term planning and accurate measurement of
512 strategic outcomes and performance indicators for
513 community and technical colleges;

(8) Jointly with the commission, development, establishment and implementation of policies for licensing and oversight of both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs;

(9) Development, implementation and oversight of statewide and regionwide projects and initiatives related specifically to providing community and technical college education such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

(10) Quality assurance that intersects with all other duties of the council particularly in the areas of planning, policy analysis, program review and approval, budgeting and information and accountability systems.

(e) The council may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years if the council makes a determination that any of the following conditions exist:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in section seven, article one-d of this chapter;

(2) The council has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the board of governors according to state law; or

(3) Other circumstances which, in the view of the council, severely limit the capacity of the board of governors to carry out its duties and responsibilities.

The period of withdrawal of specific powers may not exceed two years during which time the council is authorized

to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

(f) In addition to the powers and duties provided for in subsections (a), (b), (c) and (d) of this section and any others assigned to it by law, the council has those powers and duties necessary or expedient to accomplish the purposes of this article; and

(g) When the council and commission, each, is required to consent, cooperate, collaborate or provide input into the actions of the other the following conditions apply:

(1) The body acting first shall convey its decision in the matter to the other body with a request for concurrence in the action;

(2) The commission or the council, as the receiving body, shall place the proposal on its agenda and shall take final action within sixty days of the date when the request for concurrence is received; and

(3) If the receiving body fails to take final action within sixty days, the original proposal stands and is binding on both the commission and the council.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Employment of chancellors; designation of staff; offices.

(a) The council and commission each shall employ a chancellor to assist in the performance of their respective duties and responsibilities subject to the following conditions:

(1) Each chancellor serves at the will and pleasure of the hiring body.

(2) Neither chancellor may hold or retain any other administrative position within the system of higher education while employed as chancellor.

(3) Each chancellor is responsible for carrying out the directives of the body by whom employed and shall work with that body in developing policy options.

(4) The commission is responsible to the council and the Chancellor for Community and Technical College Education for providing services in areas essential to exercising the powers and duties assigned to the council by law. The commission may not charge the council any fee for the provision of these essential services. The service areas include, but are not limited to, legal services, research, technology, computing, finance and facilities, academic affairs, telecommunications, human resources, student services and any other general areas the council considers to be essential to the exercise of its legal authority. The services are provided under the general supervision of the Vice Chancellor for Administration.

(5) For the purpose of developing or evaluating policy options, the chancellors may request the assistance of the presidents and staff of the institutions under their respective jurisdictions.

(b) In addition to the staff positions designated in subdivision (4), subsection (a) of this section, the Vice Chancellor for Administration, employed pursuant to section two of this article, serves the offices of the chancellors to discharge jointly the duties and responsibilities of the council and commission.

36 (c) The Vice Chancellor for Health Sciences shall
37 coordinate the West Virginia University School of Medicine,
38 the Marshall University School of Medicine and the West
39 Virginia School of Osteopathic Medicine.

40 (d) Suitable offices for the vice chancellor of
41 administration and other staff shall be provided in Kanawha
42 County.

CHAPTER 69

(S. B. 499 - By Senators Plymale, Wells, Browning, Edgell, Foster, Laird, Oliverio, Stollings, Unger, White, Barnes, Boley and Guills)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-3C-7a; and to amend and reenact §18B-3C-8 of said code, all relating to community and technical colleges; name changes for certain community and technical colleges; and modifying the location requirement for certain community and technical college headquarters.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18B-3C-7a; and that §18B-3C-8 of said code be amended and reenacted, all to read as follows:

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-7a. Bridgemont Community and Technical College; Kanawha Valley Community and Technical College; Mountwest Community and Technical College.
§18B-3C-8. Legislative findings and intent; statewide network of independently accredited community and technical colleges; operations and administration.

§18B-3C-7a. Bridgemont Community and Technical College; Kanawha Valley Community and Technical College; Mountwest Community and Technical College.

1 (a) The Community and Technical College at West
2 Virginia University Institute of Technology is hereafter
3 named "Bridgemont Community and Technical College".
4 Any reference in this code to the Community and Technical
5 College at West Virginia University Institute of Technology
6 means Bridgemont Community and Technical College.

7 (b) Marshall Community and Technical College is
8 hereafter named "Mountwest Community and Technical
9 College". Any reference in this code to Marshall Community
10 and Technical College means Mountwest Community and
11 Technical College.

12 (c) West Virginia State Community and Technical
13 College is hereafter named "Kanawha Valley Community
14 and Technical College". Any reference in this code to West
15 Virginia State Community and Technical College means
16 Kanawha Valley Community and Technical College.

§18B-3C-8. Legislative findings and intent; statewide network of independently accredited community and technical colleges; operations and administration.

1 (a) *Legislative findings.* --

(1) The Legislature has enacted legislation, beginning with Enrolled Senate Bill No. 653, passed during the two thousand regular session, and continuing with Enrolled Senate Bill No. 703, passed during the two thousand one regular session, Enrolled House Bill No. 2224, passed during the two thousand three regular session, and Enrolled Senate Bill No. 448, passed during the two thousand four regular session, the purpose of which is to strengthen the state's community and technical colleges, clarify their core mission and establish essential conditions to be met, and ensure the most effective delivery of services to business, industry, and West Virginia citizens in every region of the state.

(2) The primary goal of the Legislature is to create a statewide network of independently accredited community and technical colleges that focuses on technical education, work force training, and lifelong learning for the Twenty-first Century, consistent with the goals, objectives, priorities and essential conditions established in articles one, one-d and three-c of this chapter.

(3) A necessary precedent to accomplishing the legislative goal is to change the way that leaders at all levels of education, including institutional governing boards, view community and technical colleges. Specifically, that the mission of community and technical colleges is different from that of traditional four-year colleges in what they seek to accomplish and how they can achieve it effectively and that the state can not compete successfully in today's information-driven, technology-based economy if community and technical colleges continue to be viewed as add-ons or afterthoughts attached to the baccalaureate institutions.

(b) *Legislative intent.* --

(1) Therefore, it is the intent of the Legislature that the statewide network of independently-accredited community and technical colleges as a whole and each independent

community and technical college individually provide the following types of services as part of the core institutional mission:

(A) Career and technical education certificate, associate of applied science, and selected associate of science degree programs for students seeking immediate employment, individual entrepreneurship skills, occupational development, skill enhancement and career mobility;

(B) Transfer education associate of arts and associate of science degree programs for students whose educational goal is to transfer into a baccalaureate degree program with particular emphasis on reaching beyond traditional college-age students to unserved or underserved adult populations;

(C) Developmental/remedial education courses, tutorials, skills development labs, and other services for students who need to improve their skills in mathematics, English, reading, study skills, computers and other basic skill areas;

(D) Work force development education contracted with business and industry to train or retrain employees;

(E) Continuing development assistance and education credit and noncredit courses for professional and self-development, certification and licensure, and literacy training; and

(F) Community service workshops, lectures, seminars, clinics, concerts, theatrical performances and other noncredit activities to meet the cultural, civic and personal interests and needs of the community the institution serves.

(2) It is further the intent of the Legislature that each community and technical college focus special attention on programmatic delivery of their core mission services to

unserved and underserved populations to achieve established state objectives. These include the following as highest priorities:

(A) Increasing the number of adults age twenty-five and above who participate in post-secondary education;

(B) Developing technical programs that meet the documented occupational needs of West Virginia's employers;

(C) Providing work force development programs by implementing the Adult Career Pathways Model, which provides opportunities for the following:

(i) Adults to earn certifications through the completion of skill-sets;

(ii) Ordered progression from skill-sets and certifications to one-year certificate programs and progression from one-year certificate degrees to Associate of Applied Science Degree programs, and

(iii) Students to exit at any stage of completion in order to enter employment with the option of continuing the pathway progression at a later time and/or on a part-time basis.

(D) Offering programs in various time frames other than the traditional semester delivery model and at different locations, including work sites, convenient to working adults;

(E) Providing technical programs in modules or "chunks", defined in competencies required for employment, and tied to certification and licensing requirements.

(F) Entering into collaborative programs that recognize high-quality training programs provided through labor

95 unions, registered apprenticeships, and industry-sponsored
96 training programs with the goal of enabling more adults to
97 earn a college credential;

98 (G) Developing innovative approaches to improve the
99 basic and functional literacy rates of West Virginians in all
100 regions of the state;

101 (H) Developing "bridge programs" for disadvantaged
102 youth and adults to enable them to acquire the skills
103 necessary to be successful in education and training programs
104 that lead to high-skills, high-wage jobs; and

105 (I) Providing access to post-secondary education through
106 the delivery of developmental education for those individuals
107 academically under-prepared for college-level work.

108 (c) In fulfillment of the purposes and intent defined in
109 subsections (a) and (b) of this section, there is continued a
110 statewide network of independently accredited community
111 and technical colleges serving every region of the state. Each
112 free-standing and independent community and technical
113 college is strongly encouraged to serve as a higher education
114 center for its region by brokering with other colleges,
115 universities and providers, in-state and out-of-state, both
116 public and private, to afford the most coordinated access to
117 needed programs and services by students, employers and
118 other clients, to achieve the goals, objectives, and essential
119 conditions established in articles one, one-d, and three-c of
120 this chapter, and to ensure the most efficient use of scarce
121 resources.

122 (d) *Statewide network of independently accredited*
123 *community and technical colleges.* --

124 (1) By July 1, 2009, each governing board of a
125 community and technical college which became independent

126 on July 1, 2008, shall make a determination by majority vote
127 of the board whether to keep the current name for its
128 respective institution or to select a new name. If a governing
129 board chooses to select a new name, any reference in this
130 code to that institution by a name in use prior to July 1, 2009,
131 means the institution under the name designated by its board
132 of governors.

133 (2) The statewide network of independently accredited
134 community and technical colleges is comprised of the
135 following independent state institutions of higher education
136 under the jurisdiction of the council:

137 (A) *Blue Ridge Community and Technical College.* --

138 Blue Ridge Community and Technical College is an
139 independently accredited state institution of higher education.
140 The president and the governing board of the community and
141 technical college are responsible for maintaining independent
142 accreditation and adhering to the essential conditions
143 pursuant to section three of this article.

144 (B) *Bridgemont Community and Technical College.* --

145 (i) Bridgemont Community and Technical College is an
146 independently accredited state institution of higher education
147 which may maintain an association with West Virginia
148 University Institute of Technology, a division of West
149 Virginia University, or directly with West Virginia
150 University, subject to the provisions of section twelve of this
151 article. The president and the governing board of the
152 community and technical college are responsible for
153 maintaining independent accreditation and adhering to the
154 essential conditions pursuant to section three of this article.

155 (ii) West Virginia University Institute of Technology may
156 continue associate degree programs in areas of particular

institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the governing boards of the community and technical college and West Virginia University Institute of Technology or directly with West Virginia University, as appropriate. The final contract may not be implemented until approved by the council except that any contract between the community and technical college and West Virginia University Institute of Technology or West Virginia University related to program delivery under the terms of this section in effect on July 1, 2008, shall continue in effect until July 1, 2009, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(iii) *Dual credit course delivery agreements.* --

(I) Nothing in this article alters or abrogates any agreement in place on the effective date of this section between West Virginia University Institute of Technology and Bridgemont Community and Technical College relating to delivery of dual credit courses as defined in section two, article one of this chapter;

(II) The community and technical college may deliver technical courses that are part of a certificate or associate

degree program as early entrance or dual credit courses for high school students; and

(III) Subject to an agreement between the baccalaureate institution and the community and technical college, the latter may deliver early entrance and dual credit courses as defined in section two, article one of this chapter to students in high schools which are not served by the baccalaureate institution.

(C) *Eastern West Virginia Community and Technical College.* --

Eastern West Virginia Community and Technical College is a free-standing state institution of higher education seeking independent accreditation. The president and the governing board of Eastern Community and Technical College are responsible for achieving independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(D) *Mountwest Community and Technical College.* --

(i) Mountwest Community and Technical College is an independently accredited state institution of higher education which may maintain an association with Marshall University subject to the provisions of section twelve of this article. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(ii) Marshall University may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the

authority of the council and through contract with Mountwest Community and Technical College. The terms of the contract shall be negotiated between the governing boards of the community and technical college and Marshall University. The final contract may not be implemented until approved by the council except that any contract between the community and technical college and Marshall University related to program delivery under the terms of this section in effect on July 1, 2008, shall continue in effect until July 1, 2009, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by Mountwest Community and Technical College.

(iii) *Dual credit course delivery agreements.* --

(I) Nothing in this article alters or abrogates any agreement in place on the effective date of this section between Marshall University and Mountwest Community and Technical College relating to delivery of dual credit courses as defined in section two, article one of this chapter;

(II) The community and technical college may deliver technical courses that are part of a certificate or associate degree program as early entrance or dual credit courses for high school students; and

(III) Subject to an agreement between the baccalaureate institution and the community and technical college, the latter may deliver early entrance and dual credit courses as defined in section two, article one of this chapter to students in high schools which are not served by the baccalaureate institution.

(E) *New River Community and Technical College.* --

(i) New River Community and Technical College is an independently accredited state institution of higher education which may maintain an association with Bluefield State College subject to the provisions of section twelve of this article. The community and technical college is headquartered in or near Beckley and incorporates the campuses of Greenbrier Community College Center of New River Community and Technical College and Nicholas Community College Center of New River Community and Technical College.

(ii) The president and the governing board of New River Community and Technical College are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(iii) Bluefield State College may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided through direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the governing boards of the community and technical college and Bluefield State College. The final contract may not be implemented until approved by the council except that any contract between the community and technical college and Bluefield State College related to program delivery under the terms of this section in effect on the July 1, 2008, shall continue in effect until July 1, 2009, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical

college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by New River Community and Technical College.

(iv) Bluefield State College may continue the associate of science degree in nursing which is an existing nationally accredited associate degree program in an area of particular institutional strength and which is closely articulated to the baccalaureate program and mission. The program is of a high-cost nature and can best be provided through direct administration by a baccalaureate institution. This program may not be transferred to New River Community and Technical College or any other community and technical college as long as the program maintains national accreditation and is seamlessly coordinated into the baccalaureate program at the institution.

(v) New River Community and Technical College participates in the planning and development of a unified effort involving multiple providers to meet the documented education and work force development needs in the region. Nothing in this subdivision prohibits or limits any existing, or the continuation of any existing, affiliation between Mountain State University, West Virginia University Institute of Technology and West Virginia University. The objective is to assure students and employers in the area that there is coordination and efficient use of resources among the separate programs and facilities, existing and planned, in the Beckley area.

(F) *Pierpont Community and Technical College.* --

(i) Pierpont Community and Technical College is an independent state institution of higher education seeking independent accreditation. The president and the governing

board of Pierpont Community and Technical College, assisted by the president and governing board of Fairmont State University, are responsible for the community and technical college achieving independent accreditation and adhering to the essential conditions pursuant to sections three and thirteen of this article.

(ii) Fairmont State University may continue associate degree programs in areas of particular institutional strength which are closely articulated to their baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the council and the governing board of Fairmont State University. The final contract may not be implemented until approved by the council except that any contract between the community and technical college and Fairmont State University related to program delivery under the terms of this section in effect on July 1, 2008, shall continue in effect until July 1, 2009, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(iii) *Dual credit course delivery agreements.* --

(I) Nothing in this article alters or abrogates any agreement in place on the effective date of this section

between Fairmont State University and Pierpont Community and Technical College relating to delivery of dual credit courses as defined in section two, article one of this chapter;

(II) The community and technical college may deliver technical courses that are part of a certificate or associate degree program as early entrance or dual credit courses for high school students; and

(III) Subject to an agreement between the baccalaureate institution and the community and technical college, the latter may deliver early entrance and dual credit courses as defined in section two, article one of this chapter to students in high schools which are not served by the baccalaureate institution.

(G) *Southern West Virginia Community and Technical College.* -- Southern West Virginia Community and Technical College is an independently-accredited, free-standing state institution of higher education. The president and the governing board of Southern West Virginia Community and Technical College are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(H) *West Virginia Northern Community and Technical College.* -- West Virginia Northern Community and Technical College is an independently-accredited, free-standing state institution of higher education. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(I) *Kanawha Valley Community and Technical College.* --

(i) Kanawha Valley State Community and Technical College is an independently accredited state institution of higher education which may maintain an association with

West Virginia State University subject to the provisions of section twelve of this article. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(ii) West Virginia State University may continue associate degree programs in areas of particular institutional strength which are closely articulated to its baccalaureate programs and missions or which are of a high-cost nature and can best be provided in direct coordination with a baccalaureate institution. Any such program shall be delivered under the authority of the council and through contract with the community and technical college. The terms of the contract shall be negotiated between the governing boards of the community and technical college and West Virginia State University. The final contract may not be implemented until approved by the council except that any contract between the community and technical college and West Virginia State University related to program delivery under the terms of this section in effect on July 1, 2008, shall continue in effect until July 1, 2009, unless amended or revoked before that date by mutual agreement of the contract parties with approval by the council. Such a program shall be evaluated according to the benchmarks and indicators for community and technical college education developed by the council. If the council determines that the program is making insufficient progress toward accomplishing the benchmarks, the program shall thereafter be delivered by the community and technical college.

(iii) *Dual credit course delivery agreements.* --

(I) Nothing in this article alters or abrogates any agreement in place on the effective date of this section between West Virginia State University and Kanawha Valley Community and Technical College relating to delivery of

dual credit courses as defined in section two, article one of this chapter;

(II) The community and technical college may deliver technical courses that are part of a certificate or associate degree program as early entrance or dual credit courses for high school students; and

(III) Subject to an agreement between the baccalaureate institution and the community and technical college, the latter may deliver early entrance and dual credit courses as defined in section two, article one of this chapter to students in high schools which are not served by the baccalaureate institution.

(J) *West Virginia University at Parkersburg.* --

(i) West Virginia University at Parkersburg is an independently accredited state institution of higher education which may maintain an association with West Virginia University subject to the provisions of section twelve of this article. The president and the governing board of the community and technical college are responsible for maintaining independent accreditation and adhering to the essential conditions pursuant to section three of this article.

(ii) Any contract between the community and technical college and West Virginia University related to program delivery under the authority of the council or related to delivery of baccalaureate programs, in effect on July 1, 2008, shall continue in effect unless amended or revoked by mutual agreement of the contract parties with approval by the council.

(iii) In recognition of the unique and essential part West Virginia University at Parkersburg plays in providing education services in its region, the community and technical college may continue delivering baccalaureate degree programs offered at the institution on the effective date of this section, may implement additional baccalaureate

457 programs with the approval of the commission and is
458 strongly encouraged:

459 (I) To continue and expand its role as a higher education
460 center pursuant to subsection (c) of this section; and

461 (II) To broker from West Virginia University and other
462 higher education institutions, as appropriate, additional
463 baccalaureate level degree programs the community and
464 technical college determines are needed in its service region.

465 (III) Any baccalaureate degree programs offered at the
466 community and technical college shall be delivered under the
467 authority of the commission. The program shall be evaluated
468 according to the benchmarks and indicators for baccalaureate
469 education developed by the commission.

CHAPTER 70

(Com. Sub. for H. B. 4145 - By Delegates Iaquinta, Fleischauer, Eldridge and D. Walker)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-4-9, relating to requiring the Commission and Council to establish and implement measures to provide services and facilities to assist student veterans at state institutions of higher education; and providing for annual reports to the Legislature.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18B-4-9, to read as follows:

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-9. Development of services and facilities for student veterans.

1 (a) *Legislative findings.* -- The Legislature finds that
2 veterans of the Armed Forces of the United States that attend
3 institutions of higher education in this state have many
4 unique needs, issues and concerns that most traditional
5 students do not have. Student veterans that are returning to
6 fulfill their needs for higher education who have been or
7 during their pursuit of higher education may be deployed to
8 active duty often face unique issues and concerns that are
9 unprecedented and unique to the current generation of
10 veterans of the post 9/11 era of service in the Armed Forces.
11 Many of these veterans have had or will be subject to
12 multiple deployments to active duty, including overseas
13 deployment, resulting in many unique issues and challenges
14 in their pursuit of higher education.

15 (b) *Legislative intent.* -- It is the intent of the Legislature
16 that state institutions of higher education provide adequate
17 services and facilities for student veterans in order to better
18 serve their unique issues and needs and to make West
19 Virginia's state institutions of higher education veteran-
20 friendly.

21 (c) The Commission and Council each shall establish and
22 implement measures in the state institutions of higher
23 education under their respective jurisdictions to assure that
24 veterans enrolled in the institutions receive services and are
25 provided facilities appropriate for their unique needs, that
26 student veterans complete programs of study and earn

27 degrees, and that the institutions become veteran-friendly by
28 actively and effectively providing academic and social
29 support and assistance to student veterans. The measures
30 shall include, but are not limited to, the following:

31 (1) Establishing veteran-friendly community and
32 technical college degree programs which recognize and
33 award academic credit toward degrees for various types of
34 technical and vocational military training and experience;

35 (2) Developing policies for each state institutions of
36 higher education to grant academic credit for Armed Forces
37 experiences;

38 (3) Developing programs to facilitate student veterans in
39 sharing their unique knowledge and experience in the
40 military through public school programs and local
41 community organizations;

42 (4) Establishing and sponsoring an organization for
43 student veterans on campus and encouraging other veteran-
44 friendly organizations;

45 (5) Appointing and training specific faculty within each
46 degree program or major as liaisons and contacts for student
47 veterans;

48 (6) Providing information about the Regents Bachelor of
49 Arts Degree program to student veterans and potential
50 student veterans;

51 (7) Coordinating existing disability services on campus
52 with veteran disability services available from the United
53 States Department of Veterans Affairs, other federal and state
54 agencies, and private resources;

(8) Providing counselors on each campus who are trained to effectively respond to the unique needs of veterans and to provide services or provide referrals to services to fulfill these needs for student veterans;

(9) Developing training materials on responding to student veteran needs to be available for continued professional development of counselors to student veterans;

(10) Facilitating regular statewide meetings for all personnel at state institutions of higher education who regularly provide specific services to student veterans to discuss and develop best practices, exchange ideas and experiences, and hear presentations by individuals with generally accepted expertise in areas of the various needs of student veterans;

(11) Establishing a procedure to periodically apprise appropriate state and federal agencies of the status of student veterans in West Virginia;

(12) Establishing a program to create a collaborative relationship between student veterans and alumni of the institution, and with prospective employers to facilitate and provide employment as well as social opportunities to graduating student veterans; and

(13) Developing and facilitating communications between state institutions of higher education and various veteran organizations in the state to advance veteran causes that benefit student veterans.

(d) The Commission and Council jointly shall submit a report to the Legislature on September 1, annually, on the progress toward implementing the provisions of this section.

CHAPTER 71

(Com. Sub. for S. B. 543 - By Senators Plymale, Unger, Jenkins and Foster)

[Passed March 5, 2010; in effect from passage.]
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §18B-17-2 of the Code of West Virginia, 1931, as amended, relating to authorizing a rules for the Higher Education Policy Commission regarding the Energy and Water Savings Revolving Loan Fund Program and PROMISE (Providing Real Opportunities for Maximizing In-State Student Excellence) scholarship.

Be it enacted by the Legislature of West Virginia:

That §18B-17-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Authorizing rules of Higher Education Policy Commission.

1 (a) The legislative rule filed in the State Register on
2 October 15, 2004, relating to the Higher Education Policy
3 Commission (Underwood-Smith Teacher Scholarship
4 Program rule) is authorized.

5 (b) The legislative rule filed in the State Register on
6 October 15, 2004, relating to the Higher Education Policy
7 Commission (West Virginia Engineering, Science and
8 Technology Scholarship Program rule) is authorized.

9 (c) The legislative rule filed in the State Register on
10 October 15, 2004, relating to the Higher Education Policy
11 Commission (Medical Education Fee and Medical Student
12 Loan Program rule) is authorized.

13 (d) The legislative rule filed in the State Register on
14 October 27, 2005, relating to the Higher Education Policy
15 Commission (Authorization of degree-granting institutions)
16 is authorized.

17 (e) The legislative rule filed in the State Register on
18 August 23, 2006, relating to the Higher Education Policy
19 Commission (West Virginia Higher Education Grant
20 Program) is authorized.

21 (f) The legislative rule filed in the State Register on
22 January 4, 2008, relating to the Higher Education Policy
23 Commission (Providing Real Opportunities for Maximizing
24 In-state Student Excellence - PROMISE) is authorized.

25 (g) The legislative rule filed in the State Register on
26 August 25, 2008, relating to the Higher Education Policy
27 Commission (Research Trust Program) is authorized.

28 (h) The legislative rule filed in the State Register on
29 January 8, 2009, relating to the Higher Education Policy
30 Commission (Guidelines for Governing Boards in Employing
31 and Evaluating Presidents) is authorized.

32 (i) The legislative rule filed in the State Register on
33 September 10, 2008, relating to the Higher Education Policy
34 Commission (Medical Student Loan Program) is authorized,
35 with the following amendment:

36 On page 2, subsection 5.1, following the words "financial
37 aid office" by inserting a new subdivision 5.1.3 to read as
38 follows: "United States citizenship or legal immigrant status
39 while actively pursuing United States citizenship."

40 (j) The legislative rule filed in the State Register on
41 December 1, 2008, relating to the Higher Education Policy
42 Commission (West Virginia Higher Education Grant
43 Program) is authorized.

44 (k) The legislative rule filed in the State Register on
45 January 26, 2009, relating to the Higher Education Policy
46 Commission (Accountability System) is authorized.

47 (l) The legislative rule filed in the State Register on May
48 20, 2009, relating to the Higher Education Policy
49 Commission (Energy and Water Savings Revolving Loan
50 Fund Program) is authorized.

51 (m) The legislative rule filed in the State Register on
52 January 27, 2010, relating to the Higher Education Policy
53 Commission (Providing Real Opportunities for Maximizing
54 In-state Student Excellence - PROMISE) is authorized.

CHAPTER 72

(Com. Sub. for H. B. 4130 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2010.]

AN ACT to amend and reenact §3-1A-1, §3-1A-4 and §3-1A-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §3-12-1, §3-12-2, §3-12-3, §3-12-4, §3-12-5, §3-12-6, §3-12-7, §3-12-8, §3-12-9, §3-12-10, §3-12-11, §3-12-12, §3-12-13, §3-12-14,

§3-12-15, §3-12-16 and §3-12-17, all relating to creating the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program; giving additional duties and per diem pay to the State Election Commission; authorizing the State Election Commission to use video, telephone and Internet conferencing; providing alternative public campaign financing option for candidates for the West Virginia Supreme Court of Appeals in 2012; setting forth short title and certain legislative findings and declarations; defining terms; specifying that the provisions of the act are applicable to candidates for the West Virginia Supreme Court of Appeals in the 2012 primary and general elections; establishing the Supreme Court of Appeals Public Campaign Financing Fund and sources of revenue for the fund; authorizing transfer from the Purchasing Card Administration Fund to the fund for three years; requiring an applicant for public campaign financing to complete a declaration of intent and setting forth the manner in which an application for funding may be made; setting forth eligibility criteria for qualifying candidates; allowing participating candidates to raise funds from private sources and spend exploratory contributions; requiring candidates seeking public campaign funds to collect a required number of qualifying contributions; requiring candidates to provide detailed receipts to contributors and to the State Election Commission for exploratory and qualifying contributions; requiring participating candidates to comply with all provisions of the act; requiring the State Election Commission to certify eligible candidates and setting forth the procedure for certification; providing for challenges to certification; providing for revocation of certification; providing for withdrawal from program; providing for distribution of funds from the Public Campaign Financing Fund to qualified candidates for funding election campaigns; specifying the amount of funds available for each candidate and when the funds become available; setting forth restrictions on participating candidates' contributions and spending; prohibiting participating candidates from accepting private contributions other than as specifically set forth in the act; providing for

repayment of funds under certain circumstances; prohibiting the use of personal funds for certain purposes; permitting qualified candidates to raise funds from private sources when there is insufficient money in the Public Campaign Financing Fund to make a complete distribution to all qualified candidates; requiring certain disclosures; requiring candidates to keep records and report to the State Election Commission; providing for additional funds when independent expenditures or opponent expenditures exceed certain limits; setting forth certain duties of the State Election Commission and the Secretary of State; authorizing emergency and legislative rules; authorizing the creation of a voters' guide; providing for the deposit of certain revenue into the fund; requiring repayment of excessive expenditures by candidates; providing both civil and criminal penalties for violations of the act; and expiring the act in 2013.

Be it enacted by the Legislature of West Virginia:

That §3-1A-1, §3-1A-4 and §3-1A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new article, designated §3-12-1, §3-12-2, §3-12-3, §3-12-4, §3-12-5, §3-12-6, §3-12-7, §3-12-8, §3-12-9, §3-12-10, §3-12-11, §3-12-12, §3-12-13, §3-12-14, §3-12-15, §3-12-16 and §3-12-17, all to read as follows:

Article

1A. State Election Commission and Secretary of State.

12. West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program.

ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.

§3-1A-1. Election commission continued; composition; chairperson; per diem; traveling expenses.

§3-1A-4. Office and meetings of commission.

§3-1A-5. Powers and duties of commission; legislative rules.

§3-1A-1. Election commission continued; composition; chairperson; per diem; traveling expense.

The "State Election Commission," heretofore created, is continued and is composed of the Secretary of State, and four persons appointed by the Governor, by and with the advice and consent of the Senate. The commission shall from this membership elect a chairman for a term of two years. Each member of the commission shall be reimbursed for all reasonable and necessary expenses actually paid the per diem and expense reimbursement established for the Legislature in section seven, article two-a, chapter four of this code in the performance of his or her duties as a member of the commission.

§3-1A-4. Office and meetings of commission.

(a) The office and place of meeting of the commission is the office of the Secretary of State in the State Capitol. The commission may also conduct meetings via video, telephone or Internet conferencing.

(b) The commission shall hold such meetings as may be called by the chairman, the Governor or the Secretary of State.

§3-1A-5. Powers and duties of commission; legislative rules.

(a) The commission has the power and duty to approve or disapprove applications for approval of any voting machine as provided in section seven, article four of this chapter.

(b) The commission also shall serve as a body advisory to the Secretary of State, and, as such, shall have the following powers and duties:

(1) To recommend policies and practices pertaining to the registration of voters and the conduct of elections generally;

(2) To review the work of the office of Secretary of State pertaining to the duties of that office with respect to

elections, and for this purpose to have access at reasonable times to pertinent records, books, papers and documents;

(3) To consider and study the election practices of other jurisdictions, with a view to determining the techniques used in eliminating fraud in elections and in simplifying election procedures;

(4) To advise or make recommendations to the Governor relative to election practices and policy in the state;

(5) To advise the Secretary of State on carrying out the duties to which he or she is assigned pursuant to the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program, established in article twelve of this chapter;

(6) To carry out the duties assigned to the commission by the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program, established in article twelve of this chapter; and

(7) To keep minutes of the transactions of each meeting of the commission, which shall be public records and filed with the Secretary of State.

(c) It is the commission's further duty to prepare and distribute in its name, within available appropriations and upon the recommendation of the Secretary of State, nonpartisan educational material to inform voters of the importance of voting, to encourage voters to vote, to inform voters of election laws and procedures, and to inform voters of the effect of any public question, Constitutional amendment or bond issue that is to be voted upon by all the voters of the state and that has been authorized to be placed upon the ballot by the Legislature, and manuals to assist county commissions, ballot commissioners, circuit and

county clerks and other election officials in the proper performance of their duties in the conduct of elections.

(d) The commission shall propose for promulgation emergency and legislative rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, as may be necessary to standardize and make effective the administration of the provisions of article eight of this chapter, and may propose for promulgation other rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, relating to the conduct and administration of elections as the commission determines to be advisable.

(e) Meetings of the commission conducted for the purpose of confirming the initial eligibility of individual candidates to receive public campaign financing under the West Virginia Supreme Court of Appeals Public Campaign Financing Fund; the authorization of supplemental distributions from the fund; and the candidate's ability to receive supplemental distributions pursuant to the provisions of chapter twelve of this article are expressly exempted from the public notice and public meeting requirements of article nine-a, chapter six of this code.

ARTICLE 12. WEST VIRGINIA SUPREME COURT OF APPEALS PUBLIC CAMPAIGN FINANCING PILOT PROGRAM.

§3-12-1. Short title.
§3-12-2. Legislative findings and declarations.
§3-12-3. Definitions.
§3-12-4. Alternative public campaign financing option.
§3-12-5. Supreme Court of Appeals Public Campaign Financing Fund.
§3-12-6. Sources of revenue for the fund.
§3-12-7. Declaration of intent.
§3-12-8. Exploratory period; contributions; expenditures.
§3-12-9. Qualifying contributions.
§3-12-10. Certification of candidates.
§3-12-11. Schedule and amount of Supreme Court of Appeals Public Campaign Financing Fund payments; additional funds.

§3-12-12. Restrictions on contributions and expenditures.
§3-12-13. Reporting requirements.
§3-12-14. Duties of the State Election Commission; Secretary of State.
§3-12-15. Criminal penalties.
§3-12-16. Civil penalties.
§3-12-17. Expiration of article.

§3-12-1. Short title.

1 This article is known as the "West Virginia Supreme
2 Court of Appeals Public Campaign Financing Pilot Program."
3 The pilot program begins with the exploratory period for the
4 2012 primary election and continues through the 2012
5 general election.

§3-12-2. Legislative findings and declarations.

1 The Legislature finds and declares the following:

2 (1) Current campaign finance laws permit candidates to
3 spend unlimited amounts of money raised from private
4 sources;

5 (2) Current campaign finance laws permit certain
6 independent parties to raise and spend unlimited amounts of
7 money to influence the outcome of elections;

8 (3) Over the last decade, fundraising and campaign
9 expenditures in elections for a seat on the Supreme Court of
10 Appeals have dramatically increased in West Virginia;

11 (4) In 2000, candidates running for a seat on the Supreme
12 Court of Appeals raised a total of $1.4 million;

13 (5) In 2004, candidates running for a seat on the Supreme
14 Court of Appeals raised a total of $2.8 million;

15 (6) In 2008, candidates running for a seat on the Supreme
16 Court of Appeals raised a total of $3.3 million;

(7) As spending by candidates and independent parties increases, so does the perception that contributors and interested third parties hold too much influence over the judicial process;

(8) The detrimental effects of spending large amounts by candidates and independent parties are especially problematic in judicial elections because impartiality is uniquely important to the integrity and credibility of courts;

(9) An alternative public campaign financing option for candidates running for a seat on the Supreme Court of Appeals will ensure the fairness of democratic elections in this state, protect the Constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections, protect the impartiality and integrity of the judiciary, and strengthen public confidence in the judiciary; and

(10) Funding the "West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program" from a wide range of revenue sources furthers important state interests in protecting the integrity of judicial elections and serves to protect the public interest.

§3-12-3. Definitions.

As used in this article, the following terms and phrases have the following meanings:

(1) "Candidate's committee" means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of

more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

(2) "Certified candidate" means an individual seeking election to the West Virginia Supreme Court of Appeals who has been certified in accordance with section ten of this article as having met all of the requirements for receiving public campaign financing from the fund.

(3) "Contribution" means a gift subscription, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election or defeat of a candidate. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation: *Provided,* That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.

(4) "Exploratory contribution" means a contribution of no more than $1,000 made by an individual adult, including a participating candidate and members of his or her immediate family, during the exploratory period. Exploratory contributions may not exceed $20,000 in the aggregate.

(5) "Exploratory period" means the period during which a participating candidate may raise and spend exploratory contributions to examine his or her chances of election and to qualify for public campaign financing under this article. The exploratory period begins on January 1 the year before the primary in which the candidate may run for Justice of the Supreme Court of Appeals and ends on the last Saturday in January of the election year.

(6) "Financial agent" means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

(7) "Fund" means the Supreme Court of Appeals Public Campaign Financing Fund created by section five of this article.

(8) "General election campaign period" means the period beginning the day after the primary election and ending on the day of the general election.

(9) "Independent expenditure" means an expenditure by a person:

(A) Expressly advocating the election or defeat of a clearly identified candidate; and

(B) That is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate's authorized political committee or a political party committee or its agents.

Supporting or opposing the election of a clearly identified candidate includes supporting or opposing the candidates of a political party. An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.

(10) "Immediate family" or "immediate family members" means the spouse, parents, step-parents, siblings and children of the participating candidate.

(11) "Nonparticipating candidate" means a candidate who is:

(A) Seeking election to the Supreme Court of Appeals;

(B) Is neither certified nor attempting to be certified to receive public campaign financing from the fund; and

(C) Has an opponent who is a participating or certified candidate.

(12) "Participating candidate" means a candidate who is seeking election to the Supreme Court of Appeals and is attempting to be certified in accordance with section ten of this article to receive public campaign financing from the fund.

(13) "Person" means an individual, partnership, committee, association and any other organization or group of individuals.

(14) "Primary election campaign period" means the period beginning on the first day of the primary election filing period, as determined under section seven, article five of this chapter, and ending on the day of the subsequent primary election.

(15) "Qualifying contribution" means a contribution received from a West Virginia registered voter of not less than $1 nor more than $100 in the form of cash, check or money order, made payable to a participating candidate or the candidate's committee, or in the form of an electronic payment or debit or credit card payment, received during the qualifying period.

(16) "Qualifying period" means the period during which participating candidates may raise and spend qualifying contributions in order to qualify to receive public campaign financing.

102 (A) For candidates seeking nomination on the primary
103 election ballot, the qualifying period begins on September 1
104 preceding the election year and ends on the last Saturday in
105 January of the election year.

106 (B) For candidates, other than those nominated during the
107 primary election, seeking to be placed on the general election
108 ballot, the qualifying period begins on June 1 of the election
109 year and ends on October 1 of the election year.

§3-12-4. Alternative public campaign financing option.

1 This article establishes an alternative public campaign
2 financing option available to candidates for election to the
3 office of Justice of the West Virginia Supreme Court of
4 Appeals for the 2012 primary and general elections.
5 Candidates electing the alternative public campaign financing
6 option shall comply with all other applicable election and
7 campaign laws and rules.

§3-12-5. Supreme Court of Appeals Public Campaign Financing Fund.

1 There is established within the State Treasury a special
2 revenue fund to be known as the "Supreme Court of Appeals
3 Public Campaign Financing Fund" for the dual purpose of
4 providing public financing for the election campaigns of
5 certified candidates under the provisions of this article and of
6 paying the administrative and enforcement costs of the
7 Secretary of State and State Election Commission related to
8 this article. All moneys collected under the provisions of this
9 article shall be deposited in the fund, which shall be
10 administered by the State Election Commission. Funds may
11 also be accepted from any gift, grant, bequest, endowment
12 fund or donation which may be received by the State Election
13 Commission from any person, firm, foundation or
14 corporation. Any balance, including accrued interest or other

earnings in the fund at the end of any fiscal year do not revert to the General Revenue Fund, but shall remain in the fund. Expenditures may be made from the fund only for the purposes set forth in this article and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code.

§3-12-6. Sources of revenue for the fund.

Revenue from the following sources shall be deposited in the fund:

(1) All exploratory and qualifying contributions in excess of the established maximums;

(2) Money returned by participating or certified candidates who fail to comply with the provisions of this article;

(3) Unspent or unobligated moneys allotted to certified candidates and remaining unspent or unobligated on the date of the general election for which the money was distributed;

(4) If a certified candidate loses, all remaining unspent or unobligated moneys after the primary election;

(5) Civil penalties levied by the State Election Commission against candidates for violations of this article;

(6) Civil penalties levied by the Secretary of State pursuant to section seven, article eight of this chapter;

(7) Voluntary donations made directly to the fund;

(8) Interest income;

(9) On or before July 1, 2010, and for two successive years thereafter, the State Auditor shall authorize the transfer of the amount of $1 million from the Purchasing Card Administration Fund established in section ten-d, article three, chapter twelve of this code to the fund created by this article; and

(10) Money appropriated to the fund.

§3-12-7. Declaration of intent.

A candidate desiring to receive campaign financing from the fund shall first file a declaration of intent before the end of the qualifying period and prior to collecting any qualifying contributions. The declaration shall be on a form prescribed by the State Election Commission and shall contain a statement that the candidate is qualified to be placed on the ballot, and, if elected, to hold the office sought and has complied with and will continue to comply with all requirements of this article, including contribution and expenditure restrictions. Contributions made prior to the filing of the declaration of intent are not qualifying contributions. Any contributions received by a candidate during any precandidacy period which preceded the exploratory period which remain unexpended at the time of the declaration of intent shall be considered exploratory funds and subject to the limits and provisions of section eight of this article.

§3-12-8. Exploratory period; contributions; expenditures.

(a) A participating candidate or his or her committee may not accept, spend or obligate exploratory contributions exceeding $20,000 in the aggregate, during the exploratory period. At the time the participating candidate formally declares his or her intent to qualify for public campaign financing, in accordance with section five of this article, any

7 unexpended or undedicated contributions received during any
8 precandidacy period which preceded the exploratory period
9 shall be deemed to be exploratory contributions for that
10 candidate. The maximum individual exploratory contribution
11 which may be accepted from any person including immediate
12 family members is $1,000. A participating candidate may
13 loan, contribute or obligate up to $1,000 of his or her own
14 money for exploratory purposes. Any exploratory contributions
15 received by the participating candidate in excess of $20,000
16 in the aggregate shall be sent to the Election Commission for
17 deposit in the fund.

18 (b) Each exploratory contribution shall be acknowledged
19 by a written receipt. Receipts for exploratory contributions
20 of $250 or more during an election cycle shall include the
21 contributor's name, residence and mailing address, business
22 affiliation and occupation. Receipts for exploratory
23 contributions of less than $250 shall include the contributor's
24 name and the amount of the contribution, and otherwise
25 comport with the disclosure and reporting requirements of
26 section five-a, article eight of this chapter.

27 (c) An exploratory contribution from one person may not
28 be made in the name of another person.

29 (d) At the beginning of each month a participating or
30 certified candidate or his or her financial agent shall report all
31 exploratory contributions, expenditures and obligations along
32 with all receipts for contributions received during the prior
33 month to the Secretary of State. Such reports shall be filed
34 electronically: *Provided*, That a committee may apply for an
35 exemption in case of hardship pursuant to subsection (c) of
36 section five-b, article eight of this chapter. If the candidate
37 decides not to run for office all unspent or unobligated
38 exploratory contributions shall be sent to the State Election
39 Commission for deposit in the fund. If the candidate decides
40 to run for office as a nonparticipating candidate the unspent

41 or unobligated exploratory contributions shall be used in
42 accordance with articles eight and twelve of this chapter.

§3-12-9. Qualifying contributions.

1 (a) A participating candidate or his or her candidate's
2 committee may not accept more than one qualifying
3 contribution from a single individual. A qualifying contribution
4 may not be less than $1 nor more than $100. To be
5 considered as a proper qualifying contribution, the qualifying
6 contribution must be made by a registered West Virginia
7 voter. A participating candidate shall collect qualifying
8 contributions which in the aggregate are not less than
9 $35,000 nor more than $50,000. Qualifying contributions in
10 excess of $50,000 shall be sent to the State Election
11 Commission for deposit in the fund.

12 (b) Each qualifying contribution shall be acknowledged
13 by a written receipt that includes:

14 (1) The printed name of the participating candidate on
15 whose behalf the contribution is made and the signature of
16 the person who collected the contribution for the candidate or
17 his or her candidate's committee;

18 (2) For qualifying contributions of $25 or more, the
19 contributor's signature, printed name, street address, zip
20 code, telephone number, occupation and name of employer;
21 and for qualifying contributions of less than $25, the
22 contributor's signature, printed name, street address and zip
23 code;

24 (3) A statement above the contributor's signature that:

25 (A) The contributor understands the purpose of the
26 contribution is to assist the participating candidate in
27 obtaining public campaign financing;

28 (B) The contribution was made without coercion;

29 (C) The contributor has not been reimbursed, received or
30 promised anything of value for making the contribution; and

31 (4) One copy of the receipt shall be given to the
32 contributor, one copy shall be retained by the candidate and
33 one copy shall be sent by the candidate to the Secretary of
34 State. A contribution which is not acknowledged by a
35 written receipt in the form required by this subsection is not
36 a qualifying contribution.

37 (c) During the qualifying period, a participating candidate
38 or his or her candidate's committee must obtain at least five
39 hundred qualifying contributions from registered West
40 Virginia voters. A minimum of ten percent of the total
41 number of qualifying contributions received by the candidate
42 must be from each of the state's congressional districts.

43 (d) A participating candidate and each member of the
44 candidate's immediate family who is a registered voter in this
45 state may each make one qualifying contribution. A
46 participating candidate may not use any other personal funds
47 to satisfy the qualifying contributions requirements.

48 (e) A participating candidate may not reimburse, give or
49 promise anything of value in exchange for a qualifying
50 contribution.

51 (f) At the beginning of each month, a participating or
52 certified candidate or his or her financial agent or committee
53 shall report all qualifying contributions, expenditures and
54 obligations along with all receipts for contributions received
55 during the prior month to the Secretary of State. Such reports
56 shall be filed electronically: *Provided*, That a committee may
57 apply for an exemption in case of hardship pursuant to
58 subsection (c) of section five-b, article eight of this chapter.

If the candidate decides not to run for office, all unspent or unobligated qualifying contributions shall be sent to the State Election Commission for deposit in the fund. If the candidate decides to run for office as a nonparticipating candidate, the unspent or unobligated qualifying contributions shall be used in accordance with articles eight and twelve of this chapter.

(g) All qualifying contributions collected and all expenditures by a participating candidate or his or her committee shall be reported to the Secretary of State no later than two business days after the close of the qualifying period.

§3-12-10. Certification of candidates.

(a) To be certified, a participating candidate shall apply to the State Election Commission for public campaign financing from the fund and file a sworn statement that he or she has complied and will comply with all requirements of this article throughout the applicable campaign.

(b) Upon receipt of a notice from the Secretary of State that a participating candidate has received the required number and amount of qualifying contributions, the State Election Commission shall determine whether the candidate or candidate's committee:

(1) Has signed and filed a declaration of intent as required by section seven of this article;

(2) Has obtained the required number and amount of qualifying contributions as required by section nine of this article;

(3) Has complied with the contribution restrictions of this article;

18 (4) Is eligible, as provided in section nine, article five of
19 this chapter, to appear on the primary or general election
20 ballot; and

21 (5) Has met all other requirements of this article.

22 (c) The State Election Commission shall process
23 applications in the order they are received and shall verify a
24 participating candidate's compliance with the requirements
25 of subsection (b) of this section by using the verification and
26 sampling techniques approved by the State Election
27 Commission.

28 (d) The State Election Commission shall determine
29 whether to certify a participating candidate as eligible to
30 receive public campaign financing no later than three
31 business days after the candidate or the candidate's
32 committee makes his or her final report of qualifying
33 contributions or, if a challenge is filed under subsection (g)
34 of this section, no later than six business days after the
35 candidate or the candidate's committee makes his or her final
36 report of qualifying contributions. A certified candidate shall
37 comply with the provisions of this article through the general
38 election campaign period.

39 (e) No later than two business days after the State
40 Election Commission certifies that a participating candidate
41 is eligible to receive public campaign financing under the
42 provisions of this section, the State Election Commission,
43 acting in concert with the State Auditor's office and the State
44 Treasurer's office, shall cause a check to be issued to the
45 candidate's campaign depository account an amount equal to
46 the initial public campaign financing benefit for which the
47 candidate qualifies under section eleven of this article, minus
48 the candidate's qualifying contributions, and shall notify all
49 other candidates for the same office of its determination.

50 (f) If the candidate desires to receive public financing
51 benefits by electronic transfer, the candidate shall include in
52 his or her application sufficient information and authorization
53 for the State Treasurer to transfer payments to his or her
54 campaign depository account.

55 (g) Any person may challenge the validity of any
56 contribution listed by a participating candidate by filing a
57 written challenge with the State Election Commission setting
58 forth any reason why the contribution should not be accepted
59 as a qualifying contribution. If a contribution is challenged
60 under this subsection, the State Election Commission shall
61 decide the validity of the challenge no later than the end of
62 the next business day after the day that the challenge is filed,
63 unless the State Election Commission determines that the
64 candidate whose contribution is challenged has both a
65 sufficient qualifying number and amount of qualifying
66 contributions to be certified as a candidate under this section
67 without considering the challenge. Within five business days
68 of a challenge, the candidate or candidate's committee who
69 listed any contribution that is the subject of a challenge may
70 file a report with the State Election Commission of an
71 additional contribution collected pursuant to section nine of
72 this article for consideration as a qualifying contribution.

73 (h) A candidate's certification and receipt of public
74 campaign financing may be revoked by the State Election
75 Commission, if the candidate violates any of the provisions
76 of this article. A certified candidate who violates the
77 provisions of this article shall repay all moneys received from
78 the fund to the State Election Commission.

79 (i) The determination of any issue before the State
80 Election Commission is the final administrative determination.
81 Any meetings conducted by the State Elections Commission
82 to certify a candidate's initial eligibility to receive funds
83 under this article, or their eligibility to receive supplemental

funds or rescue funds under section eleven of this article shall not be subject the public notice and open meeting requirements of article nine-a, chapter six of this Code, but the Commission shall concurrently provide public notice of any decision and determination it makes which impacts the candidate's eligibility to receive initial funds or supplemental funds pursuant to the provisions of this article. Any person adversely affected by a decision of the State Election Commission under the provisions of this article may appeal that decision to the circuit court of Kanawha County.

(j) A candidate may withdraw from being a certified candidate and become a nonparticipating candidate at any time with the approval of the State Election Commission. Any candidate seeking to withdraw shall file a written request with the State Election Commission, which shall consider requests on a case-by-case basis. No certified candidate may withdraw until he or she has repaid all moneys received from the fund: *Provided,* That the State Election Commission may, in exceptional circumstances, waive the repayment requirement. The State Election Commission may assess a penalty not to exceed $10,000 against any candidate who withdraws without approval.

§3-12-11. Schedule and amount of Supreme Court of Appeals Public Campaign Financing Fund payments; additional funds.

(a) The State Election Commission, acting in concert with the State Auditor's office and the State Treasurer's office, shall have a check issued within two business days after the date on which the candidate is certified, to make payments from the fund for the 2012 primary election campaign period available to a certified candidate.

(1) In a contested primary election, a certified candidate shall receive $200,000 in initial campaign financing from the fund, minus the certified candidate's qualifying contributions.

10 (2) In an uncontested primary election, a certified
11 candidate shall receive $50,000 from the public campaign
12 financing fund, minus the certified candidate's qualifying
13 contributions.

14 (b) Within two business days after the primary election
15 results are certified by the Secretary of State, the State
16 Election Commission, acting in concert with the State
17 Auditor's office and the State Treasurer's office, shall cause
18 a check to be issued to make initial payments from the fund
19 for the 2012 general election campaign period available to a
20 certified candidate.

21 (1) In a contested general election, a certified candidate
22 may receive from the fund an amount not to exceed
23 $350,000.

24 (2) In an uncontested general election, a certified
25 candidate shall receive $35,000 from the public campaign
26 financing fund.

27 (c) The State Election Commission shall authorize the
28 distribution of initial campaign financing moneys to certified
29 candidates in equal amounts. The commission shall propose
30 a legislative rule on distribution of funds.

31 (d) The State Election Commission may not authorize or
32 direct the distribution of moneys to certified candidates in
33 excess of the total amount of money deposited in the fund
34 pursuant to section six of this article. If the commission
35 determines that the money in the fund is insufficient to totally
36 fund all certified candidates, the commission shall authorize
37 the distribution of the remaining money proportionally,
38 according to each candidate's eligibility for funding. Each
39 candidate may raise additional money in the same manner as
40 a nonparticipating candidate for the same office up to the
41 unfunded amount of the candidate's eligible funding.

42 (e) If the commission determines from any reports filed
43 pursuant to this chapter or by other reliable and verifiable
44 information obtained through investigation that a
45 nonparticipating candidate's campaign expenditures or
46 obligations, in the aggregate, have exceeded by twenty
47 percent the initial funding available under this section any
48 certified candidate running for the same office, the commission
49 shall authorize the release of additional funds in the amount
50 of the reported excess to any opposing certified candidate for
51 the same office.

52 (f) If the State Election Commission determines from any
53 reports filed pursuant to this chapter or by other reliable and
54 verifiable information obtained through investigation that
55 independent expenditures on behalf of a nonparticipating
56 candidate, either alone or in combination with the
57 nonparticipating candidate's campaign expenditures or
58 obligations, have exceeded by twenty percent the initial
59 funding available under this section to any certified candidate
60 running for the same office, the commission shall authorize
61 the release of additional funds in the amount of the reported
62 excess to any certified candidate who is an opponent for the
63 same office.

64 (g) If the commission determines from any reports filed
65 pursuant to this chapter or by other reliable and verifiable
66 information obtained through investigation that independent
67 expenditures on behalf of a certified candidate, in
68 combination with the certified candidate's campaign
69 expenditures or obligations, exceed by twenty percent the
70 initial funding available under this section to any certified
71 candidate running for the same office, the State Election
72 Commission shall authorize the release of additional funds in
73 the amount of the reported excess to any other certified
74 candidate who is an opponent for the same office.

75 (h) Additional funds released under this section to a
76 certified candidate may not exceed $400,000 in a primary
77 election and $700,000 in a general election.

(i) In the event the commission determines that additional funds beyond the initial distribution are to be released to a participating candidate pursuant to the provisions of the section, the commission, acting in concert with the State Auditor's office and the State Treasurer's office, shall cause a check for any such funds to be issued to the candidate's campaign depository within two business days.

§3-12-12. Restrictions on contributions and expenditures.

(a) A certified candidate or his or her committee may not accept loans or contributions from any private source, including the personal funds of the candidate and the candidate's immediate family, during the primary or general election campaign periods except as permitted by this article.

(b) After filing the declaration of intent and during the qualifying period, a participating candidate may not spend or obligate more than he or she has collected in exploratory and qualifying contributions. After the qualifying period and through the general election campaign period, a certified candidate may spend or obligate any unspent exploratory or qualifying contributions and the moneys he or she receives from the fund under the provisions of section eleven of this article.

(c) A participating or certified candidate may expend exploratory and qualifying contributions and funds received from the fund only for lawful election expenses as provided in section nine, article eight of this chapter. Moneys distributed to a certified candidate from the fund may be expended only during the primary and general election campaign period for which funds were dispersed. Money from the fund may not be used:

(1) In violation of the law;

(2) To repay any personal, family or business loans, expenditures or debts; or

(3) To help any other candidate.

(d) A certified candidate or his or her committee shall return to the fund any unspent and unobligated exploratory contributions, qualifying contributions or moneys received from the fund within forty-eight hours after:

(1) The date on which the candidate ceases to be certified; or

(2) The date on which the individual loses the primary election or otherwise ceases to be a candidate.

(e) Funds remaining unspent or unobligated after the close of the primary election campaign period may be retained by the candidate for use during the general election campaign period but shall be deducted from the amount the candidate is eligible to receive under subsection (b), section eleven of this article.

(f) A certified candidate or his or her committee shall return to the fund any unspent or unobligated public campaign financing funds no later than five business days after the general election.

(g) A contribution from one person may not be made in the name of another person.

(h) A participating or certified candidate or his or her committee receiving qualifying contributions or exploratory contributions from a person not listed on the receipt required by sections eight and nine of this article is liable to the State Election Commission for the entire amount of that contribution and any applicable penalties.

(i) A certified candidate accepting any benefits under the provisions of this article shall continue to comply with all of its provisions throughout the primary election campaign period and general election campaign period.

(j) A participating or certified candidate or his or her financial agent shall provide the Secretary of State with all requested campaign records, including all records of exploratory and qualifying contributions received and campaign expenditures and obligations, and shall fully cooperate with any audit of campaign finances requested or authorized by the State Election Commission.

§3-12-13. Reporting requirements.

(a) Participating candidates, certified candidates and nonparticipating candidates shall comply with the provisions of this section in addition to any other reporting required by the provisions of this chapter.

(b) During the exploratory and qualifying periods, a participating candidate or his or her financial agent shall submit, on the first of each month, a report of all exploratory and qualifying contributions along with their receipts and an accounting of all expenditures and obligations received during the immediately preceding month. The reports shall be on forms or in a format prescribed by the Secretary of State. Such reports shall be filed electronically: *Provided,* That a committee may apply for an exemption, in case of hardship, pursuant to subsection (c) of section five-b, article eight of this chapter.

(c) No later than two business days after the close of the qualifying period, a participating candidate or his or her financial agent shall report to the Secretary of State on appropriate forms a summary of:

(1) All exploratory contributions received and funds expended or obligated during the exploratory period together with copies of any receipts not previously submitted for exploratory contributions; and

(2) All qualifying contributions received and funds expended or obligated during the qualifying period together with copies of any receipts not previously submitted for qualifying contributions.

(d) A certified candidate or his or her financial agent shall file periodic financial statements in accordance with section five, article eight of this chapter, detailing all funds received, expended or obligated during the specified periods. The reports shall be on forms approved by the Secretary of State.

(e) In addition to any other reporting required by this chapter, a nonparticipating candidate or his or her financial agent shall report to the Secretary of State on approved forms an itemized summary of his or her campaign expenditures or obligations, according to the following provisions and guidelines:

(1) On the first Saturday in March or within six days thereafter, listing the nonparticipating candidate's expenditures and obligations prior to March 1, if the nonparticipating candidate's campaign expenditures or obligations, in the aggregate, exceed the initial funding available under section eleven of this article to any certified candidate for the same office.

(2) On the first Saturday in April, listing any expenditures or obligations, in the aggregate, that exceed the initial funding available under section eleven of this article to any certified candidate running for the same office and which have taken place subsequent to those reported on the financial statement required to be filed by a candidate for public office pursuant to subdivision (1), subsection (b),

section five, article eight of this chapter. Thereafter, any additional expenditures or obligations, in the aggregate, that exceed the initial funding available under section eleven of this article to any certified candidate running for the same office made prior to the fifteenth day before the primary election shall be reported to the Secretary of State within forty-eight hours.

(3) On the first Saturday in July or within six days thereafter, listing the nonparticipating candidate's expenditures and obligations prior to July 1 subsequent to the primary election, if the nonparticipating candidate's expenditures or obligations, in the aggregate, exceed the initial funding available under section eleven of this article to any certified candidate running for the same office.

(4) On the first Saturday in October, listing any expenditures or obligations, in the aggregate, that exceed the initial funding available under section eleven of this article to any certified candidate running for the same office and which have taken place subsequent to those reported on the financial statement required to be filed by a candidate for public office pursuant to subdivision (4), subsection (b), section five, article eight of this chapter. Thereafter, any additional expenditures or obligations, in the aggregate, that exceed the initial funding available under section eleven of this article to any certified candidate running for the same office made prior to the fifteenth day before the general election shall be reported to the State Election Commission within forty-eight hours.

(5) During the last fifteen days before the primary or general elections in 2012, the nonparticipating candidate or his or her financial agent shall report to the State Election Commission within twenty-four hours thereof every additional expenditure or obligation, in the aggregate, that exceeds the initial funding available under section eleven of

this article to any certified candidate running for the same office.

(f) Any person, organization or entity making independent expenditures advocating the election or defeat of a certified candidate or the nomination or election of any candidate who is opposed by a certified candidate in excess of $1,000, in the aggregate, shall report these expenditures to the State Election Commission on approved forms within forty-eight hours of the expenditure.

(g) During the last fifteen days before the primary or general election in 2012, any person, organization or entity making independent expenditures advocating the election or defeat of any candidate, including the election or defeat of a certified candidate or the nomination or election of any candidate who is opposed by a certified candidate, shall continue to file reports as required pursuant to subsection (b), section two, article eight of this chapter.

§3-12-14. Duties of the State Election Commission; Secretary of State.

(a) In addition to its other duties, the State Election Commission shall carry out the duties of this article and complete the following as applicable:

(1) Prescribe forms for reports, statements, notices and other documents required by this article;

(2) Make an annual report to the Legislature accounting for moneys in the fund, describing the State Election Commission's activities and listing any recommendations for changes of law, administration or funding amounts;

(3) Propose emergency and legislative rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, as may be

13 necessary for the proper administration of the provisions of
14 this article;

15 (4) Enforce the provisions of this article to ensure that
16 moneys from the fund are placed in candidate campaign
17 accounts and spent as specified in this article;

18 (5) Monitor reports filed pursuant to this article and the
19 financial records of candidates to ensure that qualified
20 candidates receive matching funds promptly and to ensure
21 that moneys required by this article to be paid to the fund are
22 deposited in the fund;

23 (6) Cause an audit of the fund to be conducted by
24 independent certified public accountants ninety days after a
25 general election. The State Election Commission shall
26 cooperate with the audit, provide all necessary documentation
27 and financial records to the auditor and maintain a record of
28 all information supplied by the audit;

29 (7) In consultation with the State Treasurer and the State
30 Auditor, develop a rapid, reliable method of conveying funds
31 to certified candidates. In all cases, the commission shall
32 distribute funds to certified candidates in a manner that is
33 expeditious, ensures accountability and safeguards the
34 integrity of the fund; and

35 (8) Regularly monitor the receipts, disbursements,
36 obligations and balance in the fund to determine whether the
37 fund will have sufficient moneys to meet its obligations and
38 sufficient moneys available for disbursement during the
39 general election campaign period.

40 (b) In addition to his or her other duties, the Secretary of
41 State shall carry out the duties of this article and complete the
42 following as applicable:

43 (1) Prescribe forms for reports, statements, notices and
44 other documents required by this article;

(2) Prepare and publish information about this article and provide it to potential candidates and citizens of this state;

(3) Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and to explain the duties of candidates and others participating in elections under the provisions of this article;

(4) Propose emergency and legislative rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be necessary for the proper administration of the provisions of this article;

(5) Enforce the provisions of this article to ensure that moneys from the fund are placed in candidate campaign accounts and spent as specified in this article;

(6) Monitor reports filed pursuant to this article and the financial records of candidates to ensure that qualified candidates receive matching funds promptly and to ensure that moneys required by this article to be paid to the fund are deposited in the fund;

(7) Ensure public access to the campaign finance reports required pursuant to this article, and whenever possible, use electronic means for the reporting, storing and display of the information; and

(8) Prepare a voters' guide for the general public listing the names of each candidate seeking election to the Supreme Court of Appeals. Both certified and nonparticipating candidates shall be invited by the State Election Commission to submit a statement, not to exceed five hundred words in length, for inclusion in the guide. The guide shall identify the candidates that are certified candidates and the candidates that are nonparticipating candidates. Copies of the guide

shall be posted on the website of the Secretary of State, as soon as may be practical.

(c) To fulfill their responsibilities under this article, the State Election Commission and the Secretary of State may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require, by subpoena, the production of any books, papers, records or other items material to the performance of their duties or the exercise of their powers.

(d) The State Election Commission may also propose and adopt procedural rules to carry out the purposes and provisions of this article and to govern procedures of the State Election Commission as it relates to the requirements of this article.

§3-12-15. Criminal penalties.

(a) A participating or certified candidate who, either personally or through his or her committee, knowingly accepts contributions or benefits in excess of those allowed under this article, spends or obligates funds in excess of the public campaign financing funding to which he or she is entitled or uses the benefits or funding for a purpose other than those permitted under this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500, or confined in jail for up to thirty days or both.

(b) A participating or certified candidate who, either personally or through his or her committee or financial agent, provides false information to, or conceals or withholds information from, the State Election Commission or the Secretary of State is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $10,000, or confined in jail for up to one year or both.

§3-12-16. Civil penalties.

(a) If a participating or certified candidate or his or her committee or financial agent unintentionally accepts contributions from a private source in violation of the provisions of this article or spends or obligates to spend more than the amount of public financing money he or she is eligible to receive from the fund pursuant to section eleven of this article, the State Election Commission may order the candidate to pay to the State Election Commission an amount equal to the amount of the contribution, expenditure or obligation.

(b) If a participating or certified candidate or his or her committee or financial agent intentionally accepts contributions from a private source in violation of this article or spends or obligates more than the amount of public campaign financing he or she is eligible to receive from the fund, the State Election Commission shall order the candidate to pay to the State Election Commission an amount equal to ten times the amount of the contribution, expenditure or obligation. The candidate shall pay the civil penalty authorized under this subsection within seven days of receipt of written notice from the State Election Commission of the imposition of the penalty.

(c) If a participating or certified candidate fails to pay any moneys required to be paid to the State Election Commission or returned to the fund under this article, the State Election Commission may order the candidate to pay an amount equal to three times the amount that should have been paid to the State Election Commission or returned to the fund.

(d) In addition to any other penalties imposed by law, the State Election Commission may impose a civil penalty for a violation by or on behalf of any candidate of any reporting requirement imposed by this article in the amount of $100 a day. The penalty shall be doubled if the amount not reported

34 for a specific election exceeds ten percent of the initial
35 amount of public financing available to a certified candidate
36 in a primary or general election pursuant to section eleven of
37 this article.

38 (e) All penalties collected by the State Election
39 Commission pursuant to this section shall be deposited into
40 the fund. The candidate and the candidate's campaign
41 account are jointly and severally responsible for the payment
42 of any penalty imposed pursuant to this section.

§3-12-17. Expiration of article.

1 The provisions of this article shall have no force or effect
2 on or after July 1, 2013. Any moneys remaining in the fund
3 on July 1, 2013, shall be transferred to the General Revenue
4 Fund.

CHAPTER 73

(S. B. 339 - By Senators Williams and White)

[Passed March 9, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §3-2-4a of the Code of West Virginia, 1931, as amended, relating to statewide voter registration list maintenance; and making a technical correction to that statute.

Be it enacted by the Legislature of West Virginia:

That §3-2-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-4a. Statewide voter registration list.

(a) The Secretary of State shall implement and maintain a single, official, statewide, centralized, interactive computerized voter registration list of every legally registered voter in the state, which shall include the following:

(1) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the state.

(2) The computerized list shall contain the name, registration information and voter history of every legally registered voter in the state.

(3) Under the computerized list, the Secretary of State shall assign a unique identifier to each legally registered voter in the state.

(4) The computerized list shall be coordinated with other agency databases within the state; including, but not limited to, the vital statistics database maintained by the Department of Health and Human Resources. The Department of Health and Human Resources by January 31st of each calendar year shall provide to each county clerk a list from this database of all decedents in that county in the preceding year and shall provide to the Secretary of State the list of all decedents in the state in the preceding year.

(5) The Secretary of State and any clerk of the county commission may obtain immediate electronic access to the information contained in the computerized list.

(6) The clerk of the county commission shall electronically enter voter registration information into the computerized list on an expedited basis at the time the information is provided to the clerk.

30 (7) The Secretary of State shall provide necessary support
31 to enable every clerk of the county commission in the state to
32 enter information as described in subdivision (6) of this
33 subsection.

34 (8) The computerized list shall serve as the official voter
35 registration list for conducting all elections in the state.

36 (b) The Secretary of State or any clerk of a county
37 commission shall perform maintenance with respect to the
38 computerized list on a regular basis as follows:

39 (1) If an individual is to be removed from the
40 computerized list, he or she shall be removed in accordance
41 with the provisions of 42 U.S.C. §1973gg, *et seq.*, the
42 National Voter Registration Act of 1993.

43 (2) The Secretary of State shall coordinate the
44 computerized list with state agency records and remove the
45 names of individuals who are not qualified to vote because of
46 felony status or death: *Provided,* That no state agency may
47 withhold information regarding a voter's status as deceased
48 or as a felon unless ordered by a court of law: *Provided,*
49 *however,* that the Secretary of State shall, in each calendar
50 year, certify that the removal of individuals who are not
51 qualified to vote because of a felony conviction as provided
52 in section two of this article or death is completed at least
53 thirty days preceding the date of any primary election.

54 (c) The list maintenance performed under subsection (b) of
55 this section shall be conducted in a manner that ensures that:

56 (1) The name of each registered voter appears in the
57 computerized list;

58 (2) Only voters who are not registered or who are not
59 eligible to vote are removed from the computerized list;

60 (3) Duplicate names are eliminated from the
61 computerized list;

62 (4) Deceased individuals names are eliminated from the
63 computerized list.

64 (d) The Secretary of State and the clerks of all county
65 commissions shall provide adequate technological security
66 measures to prevent the unauthorized access to the
67 computerized list established under this section.

68 (e) The Secretary of State shall ensure that voter
69 registration records in the state are accurate and updated
70 regularly, including the following:

71 (1) A system of file maintenance that makes a reasonable
72 effort to remove registrants who are ineligible to vote from
73 the official list of eligible voters. Under the system,
74 consistent with 42 U.S.C. §1973gg, *et seq.*, registrants who
75 have not responded to a notice sent pursuant to section
76 twenty six, article two of this chapter and who have not voted
77 in two consecutive general elections for federal office shall
78 be removed from the official list of eligible voters, except
79 that no registrant may be removed solely by reason of a
80 failure to vote; and

81 (2) Safeguards to ensure that eligible voters are not
82 removed in error from the official list of eligible voters.

83 (f) Applications for voter registration may only be
84 accepted when the following information is provided:

85 (1) Except as provided in subdivision (2) of this
86 subsection and notwithstanding any other provision of law to
87 the contrary, an application for voter registration may not be
88 accepted or processed unless the application includes:

(A) In the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number;

(B) In the case of an applicant who has been issued an identification card by the Division of Motor Vehicles, the applicant's identification number; or

(C) In the case of any other applicant, the last four digits of the applicant's social security number; and

(2) If an applicant for voter registration has not been issued a current and valid driver's license, Division of Motor Vehicles' identification card or a social security number, the Secretary of State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the state has a computerized list in effect under this section and the list assigns unique identifying numbers to registrants, the number assigned under this section shall be the unique identifying number assigned under the list.

(g) The Secretary of State and the Commissioner of the Division of Motor Vehicles shall enter into an agreement to match and transfer applicable information in the database of the statewide voter registration system with information in the database of the Division of Motor Vehicles to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration.

(h) The Commissioner of the Division of Motor Vehicles shall enter into an agreement with the Commissioner of Social Security under 42 U.S.C. §301, *et seq.*, the Social Security Act. All fees associated with this agreement shall be paid for from moneys in the fund created under section twelve, article two of this chapter.

CHAPTER 74

(H. B. 4589 - By Delegates Iaquinta, Longstreth, Duke, Ellem and Frazier)

[Passed March 12, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2010.]

AN ACT to amend and reenact §3-3-2, §3-3-2b, §3-3-5 and §3-3-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-4-10 of said code; and to amend and reenact §3-5-13 of said code, all relating to conforming the appropriate sections to the requirements of the Military and Overseas Voter Empowerment Act of 2009.

Be it enacted by the Legislature of West Virginia:

That §3-3-2, §3-3-2b, §3-3-5 and §3-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-4-10 of said code be amended and reenacted; that §3-5-13 of said code be amended and reenacted, all to read as follows:

Article

3. **Voting by Absentees.**
4. **Voting Machines.**
5. **Primary Elections and Nominating Procedures.**

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.
§3-3-2b. Special absentee voting list.
§3-3-5. Voting an absentee ballot by mail or electronically; penalties.
§3-3-11. Preparation, number and handling of absent voters' ballots.

ARTICLE 3. VOTING BY ASSEMBLY.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

(a) Absentee voting is to be supervised and conducted by the proper official for the political division in which the election is held, in conjunction with the ballot commissioners appointed from each political party, as follows:

(1) For any election held throughout the county, within a political subdivision or territory other than a municipality, or within a municipality when the municipal election is conducted in conjunction with a county election, the clerk of the county commission; or

(2) The municipal recorder or other officer authorized by charter or ordinance provisions to conduct absentee voting, for any election held entirely within the municipality, or in the case of annexation elections, within the area affected. The terms "clerk" or "clerk of the county commission" or "official designated to supervise and conduct absentee voting" used elsewhere in this article means municipal recorder or other officer in the case of municipal elections.

(b) A person authorized and desiring to vote a mail-in absentee ballot in any primary, general or special election is to make application in writing in the proper form to the proper official as follows:

(1) The completed application is to be on a form prescribed by the Secretary of State and is to contain the name, date of birth and political affiliation of the voter, residence address within the county, the address to which the ballot is to be mailed, the authorized reason, if any, for which the absentee ballot is requested and, if the reason is illness or hospitalization, the name and telephone number of the attending physician, the signature of the voter to a declaration made under the penalties for false swearing as provided in

section three, article nine of this chapter that the statements and declarations contained in the application are true, any additional information which the voter is required to supply, any affidavit which may be required and an indication as to whether it is an application for voting in person or by mail; or

(2) For any person authorized to vote an absentee ballot under the provisions of 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the completed application may be on the federal postcard application for absentee ballot form issued under authority of that act, submitted by mail or electronically; or

(3) For any person unable to obtain the official form for absentee balloting at a reasonable time before the deadline for an application for an absentee ballot by mail is to be received by the proper official, the completed application may be in a form set out by the voter, provided all information required to meet the provisions of this article is set forth and the application is signed by the voter requesting the ballot.

§3-3-2b. Special absentee voting list.

(a) Any person who is registered and otherwise qualified to vote and who is permanently and totally physically disabled and who is unable to vote in person at the polls in an election may apply to the official designated to supervise and conduct absentee voting for placement on the special absentee voting list.

(b) The application is to be on a form prescribed by the Secretary of State which is to include the voter's name and signature, residence address, a statement that the voter is permanently and totally physically disabled and would be unable to vote in person at the polls in any election, a description of the nature of that disability, and a statement signed by a physician to that effect.

(c) Upon receipt of a properly completed application, the official designated to supervise and conduct absentee voting shall enter the name on the special absentee voting list, which is to be maintained in a secure and permanent record. The person's name will remain active on the list until: (1) The person requests in writing that his or her name be removed; (2) the person removes his or her residence from the county, is purged from the voter registration books or otherwise becomes ineligible to vote; (3) a ballot mailed to the address provided on the application is returned undeliverable by the United States postal service; or (4) the death of the person.

(d) The official designated to supervise and conduct absentee voting shall mail an application for an absentee ballot by mail to each person active on the special absentee voting list not later than forty-six days before each election.

§3-3-5. Voting an absentee ballot by mail or electronically; penalties.

(a) Upon oral or written request, the official designated to supervise and conduct absentee voting shall provide to any voter of the county, in person, by mail, or electronically the appropriate application for voting absentee by mail as provided in this article. The voter shall complete and sign the application in his or her own handwriting or, if the voter is unable to complete the application because of illiteracy or physical disability, the person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided.

(b) Completed applications for voting an absentee ballot by mail are to be accepted when received by the official designated to supervise and conduct absentee voting in person, by mail, or electronically within the following times:

(1) For persons eligible to vote an absentee ballot under the provisions of subdivision (3), subsection (b), section one

of this article, relating to absent uniformed services and overseas voters, not earlier than January 1 of an election year or eighty-four days preceding the election, whichever is earlier, and not later than the sixth day preceding the election, which application is to, upon the voter's request, be accepted as an application for the ballots for all elections in the calendar year; and

(2) For all other persons eligible to vote an absentee ballot by mail, not earlier than eighty-four days preceding the election and not later than the sixth day preceding the election.

(c) Upon acceptance of a completed application, the official designated to supervise and conduct absentee voting shall determine whether the following requirements have been met:

(1) The application has been completed as required by law;

(2) The applicant is duly registered to vote in the precinct of his or her residence and, in a primary election, is qualified to vote the ballot of the political party requested;

(3) The applicant is authorized for the reasons given in the application to vote an absentee ballot by mail;

(4) The address to which the ballot is to be mailed is an address outside the county if the voter is applying to vote by mail under the provisions of paragraph (A) or (B), subdivision (2), subsection (b), section one of this article; or subdivision (3) or (4) of said subsection;

(5) The applicant is not making his or her first vote after having registered by postcard registration or, if the applicant is making his or her first vote after having registered by

postcard registration, the applicant is exempt from these requirements; and

(6) No regular and repeated pattern of applications for an absentee ballot by mail for the reason of being out of the county during the entire period of voting in person exists to suggest that the applicant is no longer a resident of the county.

(d) If the official designated to supervise and conduct absentee voting determines that the required conditions have been met, two representatives that are registered to vote with different political party affiliations shall sign their names in the places indicated on the back of the official ballot. If the official designated to supervise and conduct absentee voting determines the required conditions have not been met, or has evidence that any of the information contained in the application is not true, the official shall give notice to the voter that the voter's absentee ballot will be challenged as provided in this article and shall enter that challenge.

(e) (1) Within one day after the official designated to supervise and conduct absentee voting has both the completed application and the ballot, the official shall mail to the voter at the address given on the application the following items as required and as prescribed by the Secretary of State:

(A) One of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(B) One envelope, unsealed, which may have no marks except the designation "Absent Voter's Ballot Envelope No. 1" and printed instructions to the voter;

(C) One postage paid envelope, unsealed, designated "Absent Voter's Ballot Envelope No. 2";

(D) Instructions for voting absentee by mail;

(E) For electronic systems, a device for marking by electronically sensible pen or ink, as may be appropriate;

(F) Notice that a list of write-in candidates is available upon request; and

(G) Any other supplies required for voting in the particular voting system.

(2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. §1973, *et seq.*, the official designated to supervise and conduct absentee voting shall transmit the ballot to the voter via mail, or electronically as requested by the voter. If the voter does not designate a preference for transmittal, the clerk may select either method of transmittal for the ballot. If the ballot is transmitted electronically pursuant to this subdivision, the official designated to supervise and conduct absentee voting shall also transmit electronically:

(A) A waiver of privacy form, to be promulgated by the Secretary of State;

(B) Instructions for voting absentee utilizing a federally approved system for voting by mail or electronically;

(C) Notice that a list of write-in candidates is available upon request; and

(D) Statement of the voter affirming the voter's current name and address and whether or not he or she received assistance in voting.

(f) The voter shall mark the ballot alone: *Provided,* That the voter may have assistance in voting according to the provisions of section six of this article.

(1) After the voter has voted the ballot or ballots to be returned by mail, the voter shall:

(A) Place the ballot or ballots in envelope no. 1 and seal that envelope;

(B) Place the sealed envelope no. 1 in envelope no. 2 and seal that envelope;

(C) Complete and sign the forms on envelope no. 2; and

(D) Return that envelope to the official designated to supervise and conduct absentee voting.

(2) If the ballot was transmitted electronically as provided in subdivision (2), subsection (e) of this section, the voter shall return the ballot in the same manner the ballot was received, or the voter may return the ballot by United States mail, along with a signed privacy waiver form.

(g) Except as provided in subsection (h) of this section, absentee ballots returned by United States mail or other express shipping service are to be accepted if:

(1) The ballot is received by the official designated to supervise and conduct absentee voting no later than the day after the election; or

(2) The ballot bears a postmark of the United States Postal Service dated no later than election day and the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(h) Absentee ballots received through the United States mail from persons eligible to vote an absentee ballot under the provisions of subdivision (3), subsection (b), section one of this article, relating to uniform services and overseas

135 voters, are to be accepted if the ballot is received by the
136 official designated to supervise and conduct absentee voting
137 no later than the hour at which the board of canvassers
138 convenes to begin the canvass.

139 (i) Voted ballots submitted electronically pursuant to
140 subdivision (2), subsection (f) of this section are to be
141 accepted if the ballot is received by the official designated to
142 supervise and conduct absentee voting no later than the close
143 of polls on election day: *Provided,* That the Secretary of
144 State's office shall enter into an agreement with the Federal
145 Voting Assistance Program of the United States Department
146 of Defense to transmit the ballots to the county clerks at a
147 time when two individuals of opposite political parties are
148 available to process the received ballots.

149 (j) Ballots received after the proper time which cannot be
150 accepted are to be placed unopened in an envelope marked
151 for the purpose and kept secure for twenty-two months
152 following the election, after which time they are to be
153 destroyed without being opened.

154 (k) Absentee ballots which are hand delivered are to be
155 accepted if they are received by the official designated to
156 supervise and conduct absentee voting no later than the day
157 preceding the election: *Provided,* That no person may hand
158 deliver more than two absentee ballots in any election and
159 any person hand delivering an absentee ballot is required to
160 certify that he or she has not examined or altered the ballot.
161 Any person who makes a false certification violates the
162 provisions of article nine of this chapter and is subject to
163 those provisions.

164 (l) Upon receipt of the sealed envelope, the official
165 designated to supervise and conduct absentee voting shall:

166 (1) Enter onto the envelope any other required
167 information;

(2) Enter the challenge, if any, to the ballot;

(3) Enter the required information into the permanent record of persons applying for and voting an absentee ballot in person; and

(4) Place the sealed envelope into a ballot box that is secured by two locks with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk.

(m) Upon receipt of a ballot submitted electronically pursuant to subdivision (2), subsection (f) of this section, the official designated to supervise and conduct absentee voting shall place the ballot in an envelope marked "Absentee by Electronic Means" with the completed waiver: *Provided,* That no ballots are to be processed without the presence of two individuals of opposite political parties.

(n) All ballots received electronically prior to the close of the polls on election day are to be tabulated in the manner prescribed for tabulating absentee ballots submitted by mail to the extent that those procedures are appropriate for the applicable voting system. The clerk of the county commission shall keep a record of absentee ballots sent and received electronically.

§3-3-11. Preparation, number and handling of absent voters' ballots.

(a) Absent voters' ballots are to be in all respects like other ballots. Not less than seventy days before the date on which any primary, general or special election is to be held, unless a lesser number of days is provided in any specific election law in which case the lesser number of days applies, the clerks of the county commissions of the several counties shall estimate and determine the number of absent voters' ballots of all kinds which will be required in their respective

counties for that election. The ballots for the election of all officers, or the ratification, acceptance or rejection of any measure, proposition or other public question to be voted on by the voters, are to be prepared and printed under the direction of the board of ballot commissioners constituted as provided in article one of this chapter. The several county boards of ballot commissioners shall prepare and have printed, in the number they may determine, absent voters' ballots that are to be printed under their directions as provided in this chapter and those ballots are to be delivered to the clerk of the county commission of the county not less than forty-six days before the day of the election at which they are to be used.

(b) The official designated to supervise and conduct absentee voting shall be responsible for the mailing, transmitting, receiving, delivering and otherwise handling of all absent voters' ballots. He or she shall keep a record, as may be prescribed by the Secretary of State, of all ballots delivered for the purpose of absentee voting, as well as all ballots, if any, marked before him or her and shall deliver to the commissioner of election a certificate stating the number of ballots delivered, transmitted, or mailed to absent voters and those marked before him or her, if any, and the names of the voters to whom those ballots have been delivered, transmitted, or mailed or by whom they have been marked, if marked before him or her.

ARTICLE 4. VOTING MACHINES.

§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

(a) The ballot commissioners of any county in which voting machines are to be used in any election shall cause to be printed for use in the election the ballot labels for the voting machines and paper ballots for absentee voting, voting by persons unable to use the voting machine and provisional

ballots or if an electronic voting system or direct recording election equipment is to be used in an election, the ballot commissioners shall comply with requirements of section eleven, article four-a of this chapter. The labels shall be clearly printed in black ink on clear white material in a size that will fit the ballot frames. The paper ballots shall be printed in compliance with the provisions of this chapter governing paper ballots.

(b) The heading, the names and arrangement of offices and the printing and arrangement of names of the candidates for each office indicated must be placed on the ballot for the primary election as nearly as possible according to the provisions of sections thirteen and thirteen-a, article five of this chapter and for the general election according to the provisions of section two, article six of this chapter: *Provided,* That the staggering of the names of candidates in multicandidate races and the instructions to straight ticket voters prescribed by section two, article six of this chapter shall appear on paper ballots but shall not appear on ballot labels for voting machines which mechanically control crossover voting.

(c) Each question to be voted on must be placed at the end of the ballot and must be printed according to the provisions of the laws and rules governing the question.

(d) The ballot labels printed must total in number one and one-half times the total number of corresponding voting machines to be used in the several precincts of the county in the election. All the labels must be delivered to the clerk of the county commission at least twenty-eight days prior to the day of the election. The clerk of the county commission shall determine the number of paper ballots needed for absentee voting and to supply the precincts for provisional ballots and ballots to be cast by persons unable to use the voting machine. All required paper ballots shall be delivered to the clerk of the county commission at least forty-six days prior to the day of the election.

(e) When the ballot labels and absentee ballots are delivered, the clerk of the county commission shall examine them for accuracy, assure that the appropriate ballots and ballot labels are designated for each voting precinct and insert one set in each machine prior to the inspection of the machines as prescribed in section twelve of this article. The remainder of the ballot labels for each machine shall be retained by the clerk of the county commission for use in an emergency.

(f) In addition to all other equipment and supplies required by the provisions of this article, the ballot commissioners shall cause to be printed a supply of instruction cards, sample ballots and facsimile diagrams of the voting machine ballot adequate for the orderly conduct of the election in each precinct in their county. In addition, they shall provide appropriate facilities for the reception and safekeeping of the ballots of absent voters and of challenged voters and of the "independent" voters who shall, in primary elections, cast their votes on nonpartisan candidates and public questions submitted to the voters.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-13. Form and contents of ballots.

The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(1) The heading of every ballot is to be printed in display type. The heading is to contain a ballot title, the name of the county, the state, the words "Primary Election" and the month, day and year of the election. The ballot title of the political party ballots is to contain the words "Official Ballot of the (Name) Party" and the official symbol of the political party may be included in the heading. The ballot title of any separate paper ballot or portion of any electronic or voting

machine ballot for the Board of Education is to contain the words "Nonpartisan Ballot of Election of Members of the _____ County Board of Education". The districts for which less than two candidates may be elected and the number of available seats are to be specified and the names of the candidates are to be printed without reference to political party affiliation and without designation as to a particular term of office. Any other ballot or portion of a ballot on a question is to have a heading which clearly states the purpose of the election according to the statutory requirements for that question.

(2) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the ballot by heavy lines and the offices shall be arranged in columns with the following headings, from left to right across the ballot: "National Ticket", "State Ticket", "County Ticket" and, in a presidential election year, "National Convention" or, in a nonpresidential election year, "District Ticket". The columns are to be separated by heavy lines. Within the columns, the offices are to be arranged in the order prescribed in section thirteen-a of this article.

(B) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices are to appear in the same sequence as prescribed in section thirteen-a of this article and under the same headings as prescribed in subsection (a) of this section. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements subject to approval by the Secretary of State.

(C) The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of the division, if any, and the words "Vote for _____" with the number to be nominated or elected or "Vote For Not

More Than _____" in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there is to be a clear explanation of the limitation, as prescribed by the Secretary of State, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system. For counties in which the number of county commissioners exceeds three and the total number of members of the county commission is equal to the number of magisterial districts within the county, the office of county commission is to be listed separately for each district to be filled with the name of the magisterial district and the words "Vote for One" printed below the name of the office: *Provided,* That the office title and applicable instructions may span the width of the ballot so as it is centered among the respective columns.

(D) The location for indicating the voter's choices on the ballot is to be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot is to contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(3)(A) The name of every candidate certified by the Secretary of State or the board of ballot commissioners is to be printed in capital letters in no smaller than eight point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State, the name of each candidate is to appear in the form set out by the candidate on the certificate of announcement, but in no case may the name misrepresent the identity of the candidate nor may the name include any title, position, rank, degree or nickname implying or inferring any status as a member of a class or group or affiliation with any system of belief.

(B) The city of residence of every candidate, the state of residence of every candidate residing outside the state, the county of residence of every candidate for an office on the ballot in more than one county and the magisterial district of residence of every candidate for an office subject to magisterial district limitations are to be printed in lower case letters beneath the names of the candidates.

(C) The arrangement of names within each office must be determined as prescribed in section thirteen-a of this article.

(D) If the number of candidates for an office exceeds the space available on a column or ballot page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the office on separate columns or pages are to be nearly equal and clear instructions given the voter that the candidates for the office are continued on the following column or page.

(4) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office or for the voters to elect sufficient members to the board of Education or to executive committees, the vacant positions on the ballot shall be filled with the words "No Candidate Filed": *Provided,* That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of board of education or for election to any party executive committee. A line shall separate each candidate from every other candidate for the same office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words "No Candidate Filed" may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

114 (5) In presidential election years, the words "For election
115 in accordance with the plan adopted by the party and filed
116 with the Secretary of State" is to be printed following the
117 names of all candidates for delegate to national convention.

118 (6) All paper ballots are to be printed in black ink on
119 paper sufficiently thick so that the printing or marking cannot
120 be discernible from the back: *Provided,* That no paper ballot
121 voted pursuant to the provisions of 42 U.S.C. §1973, *et seq.*,
122 the Uniformed and Overseas Citizens Absentee Voting Act
123 of 1986, or Federal write-in absentee ballot may be rejected
124 due to paper type, envelope type, or notarization requirement.
125 Ballot cards and paper for printing ballots using electronically
126 sensible ink are to meet minimum requirements of the
127 tabulating systems and are to conform in size and weight to
128 ensure ease in tabulation.

129 (7) Ballots are to contain perforated tabs at the top of the
130 ballots and are to be printed with unique sequential numbers
131 from one to the highest number representing the total number
132 of ballots printed. On paper ballots, the ballot is to be bordered
133 by a solid line at least one sixteenth of an inch wide and the
134 ballot is to be trimmed to within one-half inch of that border.

135 (8) On the back of every official ballot or ballot card the
136 words "Official Ballot" with the name of the county and the
137 date of the election are to be printed. Beneath the date of the
138 election there are to be two blank lines followed by the words
139 "Poll Clerks".

140 (9) The face of sample paper ballots and sample ballot
141 labels are to be like other official ballots or ballot labels
142 except that the word "sample" is to be prominently printed
143 across the front of the ballot in a manner that ensures the
144 names of candidates are not obscured and the word "sample"
145 may be printed in red ink. No printing may be placed on the
146 back of the sample.

CHAPTER 75

(H. B. 4247 - By Delegates Frazier, Marshall, Poore, Swartzmiller and Ferro)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2010.]

AN ACT to amend and reenact §3-4A-17 of the Code of West Virginia, 1931, as amended, relating to providing counties the discretion to accompany an electronic poll book with a printed poll book.

Be it enacted by the Legislature of West Virginia:

That §3-4A-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-17. Check of vote-recording devices and electronic poll books before use; corrections; reserve vote-recording devices.

(a) In counties utilizing an electronic voting system where votes are to be recorded by means of perforating or by touching a screen with a stylus or by means of touch before permitting the first voter to vote, the election commissioners shall examine the vote-recording devices to ascertain whether the ballot labels are arranged as specified on the facsimile diagram furnished to the precinct. If the ballot labels are

8 arranged incorrectly, the commissioners shall immediately
9 notify the clerk of the county commission of the foregoing
10 facts in writing, indicating the number of the device, and
11 obtain from the clerk a reserve vote-recording device and
12 thereafter proceed to conduct the election.

13 (b) Any reserve vote-recording device so used is to be
14 prepared for use by the clerk or his or her duly appointed
15 deputy and the reserve vote-recording device is to be
16 prepared, inspected and sealed and delivered to the polling
17 place wherein the seal is to be broken and the device opened
18 in the presence of the precinct election commissioners who
19 shall certify in writing signed by them to the clerk of the
20 county commission, that the reserve vote-recording device
21 was found to be sealed upon delivery to the polling place,
22 that the seal was broken and the device opened in their
23 presence at the polling place. The vote-recording device
24 found to have been with incorrect ballot labels is to be
25 returned immediately to the custody of the clerk who shall
26 then promptly cause the vote-recording device to be repaired,
27 prepared and resealed in order that it may be used as a
28 reserve vote-recording device if needed.

29 (c) In counties using electronic poll books, the election
30 commissioners shall examine the electronic poll books to
31 ascertain whether the poll books are in working order before
32 allowing any voters to enter the polling location. If the
33 electronic poll books are not in working order, the election
34 commissioners shall contact the county clerk who shall
35 immediately authorize a printed poll book to serve in place of
36 the electronic poll book for that election. A printed poll book
37 may accompany the electronic poll book to each precinct.

CHAPTER 76

(Com. Sub. for H. B. 4647 - By Delegates Manchin, Frazier, Moore, Miley, Brown, Caputo, Wooton, Ferro and Wells)

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

AN ACT to repeal §3-9-14 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-8-1, §3-8-1a, §3-8-2, §3-8-8 and §3-8-12 of said code, all relating to the regulation and control of elections; providing certain legislative findings; amending and deleting certain definitions; expanding reporting requirements for independent expenditures; providing for electronic filing of reports of independent expenditures; authorizing the Secretary of State to promulgate rules relating to reports of independent expenditures; retaining prohibition on corporate contribution; and repealing the ban on corporate independent expenditures.

Be it enacted by the Legislature of West Virginia:

That §3-9-14 of the Code of West Virginia, 1931, as amended, be repealed; that §3-8-1, §3-8-1a, §3-8-2, §3-8-8 and §3-8-12 of said code be amended and reenacted, all to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1. Provisions to regulate and control elections.
§3-8-1a. Definitions.
§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.
§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

§3-8-1. Provisions to regulate and control elections.

1 (a) The Legislature finds that:

2 (1) West Virginia's population is 1,808,344, ranking 37th
3 among the fifty states.

4 (2) State Senate districts have a population of
5 approximately one hundred six thousand three hundred
6 seventy-three, and the average Delegate district has a
7 population of approximately thirty-one thousand, one
8 hundred seventy-eight. The size of these districts is
9 substantially smaller than the United States Senatorial and
10 Congressional Districts.

11 (3) When the relatively small size of the State's
12 legislative and other voting districts is combined with the
13 economics and typical uses of various forms of electioneering
14 communication, history shows that non-broadcast media is
15 and will continue to be a widely used means of making
16 campaign related communications to target relevant
17 audiences. Consequently, non-broadcast communications are
18 prevalent during elections.

19 (4) Disclosure provisions are appropriate legislative
20 weapons against the reality or appearance of improper
21 influence stemming from the dependence of candidates on
22 large campaign contributions, and the ceilings imposed
23 accordingly serve the basic governmental interest in
24 safeguarding the integrity of the electoral process without
25 directly impinging upon the rights of individual citizens and
26 candidates to engage in political debate and discussion.

(5) Disclosure of expenditures serve a substantial governmental interest in informing the electorate and preventing the corruption of the political process.

(6) Disclosure by persons and entities that make expenditures for communications that expressly advocate the election or defeat of clearly identified candidates, or perform its functional equivalent, is a reasonable and minimally restrictive method of furthering First Amendment values by public exposure of the state election system.

(7) Failing to regulate non-broadcast media messages would permit those desiring to influence elections to avoid the principles and policies that are embodied in existing state law.

(8) The regulation of the various types of non-broadcast media in addition to broadcast media, is tailored to meet the circumstances found in the State of West Virginia.

(9) Non-broadcast media such as newspapers, magazines or other periodicals have proven to be effective means of election communication in West Virginia. Broadcast, satellite and non-broadcast media have all been used to influence election outcomes.

(10) Certain non-broadcast communications, such as newspaper inserts, can be more effective campaign methods than broadcast media because such communications can be targeted to registered voters or historical voters in the particular district. In contrast, broadcasted messages reach all of the general public, including person ineligible to vote in the district.

(11) Non-broadcast media communications in the final days of a campaign can be particularly damaging to the public's confidence in the election process because they reduce or make impossible an effective response.

59 (12) Identifying those funding non-broadcast media
60 campaigns in the final days of a campaign may at least permit
61 voters to evaluate the credibility of the message.

62 (13) In West Virginia, contributions up to the amounts
63 specified in this article allow contributors to express their
64 opinions, level of support and their affiliations.

65 (14) In West Virginia, campaign expenditures by entities
66 and persons who are not candidates have been increasing.
67 Public confidence is eroded when substantial amounts of
68 such money, the source of which is hidden or disguised, is
69 expended. This is particularly true during the final days of a
70 campaign.

71 (15) In West Virginia, contributions to political
72 organizations, defined in Section 527(e)(1) of the Internal
73 Revenue Code of 1986, substantially larger than the amounts
74 permitted to be received by a candidate's political committee
75 have been recorded and are considered by the legislature to
76 be large contributions.

77 (16) Independent expenditures intended to influence
78 candidates' campaigns in the state are increasingly utilizing
79 non-broadcast media to support or defeat candidates.

80 (17) Identification of persons or entities funding political
81 advertisements assists in enforcement of the contribution and
82 expenditure limitations established by this article and simply
83 informs voters of the actual identities of persons or entities
84 advocating the election or defeat of candidates.

85 (18) Identification of persons or entities funding political
86 advertisements allows voters to evaluate the credibility of the
87 message contained in the advertisement.

88 (19) Disclosure of the identity of persons or entities
89 funding political communications regarding candidates
90 bolsters the right of listeners to be fully informed.

91 (b) Political campaign contributions, receipts and
92 expenditures of money, advertising, influence and control of
93 employees, and other economic, political and social control
94 factors incident to primary, special and general elections shall
95 be regulated and controlled by the provisions of this article
96 and other applicable provisions of this chapter.

§3-8-1a. Definitions.

1 As used in this article, the following terms have the
2 following definitions:

3 (1) "Ballot issue" means a constitutional amendment,
4 special levy, bond issue, local option referendum, municipal
5 charter or revision, an increase or decrease of corporate limits
6 or any other question that is placed before the voters for a
7 binding decision.

8 (2) "Broadcast, cable or satellite communication" means
9 a communication that is publicly distributed by a television
10 station, radio station, cable television system or satellite
11 system.

12 (3) "Candidate" means an individual who:

13 (A) Has filed a certificate of announcement under section
14 seven, article five of this chapter or a municipal charter;

15 (B) Has filed a declaration of candidacy under section
16 twenty-three, article five of this chapter;

17 (C) Has been named to fill a vacancy on a ballot; or

(D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election for any state, district, county or municipal office or party office to be filled at any primary, general or special election.

(4) "Candidate's committee" means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

(5) "Clearly identified" means that the name, nickname, photograph, drawing or other depiction of the candidate appears or the identity of the candidate is otherwise apparent through an unambiguous reference, such as "the Governor," "your Senator" or "the incumbent" or through an unambiguous reference to his or her status as a candidate, such as "the Democratic candidate for Governor" or "the Republican candidate for Supreme Court of Appeals."

(6) "Contribution" means a gift, subscription, loan, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election or defeat of a candidate. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation: *Provided*, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.

53 (7) "Corporate political action committee" means a
54 political action committee that is a separate segregated fund
55 of a corporation that may only accept contributions from its
56 restricted group as outlined by the rules of the State Election
57 Commission.

58 (8) "Direct costs of purchasing, producing or
59 disseminating electioneering communications" means:

60 (A) Costs charged by a vendor, including, but not limited
61 to, studio rental time, compensation of staff and employees,
62 costs of video or audio recording media and talent, material
63 and printing costs and postage; or

64 (B) The cost of air time on broadcast, cable or satellite
65 radio and television stations, the costs of disseminating
66 printed materials, studio time, use of facilities and the
67 charges for a broker to purchase air time.

68 (9) "Disclosure date" means either of the following:

69 (A) The first date during any calendar year on which any
70 electioneering communication is disseminated after the
71 person paying for the communication has spent a total of
72 $5,000 or more for the direct costs of purchasing, producing
73 or disseminating electioneering communications; or

74 (B) Any other date during that calendar year after any
75 previous disclosure date on which the person has made
76 additional expenditures totaling $5,000 or more for the direct
77 costs of purchasing, producing or disseminating electioneering
78 communications.

79 (10) "Election" means any primary, general or special
80 election conducted under the provisions of this code or under
81 the charter of any municipality at which the voters nominate
82 or elect candidates for public office. For purposes of this

article, each primary, general, special or local election constitutes a separate election. This definition is not intended to modify or abrogate the definition of the term "nomination" as used in this article.

(11)(A) "Electioneering communication" means any paid communication made by broadcast, cable or satellite signal, or published in any newspaper, magazine or other periodical that:

(i) Refers to a clearly identified candidate for Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals or the Legislature;

(ii) Is publicly disseminated within:

(I) Thirty days before a primary election at which the nomination for office sought by the candidate is to be determined; or

(II) Sixty days before a general or special election at which the office sought by the candidate is to be filled; and

(iii) Is targeted to the relevant electorate: *Provided*, That for purposes of the general election of 2008 the amendments to this article are effective October 1, 2008.

(B) "Electioneering communication" does not include:

(i) A news story, commentary or editorial disseminated through the facilities of any broadcast, cable or satellite television or radio station, newspaper, magazine or other periodical publication not owned or controlled by a political party, political committee or candidate: *Provided*, That a news story disseminated through a medium owned or controlled by a political party, political committee or candidate is nevertheless exempt if the news is:

(I) A bona fide news account communicated in a publication of general circulation or through a licensed broadcasting facility; and

(II) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing or listening area;

(ii) Activity by a candidate committee, party executive committee or caucus committee, or a political action committee that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to section five of this article or the rules of the State Election Commission or the Secretary of State promulgated pursuant to such provision: *Provided,* That independent expenditures by a party executive committee or caucus committee or a political action committee required to be reported pursuant to subsection (b), section two of this article are not exempt from the reporting requirements of this section;

(iii) A candidate debate or forum conducted pursuant to rules adopted by the State Election Commission or the Secretary of State or a communication promoting that debate or forum made by or on behalf of its sponsor;

(iv) A communication paid for by any organization operating under Section 501(c)(3) of the Internal Revenue Code of 1986;

(v) A communication made while the Legislature is in session which, incidental to promoting or opposing a specific piece of legislation pending before the Legislature, urges the audience to communicate with a member or members of the Legislature concerning that piece of legislation;

(vi) A statement or depiction by a membership organization, in existence prior to the date on which the

145 individual named or depicted became a candidate, made in a
146 newsletter or other communication distributed only to bona
147 fide members of that organization;

148 (vii) A communication made solely for the purpose of
149 attracting public attention to a product or service offered for
150 sale by a candidate or by a business owned or operated by a
151 candidate which does not mention an election, the office
152 sought by the candidate or his or her status as a candidate; or

153 (viii) A communication, such as a voter's guide, which
154 refers to all of the candidates for one or more offices, which
155 contains no appearance of endorsement for or opposition to
156 the nomination or election of any candidate and which is
157 intended as nonpartisan public education focused on issues
158 and voting history.

159 (12) "Expressly advocating" means any communication
160 that:

161 (A) Uses phrases such as "vote for the Governor," "re-
162 elect your Senator," "support the Democratic nominee for
163 Supreme Court," "cast your ballot for the Republican
164 challenger for House of Delegates," "Smith for House," "Bob
165 Smith in '04," "vote Pro-Life" or "vote Pro-Choice"
166 accompanied by a listing of clearly identified candidates
167 described as Pro-Life or Pro-Choice, "vote against Old
168 Hickory," "defeat" accompanied by a picture of one or more
169 candidates, "reject the incumbent";

170 (B) Communications of campaign slogans or individual
171 words, that can have no other reasonable meaning than to urge
172 the election or defeat of one or more clearly identified
173 candidates, such as posters, bumper stickers, advertisements,
174 etc., which say "Smith's the One," "Jones '06," "Baker", etc; or

175 (C) Is susceptible of no reasonable interpretation other
176 than as an appeal to vote for or against a specific candidate.

(13) "Financial agent" means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

(14) "Fund-raising event" means an event such as a dinner, reception, testimonial, cocktail party, auction or similar affair through which contributions are solicited or received by such means as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services.

(15) "Independent expenditure" means an expenditure by a person:

(A) Expressly advocating the election or defeat of a clearly identified candidate; and

(B) That is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate's authorized political committee or a political party committee or its agents.

Supporting or opposing the election of a clearly identified candidate includes supporting or opposing the candidates of a political party. An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.

(16) "Membership organization" means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors and the ability to hold office, to its members and which uses a majority of its membership dues for purposes other than political purposes. "Membership organization" does not include organizations that grant membership upon receiving a contribution.

(17) "Name" means the full first name, middle name or initial, if any, and full legal last name of an individual and the full name of any association, corporation, committee or other organization of individuals, making the identity of any person who makes a contribution apparent by unambiguous reference.

(18) "Person" means an individual, corporation, partnership, committee, association and any other organization or group of individuals.

(19) "Political action committee" means a committee organized by one or more persons for the purpose of supporting or opposing the nomination or election of one or more candidates. The following are types of political action committees:

(A) A corporate political action committee, as that term is defined by subdivision (8) of this section;

(B) A membership organization, as that term is defined by subdivision(18) of this section;

(C) An unaffiliated political action committee, as that term is defined by subdivision (29) of this section.

(20) "Political committee" means any candidate committee, political action committee or political party committee.

(21) "Political party" means a political party as that term is defined by section eight, article one of this chapter or any committee established, financed, maintained or controlled by the party, including any subsidiary, branch or local unit thereof and including national or regional affiliates of the party.

237 (22) "Political party committee" means a committee
238 established by a political party or political party caucus for
239 the purposes of engaging in the influencing of the election,
240 nomination or defeat of a candidate in any election.

241 (23) "Political purposes" means supporting or opposing
242 the nomination, election or defeat of one or more candidates
243 or the passage or defeat of a ballot issue, supporting the
244 retirement of the debt of a candidate or political committee or
245 the administration or activities of an established political
246 party or an organization which has declared itself a political
247 party and determining the advisability of becoming a
248 candidate under the precandidacy financing provisions of this
249 chapter.

250 (24) "Targeted to the relevant electorate" means a
251 communication which refers to a clearly identified candidate
252 for statewide office or the Legislature and which can be
253 received by one hundred forty thousand or more individuals
254 in the state in the case of a candidacy for statewide office,
255 eight thousand two hundred twenty or more individuals in the
256 district in the case of a candidacy for the State Senate and
257 two thousand four hundred ten or more individuals in the
258 district in the case of a candidacy for the House of Delegates.

259 (25) "Two-year election cycle" means the twenty-four
260 month period that begins the day after a general election and
261 ends on the day of the subsequent general election.

262 (26) "Unaffiliated political action committee" means a
263 political action committee that is not affiliated with a
264 corporation or a membership organization.

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

(a) Except for: (1) Candidates for party committeeman and committeewoman; and (2) federal committees required to file under the provisions of 2 U.S.C.§434, all candidates for nomination or election and all persons supporting, aiding or opposing the nomination, election or defeat of any candidate shall keep for a period of six months records of receipts and expenditures which are made for political purposes. All of the receipts and expenditures are subject to regulation by the provisions of this article. Verified financial statements of the records and expenditures shall be made and filed as public records by all candidates and by their financial agents, representatives or any person acting for and on behalf of any candidate and by the treasurers of all political party committees.

(b) (1) In addition to any other reporting required by the provisions of this chapter, any person who makes independent expenditures in an aggregate amount or value in excess of $1,000 during a calendar year shall file a disclosure statement, on a form prescribed by the Secretary of State, that contains all of the following information:

(A) The name of (i) the person making the expenditure; (ii) the name of any person sharing or exercising direction or control over the activities of the person making the expenditure; and (iii) the name of the custodian of the books and accounts of the person making the expenditure;

(B) If the person making the expenditure is not an individual, the principal place of business of the partnership, corporation, committee, association, organization or group which made the expenditure;

(C) The amount of each expenditure of more than $1,000 made during the period covered by the statement and the name of the person to whom the expenditure was made;

33 (D) The elections to which the independent expenditure
34 pertain, the names, if known, of the candidates referred to or
35 to be referred to therein, whether the expenditure is intended
36 to support or oppose the identified candidates and the amount
37 of the total expenditure reported pursuant to paragraph (C) of
38 this subdivision spent to support or oppose each of the
39 identified candidates;

40 (E) The name and address of any person who contributed
41 a total of more than $250 between the first day of the
42 preceding calendar year, and the disclosure date, and whose
43 contributions were made for the purpose of furthering the
44 expenditure.

45 (F) With regard to the contributors required to be listed
46 pursuant to paragraph (E) of this subdivision, the statement
47 shall also include:

48 (i) The month, day and year that the contributions of any
49 single contributor exceeded $250;

50 (ii) If the contributor is a political action committee, the
51 name and address the political action committee registered
52 with the Secretary of State, county clerk or municipal clerk;

53 (iii) If the contributor is an individual, the name and
54 address of the individual, his or her occupation, the name and
55 address of the individual's current employer, if any, or, if the
56 individual is self-employed, the name and address of the
57 individual's business, if any;

58 (iv) A description of the contribution, if other than
59 money; and

60 (v) The value in dollars and cents of the contribution.

61 (G)(1) A certification that such independent expenditure
62 was not made in cooperation, consultation, or concert, with,

or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate.

(2) Any person who makes a contribution for the purpose of funding an independent expenditure under this subsection shall, at the time the contribution is made, provide his or her name, address, occupation, his or her current employer, if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of the contribution.

(3) The Secretary of State shall expeditiously prepare indices setting forth, on a candidate-by-candidate basis, all independent expenditures separately, made by, or on behalf of, or for, or against each candidate, as reported under this subsection, and for periodically publishing such indices on a timely pre-election basis.

(c) (1) A person, including a political committee, who makes or contracts to make independent expenditures aggregating $1,000 or more for any statewide, legislative or multi-county judicial candidate or $500 or more for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, after the fifteenth day, but more than twelve hours, before the date of an election, shall file a report on a form prescribed by the Secretary of State, describing the expenditures within twenty-four hours: *Provided*, That a person making expenditures in the amount of $1,000 or more for any statewide or legislative candidate on or after the fifteenth day but more than twelve hours before the day of any election shall report such expenditures in accordance with section two-b of this article and shall not file an additional report as provided herein.

(2) Any person who files a report under subdivision (1) of this subsection, shall file an additional report within

twenty-four hours after each time the person makes or contracts to make independent expenditures aggregating an additional $500 with respect to the same election, for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, as that to which the initial report relates.

(d) (1) A person, including a political committee, who makes or contracts to make independent expenditures aggregating $10,000 or more at any time up to and including the fifteenth day before the date of an election shall file a report on a form prescribed by the Secretary of State, describing the expenditures within forty-eight hours.

(2) A person who files a report under subdivision (1) of this subsection, the person shall file an additional report within forty-eight hours after each time the person makes or contracts to make independent expenditures aggregating an additional $10,000 with respect to the same election as that to which the initial report relates.

(e) Any communication paid for by an independent expenditure must include a clear and conspicuous public notice that:

(1) Clearly states that the communication is not authorized by the candidate or the candidate's committee; and

(2) Clearly identifies the person making the expenditure: *Provided*, That if the communication appears on or is disseminated by broadcast, cable or satellite transmission, the statement required by this subsection must be both spoken clearly and appear in clearly readable writing at the end of the communication.

(f) Any person who has spent a total of $5,000 or more for the direct costs of purchasing, producing or disseminating electioneering communications during any calendar year shall maintain all financial records and receipts related to such expenditure for a period of six months following the filing of a disclosure pursuant to subsection (a) of this section and, upon request, shall make such records and receipts available to the Secretary of State or county clerk for the purpose of an audit as provided in section seven of this article.

(g) Any person who willfully fails to comply with this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500, or confined in jail for not more than one year, or both fined and confined.

(h) (1) Any person who is required to file a statement under this section may file the statement by facsimile device or electronic mail, in accordance with such rules as the Secretary of State may promulgate.

(2) The Secretary of State shall make any document filed electronically pursuant to this subsection accessible to the public on the internet not later than twenty-four hours after the document is received by the secretary.

(3) In promulgating a rule under this subsection, the secretary shall provide methods, other than requiring a signature on the document being filed, for verifying the documents covered by the rule. Any document verified under any of the methods shall be treated for all purposes, including penalties for perjury, in the same manner as a document verified by signature.

(i) This section does not apply to candidates for federal office.

(j) The Secretary of State may promulgate emergency and legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the administration of this section.

§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

(a) An officer, agent or person acting on behalf of any corporation, whether incorporated under the laws of this or any other state or of a foreign country, may not pay, give, lend or authorize to be paid, any money or other thing of value belonging to the corporation to any candidate or candidate's campaign for nomination or election to any statewide office or any other elective office in the state or any of its subdivisions.

(b) A person may not solicit or receive any payment, contribution or other thing from any corporation or from any officer, agent or other person acting on behalf of the corporation to any candidate or candidate's campaign for nomination or election to any statewide office or any other elective office in the state or any of its subdivisions.

(c)(1) The provisions of this section do not prohibit a corporation from soliciting, through any officer, agent or person acting on behalf of the corporation, contributions to a separate segregated fund to be used for political purposes. Any separate segregated fund is considered a political action committee for the purpose of this article and is subject to all reporting requirements applicable to political action committees;

(2) It is unlawful for:

(A) A corporation or separate segregated fund to make a primary or other election contribution or expenditure by

using money or anything of value secured: (i) By physical force, job discrimination or financial reprisal; (ii) by the threat of force, job discrimination or financial reprisal; or (iii) as a condition of employment;

(B) Any person soliciting a stockholder or executive or administrative personnel and members of their families for a contribution to a corporation or separate segregated fund to fail to inform the person solicited of the political purposes of the separate segregated fund at the time of the solicitation;

(C) Any person soliciting any other person for a contribution to a corporation or separate segregated fund to fail to inform the person solicited at the time of the solicitation of his or her right to refuse to contribute without any reprisal;

(D) A separate segregated fund established by a corporation: (i) To solicit contributions to the fund from any person other than the corporation's stockholders and their families and its executive or administrative personnel and their families; or (ii) to contribute any corporate funds;

(E) A separate segregated fund established by a corporation to receive contributions to the fund from any person other than the corporation's stockholders and their immediate families and its executive or administrative personnel and their immediate families;

(F) A corporation to engage in job discrimination or to discriminate in job promotion or transfer because of an employee's failure to make a contribution to the corporation or a separate segregated fund;

(G) A separate segregated fund to make any contribution, directly or indirectly, in excess of $1,000 in connection with or on behalf of any campaign for nomination or election to

any elective office in the state or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing, supporting or aiding the nomination or election of any candidate for any such office;

(H) A corporation to pay, give or lend or to authorize payment, giving or lending of any moneys or other things of value belonging to the corporation to a separate segregated fund for the purpose of making a contribution to a candidate or a candidate's committee. This provision does not prohibit a separate segregated fund from using the property, real or personal, facilities and equipment of a corporation solely to establish, administer and solicit contributions to the fund, subject to the rules of the State Election Commission as provided in subsection (d) of this section: *Provided*, That any such corporation shall also permit any group of its employees represented by a bona fide political action committee to use the real property of the corporation solely to establish, administer and solicit contributions to the fund of the political action committee, subject to the rules of the State Election Commission promulgated in accordance with said subsection.

(3) For the purposes of this section, the term "executive or administrative personnel" means individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policy-making, managerial, professional or supervisory responsibilities.

(d) Any person or corporation violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000. A corporation may not reimburse any person the amount of any fine imposed pursuant to this section.

(e) To ensure uniform administration and application of the provisions of this section and of those of the Federal

Election Campaign Act Amendments of 1976 relating to corporate contributions, the State Election Commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this section consistent, insofar as practicable, with the rules and regulations promulgated by the Federal Election Commission to carry out similar or identical provisions of 2 U.S.C. §441b.

(f) In addition to the powers and duties set forth in article one-a of this chapter, the State Election Commission has the following powers and duties:

(1) To investigate, upon complaint or on its own initiative, any alleged violations or irregularities of this article.

(2) To administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoenas duces tecum to compel the production of books, papers, records and all other evidence necessary to any investigation.

(3) To involve the aid of any circuit court in the execution of its subpoena power.

(4) To report any alleged violations of this article to the appropriate prosecuting attorney having jurisdiction, which prosecuting attorney shall present to the grand jury such alleged violations, together with all evidence relating thereto, no later than the next term of court after receiving the report.

(g) The Attorney General shall, when requested, provide legal and investigative assistance to the State Election Commission.

(h) Any investigation, either upon complaint or initiative, shall be conducted in an executive session of the State

121 Election Commission and shall remain undisclosed except
122 upon an indictment by a grand jury.

123 (i) Any person who discloses the fact of any complaint,
124 investigation or report or any part thereof, or any proceedings
125 thereon, is guilty of a misdemeanor and, upon conviction
126 thereof, shall be fined not less than $1,000, nor more than
127 $5,000, and shall be confined in jail not less than six months
128 nor more than one year.

129 (j) The amendments to this section enacted during the
130 second extraordinary session of 2008 are intended to conform
131 to the existing proscription to constitutionally permissible
132 limits and not to create a new offense or offenses.

133 (k) The effective date of the amendments to this section
134 enacted during the second extraordinary legislative session of
135 2008 is October 1, 2008.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

1 (a) A person may not publish, issue or circulate, or cause
2 to be published, issued or circulated, any anonymous letter,
3 circular, placard, radio or television advertisement or other
4 publication supporting or aiding the election or defeat of a
5 clearly identified candidate.

6 (b) An owner, publisher, editor or employee of a
7 newspaper or other periodical may not insert, either in its
8 advertising or reading columns, any matter, paid for or to be
9 paid for, which tends to influence the voting at any election,
10 unless directly designating it as a paid advertisement and

11 stating the name of the person authorizing its publication and
12 the candidate in whose behalf it is published.

13 (c) A person may not, in any room or building occupied
14 for the discharge of official duties by any officer or employee
15 of the state or a political subdivision of the state, solicit orally
16 or by written communication delivered within the room or
17 building, or in any other manner, any contribution of money
18 or other thing of value for any party or political purpose,
19 from any postmaster or any other officer or employee of the
20 federal government, or officer or employee of the State, or a
21 political subdivision of the State. An officer, agent, clerk or
22 employee of the federal government, or of this state, or any
23 political subdivision of the state, who may have charge or
24 control of any building, office or room, occupied for any
25 official purpose, may not knowingly permit any person to
26 enter any building, office or room, occupied for any official
27 purpose for the purpose of soliciting or receiving any
28 political assessments from, or delivering or giving written
29 solicitations for, or any notice of, any political assessments
30 to, any officer or employee of the state, or a political
31 subdivision of the state.

32 (d) Except as provided in section eight of this article, a
33 person entering into any contract with the state or its
34 subdivisions, or any department or agency of the state, either
35 for rendition of personal services or furnishing any material,
36 supplies or equipment or selling any land or building to the
37 state, or its subdivisions, or any department or agency of the
38 state, if payment for the performance of the contract or
39 payment for the material, supplies, equipment, land or
40 building is to be made, in whole or in part, from public funds
41 may not, during the period of negotiation for or performance
42 under the contract or furnishing of materials, supplies,
43 equipment, land or buildings, directly or indirectly, make any
44 contribution to any political party, committee or candidate for
45 public office or to any person for political purposes or use;

nor may any person or firm solicit any contributions for any purpose during any period.

(e) A person may not, directly or indirectly, promise any employment, position, work, compensation or other benefit provided for, or made possible, in whole or in part, by act of the Legislature, to any person as consideration, favor or reward for any political activity for the support of or opposition to any candidate, or any political party in any election.

(f) Except as provided in section eight of this article, a person may not, directly or indirectly, make any contribution in excess of the value of $1,000 in connection with any campaign for nomination or election to or on behalf of any statewide office, in connection with any other campaign for nomination or election to or on behalf of any other elective office in the state or any of its subdivisions, or in connection with or on behalf of any person engaged in furthering, advancing, supporting or aiding the nomination or election of any candidate for any of the offices.

(g) A political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) may not solicit or accept contributions until it has notified the Secretary of State of its existence and of the purposes for which it was formed. During the two-year election cycle, a political organization (as defined in Section 527 (e) (1) of the Internal Revenue Code of 1986) may not accept contributions totaling more than $1,000 from any one person prior to the primary election and contributions totaling more than $1,000 from any one person after the primary and before the general election.

(h) It is unlawful for any person to create, establish or organize more than one political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) with

the intent to avoid or evade the contribution limitations contained in subsection (g) of this section.

(i) Notwithstanding the provisions of subsection (f) of this section to the contrary, a person may not, directly or indirectly, make contributions to a state party executive committee or state party legislative caucus committee which, in the aggregate, exceed the value of $1,000 in any calendar year.

(j) The limitations on contributions contained in this section do not apply to transfers between and among a state party executive committee or a state party's legislative caucus political committee from national committees of the same political party: *Provided*, That transfers permitted by this subsection may not exceed $50,000 in the aggregate in any calendar year to any state party executive committee or state party legislative caucus political committee: *Provided, however*, That the moneys transferred may only be used for voter registration and get-out-the-vote activities of the state committees.

(k) A person may not solicit any contribution, other than contributions to a campaign for or against a county or local government ballot issue, from any nonelective salaried employee of the state government or of any of its subdivisions: *Provided*, That in no event may any person acting in a supervisory role solicit a person who is a subordinate employee for any contribution. A person may not coerce or intimidate any nonelective salaried employee into making a contribution. a person may not coerce or intimidate any nonsalaried employee of the state government or any of its subdivisions into engaging in any form of political activity. The provisions of this subsection may not be construed to prevent any employee from making a contribution or from engaging in political activity voluntarily without coercion, intimidation or solicitation.

113 (l) A person may not solicit a contribution from any other
114 person without informing the other person at the time of the
115 solicitation of the amount of any commission, remuneration
116 or other compensation that the solicitor or any other person
117 will receive or expect to receive as a direct result of the
118 contribution being successfully collected. Nothing in this
119 subsection may be construed to apply to solicitations of
120 contributions made by any person serving as an unpaid
121 volunteer.

122 (m) A person may not place any letter, circular, flyer,
123 advertisement, election paraphernalia, solicitation material or
124 other printed or published item tending to influence voting at
125 any election in a roadside receptacle unless it is: (1)
126 Approved for placement into a roadside receptacle by the
127 business or entity owning the receptacle; and (2) contains a
128 written acknowledgment of the approval. This subdivision
129 does not apply to any printed material contained in a
130 newspaper or periodical published or distributed by the
131 owner of the receptacle. The term "roadside receptacle"
132 means any container placed by a newspaper or periodical
133 business or entity to facilitate home or personal delivery of a
134 designated newspaper or periodical to its customers.

135 (n) Any person violating any provision of this section is
136 guilty of a misdemeanor and, upon conviction thereof, shall
137 be fined not more than $1,000, or confined in jail for not
138 more than one year, or, both fined and confined.

139 (o) The provisions of subsection (k) of this section,
140 permitting contributions to a campaign for or against a
141 county or local government ballot issue shall become
142 operable on and after January 1, 2005.

143 (p) The limitations on contributions established by
144 subsection (g) of this section do not apply to contributions
145 made for the purpose of supporting or opposing a ballot
146 issue, including a constitutional amendment.

CHAPTER 77

(H. B. 4036 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-10-3a, relating to the establishment of the Judicial Vacancy Advisory Commission; providing for commission membership and terms of appointment; requiring written policies and procedures of the commission; establishing a quorum requirement; requiring that certain proceedings of the commission be open to the public; requiring the disclosure of certain documents or materials; exempting certain meetings from the Open Governmental Proceedings Act; and exempting certain documents and materials from the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §3-10-3a, to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-3a. Judicial Vacancy Advisory Commission.

1 (a) The Judicial Vacancy Advisory Commission is hereby
2 established to assist the Governor in filling judicial

vacancies. The commission shall meet and submit a list of no more than five nor less than two best qualified persons to the Governor within ninety days of the occurrence of a vacancy in the office of justice of the Supreme Court of Appeals, judge of an intermediate appellate court, judge of a circuit court, or judge of a family court.

(b) The commission shall consist of eight appointed members. Four public members shall be appointed by the Governor for six-year terms, except for the initial appointments which shall be staggered in accordance with subsection (c) of this section. Four attorney members shall be appointed by the Governor for six-year terms, except as provided in subsection (c) of this section, from a list of nominees provided by the Board of Governors of the West Virginia State Bar. The Board of Governors of the West Virginia State Bar shall nominate no more than twenty nor less than ten best qualified attorneys for appointment to the commission whenever there is a vacancy in the membership of the commission reserved for attorney members. The commission shall choose one of its appointed members to serve as chair for a three-year term. No more than four appointed members of the commission shall belong to the same political party. No more than three appointed members of the commission shall be residents of the same congressional district. All members of the commission shall be citizens of this state. Public members of the commission may not be licensed to practice law in West Virginia or any other jurisdiction.

(c) Of the initial appointments made to the commission, two public members and two attorney members shall be appointed for a term ending two years after the effective date of this section, one public member and one attorney member shall be appointed for a term ending four years after the effective date of this section, and one public member and one attorney member shall be appointed for a term ending six years after the effective date of this section.

39 (d) The Governor, or his or her designee, the President of
40 the West Virginia State Bar, and the Dean of the West
41 Virginia University College of Law shall serve as *ex officio*
42 members of the commission.

43 (e) Members of the commission shall serve without
44 compensation, except that commission members are entitled
45 to reimbursement of travel and other necessary expenses
46 actually incurred while engaged in official commission
47 activities in accordance with the guidelines of the Travel
48 Management Office of the Department of Administration, or
49 its successor entity. The Governor's Office shall cooperate
50 with the commission to ensure that all resources necessary to
51 carrying out the official duties of the commission are
52 provided, including staff assistance, equipment and materials.

53 (f) The commission shall adopt written policies that
54 formalize and standardize all operating procedures and
55 ethical practices of its members including, but not limited to,
56 procedures for training commission members, publishing
57 notice of judicial vacancies, recruiting qualified individuals
58 for consideration by the commission, receiving applications
59 from qualified individuals, notifying the public of judicial
60 vacancies, notifying state or local groups and organizations
61 of judicial vacancies, and soliciting public comment on
62 judicial vacancies. The written policies of the commission
63 are not subject to the provisions of chapter twenty-nine-a of
64 this code, but shall be filed with the Secretary of State.

65 (g) A majority of the commission plus one shall
66 constitute a quorum to do business.

67 (h) All organizational meetings of the commission shall
68 be open to the public and subject to the requirements of
69 article nine-a, chapter six of this code. An "organizational
70 meeting" means an initial meeting to discuss the
71 commission's procedures and requirements for a judicial
72 vacancy. The commission shall hold at least one
73 organizational meeting upon the occurrence of a judicial

vacancy. All other meetings of the commission are exempt from article nine-a, chapter six of this code.

(i) The commission shall make available to the public copies of any applications and any letters of recommendation written on behalf of any applicants. All other documents or materials created or received by the commission shall be confidential and exempt from the provisions of chapter twenty-nine-b of this code, except for the list of best qualified persons or accompanying memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this section, which shall be available for public inspection, and the written policies required to be filed with the Secretary of State in accordance with subsection (f) of this section.

(j) The commission shall submit its list of best qualified persons to the Governor in alphabetical order. A memorandum may accompany the list of best qualified persons and state facts concerning each of the persons listed. The commission shall make copies of any list of best qualified persons and accompanying memoranda it submits to the Governor available for public inspection.

CHAPTER 78

(Com. Sub. for S. B. 557 - By Senators Kessler, Oliverio, D. Facemire and Minard

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §3-10-5 of the Code of West Virginia, 1931, as amended, clarifying the procedures for the filling of vacancies in the State Legislature.

Be it enacted by the Legislature of West Virginia:

That §3-10-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-5. Vacancies in State Legislature.

1 (a) Any vacancy in the office of State Senator or member
2 of the House of Delegates shall be filled by appointment by
3 the Governor, from a list of three legally qualified persons
4 submitted by the party executive committee of the party with
5 which the person holding the office immediately preceding
6 the vacancy was affiliated. Such list of qualified persons to
7 fill the vacancy shall be submitted to the Governor within
8 fifteen days after the vacancy occurs and the Governor shall
9 duly make his or her appointment to fill the vacancy from the
10 list of legally qualified person within five days after the list
11 is received. If the list is not submitted to the Governor within
12 the fifteen day period, the Governor shall appoint within five
13 days thereafter a legally qualified person of the same political
14 party as the person vacating the office.

15 (b) In the case of a member of the House of Delegates,
16 the list shall be submitted by the party executive committee
17 of the delegate district in which the vacating member resided
18 at the time of his or her election or appointment. The
19 appointment to fill a vacancy in the House of Delegates is for
20 the unexpired term.

21 (c) In the case of a State Senator, the list shall be submitted
22 by the party executive committee of the state senatorial district
23 in which the vacating senator resided at the time of his or her
24 election or appointment. If the unexpired term in the office of
25 the State Senator will be for less than two years and two
26 months, the appointment is for the unexpired term. If the

unexpired term will be for a period equal to or longer than two years and two months, the appointment is until the next general election and until the election and qualification of a successor to the person appointed, at which general election the vacancy shall be filled by election for the unexpired term. Notice of an election to fill a vacancy in the office of State Senator shall be given by the Governor by proclamation and shall be published before the election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be each county in the senatorial district. Nominations for candidates to fill a vacancy shall be made in the manner prescribed for nominating a candidate to fill a vacancy in the office of Governor to be voted for at a general election. The state senatorial district executive committee of the political party shall discharge the duties incident to State Senator nominations devolving upon the party state executive committee in nominating a candidate for a state office.

CHAPTER 79

(Com. Sub. for H. B. 4577 - By Delegates Manypenny, Martin, Butcher, D. Poling, Canterbury, Stephens and Morgan)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §21-3C-1, §21-3C-2a, §21-3C-10a and §21-3C-11 of the Code of West Virginia, 1931, as amended, all relating to elevators; exempting platform lifts from the definition of elevator; prohibiting certain elevators from being installed in certain settings; requiring inspections on certain

elevators; creating different classifications of licensure; and providing rule-making authority to the Division of Labor.

Be it enacted by the Legislature of West Virginia:

That §21-3C-1, §21-3C-2a, §21-3C-10a and §21-3C-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-1. Definitions.
§21-3C-2a. Installation prohibited; exemptions; two-way communication required; key required.
§21-3C-10a. License requirements for elevator mechanics; contractors license requirements; supervision of elevator apprentices requirements.
§21-3C-11. Disposition of fees; legislative rules.

§21-3C-1. Definitions.

1 (1) "Accessibility equipment" means lifting devices
2 designated to remove access barriers in public buildings and
3 private residences for persons with physical challenges,
4 including residential and limited use/limited application
5 elevators, vertical platforms, inclined platform lifts and
6 stairway chairlifts.

7 (2) "Certificate of acceptance" means a certificate issued
8 by the Division of Labor certifying that a newly installed
9 elevator has been inspected and was found to be installed in
10 compliance with the safety standards set forth in the
11 American Society of Mechanical Engineers Safety Code for
12 Elevators and Escalators (ASME) A17.1-3, "Safety Code for
13 Elevators" and ASME A18.1, "Safety Code for Platform
14 Lifts and Stairway Chairlifts."

15 (3) "Certificate of competency" means a certificate issued
16 by the Division of Labor certifying that an individual is
17 qualified to inspect elevators.

(4) "Certificate of operation" means a certificate issued by the Division of Labor certifying that an elevator has been inspected and is safe for operation.

(5) "Commissioner" means the Commissioner of the Division of Labor.

(6) "Division" means the Division of Labor.

(7) "Division inspector" means an employee or contractor of the division who has been examined and issued a certificate of competency and who only inspects elevators in state owned buildings.

(8) "Elevator" means all the machinery, construction, apparatus and equipment used in raising and lowering a car, cage or platform vertically between permanent rails or guides and includes all elevators, power dumbwaiters, escalators, gravity elevators and other lifting or lowering apparatus permanently installed between rails or guides, but does not include hand operated dumbwaiters, platform lifts for loading docks, manlifts of the platform type with a platform area not exceeding nine hundred square inches, construction hoists or other similar temporary lifting or lowering apparatus.

(9) "Elevator apprentice" means a person who meets the requirements set forth in legislative rule promulgated pursuant to this article.

(10) "Elevator mechanic" means a person who possesses an elevator mechanic's license in accordance with the provisions of this article and who is engaged in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining elevators or related conveyances covered by this article.

(11) "Freight elevator" means an elevator used for carrying freight and on which only the operator, by the permission of the employer, is allowed to ride.

(12) "Inspector" means both a division inspector and a private inspector.

(13) "License" means a license issued to an elevator mechanic pursuant to this article.

(14) "Private residence elevator" means a passenger elevator of which use is limited by size, capacity, rise and speed, and access is limited by its location, by the requirement of a key for its operation or by other restriction.

(15) "Passenger elevator" means an elevator that is designed to carry persons to its contract capacity.

(16) "Private inspector" means a person who has been examined and issued a certificate of competency to inspect elevators within this state.

§21-3C-2a. Installation prohibited; exemptions; two-way communication required; key required.

(a) On and after July 1, 2007, no private residence elevator may be installed in a nonresidential setting.

(b) A private residence elevator installed in a nonresidential setting which was in use on July 1, 2007, may continue in use so long as the elevator:

(1) Meets the specifications as set forth in the American Society of Mechanical Engineers (ASME) Safety Code for Elevators and Escalators A17.1 5.3 "Safety Code for Elevators";

10 (2) Has a method of two-way communication between
11 the car and each floor served by the elevator;

12 (3) Is operated automatically; and

13 (4) Is inspected annually by an inspector and is issued a
14 certification of operation by the division.

15 (c) New residential elevators shall undergo an acceptance
16 test performed by an inspector, and the inspector shall file a
17 report of the test with the division.

18 (d) An elevator in a residential property shall be
19 inspected by an inspector when the residential property is
20 transferred, and the inspector shall file a report of the
21 inspection with the division.

§21-3C-10a. License requirements for elevator mechanics; contractors license requirements; supervision of elevator apprentices requirements.

1 (a) A person may not engage or offer to engage in the
2 business of erecting, constructing, installing, altering,
3 servicing, repairing or maintaining elevators or related
4 conveyances covered by this article in this state, unless he or
5 she has a license issued by the Commissioner of Labor in
6 accordance with this article.

7 (b) A person licensed under this article must:

8 (1) Have in his or her possession a copy of the license
9 issued pursuant to this article on any job on which he or she
10 is performing elevator mechanic work; and

11 (2) Be, or be employed by, a contractor licensed pursuant
12 to the provisions of article eleven, chapter twenty-one of this
13 code unless the work is performed by a historic resort hotel's

regular employees, for which the employees are paid regular wages and not a contract price, on property owned or leased by the historic resort hotel which is not intended for speculative sale or lease;

(c) To obtain a license a person must:

(1) Complete a four-year apprenticeship program, registered by the United States Department of Labor, qualifying for a commercial license;

(2) Complete a two-year apprenticeship program, registered by the United States Department of Labor, qualifying for an accessibility license. A person holding an accessibility license may only perform work on accessibility equipment; or

(3) Complete a certified apprenticeship program, registered by the United States Department of Labor established at a historic resort hotel, qualifying for a limited technician license. A person holding a limited technician license may only perform work at a historic resort hotel.

(d) For the purposes of section, "historic resort hotel" has the same meaning ascribed to it in section two, article twenty-five, chapter twenty-nine of this code.

(e) An elevator apprentice who is enrolled in a four-year apprenticeship program approved by the commissioner, and who is in good standing in the program, may work under the supervision of a licensed elevator mechanic, as follows:

(f) An apprentice who has not successfully completed the equivalent of at least one year of the program may work only under the direct supervision of a licensed elevator mechanic who is present on the premises and available to the apprentice at all times.

(2) An apprentice who has successfully completed the equivalent of at least one year of the program may:

(A) Work under the direct supervision of a licensed elevator mechanic as set forth in subdivision (1) of this subsection; and

(B) Perform the tasks set forth in this paragraph, only if delegated by and performed under the general supervision of a licensed elevator mechanic, who must, at a minimum, meet the apprentice on the job at the beginning of each day to delegate the specific tasks, and who remains responsible for the delegated tasks:

(i) Oiling, cleaning, greasing and painting;

(ii) Replacing of combplate teeth;

(iii) Reclamping and fixture maintenance;

(iv) Inspection, cleaning and lubricating of hoistway doors, car tops, bottoms and pits; and

(v) Observing operation of equipment.

§21-3C-11. Disposition of fees; legislative rules.

(a) The division shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, for the implementation and enforcement of the provisions of this article, which shall provide:

(1) Standards, qualifications and procedures for submitting applications, taking examinations, and issuing and renewing licenses, certificates of competency and certificates of operation of the three licensure classifications set forth in section ten-a of this article;

(2) Qualifications and supervision requirements for elevator apprentices;

(3) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform work as defined in this article and who apply for licensure on or before July 1, 2010: *Provided*, That if a license issued under the authority of this subsection subsequently lapses, the applicant may, at the discretion of the commissioner, be subject to all licensure requirements, including the examination;

(4) Provisions for the granting of emergency licenses in the event of an emergency due to disaster, act of God or work stoppage when the number of persons in the state holding licenses issued pursuant to this article is insufficient to cope with the emergency;

(5) Provisions for the granting of temporary licenses in the event that there are no elevator mechanics available to engage in the work of an elevator mechanic as defined by this article;

(6) Continuing education requirements;

(7) Reciprocity provisions;

(8) Procedures for investigating complaints and revoking or suspending licenses, certificates of competency and certificates of operation, including appeal procedures;

(9) Fees for testing, issuance and renewal of licenses, certificates of competency and certificates of operation, and other costs necessary to administer the provisions of this article;

(10) Enforcement procedures; and

(11) Any other rules necessary to effectuate the purposes of this article.

(b) The rules proposed for promulgation pursuant to subsection (a) of this section shall establish the amount of any fee authorized pursuant to the provisions of this article: *Provided*, That in no event may the fees established for the issuance of certificates of operation exceed $50.

(c) All fees collected pursuant to the provisions of this article shall be deposited in an appropriated special revenue account hereby created in the State Treasury known as the "Elevator Safety Fund" and expended for the implementation and enforcement of this article: *Provided*, That amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(d) The division may enter into agreements with counties and municipalities whereby such counties and municipalities be permitted to retain the inspection fees collected to support the enforcement activities at the local level.

(e) The commissioner and his or her deputy commissioner or any compliance officer of the division as authorized by the commissioner may consult with engineering authorities and organizations concerned with standard safety codes, rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation and the qualifications which are adequate, reasonable and necessary for the elevator mechanic and inspector.

CHAPTER 80

(Com. Sub. for H. B. 4143 - By Delegates Morgan, Stevens, Staggers, Swartzmiller, Talbott, Martin, Givens, C. Miller, Hartman, Butcher and Rowan)

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

AN ACT to repeal §16-4C-5a of the Code of West Virginia, 1931, as amended; to amend and reenact §16-4C-3, §16-4C-6, §16-4C-6a, §16-4C-8, §16-4C-9, §16-4C-10, §16-4C-12 and §16-4C-16 of said code, all relating to emergency medical services; revising definitions; revising powers and duties of the commissioner; revising rule-making authority; revising requirement to review statewide emergency medical services implementation plan; revising requirements to operate emergency medical vehicle; revising standards for emergency medical service personnel; requiring applicants to allow the State Police access to personal background information; removing nonutilized code sections; requiring certified persons to report violations; providing immunity from civil liability for reporting violations; clarifying procedures for complaint investigation, hearings, rights of appeal and judicial review; removing automatic stay on appeal; increasing criminal penalties; clarifying limitations on immunity in the absence of required insurance policy; and removing antiquated language.

Be it enacted by the Legislature of West Virginia:

That §16-4C-5a of the Code of West Virginia, 1931, as amended, be repealed; that §16-4C-3, §16-4C-6, §16-4C-6a, §16-

4C-8, §16-4C-9, §16-4C-10, §16-4C-12 and §16-4C-16 of said code be amended and reenacted, all to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-3. Definitions.
§16-4C-6. Powers and duties of commissioner.
§16-4C-6a. Emergency medical services agency licensure.
§16-4C-8. Standards for emergency medical service personnel.
§16-4C-9. Complaints; investigations; due process procedure; grounds for disciplinary action.
§16-4C-10. Procedures for hearing; right of appeal; judicial review.
§16-4C-12. Violations; criminal penalties.
§16-4C-16. Limitation of liability; mandatory errors and omissions insurance.

§16-4C-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(a) "Ambulance" means any privately or publicly-owned vehicle or aircraft which is designed, constructed or modified; equipped or maintained; and operated for the transportation of patients, including, but not limited to, emergency medical services vehicles; rotary and fixed wing air ambulances; gsa kkk-A-1822 federal standard type I, type II and type III vehicles; and specialized multipatient medical transport vehicles operated by an emergency medical services agency;

(b) "Commissioner" means the Commissioner of the Bureau for Public Health;

(c) "Council" means the Emergency Medical Service Advisory Council created pursuant to this article;

(d) "Director" means the Director of the Office of Emergency Medical Service in the Bureau for Public Health.

(e) "Emergency Medical Services" means all services which are set forth in Public Law 93-154 "The Emergency

20 Medical Services Systems Act of 1973" and those included
21 in and made a part of the emergency medical services plan of
22 the Department of Health and Human Resources inclusive of,
23 but not limited to, responding to the medical needs of an
24 individual to prevent the loss of life or aggravation of illness
25 or injury;

26 (f) "Emergency medical service agency" means any
27 agency licensed under section six-a of this article to provide
28 emergency medical services;

29 (g) "Emergency medical service personnel" means any
30 person certified by the commissioner to provide emergency
31 medical services as set forth by legislative rule;

32 (h) "Emergency medical service provider" means any
33 authority, person, corporation, partnership or other entity,
34 public or private, which owns or operates a licensed
35 emergency medical services agency providing emergency
36 medical service in this state;

37 (i) "Governing body" has the meanings ascribed to it as
38 applied to a municipality in subdivision (1), subsection (b),
39 section two, article one, chapter eight of this code;

40 (j) "Line officer" means the emergency medical service
41 personnel, present at the scene of an accident, injury or
42 illness, who has taken the responsibility for patient care;

43 (k) "Medical command" means the issuing of orders by
44 a physician from a medical facility to emergency medical
45 service personnel for the purpose of providing appropriate
46 patient care;

47 (l) "Municipality" has the meaning ascribed to it in
48 subdivision (1), subsection (a), section two, article one,
49 chapter eight of this code;

(m) "Patient" means any person who is a recipient of the services provided by emergency medical services;

(n) "Service reciprocity" means the provision of emergency medical services to citizens of this state by emergency medical service personnel certified to render those services by a neighboring state;

(o) "Small emergency medical service provider" means any emergency medical service provider which is made up of less than twenty emergency medical service personnel; and

(p) "Specialized multipatient medical transport" means a type of ambulance transport provided for patients with medical needs greater than those of the average population, which may require the presence of a trained emergency medical technician during the transport of the patient: *Provided,* That the requirement of "greater medical need" may not prohibit the transportation of a patient whose need is preventive in nature.

§16-4C-6. Powers and duties of commissioner.

The commissioner has the following powers and duties:

(a) To propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code: *Provided,* That the rules have been submitted at least thirty days in advance for review by the Emergency Medical Services Advisory Council, who may act only in the presence of a quorum. The rules may include:

(1) Standards and requirements for certification and recertification of emergency medical service personnel, including, but not limited to:

(A) Age, training, testing and continuing education;

12 (B) Procedures for certification and recertification, and
13 for denying, suspending, revoking, reinstating and limiting a
14 certification or recertification;

15 (C) Levels of certification and the scopes of practice for
16 each level;

17 (D) Standards of conduct; and

18 (E) Causes for disciplinary action and sanctions which
19 may be imposed.

20 (2) Standards and requirements for licensure and
21 licensure renewals of emergency medical service agencies,
22 including:

23 (A) Operational standards, levels of service, personnel
24 qualifications and training, communications, public access,
25 records management, reporting requirements, medical
26 direction, quality assurance and review, and other
27 requirements necessary for safe and efficient operation;

28 (B) Inspection standards and establishment of
29 improvement periods to ensure maintenance of the standards;

30 (C) Fee schedules for licensure, renewal of licensure and
31 other necessary costs;

32 (D) Procedures for denying, suspending, revoking,
33 reinstating or limiting an agency licensure;

34 (E) Causes for disciplinary action against agencies; and

35 (F) Administrative penalties, fines and other disciplinary
36 sanctions which may be imposed on agencies;

37 (3) Standards and requirements for emergency medical
38 service vehicles, including classifications and specifications;

(4) Standards and requirements for training institutions, including approval or accreditation of sponsors of continuing education, course curricula and personnel;

(5) Standards and requirements for a State Medical Direction System, including qualifications for a State Emergency Medical Services Medical Director and Regional Medical Directors, the establishment of a State Medical Policy and Care Committee and the designation of Regional Medical Command Centers;

(6) Provision of services by emergency medical services personnel in hospital emergency rooms; and

(7) Any other rules necessary to carry out the provisions of this article.

(b) To apply for, receive and expend advances, grants, contributions and other forms of assistance from the state or federal government or from any private or public agencies or foundations to carry out the provisions of this article.

(c) To design, develop and review a Statewide Emergency Medical Services Implementation Plan. The plan shall recommend aid and assistance and all other acts necessary to carry out the purposes of this article:

(1) To encourage local participation by area, county and community officials and regional emergency medical services boards of directors; and

(2) To develop a system for monitoring and evaluating emergency medical services programs throughout the state.

(d) To provide professional and technical assistance and to make information available to Regional Emergency Medical Services Boards of Directors and other potential

applicants or program sponsors of emergency medical services for purposes of developing and maintaining a statewide system of services.

(e) To assist local government agencies, Regional Emergency Medical Services Boards of Directors and other public or private entities in obtaining federal, state or other available funds and services.

(f) To cooperate and work with federal, state and local governmental agencies, private organizations and other entities as may be necessary to carry out the purposes of this article.

(g) To acquire in the name of the state by grant, purchase, gift, devise or any other methods appropriate real and personal property as may be reasonable and necessary to carry out the purposes of this article.

(h) To make grants and allocations of funds and property so acquired or which may have been appropriated to the agency to other agencies of state and local government as may be appropriate to carry out the purposes of this article.

(i) To expend and distribute by grant or bailment funds and property to all state and local agencies for the purpose of performing the duties and responsibilities of the agency all funds which it may have so acquired or which may have been appropriated by the Legislature of this state.

(j) To develop a program to inform the public concerning emergency medical services.

(k) To review and disseminate information regarding federal grant assistance relating to emergency medical services.

(l) To prepare and submit to the Governor and Legislature recommendations for legislation in the area of emergency medical services.

(m) To review, make recommendations for and assist in all projects and programs that provide for emergency medical services whether or not the projects or programs are funded through the Office of Emergency Medical Services. A review and approval shall be required for all emergency medical services projects, programs or services for which application is made to receive state or federal funds for their operation after the effective date of this act; and

(n) To take all necessary and appropriate action to encourage and foster the cooperation of all emergency medical service providers and facilities within this state.

§16-4C-6a. Emergency medical services agency licensure.

(a) Any person who proposes to establish or maintain an emergency medical services agency shall file an application with the commissioner which includes the identity of the applicant, any parent or affiliated entity, the proposed level of service and the number of emergency medical service response vehicles of the agency or proposed agency. The commissioner may require that additional information be included on each application.

(b) Upon receipt and review of the application the commissioner shall issue a license if he or she finds that the applicant meets the requirements and quality standards, to be established by the commissioner, for an emergency medical services agency license, and if the applicant has certified under penalty of perjury that he or she is current with all lawful obligations owed the State of West Virginia, excluding obligations owed in the current quarter, including, but not limited to, payment of taxes and workers'

18 compensation premiums: *Provided,* That the certification set
19 forth in this paragraph is required for the original application
20 and subsequent renewals.

§16-4C-8. Standards for emergency medical service personnel.

1 (a) Every ambulance operated by an emergency medical
2 service agency shall carry at least two personnel. At least
3 one person shall be certified in cardiopulmonary resuscitation
4 or first aid and the person in the patient compartment shall be
5 certified as an emergency medical technician-basic at a
6 minimum except that in the case of a specialized multipatient
7 medical transport, only one staff person is required and that
8 person shall be certified, at a minimum, at the level of an
9 emergency medical technician-basic. The requirements of
10 this subsection will remain in effect until revised by the
11 legislative rule to be promulgated pursuant to subsection (b)
12 of this section.

13 (b) On or before May 28, 2010, the commissioner shall
14 submit a proposed legislative rule to the Emergency Medical
15 Services Advisory Council for review, and on or before June
16 30, 2010, shall file the proposed legislative rule with the
17 office of the Secretary of State, in accordance with the
18 provisions of chapter twenty-nine-a, article three of this code,
19 to establish certification standards for emergency medical
20 vehicle operators and to revise the requirements for
21 emergency medical service personnel.

22 (c) As of the effective date of the legislative rule to be
23 promulgated pursuant to subsection (b) of this section,
24 emergency medical service personnel who operate
25 ambulances shall meet the requirements set forth in the
26 legislative rule.

27 (d) Any person desiring emergency medical service
28 personnel certification shall apply to the commissioner using

29 forms and procedures prescribed by the commissioner. Upon
30 receipt of the application, the commissioner shall determine
31 whether the applicant meets the certification requirements
32 and may examine the applicant, if necessary to make that
33 determination.

34 (e) The applicant shall submit to a national criminal
35 background check, the requirement of which is declared to be
36 not against public policy.

37 (1) The applicant shall meet all requirements necessary
38 to accomplish the national criminal background check,
39 including submitting fingerprints, and authorizing the West
40 Virginia Office of Emergency Medical Services, the West
41 Virginia State Police and the Federal Bureau of Investigation
42 to use all records submitted and produced for the purpose of
43 screening the applicant for certification.

44 (2) The results of the national criminal background check
45 may not be released to or by a private entity.

46 (3) The applicant shall submit a fee of $75 for initial
47 certification and a fee of $50 for recertification. The fees set
48 forth in this subsection remain in effect until modified by
49 legislative rule.

50 (f) An application for an original, renewal or temporary
51 emergency medical service personnel certificate or
52 emergency medical services agency license, shall be acted
53 upon by the commissioner and the certificate or license
54 delivered or mailed, or a copy of any order of the
55 commissioner denying any such application delivered or
56 mailed to the applicant, within fifteen days after the date
57 upon which the complete application including test scores
58 and background checks, if applicable, was received by the
59 commissioner.

(g) Any person may report to the commissioner or the Director of the Office of Emergency Medical Services information he or she may have that appears to show that a person certified by the commissioner may have violated the provisions of this article or legislative rules promulgated pursuant to this article. A person who is certified by the commissioner, who knows of or observes another person certified by the commissioner violating the provisions of this article or legislative rules promulgated pursuant to this article, has a duty to report the violation to the commissioner or director. Any person who reports or provides information in good faith is immune from civil liability.

(h) The commissioner may issue a temporary emergency medical service personnel certificate to an applicant, with or without examination of the applicant, when he or she finds that issuance to be in the public interest. Unless suspended or revoked, a temporary certificate shall be valid initially for a period not exceeding one hundred twenty days and may not be renewed unless the commissioner finds the renewal to be in the public interest.

§16-4C-9. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The commissioner may at any time upon his or her own motion, and shall, upon the written complaint of any person, cause an investigation to be conducted to determine whether grounds exist for disciplinary action under this article or legislative rules promulgated pursuant to this article.

(b) An investigator or other person who, under the direction of the commissioner or the director, gathers or reports information in good faith to the commissioner or the director, is immune from civil liability.

11 (c) After reviewing any information obtained through an
12 investigation, the commissioner or director shall determine if
13 probable cause exists that the licensee or certificate holder
14 has violated any provision of this article or rules promulgated
15 pursuant to this article.

16 (d) Upon a finding that probable cause exists that the
17 licensee or certificate holder has violated any provision of
18 this article or rules promulgated pursuant to this article, the
19 commissioner or director shall provide a copy of the
20 complaint to the licensee or certificate holder.

21 (e) The commissioner or the director may enter into a
22 consent decree or hold a hearing for the suspension or
23 revocation of the license or certification or the imposition of
24 sanctions against the licensee or certificate holder.

25 (f) The commissioner or the director issue subpoenas and
26 subpoenas duces tecum to obtain testimony and documents
27 to aid in the investigation of allegations against any person or
28 agency regulated by the article.

29 (g) The commissioner or the director may sign a consent
30 decree or other legal document related to the complaint.

31 (h) The commissioner shall suspend or revoke any
32 certificate, temporary certificate or license when he or she
33 finds the holder has:

34 (1) Obtained a certificate, temporary certificate or license
35 by means of fraud or deceit; or

36 (2) Been grossly incompetent, and/or grossly negligent as
37 defined by the commissioner in accordance with rules or by
38 prevailing standards of emergency medical services care; or

39 (3) Failed or refused to comply with the provisions of this
40 article or any legislative rule promulgated by the

commissioner or any order or final decision of the commissioner; or

(4) Engaged in any act during the course of duty which has endangered or is likely to endanger the health, welfare or safety of the public.

(i) The commissioner or the director may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license or certification of, impose probationary conditions upon or take disciplinary action against, any licensee or certificate holder for any violation of this article or any rule promulgated pursuant to this article, once a violation has been proven by a preponderance of the evidence.

(j) Disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative penalties and fines;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee or holder of a certificate to report to the commissioner or director for periodic interviews for a specified period of time;

(7) Other disciplinary action considered by the commissioner or director to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk; or

68 (8) Other sanctions as set forth by legislative rule
69 promulgated pursuant to this article.

70 (k) The commissioner shall suspend or revoke any
71 certificate , temporary certificate or license if he or she finds
72 the existence of any grounds which would justify the denial
73 of an application for the certificate, temporary certificate or
74 license if application were then being made for it.

§16-4C-10. Procedures for hearing; right of appeal; judicial review.

1 (a) Hearings are governed by the provisions of article
2 five, chapter twenty-nine a of this code.

3 (b) The commissioner or director may conduct the
4 hearing or elect to have an Administrative Law Judge
5 conduct the hearing.

6 (c) If the hearing is conducted by an Administrative Law
7 Judge, the Administrative Law Judge shall prepare a
8 proposed written order at the conclusion of a hearing
9 containing findings of fact and conclusions of law. The
10 proposed order may contain proposed disciplinary actions if
11 the commissioner or director so directs. The commissioner
12 may accept, reject or modify the decision of the
13 Administrative Law Judge.

14 (d) The commissioner or director has the authority to
15 administer oaths, examine any person under oath and issue
16 subpoenas and subpoenas duces tecum.

17 (e) If, after a hearing, the commissioner or director
18 determines the licensee or holder of a certificate has violated
19 any provision of this article or the legislative rules
20 promulgated pursuant to this article, a formal written decision
21 shall be prepared which contains findings of fact, conclusions

of law and a specific description of the disciplinary actions imposed.

(f) The order of the Commissioner or director is final unless vacated or modified upon judicial review.

(g) Any licensee or certificate holder adversely affected by a final order made and entered by the commissioner or director is entitled to judicial review. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code apply to and govern the review with like effect as if the provisions of the section were set forth herein.

(h) The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§16-4C-12. Violations; criminal penalties.

(a) When, as a result of an investigation under this article or otherwise, the commissioner or director has reason to believe that a licensee or certificate holder has committed a criminal offense, the commissioner or director may bring the information to the attention of an appropriate law-enforcement official.

(b) Any person who violates any law or rule or operates an ambulance with an insufficient number of emergency medical service personnel aboard when not lawfully permitted to do so, or who represents himself or herself as a certified emergency medical service personnel knowing the representation to be untrue, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000: *Provided,* That after July 1, 2010, the fine shall not be more than $5,000.

§16-4C-16. Limitation of liability; mandatory errors and omissions insurance.

1 (a) Every person, corporation, ambulance service,
2 emergency medical service provider, emergency ambulance
3 authority, emergency ambulance service or other person
4 which employs emergency medical service personnel with or
5 without wages for ambulance service or provides ambulance
6 service in any manner, shall obtain a policy of insurance
7 insuring the person or entity and every employee, agent or
8 servant, against loss from the liability imposed by law for
9 damages arising from any error or omission in the provision
10 of emergency medical services as enumerated by this article,
11 in an amount no less than $1,000,000 per incident.

12 (b) No emergency medical service personnel or
13 emergency medical service provider is liable for civil
14 damages or injuries in excess of the amounts for which the
15 person or entity is actually insured, unless the damages or
16 injuries are intentionally or maliciously inflicted.

17 (c) Every person or entity required by this section to
18 obtain a policy of insurance shall furnish proof of the
19 existence of the policy to the commissioner on or before
20 January 1 of each calendar year.

21 (d) Any person or entity who fails to secure a policy of
22 insurance before providing emergency medical services is not
23 entitled to the limited liability created by subsection (b) of
24 this section: *Provided,* That any physician, who gives
25 instructions to emergency medical service personnel without
26 being compensated, or who treats any patient transported in
27 an ambulance or treats any patient prior to the transport,
28 without being compensated, is entitled to the limited liability
29 provided in subsection (b) of this section.

CHAPTER 81

(Com. Sub. for S. B. 518 - By Senators McCabe, Caruth, Browning, Barnes, Hall, Sypolt, Deem, Boley, Guills, K. Facemyer, Minard, Plymale, Wells, Stollings, Jenkins, Edgell, Williams, D. Facemire, Palumbo, Green, Tomblin (Mr. President), Yost, Fanning, Helmick, White, Kessler, Chafin, Laird, Unger, Snyder, Prezioso, Foster and Oliverio)

[Passed March 13, 2010; in effect July 1, 2010.]
[Approved by the Governor on April 6, 2010.]

AN ACT to amend and reenact §5B-2F-2 of the Code of West Virginia, 1931, as amended, relating to the duties of the Division of Energy and the Office of the Director for Energy Development.

Be it enacted by the Legislature of West Virginia:

That §5B-2F-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2F. DIVISION OF ENERGY.

§5B-2F-2. Purpose; office of Director for Energy Development; director to be member of Public Energy Authority; division to develop energy policy and development plan; contents of energy policy and development plan; and division to promote energy initiatives.

(a) Effective July 1, 2007, the Division of Energy is created as a state agency under the Department of Commerce. The division may receive federal funds. The division shall be administered by a director, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall continue to serve until his or her successor is appointed and qualified as provided. The director shall be selected with special preference and consideration given to his or her training, experience, capacity and interest in energy policy and development activities.

(b) Creation of the division is intended to provide leadership for developing energy policies emphasizing the increased efficiency of energy use, the increased development and production of new and existing domestic energy sources, the increased awareness of energy use on the environment and the economy, dependable, efficient and economical statewide energy systems capable of supporting the needs of the state, increased energy self-sufficiency where the ratio of indigenous to imported energy use is increased, reduce the ratio energy consumption to economic activity and maintain low-cost energy. The energy policies and development plans shall also provide direction for the private sector.

(c) The director shall administer the daily operations of the Public Energy Authority provided under the provisions of chapter five-d of this code. The director shall also have authority over the Office of Coalfield Community Development, created by the provisions of article two-a of this chapter, and the energy efficiency program existing under the West Virginia Development Office which are hereby transferred to the division. The director shall effectuate coordination of these entities relative to the purposes provided in this article.

(d) The division shall develop an energy policy and shall report the same back to the Governor and the Joint

36 Committee on Government and Finance before December 1,
37 2007. The energy policy shall be a five-year plan setting
38 forth the state's energy policies and shall provide a direction
39 for the private sector. Prior to the expiration of the energy
40 policy, the division shall begin review of the policy and
41 submit a revised energy policy to the Governor and the Joint
42 Committee on Government and Finance six months before
43 the expiration of the policy.

44 (e) The director shall be a member of the Public Energy
45 Authority and as such shall attend and participate in all
46 official meetings and public hearings conducted under the
47 auspices of the authority.

48 (f) The division shall prepare and submit an annual energy
49 development plan to the Governor and the Joint Committee
50 on Government and Finance on or before December 1, of
51 each year. The development plan shall relate to the
52 division's implementation of the energy policy and the
53 activities of the division during the previous year. The
54 development plan shall include any recommended legislation.
55 The Public Energy Authority, the Office of Coalfield
56 Community Development, the energy efficiency program, the
57 Department of Environmental Protection and the Public
58 Service Commission, in addition to their other duties
59 prescribed by this code, shall assist the division and the
60 director in the development of an energy policy and related
61 development plans. The energy development plan shall set
62 forth the plans for implementing the state's energy policy and
63 shall provide a direction for the private sector. The energy
64 development plan shall recognize the powers of the Public
65 Energy Authority as to development and financing of projects
66 under its jurisdiction and shall make such recommendations
67 as are reasonable and practicable for the exercise of such
68 powers.

69 (g) The division shall hold public hearings and meetings
70 with notice to receive public input regarding proposed energy

policies and development plans. The energy policy and development plans required by subsections (d) and (f) of this section shall address increased efficiency of energy use, traditional and alternative energy, water as a resource and a component of energy production, energy distribution systems, the siting of energy facilities, the increased development and production of new and existing domestic energy sources, increased awareness of energy use on the environment and the economy, energy infrastructure, the development and implementation of renewable, clean, technically innovative and advanced energy projects in this state. Projects may include, without limitation, solar and wind energy, low-impact hydro power, geothermal, biomass, landfill gas, fuel cells, renewable hydrogen fuel technologies, waste coal, coal mine methane, coal gasification to ultraclean fuels, solid waste to fuel grade ethanol and coal liquefaction technologies.

(h) The division may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code designed to implement an energy policy and development plan in accordance with the provisions of this chapter.

(i) The energy policy and development plans required by subsections (d) and (f) of this section shall identify and report on the energy infrastructure in this state and include without limitation energy infrastructure related to protecting the state's essential data, information systems and critical government services in times of emergency, inoperativeness or disaster. In consultation with the Director of the Division of Homeland Security and Emergency Management, the director of the division shall encourage the development of energy infrastructure and strategic resources that will ensure the continuity of governmental operations in situations of emergency, inoperativeness or disaster.

105 (j) In preparing or revising the energy policy and
106 development plan, the division may rely upon internal staff
107 reports or the advice of outside advisors or consultants and
108 may procure such services with the consent of the Secretary
109 of Commerce. The division may also involve national, state
110 and local government leadership and energy experts.

111 (k) The division shall prepare an energy use database,
112 including without limitation, end-use applications and
113 infrastructure needs for different classes of energy users
114 including residential, commercial and industrial users, data
115 regarding the interdependencies and sources of electricity,
116 oil, coal, water and gas infrastructure, data regarding energy
117 use of schools and state-owned facilities and collect data on
118 the impact of the energy policy and development plan on the
119 decisions and strategies of energy users of the state.

120 (l) The division shall promote collaboration between the
121 state's universities and colleges, private industry and
122 nonprofit organizations to encourage energy research and
123 leverage available federal energy research and development
124 resources.

125 (m) The division shall promote initiatives to enhance the
126 nation's energy security through research and development
127 directed at transforming the state's energy resources into the
128 resources that fuel the nation.

129 (n) The Performance Evaluation and Research Division of
130 the Legislative Auditor's office shall perform an agency
131 review of the Division of Energy in 2010 as part of its review
132 of the Department of Commerce as set forth in article four,
133 chapter ten of this code.

134 (o) The division shall work with the President of the
135 United States and his or her administration to develop a plan
136 that would allow West Virginia to become the leader in
137 transitioning the United States to a new energy future.

138 (p) The division is to determine the best way for West
139 Virginia to utilize its resources and any federal funding to
140 develop the technologies that are necessary for such a
141 transition.

142 (q) The division is to clearly articulate West Virginia's
143 position on an energy solution for the United States that
144 encompasses clean coal, natural gas, transtech energy
145 technologies and renewable energy technologies.

146 (r) The division shall develop and distribute an
147 informational program and policies that emphasize the
148 importance of West Virginia energy resources and their
149 positive impact on the eastern seaboard and the nation.

150 (s) The division shall monitor legal challenges to the
151 energy industries in the state and submit a report quarterly to
152 the Joint Committee on Government and Finance. The report
153 shall contain information relating to any litigation that
154 challenges any statute that could affect the production,
155 distribution and utilization of natural resources of the state.

CHAPTER 82

(S. B. 350 - By Senators Oliverio, McCabe, Browning, Green, Kessler, Foster, Stollings, D. Facemire, Prezioso, Plymale and Palumbo)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §24-2F-3 of the Code of West Virginia, 1931, as amended, relating to definitions used in the

alternative and renewable energy portfolio standard; recategorizing recycled energy as a renewable energy resource for the purposes of purchasing energy resource credits; and removing restriction that ethanol be produced from sources other than corn in order to be a renewable energy resource.

Be it enacted by the Legislature of West Virginia:

That §24-2F-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2F. ALTERNATIVE AND RENEWABLE ENERGY PORTFOLIO STANDARD.

§24-2F-3. Definitions.

Unless the context clearly requires a different meaning, as used in this article:

(1) "Advanced coal technology" means a technology that is used in a new or existing energy generating facility to reduce airborne carbon emissions associated with the combustion or use of coal and includes, but is not limited to, carbon dioxide capture and sequestration technology, supercritical technology, advanced supercritical technology as that technology is determined by the Public Service Commission, ultrasupercritical technology and pressurized fluidized bed technology and any other resource, method, project or technology certified by the commission as advanced coal technology.

(2) "Alternative and renewable energy portfolio standard" or "portfolio standard" means a requirement in any given year that requires an electric utility to own credits in an amount equal to a certain percentage of electric energy sold in the preceding calendar year by the electric utility to retail customers in this state.

20 (3) "Alternative energy resources" means any of the
21 following resources, methods or technologies for the
22 production or generation of electricity:

23 (A) Advanced coal technology;

24 (B) Coal bed methane;

25 (C) Natural gas;

26 (D) Fuel produced by a coal gasification or liquefaction
27 facility;

28 (E) Synthetic gas;

29 (F) Integrated gasification combined cycle technologies;

30 (G) Waste coal;

31 (H) Tirederived fuel;

32 (I) Pumped storage hydroelectric projects; and

33 (J) Any other resource, method, project or technology
34 certified as an alternative energy resource by the Public
35 Service Commission.

36 (4) "Alternative and renewable energy resource credit" or
37 "credit" means a tradable instrument that is used to establish,
38 verify and monitor the generation of electricity from
39 alternative and renewable energy resource facilities, energy
40 efficiency or demand-side energy initiative projects or
41 greenhouse gas emission reduction or offset projects.

42 (5) "Alternative energy resource facility" means a facility
43 or equipment that generates electricity from alternative
44 energy resources.

(6) "Commission" or "Public Service Commission" means the Public Service Commission of West Virginia as continued pursuant to section three, article one of this chapter.

(7) "Customer-generator" means an electric retail customer who owns and operates a customer-sited generation project utilizing an alternative or renewable energy resource or a net metering system in this state.

(8) "Electric utility" means any electric distribution company or electric generation supplier that sells electricity to retail customers in this state. Unless specifically provided for otherwise, for the purposes of this article, the term "electric utility" may not include rural electric cooperatives, municipally-owned electric facilities or utilities serving less than thirty thousand residential electric customers in West Virginia.

(9) "Energy efficiency or demand-side energy initiative project" means a project in this state that promotes customer energy efficiency or the management of customer consumption of electricity through the implementation of:

(A) Energy efficiency technologies, equipment, management practices or other strategies utilized by residential, commercial, industrial, institutional or government customers that reduce electricity consumption by those customers;

(B) Load management or demand response technologies, equipment, management practices, interruptible or curtailable tariffs, energy storage devices or other strategies in residential, commercial, industrial, institutional and government customers that shift electric load from periods of higher demand to periods of lower demand;

(C) Industrial by-product technologies consisting of the use of a by-product from an industrial process, including, but not limited to, the reuse of energy from exhaust gases or

other manufacturing by-products that can be used in the direct production of electricity at the customer's facility;

(D) Customer-sited generation, demand-response, energy efficiency or peak demand reduction capabilities, whether new or existing, that the customer commits for integration into the electric utility's demand-response, energy efficiency or peak demand reduction programs; or

(E) Infrastructure and modernization projects that help promote energy efficiency, reduce energy losses or shift load from periods of higher demand to periods of lower demand, including the modernization of metering and communications (also known as "smart grid"), distribution automation, energy storage, distributed energy resources and investments to promote the electrification of transportation.

(10) "Greenhouse gas emission reduction or offset project" means a project to reduce or offset greenhouse gas emissions from sources in this state other than the electric utility's own generating and energy delivery operations. Greenhouse gas emission reduction or offset projects include, but are not limited to:

(A) Methane capture and destruction from landfills, coal mines or farms;

(B) Forestation, afforestation or reforestation; and

(C) Nitrous oxide or carbon dioxide sequestration through reduced fertilizer use or no-till farming.

(11) "Net metering" means measuring the difference between electricity supplied by an electric utility and electricity generated from an alternative or renewable energy resource facility owned or operated by an electric retail customer when any portion of the electricity generated from the alternative or renewable energy resource facility is used

to offset part or all of the electric retail customer's requirements for electricity.

(12) "Reclaimed surface mine" means a surface mine, as that term is defined in section three, article three, chapter twenty-two of this code, that is reclaimed or is being reclaimed in accordance with state or federal law.

(13) "Renewable energy resource" means any of the following resources, methods, projects or technologies for the production or generation of electricity:

(A) Solar photovoltaic or other solar electric energy;

(B) Solar thermal energy;

(C) Wind power;

(D) Run of river hydropower;

(E) Geothermal energy, which means a technology by which electricity is produced by extracting hot water or steam from geothermal reserves in the earth's crust to power steam turbines that drive generators to produce electricity;

(F) Biomass energy, which means a technology by which electricity is produced from a nonhazardous organic material that is available on a renewable or recurring basis, including pulp mill sludge;

(G) Biologically derived fuel including methane gas, ethanol or biodiesel fuel;

(H) Fuel cell technology, which means any electrochemical device that converts chemical energy in a hydrogen-rich fuel directly into electricity, heat and water without combustion;

135 (I) Recycled energy, which means useful thermal,
136 mechanical or electrical energy produced from: (i) Exhaust
137 heat from any commercial or industrial process; (ii) waste
138 gas, waste fuel or other forms of energy that would otherwise
139 be flared, incinerated, disposed of or vented; and (iii)
140 electricity or equivalent mechanical energy extracted from a
141 pressure drop in any gas, excluding any pressure drop to a
142 condenser that subsequently vents the resulting heat; and

143 (J) Any other resource, method, project or technology
144 certified by the commission as a renewable energy resource.

145 (14) "Renewable energy resource facility" means a
146 facility or equipment that generates electricity from
147 renewable energy resources.

148 (15) "Waste coal" means a technology by which
149 electricity is produced by the combustion of the by-product,
150 waste or residue created from processing coal (such as gob).

CHAPTER 83

(Com. Sub. for S. B. 496 - By Senators Williams, Caruth, Stollings and Plymale)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §22-1-9 of the Code of West Virginia, 1931, as amended, relating to the Environmental Protection Advisory Council; authorizing the council to review and make recommendations on rulemaking to the secretary; adding a member

to the council; and requiring Department of Environmental Protection consider the council's recommendations.

Be it enacted by the Legislature of West Virginia:

That §22-1-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-9. Environmental Protection Advisory Council.

1 (a) There is created within the Department of
2 Environmental Protection the Environmental Protection
3 Advisory Council. The Environmental Protection Advisory
4 Council consists of eight members. The secretary serves as
5 an ex officio member of the council and as its chair. The
6 remaining seven members are appointed by the Governor.
7 Each member serves for a term of four years and may be
8 reappointed. Vacancies on the council shall be filled within
9 sixty days after the vacancy occurs.

10 (b) Two members of the council shall represent industries
11 regulated by the department or their trade associations. Two
12 members shall represent organizations advocating
13 environmental protection. One member shall represent
14 organizations representing local governments. One member
15 shall represent public service districts. One member shall
16 represent the largest coal miner's labor organization in the
17 state. In making subsequent appointments this balance of
18 membership shall be maintained.

19 (c) Appointed members shall be paid the same
20 compensation and expense reimbursement as is paid to
21 members of the Legislature for their interim duties as
22 recommended by the Citizens Legislative Compensation

Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

(d) The council shall meet at least once every quarter, at the call of the chair or upon the unanimous request of its members.

(e) The council shall:

(1) Consult with and advise the director on program and policy development, problem solving and other appropriate subjects;

(2) Identify and define problems associated with the implementation of the policy set forth in section one of this article;

(3) Provide and disseminate to industry and the public early identification of major federal program and regulatory changes;

(4) Provide a forum for the resolution of conflicts between constituency groups;

(5) To the extent possible, strive for consensus on the development of overall environmental policy; and

(6) Provide an annual report to the Joint Committee on Government and Finance on or before January 1 of each year relating to its findings with regard to the department's performance during the previous year. The report will specifically address the department's performance in accomplishing the nine purposes set forth in subsection (b), section one of this article.

(f) Notwithstanding any other provision of this code to the contrary, upon approval by majority vote of the Environmental Protection Advisory Council's members, the

52 council may submit recommendations for rulemaking to the
53 Secretary of the Department of Environmental Protection.
54 The secretary shall consider the council's recommendations
55 for rule-making when developing agency rules to be
56 submitted for legislative approval.

CHAPTER 84

(S. B. 382 - By Senators Minard, Helmick, Green, Bowman and Plymale)

[Passed March 8, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §22-6-22 of the Code of West Virginia, 1931, as amended, relating to the reporting of certain geologic information obtained incidental to oil and gas drilling; requiring the filing of reports with the Department of Environmental Protection and the state Geological and Economic Survey; providing for the delivery of core samples and well cuttings to the state Geological and Economic Survey; and assuring the confidentiality of reports and other information provided.

Be it enacted by the Legislature of West Virginia:

That §22-6-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22-6-22. Well report, logs, core samples and cuttings to be filed; confidentiality and permitted use; authority to promulgate rules.

(a) Within a reasonable time after the completion of the drilling of a shallow well or deep well, the well operator shall file with the secretary and with the state Geological and Economic Survey a completion report containing the following:

(1) The character, depth and thickness of geological formations encountered, including fresh water, coal seams, mineral beds, brine and oil and gas bearing formations; and

(2) Such other information as the secretary may require to effectuate the purposes of this chapter.

The secretary may promulgate such reasonable rules in accordance with article three, chapter twenty-nine-a of this code, as may be considered necessary to ensure that the character, depth and thickness of geological formations encountered are accurately logged: *Provided,* That the secretary shall not require logging by the use of an electrical logging device: *Provided, however,* That if electrical or mechanical or geophysical logs are recorded in the well, the secretary may request copies of these logs: *Provided further,* That mechanical or geophysical logs may not include vertical seismic profiles or two-dimensional or three-dimensional seismic information.

(b) If a well operator takes core samples, that activity shall be noted within the report, and, within sixty days after filing the completion report, the operator shall, subject to the terms of this article, provide the state Geological and Economic Survey with a complete set of cores, consisting of at least quarter slabs, correctly labeled and identified according to depth. The core samples requested by and

provided to the state Geological and Economic Survey may not contain any materials or documents made with regard to analyzing or interpreting the core samples.

(c) If a well operator catches cuttings during the drilling of any deep or shallow well, that activity shall be noted within the report and, within sixty days after filing the completion report, the operator shall, subject to the terms of this article, provide the state Geological and Economic Survey with a sample of the cuttings, correctly labeled and identified according to depth.

(d) Any information, reports, cuttings and core samples requested by and provided to the state Geological and Economic Survey by the operator shall be kept confidential at the written request of the operator for a specified amount of time as follows:

(1) Except for core samples, any logs, drill cuttings, reports and other information or materials that reveal trade secrets or other confidential business information relating to the competitive interests of the operator or the operator's privy may not be disclosed to the public for one year following delivery, unless the operator consents in writing to a shorter time. At the operator's written request, the period of confidentiality may be extended in annual increments: *Provided,* That the total period of confidentiality may not exceed three years.

(2) Any core samples may not be disclosed to the public for five years following delivery to the state Geological and Economic Survey, unless the operator consents in writing to a shorter time. At the operator's written request, the period of confidentiality may be extended for an additional five years: *Provided,* That the total period of confidentiality may not exceed ten years.

(e) Notwithstanding the provisions of subsection (d) of this section, the state Geological and Economic Survey may store and process confidential information within its minerals mapping or geographic information systems; however, that confidential information may not be revealed to the public until the lapsing of the period of confidentiality created pursuant to subsection (d) of this section. After the period of confidentiality has lapsed, statistics or other information generated as the result of storage and processing may be disclosed in the aggregate through articles, reports, maps, or lectures presented in accordance with generally accepted academic or scientific practices and in a manner to preclude the identification of a particular well or operator.

CHAPTER 85

(H. B. 4277 - By Delegates Boggs, Miley, Barker and Caputo)

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

AN ACT to amend and reenact §22-11-3 and §22-11-8 of the Code of West Virginia, 1931, as amended, all relating to authorizing the Secretary of the Department of Environmental Protection to issue National Pollutant Discharge Elimination System permits; defining terms; and correcting antiquated language.

Be it enacted by the Legislature of West Virginia:

That §22-11-3 and §22-11-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-3. Definitions.
§22-11-8. Prohibitions; permits required.

§22-11-3. Definitions.

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

(1) "Activity" or "activities" means any activity or activities for which a permit is required by section seven of this article;

(2) "Board" means the environmental quality board, provided in article three, chapter twenty-two-b of this code;

(3) "Chief" means the director of the division of water and waste management of the Department of Environmental Protection;

(4) "Code" means the Code of West Virginia, 1931, as amended;

(5) "Department" means the Department of Environmental Protection;

(6) "Disposal system" means a system for treating or disposing of sewage, industrial wastes or other wastes, or the effluent therefrom, either by surface or underground methods, and includes sewer systems, the use of subterranean spaces, treatment works, disposal wells and other systems;

(7) "Disposal well" means any well drilled or used for the injection or disposal of treated or untreated sewage, industrial wastes or other wastes into underground strata;

(8) "Effluent limitation" means any restriction established on quantities, rates and concentrations of chemical, physical,

biological and other constituents which are discharged into the waters of this state;

(9) "Establishment" means an industrial establishment, mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well and each and every industry or plant or works in the operation or process of which industrial wastes, sewage or other wastes are produced;

(10) "Industrial user" means those industries identified in the standard industrial classification manual, United States Bureau of the Budget, 1967, as amended and supplemented, under the category "division d--manufacturing" and other classes of significant waste producers identified under regulations issued by the director or the administrator of the United States environmental protection agency;

(11) "Industrial wastes" means any liquid, gaseous, solid or other waste substance, or a combination thereof, resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resources; and the admixture with such industrial wastes of sewage or other wastes, as hereinafter defined, is also "industrial waste" within the meaning of this article;

(12) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues resulting from secondary processing; sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals, heat or all other materials and substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of the state;

(13) "Outlet" means the terminus of a sewer system or the point of emergence of any water-carried sewage,

industrial wastes or other wastes, or the effluent therefrom, into any of the waters of this state, and includes a point source;

(14) "Person", "persons" or "applicant" means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; State of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever;

(15) "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock or vessel or other floating craft, from which pollutants are or may be discharged;

(16) "Pollutant" means industrial wastes, sewage or other wastes as defined in this section;

(17) "Pollution" means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of the waters of the state;

(18) "Publicly owned treatment works" means any treatment works owned by the state or any political subdivision thereof, any municipality or any other public entity, for the treatment of pollutants;

(19) "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the secretary has delegated authority or duties pursuant to section six or eight, article one of this chapter;

(20) "Sewage" means water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface waters as may be present;

(21) "Sewer system" means pipelines or conduits, pumping stations, force mains and all other constructions, facilities, devices and appliances appurtenant thereto, used for collecting or conducting sewage, industrial wastes or other wastes to a point of disposal or treatment;

(22) "Treatment works" means any plant, facility, means, system, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, diversion ditch above or below the surface of the ground, settling tank or pond, earthen pit, incinerator, area devoted to sanitary landfills or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing, holding or disposing of sewage, industrial wastes or other wastes or for the purpose of regulating or controlling the quality and rate of flow thereof;

(23) "Water resources", "water" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells, watercourses and wetlands; and

(24) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does

not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use.

§22-11-8. Prohibitions; permits required.

(a) The secretary may, after public notice and opportunity for public hearing, issue a permit for the discharge or disposition of any pollutant or combination of pollutants into waters of this state upon condition that the discharge or disposition meets or will meet all applicable state and federal water quality standards and effluent limitations and all other requirements of this article and article three, chapter twenty-two-b of this code.

(b) It is unlawful for any person, unless the person holds a permit therefor from the department, which is in full force and effect, to:

(1) Allow sewage, industrial wastes or other wastes, or the effluent therefrom, produced by or emanating from any point source, to flow into the waters of this state;

(2) Make, cause or permit to be made any outlet, or substantially enlarge or add to the load of any existing outlet, for the discharge of sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state;

(3) Acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state, or any extension to or addition to the disposal system;

(4) Increase in volume or concentration any sewage, industrial wastes or other wastes in excess of the discharges

or disposition specified or permitted under any existing permit;

(5) Extend, modify or add to any point source, the operation of which would cause an increase in the volume or concentration of any sewage, industrial wastes or other wastes discharging or flowing into the waters of the state;

(6) Construct, install, modify, open, reopen, operate or abandon any mine, quarry or preparation plant, or dispose of any refuse or industrial wastes or other wastes from the mine or quarry or preparation plant: *Provided,* That the department's permit is only required wherever the aforementioned activities cause, may cause or might reasonably be expected to cause a discharge into or pollution of waters of the state, except that a permit is required for any preparation plant: *Provided, however,* That unless waived in writing by the secretary, every application for a permit to open, reopen or operate any mine, quarry or preparation plant or to dispose of any refuse or industrial wastes or other wastes from the mine or quarry or preparation plant shall contain a plan for abandonment of the facility or operation, which plan shall comply in all respects to the requirements of this article. The plan of abandonment is subject to modification or amendment upon application by the permit holder to the secretary and approval of the modification or amendment by the secretary; or

(7) Operate any disposal well for the injection or reinjection underground of any industrial wastes, including, but not limited to, liquids or gases, or convert any well into such a disposal well or plug or abandon any such disposal well.

(c) Where a person has a number of outlets emerging into the waters of this state in close proximity to one another, the outlets may be treated as a unit for the purposes of this section, and only one permit issued for all the outlets.

CHAPTER 86

(Com. Sub. for H. B. 4534 - By Delegates Caputo, Manchin, Longstreth, Wooton, Hamilton, Miley, Moore, Frazier, Fleischauer, Hunt and Brown)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2010.]

AN ACT to amend and reenact §17C-4-1 of the Code of West Virginia, 1931, as amended, relating to increasing the criminal penalty for failing to stop and render aid after a motor vehicle crash; clarifying intent requirement; extending suspension period; and naming the code section "Erin's Law".

Be it enacted by the Legislature of West Virginia:

That §17C-4-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. CRASHES.

*§17C-4-1. Crashes involving death or personal injuries; Erin's Law.

1 (a) The driver of any vehicle involved in a crash resulting
2 in injury to or death of any person shall immediately stop the

*CLERK'S NOTE: This section was also amended by S. B. 354 (Chapter 173) which passed prior to this act.

3 vehicle at the scene of the crash or as close to the scene as
4 possible and return to and remain at the scene of the crash
5 until he or she has complied with the requirements of section
6 three of this article: *Provided,* That the driver may leave the
7 scene of the crash as may reasonably be necessary for the
8 purpose of rendering assistance to an injured person as
9 required by said section three. Every such stop shall be made
10 without obstructing traffic more than is necessary.

11 (b) Any person knowingly violating the provisions of
12 subsection (a) of this section after being involved in a crash
13 resulting in the death of any person is guilty of a felony and,
14 upon conviction thereof, shall be fined by not more than
15 $5,000 or imprisoned in a correctional facility for not less
16 than one year nor more than five years, or both fined and
17 confined.

18 (c) Any person knowingly violating the provisions of
19 subsection (a) of this section after being involved in a crash
20 resulting in physical injury to any person is guilty of a
21 misdemeanor and, upon conviction thereof, shall be punished
22 by confinement in jail for not more than one year, or fined
23 not more than $1,000, or both.

24 (d) The commissioner shall revoke the license or permit
25 or operating privilege to drive of any resident or nonresident
26 person convicted pursuant to the provisions of this section for
27 a period of one year from the date of conviction or the date
28 of release from incarceration, whichever is later.

29 (e) This section may be known and cited as "Erin's Law".

CHAPTER 87

(Com. Sub. for S. B. 494 - By Senators Kessler and Chafin)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2010.]

AN ACT to amend and reenact §44-3-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §44-3A-35 of said code; and to amend said code by adding thereto a new section, designated §51-10A-6, all relating to fiduciary matters; updating references from the commissioner of accounts to the fiduciary commissioner; requiring fiduciary commissioner to file status reports and settle accounts of certain cases with county clerks; requiring county clerks to file the status report with county commissions; and prohibiting bail bonding companies or bail bond enforcers from providing fiduciary bonds unless licenced by the Insurance Commissioner.

Be it enacted by the Legislature of West Virginia:

That §44-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §44-3A-35 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §51-10A-6, all to read as follows:

Chapter
44. Administration of Estates and Trusts.
51. Courts and Their Officers.

CHAPTER 44. ADMINISTRATION OF ESTATES & TRUSTS.

Article
3. **Fiduciary Commissioners; Powers and Duties.**
3A. **Optional Procedure for Proof and Allowance of Claims Against Estates of Decendents; County Option.**

ARTICLE 3. FIDUCIARY COMMISSIONERS; POWERS AND DUTIES.

§44-3-1. Fiduciary commissioners.

The office previously known as commissioner of accounts is hereby abolished. The office of fiduciary commissioner is hereby created and any reference in this code to a commissioner of accounts shall, after the effective date of this section, mean fiduciary commissioner. Fiduciary commissioners shall be attorneys admitted to the practice of law in this state, or shall meet the qualifications of fiduciary supervisors as set forth in article three-a of this chapter: *Provided,* That persons who are serving as commissioners of accounts upon the effective date of this article shall be continued in office as fiduciary commissioners for not more than one year from the effective date of this article for the purpose of settling estates not settled on the effective date of this article.

The county commission of each county shall appoint not more than four fiduciary commissioners. In counties in which there exists a separate tribunal for police and fiscal purposes, that tribunal shall appoint the fiduciary commissioners. In either case, not more than two of the fiduciary commissioners may be from the same political party.

The fiduciary commissioner shall report to and settle accounts with the county clerk. On or before the last day of March, June, September and December, the fiduciary commissioner shall file with the county clerk a report on the status and disposition of every active case referred to the

fiduciary commissioner. In the next succeeding term of the county commission, the county clerk shall provide a copy of the report to the county commission, and shall inform the county commission of any cases referred to a fiduciary commissioner in which the fiduciary commissioner has not fulfilled duties relating to the case in accordance with deadlines established by law. The county commission shall take appropriate action to ensure that all deadlines established by law will be observed, including, if necessary, the removal of fiduciary commissioners who consistently fail to meet such deadlines.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.

§44-3A-35. Fiduciary commissioners.

The county commission of each county shall appoint not more than four fiduciary commissioners, except that in counties in which there exists a separate tribunal for police and fiscal purposes, such tribunal shall appoint such commissioners: *Provided,* That the county commission or such separate tribunal shall avoid reference of estates to such commissioners, unless such reference is necessary.

The fiduciary commissioner shall report to and settle accounts with the county clerk. On or before the last day of March, June, September and December, the fiduciary commissioner shall file with the county clerk a report on the status and disposition of every active case referred to the fiduciary commissioner. In the next succeeding term of the county commission, the county clerk shall provide a copy of the report to the county commission, and shall inform the county commission of any cases referred to a fiduciary commissioner in which the fiduciary commissioner has not

fulfilled duties relating to the case in accordance with deadlines established by law. The county commission shall take appropriate action to ensure that all deadlines established by law will be observed, including, if necessary, the removal of fiduciary commissioners who consistently fail to meet such deadlines.

CHAPTER 51. COURTS & THEIR OFFICERS.

ARTICLE 10A. BAIL BOND ENFORCERS.

§51-10A-6. Prohibition against providing fiduciary bonds in estates; exception.

A bail bonding company or a bail bond enforcer may not provide fiduciary bonds for an estate unless the bail bonding company or bail bond enforcer is licensed with the Insurance Commissioner to act as an agent for an insurance company that provides surety or fiduciary bonds.

CHAPTER 88

(Com. Sub. for H. B. 4155 - By Delegates Varner, Kominar, Cann, Campbell, White, M. Poling, Mahan, Ferro, Perdue, Boggs and Pethtel)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2010.]

AN ACT to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended, relating to permitting revenues allocated to volunteer and part-time fire departments to be used

for Workers' Compensation premiums, certain life insurance premiums, educational training supplies and fire prevention promotional materials; and revising references.

Be it enacted by the Legislature of West Virginia:

That §8-15-8b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-8b. Authorized expenditures of revenues from the municipal pensions and protection fund and the fire protection fund.

1 Revenues allocated to volunteer and part volunteer fire
2 companies and departments may be expended only for the
3 items listed in subdivisions (1) through (15) of this section.

4 Funds received from the state for volunteer and part
5 volunteer fire companies and departments, pursuant to
6 sections fourteen-d and thirty-three, article three, and section
7 seven, article twelve-c, all of chapter thirty-three of this code,
8 may not be commingled with funds received from any other
9 source. Expenditures may be made for the following:

10 (1) Personal protective equipment, including protective
11 head gear, bunker coats, pants, boots, combination of bunker
12 pants and boots, coats and gloves;

13 (2) Equipment for compliance with the national fire
14 protection standard or automotive fire apparatus, NFPA-1901;

15 (3) Compliance with insurance service office
16 recommendations relating to fire departments;

(4) Rescue equipment, communications equipment and ambulance equipment: *Provided*, That no moneys received from the municipal pensions and protection fund or the fire protection fund may be used for equipment for personal vehicles owned or operated by volunteer fire company or department members;

(5) Capital improvements reasonably required for effective and efficient fire protection service and maintenance of the capital improvements;

(6) Retirement of debts;

(7) Payment of utility bills;

(8) Payment of the cost of immunizations, including any laboratory work incident to the immunizations, for firefighters against hepatitis-b and other blood borne pathogens: *Provided*, That the vaccine shall be purchased through the state immunization program or from the lowest cost vendor available: *Provided, however*, That volunteer and part volunteer fire companies and departments shall seek to obtain no cost administration of the vaccinations through local boards of health: *Provided further*, That in the event any volunteer or part volunteer fire company or department is unable to obtain no cost administration of the vaccinations through a local board of health, the company or department shall seek to obtain the lowest cost available for the administration of the vaccinations from a licensed health care provider;

(9) Any filing fee required to be paid to the Legislative Auditor's Office under section fourteen, article four, chapter twelve of this code relating to sworn statements of annual expenditures submitted by volunteer or part volunteer fire companies or departments that receive state funds or grants;

(10) Property/casualty insurance premiums for protection and indemnification against loss or damage or liability;

50 (11) Operating expenses reasonably required in the
51 normal course of providing effective and efficient fire
52 protection service, which include, but are not limited to,
53 gasoline, bank fees, postage and accounting costs;

54 (12) Dues paid to national, state and county associations;

55 (13) Workers' Compensation premiums;

56 (14) Life insurance premiums to provide a benefit not to
57 exceed $20,000 for firefighters; and

58 (15) Educational and training supplies and fire prevention
59 promotional materials, not to exceed $500 per year.

CHAPTER 89

(Com. Sub. for H. B. 4166 - By Delegates Hamilton, Klempa, Miley, Duke, Ellem, Wells and Manchin)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2010.]

AN ACT to amend and reenact §8-15-17 of the Code of West Virginia, 1931, as amended, relating to paid firefighters who seek subsequent employment with other paid fire departments; authorizing applicants over the age of thirty-five who seek subsequent employment with a paid fire department to apply under certain circumstances; and limiting subsequent hiring or reinstatement effects on seniority considerations.

Be it enacted by the Legislature of West Virginia:

That §8-15-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-17. Form of application; age and residency requirements; exceptions.

1 (a) The Firemen's Civil Service Commission in each
2 municipality shall require individuals applying for admission
3 to any competitive examination provided for under the civil
4 service provisions of this article or under the rules of the
5 commission to file in its office, within a reasonable time prior
6 to the proposed examination, a formal application in which
7 the applicant shall state under oath or affirmation:

8 (1) His or her full name, residence and post-office
9 address;

10 (2) His or her United States citizenship, age and the place
11 and date of his or her birth;

12 (3) His or her state of health, and his or her physical
13 capacity for the public service;

14 (4) His or her business and employments and residences
15 for at least three previous years; and

16 (5) Any other information as may reasonably be required,
17 touching upon the applicant's qualifications and fitness for
18 the public service.

19 (b) Blank forms for the applications shall be furnished by
20 the commission, without charge, to all individuals requesting
21 the same.

(c) The commission may require, in connection with the application, certificates of citizens, physicians and others, having pertinent knowledge concerning the applicant, as the good of the service may require.

(d) Except as provided in subsections (e) and (f) of this section, no application for original appointment shall be received if the individual applying is less than eighteen years of age or more than thirty-five years of age at the date of his or her application.

(e) In the event any applicant formerly served upon the paid fire department of the municipality to which he or she makes application, for a period of more than one year, and resigned from the department at a time when there were no charges of misconduct or other misfeasance pending against the applicant, within a period of two years next preceding the date of his or her application, and at the time of his or her application resides within the corporate limits of the municipality in which the paid fire department to which he or she seeks appointment by reinstatement is located, then the individual shall be eligible for appointment by reinstatement in the discretion of the Firemen's Civil Service Commission, even though the applicant shall be over the age of thirty-five years, and the applicant, providing his or her former term of service so justifies, may be appointed by reinstatement to the paid fire department without a competitive examination, but the applicant shall undergo a medical examination; and if the individual shall be so appointed by reinstatement to the paid fire department, he or she shall be the lowest in rank in the department next above the probationers of the department and may not be entitled to seniority considerations.

(f) If an individual is presently employed by one paid fire department and is over the age of thirty-five, he or she may make an application to another paid fire department if:

(1) The paid fire department to which he or she is applying is serving a municipality that has elected to

participate in the West Virginia Municipal Police Officers and Firefighters Retirement System created in article twenty-two-a, chapter eight of this code: *Provided*, That any individual applying pursuant to this subdivision is to be classified as a new employee for retirement purposes and no prior employment service can be transferred to the West Virginia Municipal Police Officers and Firefighters Retirement System; or

(2)The paid fire department to which he or she is applying is serving a municipality that has elected to participate in the West Virginia Public Employees Retirement System created in article ten, chapter five of this code: *Provided*, That any individual applying pursuant to this subdivision is to be classified as a new employee for retirement purposes and no prior employment service can be transferred to the West Virginia Public Employees Retirement System, except for individuals and their prior employment service already credited to them in the West Virginia Public Employees Retirement System pursuant to article ten, chapter five of this code.

(g) Individuals who are authorized to apply to a paid fire department pursuant to subsection (f) of this section shall be in the lowest rank of the department and may not be entitled to seniority considerations.

(h) Any applicant for original appointment must have been a resident for one year, during some period of time prior to the date of his or her application, of the municipality in which he or she seeks to become a member of the paid fire department: *Provided,* That if the commission determines it necessary it may consider for original appointment applicants who are not residents of the municipality but who have been residents of the county in which the municipality or any portion of the territory thereof is located for a period of at least one year.

CHAPTER 90

(S. B. 664 - By Senator Palumbo)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §44A-3-1 and §44A-3-2 of the Code of West Virginia, 1931, as amended, all relating to the duties and reports of the guardian of a protected person; providing that the guardian owes a fiduciary duty to act in the best interests of the protected person; requiring the guardian to make provision for social interactions between the protected person and the protected person's friends and family; requiring the periodic guardian reports to include a summary of the guardian's efforts and activities on behalf of the protected person; and including the guardian's efforts to facilitate the protected persons involvement in social activities and social interaction with friends and family as a part of the guardian's periodic reports.

Be it enacted by the Legislature of West Virginia:

That §44A-3-1 and §44A-3-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

§44A-3-1. Duties of guardian of protected person.
§44A-3-2. Reports by guardian of protected person.

ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

§44A-3-1. Duties of guardian of protected person.

(a) The guardian of a protected person owes a fiduciary duty to the protected person and is responsible for obtaining provision for and making decisions with respect to the protected person's support, care, health, habilitation, education, therapeutic treatment, social interactions with friends and family, and, if not inconsistent with an order of commitment or custody, to determine the protected person's residence.

(b) A guardian shall maintain sufficient contact of not less than once very six months with the protected person to know of the protected person's capabilities, limitations, needs, and opportunities.

(c) A guardian shall be required to seek prior court authorization to change the protected person's residence to another state, to terminate or consent to a termination of the protected person's parental rights, to initiate a change in the protected person's marital status, to deviate from a protected person's living will or medical power of attorney, or to revoke or amend a durable power of attorney executed by the protected person.

(d) A guardian shall exercise authority only to the extent necessitated by the protected person's limitations, and, where feasible, shall encourage the protected person to participate in decisions, to act on his or her own behalf, and to develop or regain the capacity to manage personal affairs.

(e) A guardian shall, to the extent known, consider the express desires and personal values of the protected person when making decisions, and shall otherwise act in the protected person's best interests and exercise reasonable care, diligence, and prudence.

(f) Upon the petition of an interested party or upon its own motion, the court or Mental Hygiene Commissioner may order the guardian to take appropriate action to address the

needs and best interests of the protected person as required by this section.

§44A-3-2. Reports by guardian of protected person.

(a) Any guardian appointed pursuant to the provisions of this chapter shall file periodic reports, in accordance with section eleven of this article including:

(1) A description of the current mental, physical, and social condition of the protected person;

(2) A description of the protected person's living arrangements during the reported period;

(3) The medical, educational, vocational, and other professional services provided to the protected person and the guardian's opinion as to the adequacy of the protected person's care;

(4) A summary of the guardian's visits with the protected person, the guardian's social interactions with the protected persons, the guardian's efforts and activities on behalf of the protected person, including the guardian's efforts facilitating on behalf of the protected person social interactions with friends and families, and the guardian's efforts facilitating the protected person engagement in social activities;

(5) A statement of whether the guardian agrees with the current treatment or habilitation plan;

(6) A recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship;

(7) Any other information requested by the court or useful in the opinion of the guardian;

(8) The compensation requested and the reasonable and necessary expenses incurred by the guardian; and

28 (9) A verification signed by the guardian stating that all
29 of the information contained in the report is true and correct
30 to the best of his or her knowledge.

31 (b) The court may order the guardian to attend a hearing
32 on the report by motion of the court or Mental Hygiene
33 Commissioner, or upon the petition of any interested person.
34 A report of the guardian may be incorporated into and made
35 a part of the accounting of the conservator.

CHAPTER 91

(Com. Sub. for H. B. 4187 - By Delegates Barker and Wells)

[Amended and again passed March 20, 2010, as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §22-18-22 of the Code of West Virginia, 1931, as amended, relating to extending the termination date of the Hazardous Waste Management Fee Fund; and continuation of the annual certification fee.

Be it enacted by the Legislature of West Virginia:

That §22-18-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.

§22-18-22. Appropriation of funds; Hazardous Waste Management Fund.

(a) The net proceeds of all fines, penalties and forfeitures collected under this article shall be appropriated as directed by section five, article XII of the Constitution of West Virginia. For the purposes of this section, the net proceeds of the fines, penalties and forfeitures are considered the proceeds remaining after deducting therefrom those sums appropriated by the Legislature for defraying the cost of administering this article. All permit application fees collected under this article shall be paid into the State Treasury into a special fund designated the Hazardous Waste Management Fund. In making the appropriation for defraying the cost of administering this article, the Legislature shall first take into account the sums included in that special fund prior to deducting additional sums as may be needed from the fines, penalties and forfeitures collected pursuant to this article.

(b) Effective on July 1, 2003, there is imposed an annual certification fee for facilities that manage hazardous waste, as defined by the federal Resource Conservation and Recovery Act, as amended. The secretary shall propose a rule for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish the certification fee. The rule shall be a product of a negotiated rule-making process with the facilities subject to the rule. The rule shall, at a minimum, establish different fee rates for facilities based on criteria established in the rule. The total amount of fees generated raise no more funds than are necessary and adequate to meet the matching requirements for all federal grants which support the hazardous waste management program, but shall not exceed $700,000 per year.

(c) The revenues collected from the annual certification fee shall be deposited in the State Treasury to the credit of the Hazardous Waste Management Fee Fund, which is continued. Moneys of the fund, together with any interest or other return earned on the fund, shall be expended to meet the matching requirements of federal grant programs which support the

hazardous waste management program. Expenditures from the fund are for the purposes set forth in this article and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts by appropriation of the Legislature.

(d) The fee provided in subsection (b) of this section and the fund established in subsection (c) of this section shall terminate on June 30, 2015. The department shall, by December 31 of each year, report to the Joint Committee on Government and Finance regarding moneys collected into the Hazardous Waste Management Fee Fund and expenditures by the agency, including any federal matching moneys received and providing an accounting on the collection of the fee by type of permit activity, funds being expended and current and future projected balances of the fund.

CHAPTER 92

(Com. Sub. for H. B. 4176 - By Delegates Perdue, Border, Hatfield, Staggers, Moore, Moye and Rodighiero)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §16-1A-1, §16-1A-2, §16-1A-3, §16-1A-4 and §16-1A-5 of the Code of West Virginia, 1931, as

amended; and to amend said code by adding thereto five new sections, designated §16-1A-6, §16-1A-7, §16-1A-8, §16-1A-9 and §16-1A-10, all relating to providing for uniform credentialing for health care practitioners; establishing a single statewide credentialing verification organization and a uniform recredentialing calendar; setting forth legislative findings, defining terms; increasing the membership of the advisory committee; authorizing the Secretary and Insurance Commissioner to, no later than July 1, 2015, select and contract with a qualified credentialing verification organization that will be the sole source for primary source verification for all credentialing entities; reviewing operations of the statewide credentialing verification organization; setting forth qualifications for a credentialing verification organization; giving preference to a credentialing verification organization organized within this state; suspending mandatory use of statewide credentialing verification organization by credentialing entities by the Secretary and Insurance Commissioner for certain failures of the statewide credentialing verification organization; setting forth an application process; providing for the confidentiality of information and exceptions; setting forth legislative rule-making authority; providing for the establishment by rule of penalties; and granting immunity to credentialing entity for reliance upon information provided by the statewide credentialing verification organization.

Be it enacted by the Legislature of West Virginia:

That §16-1A-1, §16-1A-2, §16-1A-3, §16-1A-4 and §16-1A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto five new sections, designated §16-1A-6, §16-1A-7, §16-1A-8, §16-1A-9 and §16-1A-10, all to read as follows:

ARTICLE 1A. UNIFORM CREDENTIALING FOR HEALTH CARE PRACTITIONERS.

§16-1A-1. Legislative findings; purpose.
§16-1A-2. Development of uniform credentialing application forms and the credentialing process.
§16-1A-3. Definitions.
§16-1A-4. Advisory committee.
§16-1A-5. Credentialing Verification Organization.
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§16-1A-9. Rulemaking; fees; penalties.
§16-1A-10. Immunity.

§16-1A-1. Legislative findings; purpose.

(a) The Legislature finds:

(1) Credentialing, required by hospitals, insurance companies, prepaid health plans, third party administrators, provider networks and other health care entities, is necessary to assess and verify the education, training and experience of health care practitioners to ensure that qualified professionals treat the citizens of this state.

(2) Although uniform credentialing and recredentialing application forms have been created to reduce duplication and increase efficiency, each credentialing entity continues to perform primary source verification for the practitioners who apply to that entity for affiliation. Moreover, because credentialing entities do not follow a common calendar, practitioners are required to respond to requests throughout the year from various credentialing entities seeking essentially similar information. This duplication of primary source verification is time consuming and costly.

(3) The Secretary of the Department of Health and Human Resources and the Insurance Commissioner share regulatory authority over the entities requiring credentialing.

(b) The purpose of this article is to continue the advisory committee previously established to assist in developing a uniform credentialing process through the development of

24 legislative rules to govern how a single credentialing
25 verification organization will operate in this state and, except
26 with respect to health care facilities, the establishment of a
27 common credentialing calendar.

§16-1A-2. Development of uniform credentialing application forms and the credentialing process.

1 Notwithstanding any provision of this code to the
2 contrary, the Secretary of the Department of Health and
3 Human Resources and the Insurance Commissioner shall
4 jointly propose rules for legislative approval in accordance
5 with the provisions of article three, chapter twenty-nine-a of
6 this code governing the development and use of uniform
7 application forms for credentialing, recredentialing or
8 updating information of health care practitioners required to
9 use the forms and the improvement of the credentialing
10 process, including creation of a credentialing verification
11 organization and a uniform recredentialing calendar.

§16-1A-3. Definitions.

1 For the purposes of this article, the following definitions
2 apply:

3 (a) "Credentialing" means the process used to assess and
4 validate the qualifications of a health care practitioner,
5 including, but not limited to, an evaluation of licensure status,
6 education, training, experience, competence and professional
7 judgment.

8 (b) "Credentialing entity" means any health care facility,
9 as that term is defined in subsection (j), section two, article
10 two-d of this chapter, or payor or network that requires
11 credentialing of health care practitioners.

12 (c) "Credentialing Verification Organization" means an
13 entity that performs primary source verification of a health

14 care practitioner's training, education, experience; "statewide
15 credentialing verification organization" means the
16 credentialing verification organization selected pursuant to
17 the provisions of section five of this article.

18 (d) "Health care practitioner" or "practitioner" means a
19 person required to be credentialed using the uniform forms
20 set forth in the rule promulgated pursuant to the authority
21 granted in section two, article one-a of this chapter.

22 (e) "Insurance Commissioner" or "Commissioner" means
23 the Insurance Commissioner of the State of West Virginia as
24 set forth in article two, chapter thirty-three of this code.

25 (f) "Joint Commission" formerly known as the Joint
26 Commission on Accreditation of Healthcare Organizations or
27 JCAHO, is a private sector, United States-based, not-for-
28 profit organization that operates voluntary accreditation
29 programs for hospitals and other health care organizations.

30 (g) "National Committee for Quality Assurance" or
31 "NCQA" is a private, 501(c)(3) not-for-profit organization
32 that evaluates and certifies credentialing verification
33 organizations.

34 (h) "Network" means an organization that represents or
35 contracts with a defined set of health care practitioners under
36 contract to provide health care services to a payor's enrollees.

37 (i) "Payor" means a third party administrator as defined
38 in section two, article forty-six , chapter thirty-three of this
39 code and including third party administrators that are
40 required to be registered pursuant to section thirteen, article
41 forty-six, chapter thirty-three of this code, any insurance
42 company, health maintenance organization, health care
43 corporation or any other entity required to be licensed under
44 chapter thirty-three of this code and that, in return for

45 premiums paid by or on behalf of enrollees, indemnifies such
46 enrollees or reimburses health care practitioners for medical
47 or other services provided to enrollees by health care
48 practitioners.

49 (j) "Primary source verification procedure" means the
50 procedure used by a credentialing verification organization
51 to, in accordance with national committee for quality
52 assurance standards, collect, verify and maintain the accuracy
53 of documents and other credentialing information submitted
54 in connection with a health care practitioner's application to
55 be credentialed.

56 (k) "Secretary" means the Secretary of the West Virginia
57 Department of Health and Human Resources as set forth in
58 chapter sixteen, article one of this code.

59 (l) "Uniform application form" or "uniform form" means
60 the blank uniform credentialing or recredentialing form
61 developed and set forth in a joint procedural rule
62 promulgated pursuant to section two of this article.

§16-1A-4. Advisory committee.

1 (a) The Secretary of the Department of Health and Human
2 Resources and the Insurance Commissioner shall jointly
3 establish an advisory committee to assist them in the
4 development and implementation of the uniform credentialing
5 process in this state. The advisory committee shall consist of
6 fourteen appointed members. Six members shall be appointed
7 by the Secretary of the Department of Health and Human
8 Resources: One member shall represent a hospital with one
9 hundred beds or less; one member shall represent a hospital
10 with more than one hundred beds; one member shall represent
11 another type of health care facility requiring credentialing; one
12 member shall be a person currently credentialing on behalf of
13 health care practitioners; and two of the members shall

14 represent the health care practitioners subject to credentialing.
15 Five members shall be representative of the entities regulated
16 by the Insurance Commissioner that require credentialing and
17 shall be appointed by the Insurance Commissioner: One
18 member shall represent an indemnity health care insurer; one
19 member shall represent a preferred provider organization; one
20 member shall represent a third party administrator; one
21 member shall represent a health maintenance organization
22 accredited by URAC; and one member shall represent a health
23 maintenance organization accredited by the national committee
24 on quality assurance. The Secretary of the Department of Health
25 and Human Resources and the Insurance Commissioner, or the
26 designee of either or both, shall be nonvoting ex officio
27 members. Upon the effective date of this legislation, the state
28 hospital association, the state association of licensing boards
29 and state medical association shall each designate to the
30 department one person to represent their respective
31 associations and members and those designees shall be
32 appointed to the advisory committee by the secretary of the
33 department.

34 (b) At the expiration of the initial terms, successors will
35 be appointed to terms of three years. Members may serve an
36 unlimited number of terms. When a vacancy occurs as a
37 result of the expiration of a term or otherwise, a successor of
38 like qualifications shall be appointed. Representatives of the
39 hospital association, the association of licensing boards and
40 the state medical association shall serve for three-year terms.

41 (c) The advisory committee shall meet at least annually
42 to review the status of uniform credentialing in this state, and
43 may make further recommendations to the Secretary of the
44 Department of Health and Human Resources and the
45 Insurance Commissioner as are necessary to carry out the
46 purposes of this article. Any uniform forms and the list of
47 health care practitioners required to use the uniform forms as
48 set forth in legislative rule proposed pursuant to section two
49 of this article may be amended as needed by procedural rule.

§16-1A-5. Credentialing Verification Organization.

1 The Secretary and the Insurance Commissioner shall,
2 with the advice of the advisory committee, take such steps as
3 are necessary to select and contract with a credentialing
4 verification organization that will, beginning no later than
5 July 1, 2015, be the sole source for primary source
6 verification for all credentialing entities. The credentialing
7 verification organization selected shall be responsible for the
8 receipt of all uniform applications, the primary source
9 verification of the information provided on such applications,
10 and the updating and maintenance of all information
11 generated by such activities. The dates on which the use of
12 this statewide credentialing verification organization is
13 mandatory with respect to the credentialing of the different
14 classes of health care practitioners shall be determined by
15 emergency and legislative rules promulgated pursuant to the
16 authority in section ten of this article.

§16-1A-6. Contract with statewide credentialing verification organization; requirements.

1 The Secretary and Insurance Commissioner shall assure
2 that:

3 (1) Any contract executed with a credentialing
4 verification organization shall be for an initial contract period
5 of at least three years, subject to renewals, and the Secretary
6 and Insurance Commissioner shall, in consultation with the
7 advisory committee, periodically review the statewide
8 credentialing verification organization's operations no less often
9 than prior to every renewal.

10 (2) A credentialing verification organization selected
11 pursuant to this article must, at a minimum, be certified by
12 the national committee for quality assurance, be able to
13 demonstrate compliance with the joint commission's

14 standards for credentialing and with all federal and state
15 credentialing regulations, and maintain an errors and
16 omissions insurance policy in amounts deemed to be
17 adequate by the Secretary and Insurance Commissioner.

18 (3) Preference shall be given to credentialing verification
19 organizations organized within the State of West Virginia.

§16-1A-7. Verification process; suspension of requirements.

1 (a) The statewide credentialing verification organization
2 shall provide electronic access to the uniform credentialing
3 application forms developed pursuant to section two of this
4 article.

5 (b) A health care practitioner seeking to be credentialed
6 must attest to and submit a completed uniform application
7 form to the statewide credentialing verification organization
8 and must provide any additional information requested by
9 such credentialing verification organization: *Provided,* That
10 a failure to comply with a reasonable request for additional
11 information within thirty days may be grounds for the
12 statewide credentialing verification organization to submit its
13 report to any credentialing entity with identification of
14 matters deemed to be incomplete.

15 (c) Except as provided in subsection (d) of this section,
16 a credentialing entity may not require a person seeking to be
17 credentialed or recredentialed to provide verification of any
18 information contained in the uniform application: *Provided,*
19 That nothing in this article is considered to prevent a
20 credentialing entity from collecting or inquiring about
21 information unavailable from or through the statewide
22 credentialing verification organization or from making
23 inquires to the National Practitioner Data Bank.

24 (d) A credentialing entity other than a health care facility
25 must issue a credentialing decision within sixty days after

26 receiving the statewide credentialing verification
27 organization's completed report and, with respect to
28 affirmative credentialing decisions, payments pursuant to the
29 contract shall be retroactive to the date of the decision.

30 (e) If the statewide credentialing verification organization
31 fails to maintain national committee for quality assurance
32 certification or, in the opinion of the Secretary and Insurance
33 Commissioner, is unable to satisfy compliance with the joint
34 commission's standards or federal and state credentialing
35 regulations, the Secretary and Insurance Commissioner may,
36 under terms and conditions deemed necessary to maintain the
37 integrity of the credentialing process, notify credentialing
38 entities that the requirement, relating to the mandatory use of
39 the statewide credentialing verification organization, is being
40 suspended.

41 (f) Notwithstanding any other provision of this code,
42 credentialing entities may contract with the statewide
43 credentialing verification organization or another credentialing
44 verification organization to perform credentialing services, such
45 as site visits to health care practitioners' offices, in addition to
46 those services for which the statewide credentialing verification
47 organization is the sole source.

§16-1A-8. Release and uses of information collected; confidentiality.

1 (a) Upon execution of a release by the health care
2 practitioner, the statewide credentialing verification
3 organization shall, under terms established in rule, provide
4 the credentialing entity with electronic access to data
5 generated.

6 (b) In order to assure that information in its files is
7 current, the statewide credentialing verification organization
8 shall establish processes to update information as required by
9 credentialing entities.

10 (c) Except as provided in subsection (d) of this section,
11 all information collected by the statewide credentialing
12 verification organization from any source is confidential in
13 nature, is exempt from disclosure pursuant to subpoena or
14 discovery, is exempt from disclosure under the provisions of
15 article one, chapter twenty-nine-b of this code, and shall be
16 used solely by a credentialing entity to review the
17 professional background, competency and qualifications of
18 each health care practitioner applying to be credentialed.

19 (d) Credentialing information received by a credentialing
20 entity from the statewide credentialing verification
21 organization shall not be disclosed except:

22 (1) In appeals of credentialing decisions or to peer review
23 and quality improvement committees: *Provided,* That such
24 information shall be afforded the same protection from
25 disclosure as is provided to other records used in proceedings
26 subject to section three, article three-c, chapter thirty of this
27 code;

28 (2) In any matter in which an action or order of a
29 professional licensing board or other state or federal
30 regulatory authority is at issue, including any proceeding
31 brought by or on behalf of a health care practitioner or patient
32 or by a regulatory body that challenges the actions, omissions
33 or conduct of a credentialing entity with respect to
34 credentialing decision; or

35 (3) When authorized by the health care practitioner to
36 whom the credentialing information relates: *Provided,* That
37 the health care practitioner's authorization shall only permit
38 disclosure of information that he or she provided directly to
39 the statewide credentialing verification organization.

40 (e) Upon the expiration of the contract with a statewide
41 credentialing verification organization, all information

42 collected in connection with the duties under such contract
43 shall be delivered to the Secretary and Insurance
44 Commissioner to the extent allowed by law and subject to
45 any legal requirements applicable to the sources of such
46 information.

47 (f) The statewide credentialing verification organization
48 may enter into contractual agreements to define the data type
49 and form of information to be provided to users and to give
50 users assurances of the integrity of the information collected.

§16-1A-9. Rulemaking; fees; penalties.

1 The Secretary and Insurance Commissioner, in
2 consultation with the advisory committee, shall propose rules
3 for legislative approval in accordance with the provisions of
4 article three, chapter twenty-nine-a of this code on or before
5 June 1, 2011. The legislative rules must include, but shall not
6 be limited to, the following matters:

7 (1) Performance standards for the evaluation of the
8 statewide credentialing verification organization;

9 (2) The manner in which the statewide credentialing
10 verification organization must demonstrate compliance with
11 credentialing standards and regulations;

12 (3) Penalties, including monetary sanctions, for violations
13 of any provisions of this article;

14 (4) Duties of the statewide credentialing verification
15 organization and the timelines for completion of its
16 verification duties and services;

17 (5) Procedures for maintaining healthcare practitioner
18 files;

(6) The payment system to cover the costs of the credentialing program;

(7) The use and confidentiality of data generated, collected and maintained by the statewide credentialing verification organization;

(8) Except with respect to health care facilities, the methodology for determination and communication of the common recredentialing date for a practitioner; and

(9) Procedures and criteria for the bidding and selection of the statewide credentialing verification organization.

§16-1A-10. Immunity.

(a) If the statewide credentialing verification organization certifies that information in an application has been verified according to its primary source verification procedures, any negligence by the statewide credentialing verification organization in its collection and verification of such information may not be imputed to a credentialing entity that receives such information and, further, such credentialing entity is not liable for damages arising from its reliance on such information in its credentialing process unless the credentialing entity knew or should have known such information was incorrect: *Provided,* That a credentialing entity is otherwise liable as provided by law for damages arising from its credentialing decisions.

(b) This article may not be interpreted as requiring a credentialing entity as defined in this article, to grant medical staff appointment to any practitioner nor may it be interpreted as requiring a credentialing entity to permit any practitioner to provide patient care or as requiring a payor or network to reimburse a practitioner for services.

CHAPTER 93

(Com. Sub. for S. B. 422 - By Senators Foster, Unger and Laird)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §16-4D-4 of the Code of West Virginia, 1931, as amended, relating to limiting liability for anticipated automatic external defibrillator users who are not health care providers.

Be it enacted by the Legislature of West Virginia:

That §16-4D-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4D. AUTOMATED EXTERNAL DEFIBRILLATORS.

§16-4D-4. Limitation on liability.

1 A person is not liable for civil damages as a result of any
2 act or omission in rendering emergency medical care or
3 treatment involving the use of an AED if the care or
4 treatment does not amount to gross negligence and the
5 following conditions are met:

6 (1) The person, entity, certified trainer or medical director
7 of the early defibrillation program is in compliance with the
8 provisions of section three of this article; and

9 (2) The person is an anticipated operator of an AED who
10 gratuitously and in good faith rendered emergency medical
11 care, pursuant to the requirements of section three of this
12 article, other than in the ordinary course of the person's
13 employment or profession as a health care provider, as
14 defined in section two, article two-d of this chapter; or

15 (3) The person is an unanticipated operator who
16 gratuitously and in good faith rendered emergency medical
17 care.

CHAPTER 94

(Com. Sub. for S. B. 597 - By Senators Kessler, Prezioso, Boley and Green)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to repeal §16-2I-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-2I-2, §16-2I-8 and §16-2I-9 of said code, all relating to physician assisted abortions; requiring prior notice to the patient of the opportunity to view any ultrasound image utilized and in conjunction with the abortion procedure; providing the contents of a form to be provided to and signed by the female undergoing the abortion relating to her right to view or not view the ultrasound image; revising administrative remedies for physicians and their agents that do not comply with the provisions of the Woman's Right to Know Act; removing civil liability and civil remedies associated with failure to comply with the Woman's Right to Know Act; and providing for severability.

Be it enacted by the Legislature of West Virginia:

That §16-2I-10 of the Code of West Virginia, 1931, as amended, be repealed; and that §16-2I-2, §16-2I-8 and §16-2I-9 be amended and reenacted, all to read as follows:

§16-2I-2. Informed consent.
§16-2I-8. Administrative remedies.
§16-2I-9. Severability.

§16-2I-2. Informed consent.

No abortion may be performed in this state except with the voluntary and informed consent of the female upon whom the abortion is to be performed. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if, and only if:

(a) The female is told the following, by telephone or in person, by the physician or the licensed health care professional to whom the responsibility has been delegated by the physician who is to perform the abortion at least twenty-four hours before the abortion:

(1) The particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies and infertility;

(2) The probable gestational age of the embryo or fetus at the time the abortion is to be performed; and

(3) The medical risks associated with carrying her child to term.

The information required by this subsection may be provided by telephone without conducting a physical examination or tests of the patient, in which case the

22 information required to be provided may be based on facts
23 supplied by the female to the physician or other licensed
24 health care professional to whom the responsibility has been
25 delegated by the physician and whatever other relevant
26 information is reasonably available to the physician or other
27 licensed health care professional to whom the responsibility
28 has been delegated by the physician. It may not be provided
29 by a tape recording, but must be provided during a
30 consultation in which the physician or licensed health care
31 professional to whom the responsibility has been delegated
32 by the physician is able to ask questions of the female and the
33 female is able to ask questions of the physician or the
34 licensed health care professional to whom the responsibility
35 has been delegated by the physician.

36 If a physical examination, tests or the availability of other
37 information to the physician or other licensed health care
38 professional to whom the responsibility has been delegated
39 by the physician subsequently indicate, in the medical
40 judgment of the physician or the licensed health care
41 professional to whom the responsibility has been delegated
42 by the physician, a revision of the information previously
43 supplied to the patient, that revised information may be
44 communicated to the patient at any time before the
45 performance of the abortion procedure.

46 Nothing in this section may be construed to preclude
47 provision of required information in a language understood
48 by the patient through a translator.

49 (b) The female is informed, by telephone or in person, by
50 the physician who is to perform the abortion, or by an agent
51 of the physician, at least twenty-four hours before the
52 abortion procedure:

53 (1) That medical assistance benefits may be available for
54 prenatal care, childbirth and neonatal care through
55 governmental or private entities;

(2) That the father, if his identity can be determined, is liable to assist in the support of her child based upon his ability to pay even in instances in which the father has offered to pay for the abortion;

(3) That she has the right to review the printed materials described in section three of this article, that these materials are available on a state-sponsored website and the website address; and

(4) That the female will be presented with a form which she will be required to execute prior to the abortion procedure that is available pursuant to section three of this article, and that the form to be presented will inform her of the opportunity to view the ultrasound image and her right to view or decline to view the ultrasound image, if an ultrasound is performed.

The physician or an agent of the physician shall orally inform the female that the materials have been provided by the State of West Virginia and that they describe the embryo or fetus and list agencies and entities which offer alternatives to abortion.

If the female chooses to view the materials other than on the website, then they shall either be provided to her at least twenty-four hours before the abortion or mailed to her at least seventy-two hours before the abortion by first class mail in an unmarked envelope.

The information required by this subsection may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to have the printed materials given or mailed to her.

(c) The form required pursuant to subdivision (4), subsection (b) of this section shall include the following information: (1) It is a female's decision whether or not to undergo any ultrasound imaging procedure in consultation with her health care provider; (2) If an ultrasound is performed in conjunction with the performance of an abortion procedure, the female has the right to view or to decline to view the image; and (3) That the woman has been previously informed of her opportunity to view the ultrasound image and her right to view or decline to view the ultrasound image. The woman shall certify her choice on this form prior to the abortion procedure being performed.

The female shall certify in writing, before the abortion, that the information described in subsections (a) and (b) of this section has been provided to her and that she has been informed of her opportunity to review the information referred to in subdivision (3), subsection (b) of this section.

Before performing the abortion procedure, the physician who is to perform the abortion or the physician's agent shall obtain a copy of the executed certification required by the provisions of subsections (b) and (c) of this section.

§16-2I-8. Administrative remedies.

Any physician or agent thereof who willfully violates the provisions of this article may be subject to sanctions as levied by the licensing board governing his or her profession.

§16-2I-9. Severability.

If any one or more provision, section, subsection, sentence, clause, phrase or word of this article or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this article shall remain effective

6 notwithstanding such unconstitutionality. The Legislature
7 hereby declares that it would have passed this article, and
8 each provision, section, subsection, sentence, clause, phrase
9 or word thereof, irrespective of the fact that any one or more
10 provision, section, subsection, sentence, clause, phrase or
11 word be declared unconstitutional.

CHAPTER 95

**(Com. Sub. for H. B. 4182 -
By Delegate Spencer)**

[Passed March 13 2010; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2010.]

AN ACT to amend and reenact §16-5V-2, §16-5V-6, §16-5V-7, §16-5V-8, §16-5V-18, §16-5V-19, §16-5V-20 and §16-5V-21 of the Code of West Virginia, 1931, as amended, all relating to the Emergency Medical Services Retirement System Act; modifying definitions; making technical changes; procedures for the transfer of contributions; clarifying actuarial valuation period; clarifying employer contribution amount; specifying procedures for the correction of errors; providing onset date for receipt of disability benefits; and providing for the termination of disability benefits when a retirant refuses to submit to a medical examination or provide certification from a physician of continued disability.

Be it enacted by the Legislature of West Virginia:

That §16-5V-2, §16-5V-6, §16-5V-7, §16-5V-8, §16-5V-18, §16-5V-19, §16-5V-20 and §16-5V-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-2. Definitions.
§16-5V-6. Members.
§16-5V-7. Creation of Fund; investments; actuarial valuations.
§16-5V-8. Members' contributions; employer contributions; correction of errors.
§16-5V-18. Refunds to certain, members upon discharge or resignation; deferred retirement; forfeitures.
§16-5V-19. Awards and benefits for disability – Duty related.
§16-5V-20. Same – Due to other causes.
§16-5V-21. Same – Physical examinations; termination of disability.

§16-5V-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year of the member's final average salary for the first twenty years of credited service. Additionally, two percent per year for twenty-one through twenty-five years and one percent per year for twenty-six through thirty years will be credited with a maximum benefit of sixty-seven percent. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of section twelve of this article.

(1) The board may upon the recommendation of the board's actuary increase the employees' contribution rate to ten and five-tenths percent should the funding of the plan not reach seventy percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and one-half percent once the plan funding reaches the seventy percent support objective as of any later actuarial valuation date.

(2) Upon reaching the seventy-five percent actuarial funded level, as of an actuarial valuation date, the board shall increase the two and six-tenths percent to two and three-

23 quarter percent for the first twenty years of credited service.
24 The maximum benefit will also be increased from sixty-seven
25 percent to seventy percent.

26 (b) "Accumulated contributions" means the sum of all
27 retirement contributions deducted from the compensation of
28 a member, or paid on his or her behalf as a result of covered
29 employment, together with regular interest on the deducted
30 amounts.

31 (c) "Active military duty" means full-time active duty
32 with any branch of the Armed Forces of the United States,
33 including service with the National Guard or reserve military
34 forces when the member has been called to active full-time
35 duty and has received no compensation during the period of
36 that duty from any board or employer other than the Armed
37 Forces.

38 (d) "Actuarial equivalent" means a benefit of equal value
39 computed upon the basis of the mortality table and interest
40 rates as set and adopted by the board in accordance with the
41 provisions of this article.

42 (e) "Annual compensation" means the wages paid to the
43 member during covered employment within the meaning of
44 Section 3401(a) of the Internal Revenue Code, but
45 determined without regard to any rules that limit the
46 remuneration included in wages based upon the nature or
47 location of employment or services performed during the
48 plan year plus amounts excluded under Section 414(h)(2) of
49 the Internal Revenue Code and less reimbursements or other
50 expense allowances, cash or noncash fringe benefits or both,
51 deferred compensation and welfare benefits. Annual
52 compensation for determining benefits during any
53 determination period may not exceed $100,000 as adjusted
54 for cost-of-living in accordance with Section 401(a)(17)(B)
55 of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement application. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for "retirement" on an application supplied by the board.

(h) "Board" means the Consolidated Public Retirement Board.

(i) "County commission or political subdivision" has the meaning ascribed to it in this code.

(j) "Covered employment" means either: (1) Employment as a full-time emergency medical technician, emergency medical technician/paramedic or emergency medical services/registered nurse and the active performance of the duties required of emergency medical services officers; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by an emergency medical services officer in a job or jobs in addition to his or her employment as an emergency medical services officer where the secondary employment requires the emergency medical services officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided,* That the emergency medical services officer contributes to the fund created in this article the amount specified as the member's contribution in section eight of this article.

88 (k) "Credited service" means the sum of a member's
89 years of service, active military duty, disability service and
90 accrued annual and sick leave service.

91 (l) "Dependent child" means either:

92 (1) An unmarried person under age eighteen who is:

93 (A) A natural child of the member;

94 (B) A legally adopted child of the member;

95 (C) A child who at the time of the member's death was
96 living with the member while the member was an adopting
97 parent during any period of probation; or

98 (D) A stepchild of the member residing in the member's
99 household at the time of the member's death; or

100 (2) Any unmarried child under age twenty-three:

101 (A) Who is enrolled as a full-time student in an
102 accredited college or university;

103 (B) Who was claimed as a dependent by the member for
104 federal income tax purposes at the time of member's death;
105 and

106 (C) Whose relationship with the member is described in
107 paragraph (A), (B) or (C), subdivision (1) of this subsection.

108 (m) "Dependent parent" means the father or mother of
109 the member who was claimed as a dependent by the member
110 for federal income tax purposes at the time of the member's
111 death.

112 (n) "Disability service" means service received by a
113 member, expressed in whole years, fractions thereof or both,
114 equal to one half of the whole years, fractions thereof, or

both, during which time a member receives disability benefits under this article.

(o) "Early retirement age" means age forty-five or over and completion of twenty years of contributory service.

(p) "Effective date" means January 1, 2008.

(q) "Emergency medical services officer" means an individual employed by the state, county or other political subdivision as a medical professional who is qualified to respond to medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as defined by the West Virginia Office of Emergency Medical Services. This definition is construed to include employed ambulance providers and other services such as law enforcement, rescue or fire department personnel who primarily perform these functions and are not provided any other credited service benefits or retirement plans. These persons may hold the rank of emergency medical technician/basic, emergency medical technician/paramedic, emergency medical services/ registered nurse, or others as defined by the West Virginia Office of Emergency Medical Services and the Consolidated Public Retirement Board.

(r) "Employer error" means an omission, misrepresentation or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this article by a participating public employer does not constitute employer error.

(s) "Final average salary" means the average of the highest annual compensation received for covered

148 employment by the member during any five consecutive plan
149 years within the member's last ten years of service while
150 employed, prior to any disability payment. If the member did
151 not have annual compensation for the five full plan years
152 preceding the member's attainment of normal retirement age
153 and during that period the member received disability
154 benefits under this article, then "final average salary" means
155 the average of the monthly salary determined paid to the
156 member during that period as determined under section
157 twenty-two of this article multiplied by twelve. "Final
158 average salary" does not include any lump sum payment for
159 unused, accrued leave of any kind or character.

160 (t) "Full-time employment" means permanent
161 employment of an employee by a participating public
162 employer in a position which normally requires twelve
163 months per year service and requires at least one thousand
164 forty hours per year service in that position.

165 (u) "Fund" means the West Virginia Emergency Medical
166 Services Retirement Fund created by this article.

167 (v) "Hour of service" means:

168 (1) Each hour for which a member is paid or entitled to
169 payment for covered employment during which time active
170 duties are performed. These hours shall be credited to the
171 member for the plan year in which the duties are performed;
172 and

173 (2) Each hour for which a member is paid or entitled to
174 payment for covered employment during a plan year but
175 where no duties are performed due to vacation, holiday,
176 illness, incapacity including disability, layoff, jury duty,
177 military duty, leave of absence or any combination thereof
178 and without regard to whether the employment relationship
179 has terminated. Hours under this subdivision shall be

calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under section nineteen or twenty of this article; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission or political subdivision, irrespective of mitigation of damages. The same hours of service shall not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(w) "Member" means a person first hired as an emergency medical services officer by an employer which is a participating public employer of the Public Employees Retirement System or the Emergency Medical Services Retirement System after the effective date of this article, as defined in subsection (p) of this section, or an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(x) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(y) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the

difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(z) "Normal retirement age" means the first to occur of the following:

(1) Attainment of age fifty years and the completion of twenty or more years of regular contributory service, excluding active military duty, disability service and accrued annual and sick leave service;

(2) While still in covered employment, attainment of at least age fifty years and when the sum of current age plus regular contributory years of service equals or exceeds seventy years;

(3) While still in covered employment, attainment of at least age sixty years and completion of ten years of regular contributory service; or

(4) Attainment of age sixty-two years and completion of five or more years of regular contributory service.

(aa) "Participating public employer" means any county commission or political subdivision in the state which has elected to cover its emergency medical services officers, as defined in this article, under the West Virginia Emergency Medical Services Retirement System.

(bb) "Political subdivision" means a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive

with one or more counties, cities or towns: *Provided,* That any public corporation established under section four, article fifteen, chapter seven of this code is considered a political subdivision solely for the purposes of this article.

(cc) "Plan" means the West Virginia Emergency Medical Services Retirement System established by this article.

(dd) "Plan year" means the twelve-month period commencing on January 1 of any designated year and ending the following December 31.

(ee) "Public Employees Retirement System" means the West Virginia Public Employee's Retirement System created by West Virginia Code.

(ff) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(gg) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age seventy and one-half; or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(hh) "Retirant" means any member who commences an annuity payable by the plan.

(ii) "Retirement income payments" means the monthly retirement income payments payable under the plan.

(jj) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(kk) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

272 (ll) "Totally disabled" means a member's inability to
273 engage in substantial gainful activity by reason of any
274 medically determined physical or mental impairment that can
275 be expected to result in death or that has lasted or can be
276 expected to last for a continuous period of not less than
277 twelve months.

278 For purposes of this subsection:

279 (1) A member is totally disabled only if his or her
280 physical or mental impairment or impairments is so severe
281 that he or she is not only unable to perform his or her
282 previous work as an emergency medical services officer but
283 also cannot, considering his or her age, education and work
284 experience, engage in any other kind of substantial gainful
285 employment which exists in the state regardless of whether:
286 (A) The work exists in the immediate area in which the
287 member lives; (B) a specific job vacancy exists; or (C) the
288 member would be hired if he or she applied for work. For
289 purposes of this article, substantial gainful employment is the
290 same definition as used by the United States Social Security
291 Administration.

292 (2) "Physical or mental impairment" is an impairment
293 that results from an anatomical, physiological or
294 psychological abnormality that is demonstrated by medically
295 accepted clinical and laboratory diagnostic techniques. The
296 board may require submission of a member's annual tax
297 return for purposes of monitoring the earnings limitation.

298 (mm) "Year of service" means a member shall, except in
299 his or her first and last years of covered employment, be
300 credited with years of service credit based upon the hours of
301 service performed as covered employment and credited to the
302 member during the plan year based upon the following
303 schedule:

Hours of Service Year of Service Credited.

Less than 500 0

500 to 999 ..... 1/3

1,000 to 1,499 .....2/3

1,500 or more 1

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section nineteen or twenty of this article. Except as specifically excluded, years of service include covered employment prior to the effective date.

Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to section eighteen of this article or section thirty, article ten, chapter five of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section eighteen of this article or has prior to the effective date made the repayment pursuant to section eighteen, article ten, chapter five of this code.

§16-5V-6. Members.

(a) Any emergency medical services officer first employed by a county or political subdivision in covered employment after the effective date of this article shall be a member of this retirement plan as a condition of employment

5 and upon membership does not qualify for membership in
6 any other retirement system administered by the board, so
7 long as he or she remains employed in covered employment.

8 (b) Any emergency medical services officer employed in
9 covered employment by an employer which is currently a
10 participating public employer of the Public Employees
11 Retirement System shall notify in writing both the county
12 commission in the county or officials in the political
13 subdivision in which he or she is employed and the board of
14 his or her desire to become a member of the plan by
15 December 31, 2007. Any emergency medical services officer
16 who elects to become a member of the plan ceases to be a
17 member or have any credit for covered employment in any
18 other retirement system administered by the board and shall
19 continue to be ineligible for membership in any other
20 retirement system administered by the board so long as the
21 emergency medical services officer remains employed in
22 covered employment by an employer which is currently a
23 participating public employer of this plan: *Provided,* That
24 any emergency medical services officer who does not
25 affirmatively elect to become a member of the plan continues
26 to be eligible for any other retirement system as is, from time
27 to time, offered to other county employees but is ineligible
28 for this plan regardless of any subsequent termination of
29 employment and rehire.

30 (c) Any emergency medical services officer who was
31 employed as an emergency medical services officer prior to
32 the effective date, but was not employed on the effective date
33 of this article, shall become a member upon rehire as an
34 emergency medical services officer. For purposes of this
35 section, the member's years of service and credited service
36 prior to the effective date shall not be counted for any
37 purposes under this plan unless the emergency medical
38 services officer has not received the return of his or her
39 accumulated contributions in the Public Employees

Retirement System pursuant to section thirty, article ten, chapter five of this code. The member may request in writing to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan. If the conditions of this subsection are met, all years of the emergency medical services officer's covered employment shall be counted as years of service for the purposes of this article.

(d) Any emergency medical services officer employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be given credited service at the time of transfer for all credited service then standing to the emergency medical services officer's service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in section two, article ten, chapter five of this code) was earned as an emergency medical services officer. All credited service standing to the transferring emergency medical services officer's credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article and the transferring emergency medical services officer shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring emergency medical services officer would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring emergency medical services officer receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: *Provided,* That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of this

76 section may not, after having transferred into and becoming
77 an active member of this plan, reinstate to his or her credit in
78 this plan any service credit relating to periods in which the
79 member was not in covered employment as an emergency
80 medical services officer and which service was withdrawn
81 from the Public Employees Retirement System prior to his or
82 her elective transfer into this plan.

83 (e) Once made, the election made under this section is
84 irrevocable. All emergency medical services officers
85 employed by an employer which is a participating public
86 employer of the Public Employees Retirement System after
87 the effective date and emergency medical services officers
88 electing to become members as described in this section shall
89 be members as a condition of employment and shall make the
90 contributions required by this article.

91 (f) Notwithstanding any other provisions of this article,
92 any individual who is a leased employee is not eligible to
93 participate in the plan. For purposes of this plan, a "leased
94 employee" means any individual who performs services as an
95 independent contractor or pursuant to an agreement with an
96 employee leasing organization or similar organization. If a
97 question arises regarding the status of an individual as a
98 leased employee, the board has final power to decide the
99 question.

§16-5V-7. Creation of Fund; investments; actuarial valuations.

1 (a) There is hereby created the "West Virginia
2 Emergency Medical Services Retirement Fund" for the
3 benefit of the members of the retirement system created
4 pursuant to this article and the dependents of any deceased or
5 retired member of the system.

6 (b) All moneys paid into and accumulated in the fund,
7 except amounts designated by the board for payment of

8 benefits as provided in this article, shall be held in trust and
9 invested in the consolidated pensions fund administered by
10 the West Virginia Investment Management Board as
11 provided by law.

12 (c) The board shall employ a competent actuary or
13 actuarial firm to prepare an actuarial valuation of the assets
14 and liabilities of the fund. The actuarial valuation period
15 shall coincide with the fiscal year of the state.

§16-5V-8. Members' contributions; employer contributions; correction of errors.

1 (a) There shall be deducted from the monthly salary of
2 each member and paid into the fund an amount equal to eight
3 and one-half percent of his or her monthly salary. An
4 additional amount shall be paid to the fund by the county
5 commission or political subdivision in which the member is
6 employed in covered employment in an amount determined
7 by the board: *Provided,* That in no year may the total of the
8 employer contributions provided in this section, to be paid by
9 the county commission or political subdivision, exceed ten
10 and one-half percent of the total payroll for the members in
11 the employ of the county commission or political
12 subdivision.

13 (b) Any active member who has concurrent employment
14 in an additional job or jobs and the additional employment
15 requires the emergency medical services officer to be a
16 member of another retirement system which is administered
17 by the Consolidated Public Retirement Board pursuant to
18 article ten-d, chapter five of this code shall contribute to the
19 fund the sum of eight and one-half percent of his or her
20 monthly salary earned as an emergency medical services
21 officer as well as the sum of eight and one-half percent of his
22 or her monthly salary earned from any additional
23 employment which additional employment requires the

emergency medical services officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code. An additional percent of the monthly salary of each member shall be paid to the fund by the concurrent employer by which the member is employed in an amount determined by the board: *Provided,* That in no year may the total of the employer contributions provided in this section, to be paid by the concurrent employer, exceed ten and one-half percent of the payroll for the concurrent member employees.

(c) All required deposits shall be remitted to the board no later than fifteen days following the end of the calendar month for which the deposits are required. If the board upon the recommendation of the board actuary finds that the benefits provided by this article can be actuarially funded with a lesser contribution, then the board shall reduce the required member and employer contributions proportionally. Any county commission or political subdivision which fails to make any payment due the Emergency Medical Services Retirement Fund by the fifteenth day following the end of each calendar month in which contributions are due may be required to pay the actuarial rate of interest lost on the total amount owed for each day the payment is delinquent. Accrual of the loss of earnings owed by the delinquent county commission or political subdivision commences after the fifteenth day following the end of the calendar month in which contributions are due and continues until receipt of the delinquent amount. Interest compounds daily and the minimum surcharge is $50.

(d) If any change or employer error in the records of any participating public employer or the retirement system results in any member receiving from the system more or less than he or she would have been entitled to receive had the records been correct, the board shall correct the error and as far as is

59 practicable shall adjust the payment of the benefit in a
60 manner that the actuarial equivalent of the benefit to which
61 the member was correctly entitled shall be paid. Any
62 employer error resulting in an underpayment to the retirement
63 system may be corrected by the member remitting the
64 required employee contribution and the participating public
65 employer remitting the required employer contribution.
66 Interest shall accumulate in accordance with the Legislative
67 Rule 162 CSR 7 retirement board reinstatement interest, and
68 any accumulating interest owed on the employee and
69 employer contributions resulting from the employer error
70 shall be the responsibility of the participating public
71 employer. The participating public employer may remit total
72 payment and the employee reimburse the participating public
73 employer through payroll deduction over a period equivalent
74 to the time period during which the employer error occurred.

§16-5V-18. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

1 (a) Any member who terminates covered employment
2 and is not immediately eligible to receive disability or
3 retirement income benefits under this article is, by written
4 request filed with the board, entitled to receive from the fund
5 the member's accumulated contributions. Except as provided
6 in subsection (b) of this section, upon withdrawal, the
7 member shall forfeit his or her accrued benefit and cease to
8 be a member.

9 (b) Any member who ceases employment in covered
10 employment and active participation in this plan and who
11 thereafter becomes reemployed in covered employment may
12 not receive any credited service for any prior withdrawn
13 accumulated contributions from either this plan or the Public
14 Employees Retirement System unless following his or her
15 return to covered employment and active participation in this

16 plan, the member redeposits in the fund the amount of the
17 accumulated contributions withdrawn from previous covered
18 employment, together with interest on the accumulated
19 contributions at the rate determined by the board from the
20 date of withdrawal to the date of redeposit. Upon repayment
21 he or she shall receive the same credit on account of his or
22 her former covered employment as if no refund had been
23 made.

24 The repayment authorized by this subsection shall be
25 made in a lump sum within sixty months of the emergency
26 medical services officer's reemployment in covered
27 employment or, if later, within sixty months of the effective
28 date of this article.

29 (c) A member of this plan who has elected to transfer
30 from the Public Employees Retirement System into this plan
31 pursuant to subsection (b), section six of this article may not,
32 after having transferred into and become an active member of
33 this plan, reinstate to his or her credit in this plan any service
34 credit relating to periods of nonemergency medical services
35 officer service withdrawn from the Public Employees
36 Retirement System prior to his or her elective transfer into
37 this plan.

38 (d) Every member who completes sixty months of
39 covered employment is eligible, upon cessation of covered
40 employment, to either withdraw his or her accumulated
41 contributions in accordance with this section or to choose not
42 to withdraw his or her accumulated contribution and to
43 receive retirement income payments upon attaining early or
44 normal retirement age.

45 (e) Notwithstanding any other provision of this article,
46 forfeitures under the plan may not be applied to increase the
47 benefits any member would otherwise receive under the plan.

§16-5V-19. Awards and benefits for disability -- Duty related.

(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally disabled by injury, illness or disease; and (2) the disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or (3) the disability was incurred while performing emergency medical services functions during either scheduled work hours or at any other time; and (4) in the opinion of two physicians after medical examination, one of whom shall be named by the board, the member is by reason of the disability unable to perform adequately the duties required of an emergency medical services officer, is entitled to receive and shall be paid from the fund in monthly installments the compensation set forth under either subsection (b) or (c) of this section.

(b) If the member is totally disabled, the member shall receive ninety percent of his or her average full monthly compensation for the twelve-month period preceding the member's disability or the shorter period if the member has not worked twelve months.

(c) If the member remains totally disabled until attaining sixty-five years of age, the member shall then receive the retirement benefit provided in sections sixteen and seventeen of this article.

(d) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

§16-5V-20. Same -- Due to other causes.

(a) Any member who after the effective date of this article and during covered employment: (1) Has been or becomes totally disabled from any cause other than those set forth in section nineteen of this article and not due to vicious habits, intemperance or willful misconduct on his or her part; and (2) in the opinion of two physicians after medical examination, one of whom shall be named by the board, he or she is by reason of the disability unable to perform adequately the duties required of an emergency medical services officer, is entitled to receive and shall be paid from the fund in monthly installments, the compensation set forth in, either subsection (b) or (c) of this section.

(b) If the member is totally disabled, he or she shall receive sixty-six and two-thirds percent of his or her average monthly compensation for the twelve-month period preceding the disability, or the shorter period, if the member has not worked twelve months.

(c) If the member remains totally disabled until attaining sixty years of age, then the member shall receive the retirement benefit provided in sections sixteen and seventeen of this article.

(d) The board shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code concerning member disability payments so as to ensure that the payments do not exceed one hundred percent of the average current salary for the position last held by the member.

(e) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board: *Provided,* That no

32 member may receive disability benefit payments set forth in
33 this section before January 1, 2011.

§16-5V-21. Same – Physical examinations; termination of disability.

1 (a) The board may require any member who has applied
2 for or is receiving disability benefits under this article to
3 submit to a physical examination, mental examination or
4 both, by a physician or physicians selected or approved by
5 the board and may cause all costs incident to the examination
6 and approved by the board to be paid from the fund. The
7 costs may include hospital, laboratory, X-ray, medical and
8 physicians' fees. A report of the findings of any physician
9 shall be submitted in writing to the board for its
10 consideration. If, from the report, independent information,
11 or from the report and any hearing on the report, the board is
12 of the opinion and finds that: (1) The member has become
13 reemployed as an emergency medical services officer; (2) a
14 physician who has examined the member has found that
15 considering the opportunities for emergency medical services
16 in West Virginia, the member could be so employed as an
17 emergency medical services officer; or (3) other facts exist to
18 demonstrate that the member is no longer totally disabled,
19 then the disability benefits shall cease. Benefits shall cease
20 once the member has been found to be no longer totally
21 disabled. The board shall require annual recertification.

22 (b) If a retirant refuses to submit to a medical examination
23 or submit a statement by his or her physician certifying
24 continued disability in any period, his or her disability annuity
25 may be discontinued by the board until the retirant complies. If
26 the refusal continues for one year, all the retirant's rights in and
27 to the annuity may be revoked by the board.

CHAPTER 96

(S. B. 612 - By Senators Plymale Unger, Bowman, D. Facemire, Minard, Snyder, Kessler, Wells, Yost, Jenkins and Prezioso)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on April 6, 2010.]

AN ACT to amend and reenact §29-22-18 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29-22-18c; and to amend and reenact §31-15-16a of said code, all relating to funding of higher education capital projects; authorizing the Governor to certify certain revised lists of capital improvement projects; authorizing the Economic Development Authority to issue bonds in certain amounts and for certain purposes; specifying that the Economic Development Authority may grant second-in-priority and third-in-priority liens on proceeds of the State Lottery Fund up to a certain amount in favor of the bonds; increasing the amount paid annually to the Higher Education Improvement Fund from $10 million to $15 million; and making other technical corrections.

Be it enacted by the Legislature of West Virginia:

That §29-22-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §29-22-18c; and that §31-15-16a of said code be amended and reenacted, all to read as follows:

Chapter
29. Miscellaneous Boards and Officers.
31. Corporations.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State Lottery Fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; State Lottery Education Fund; State Lottery Senior Citizens Fund; allocation and appropriation of net profits.
§29-22-18c. Increase in allocation to Higher Education Improvement Fund from State Excess Lottery Revenue Fund.

§29-22-18. State Lottery Fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; State Lottery Education Fund; State Lottery Senior Citizens Fund; allocation and appropriation of net profits.

(a) There is continued a Special Revenue Fund in the State Treasury which shall be designated and known as the State Lottery Fund. The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received from the sale of lottery tickets, materials and games shall be deposited with the State Treasurer and placed into the State Lottery Fund. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the Auditor and Treasurer as part of the general revenue of the state.

(b) No appropriation, loan or other transfer of state funds may be made to the commission or Lottery Fund after the initial appropriation.

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) Not more than fifteen percent of the gross amount received from each lottery may be allocated to and may be disbursed as necessary for fund operation and administration expenses.

(e) The excess of the aggregate of the gross amount received from all lotteries over the sum of the amounts allocated by subsections (c) and (d) of this section shall be allocated as net profit. In the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate to an amount not to exceed $250,000. On a monthly basis, the director shall report to the Joint Committee on Government and Finance of the Legislature any surplus in excess of $250,000 and remit to the State Treasurer the entire amount of those surplus funds in excess of $250,000 which shall be allocated as net profit.

(f) After first satisfying the requirements for funds dedicated to the School Building Debt Service Fund in subsection (h) of this section to retire the bonds authorized to be issued pursuant to section eight, article nine-d, chapter eighteen of this code, then satisfying the requirements for funds dedicated to the Education, Arts, Sciences and Tourism Debt Service Fund, in subsection (i) of this section to retire the bonds authorized to be issued pursuant to section eleven-a, article six, chapter five of this code and section sixteen-a, article fifteen, chapter thirty-one of this code, and then

satisfying the requirements for funds dedicated to the Community and Technical College Capital Improvement Fund in subsection (j) of this section to retire the bonds for community and technical college capital improvements authorized to be issued pursuant to section eight, article ten, chapter eighteen-b of this code, any and all remaining funds in the State Lottery Fund shall be made available to pay debt service in connection with any revenue bonds issued pursuant to section eighteen-a of this article, if and to the extent needed for such purpose from time to time. The Legislature shall annually appropriate all of the remaining amounts allocated as net profits in subsection (e) of this section, in such proportions as it considers beneficial to the citizens of this state, to: (1) The Lottery Education Fund created in subsection (g) of this section; (2) the School Construction Fund created in section six, article nine-d, chapter eighteen of this code; (3) the Lottery Senior Citizens Fund created in subsection (k) of this section; and (4) the Division of Natural Resources created in section three, article one, chapter twenty of this code and the West Virginia Development Office as created in section one, article two, chapter five-b of this code, in accordance with subsection (l) of this section. No transfer to any account other than the School Building Debt Service Fund, the Education, Arts, Sciences and Tourism Debt Service Fund, the Community and Technical College Capital Improvement Fund, the Economic Development Project Fund created under section eighteen-a, article twenty-two, chapter twenty-nine of this code, or any fund from which debt service is paid under subsection (c), section eighteen-a of this article may be made in any period of time in which a default exists in respect to debt service on bonds issued by the School Building Authority, the State Building Commission, the Higher Education Policy Commission, the Economic Development Authority or which are otherwise secured by lottery proceeds. No additional transfer may be made to any account other than the School Building Debt Service Account and the Education, Arts, Sciences and Tourism Debt Service

Fund, and the Community and Technical College Capital Improvement Fund, when net profits for the preceding twelve months are not at least equal to one hundred fifty percent of debt service on bonds issued by the School Building Authority, the State Building Commission, the Higher Education Policy Commission and the Economic Development Authority which are secured by net profits.

(g) There is continued a special revenue fund in the State Treasury which shall be designated and known as the Lottery Education Fund. The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which shall be deposited into the Lottery Education Fund by the State Treasurer. The Lottery Education Fund shall also consist of all interest earned from investment of the Lottery Education Fund and any other appropriations, gifts, grants, contributions or moneys received by the Lottery Education Fund from any source. The revenues received or earned by the Lottery Education Fund shall be disbursed in the manner provided below and may not be treated by the Auditor and Treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the Lottery Education Fund to the state system of public and higher education for these educational programs it considers beneficial to the citizens of this state.

(h) On or before the twenty-eighth day of each month, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the School Building Debt Service Fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code, as a first priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after April 1, 1994, as certified to the lottery

director in accordance with the provisions of section six, article nine-d, chapter eighteen of this code. In no event shall the monthly amount allocated exceed $1.8 million nor may the total allocation of the net profits to be paid into the School Building Debt Service Fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or $18 million. In the event there are insufficient funds available in any month to transfer the amount required to be transferred pursuant to this subsection to the School Debt Service Fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A lien on the proceeds of the State Lottery Fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed $27 million annually, may be granted by the School Building Authority in favor of the bonds it issues which are secured by the net lottery profits. When the school improvement bonds, secured by profits from the lottery and deposited in the School Debt Service Fund, mature, the profits shall become available for debt service on additional school improvement bonds as a first priority from the net profits of the lottery or may at the discretion of the authority be placed into the School Construction Fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code.

(i) Beginning on or before July 28, 1996, and continuing on or before the twenty-eighth day of each succeeding month thereafter, as long as revenue bonds or refunding bonds issued in accordance with section eleven-a, article six, chapter five or section sixteen-a, article fifteen, chapter thirty-one of this code are outstanding, the lottery director shall allocate to the Education, Arts, Sciences and Tourism Debt Service Fund, created pursuant to the provisions of section eleven-a, article six, chapter five of this code, as a

second priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after April 1, 1996, as certified to the lottery director in accordance with the provisions of section eleven-a, article six, chapter five or section sixteen-a, article fifteen, chapter thirty-one of this code. In no event may the monthly amount allocated exceed $1 million nor may the total allocation paid into the Education, Arts, Sciences and Tourism Debt Service Fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or $10 million. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the Education, Arts, Sciences and Tourism Debt Service Fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A second-in-priority lien on the proceeds of the State Lottery Fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed $15 million annually, may be granted by the State Building Commission or the Economic Development Authority in favor of the bonds issued in accordance with section eleven-a, article six, chapter five or section sixteen-a, article fifteen, chapter thirty-one of this code.

(j) Beginning on or before July 28, 2008, and continuing on or before the twenty-eighth day of each succeeding month thereafter, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the Community and Technical College Capital Improvement Fund, created pursuant to section eight, article ten, chapter eighteen-b of this code, as a third priority from net profits of the lottery for the preceding month, an amount equal to one

tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued or to be issued, on or after April 1, 2008, as certified by the lottery director in accordance with the provisions of that section. In no event may the monthly amount allocated exceed $500,000 nor may the total allocation paid to the Community and Technical Capital Improvement Fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or $5 million. In the event there are insufficient funds available in any month to transfer the amount required pursuant to this subsection to the Community and Technical College Capital Improvement Fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency.

(1) A third-in-priority lien on the proceeds of the State Lottery Fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not exceeding $7.5 million annually, may be granted by the Higher Education Policy Commission in favor of the bonds it issues which are secured by the net lottery profits.

(2) When the community and technical college capital improvement bonds secured by profits from the lottery and deposited in the Community and Technical College Capital Improvement Fund mature, the profits shall become available for debt service on additional community and technical college capital improvement bonds as a third priority from the net profits of the lottery.

(3) The Council for Community and Technical College Education shall approve all community and technical college capital improvement projects prior to the distribution of bond proceeds.

(4) Prior to the issuance of community and technical college revenue bonds pursuant to this subsection, the lottery director shall transfer $5 million to the Community and Technical College Improvement Fund, less any amounts needed for initial debt service payments, to be used on a cash basis for community and technical college capital improvements and capital projects.

(k) There is continued a special revenue fund in the State Treasury which shall be designated and known as the Lottery Senior Citizens Fund. The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which amounts shall be deposited into the Lottery Senior Citizens Fund by the State Treasurer. The Lottery Senior Citizens Fund shall also consist of all interest earned from investment of the Lottery Senior Citizens Fund and any other appropriations, gifts, grants, contributions or moneys received by the Lottery Senior Citizens Fund from any source. The revenues received or earned by the Lottery Senior Citizens Fund shall be distributed in the manner provided below and may not be treated by the Auditor or Treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the Lottery Senior Citizens Fund to any senior citizens medical care and other programs it considers beneficial to the citizens of this state.

(l) The Division of Natural Resources and the West Virginia Development Office, as appropriated by the Legislature, may use the amounts allocated to them pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as these terms are defined in section four, article five, chapter twenty of this code, pursuant to the

254 authority granted to it under article five, chapter twenty of
255 this code; (2) the payment, funding or refunding of the
256 principal of, interest on or redemption premiums on any
257 bonds, security interests or notes issued by the parks and
258 recreation section of the Division of Natural Resources under
259 article five, chapter twenty of this code; or (3) the payment of
260 any advertising and marketing expenses for the promotion
261 and development of tourism or any tourist facility or
262 attraction in this state.

§29-22-18c. Increase in allocation to Higher education Improvement Fund from State Excess Lottery Revenue Fund.

1 Notwithstanding any provision of subsection (d), section
2 eighteen-a of this article to the contrary, the deposit of $10
3 million into the Higher Education Improvement Fund for
4 Higher Education set forth above is for the fiscal year
5 beginning July 1, 2009, only. For the fiscal year beginning
6 July 1, 2010, and subsequent fiscal years, the commission
7 shall deposit $15 million into the Higher Education
8 Improvement Fund for Higher Education.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-16a. Bonds for capital improvements at institutions of higher education, state parks, the State Capitol complex, other state facilities or tourism sites; limitations; authority to issue revenue bonds; use of funds to pay for projects.

1 (a)(1) The economic development authority shall, in
2 accordance with the provisions of this article, issue revenue

bonds from time to time, to pay for a portion of the cost of constructing, equipping, improving or maintaining capital improvement projects under this section or to refund the bonds, at the discretion of the authority. The principal amount of the bonds issued under this section shall not exceed, in the aggregate, an amount that, in the opinion of the authority, is necessary to provide sufficient funds for achievement of the purposes of this section and is within the limits of moneys pledged for the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding bonds authorized by this section. Any revenue bonds issued on or after the effective date of this section which are secured by lottery proceeds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of, and the interest and redemption premium, if any, on the bonds shall be payable solely from the Education, Arts, Sciences and Tourism Debt Service Fund established in section eleven-a, article six, chapter five and continued by this section.

(2) All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section. The authority may further provide in the trust agreement for priorities on the revenues paid into the Education, Arts, Sciences and Tourism Debt Service Fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section or section eleven-a, article six, chapter five of this code. The bonds issued pursuant to this section shall be separate from all other bonds which may be or have been issued from time to time under the provisions of section eleven-a, article six, chapter five of this code. The Education, Arts, Sciences and Tourism Debt Service Fund shall be pledged solely for the repayment of bonds issued pursuant to this section and section eleven-a,

38 article six, chapter five of this code. On or prior to May 1 of
39 each year, commencing May 1, 2010, the authority shall
40 certify to the state lottery director the principal and interest
41 and coverage ratio requirements for the following fiscal year
42 on any revenue bonds or refunding revenue bonds issued
43 pursuant to this section, and for which moneys deposited in
44 the Education, Arts, Sciences and Tourism Debt Service
45 Fund have been pledged, or will be pledged, for repayment
46 pursuant to this section.

47 (3) After the authority has issued bonds authorized by
48 this section, and after the requirements of all funds have been
49 satisfied, including coverage and reserve funds established in
50 connection with the bonds issued pursuant to this section, any
51 balance remaining in the Education, Arts, Sciences and
52 Tourism Debt Service Fund may be used for the redemption
53 of any of the outstanding bonds issued under this section
54 which, by their terms, are then redeemable or for the
55 purchase of the outstanding bonds at the market price, but not
56 to exceed the price, if any, at which redeemable, and all
57 bonds redeemed or purchased shall be immediately canceled
58 and shall not again be issued.

59 (b) The authority shall expend sixty percent of the bond
60 proceeds, net of issuance costs, reserve funds and refunding
61 costs, for certified capital improvement projects at state
62 institutions of higher education. The Higher Education
63 Policy Commission shall submit a proposed list of capital
64 improvement projects to the Governor on or before January
65 1, 2010. Thereafter, the Governor shall certify to the
66 authority on or before February 1, 2010, a list of those capital
67 improvement projects at state institutions of higher education
68 that will receive funds from the proceeds of bonds issued
69 pursuant to this section.

At any time prior to the issuance of bonds under this section, the Governor may certify to the authority a revised list of capital improvement projects at state institutions of higher education that will receive funds from the proceeds of bonds issued pursuant to this section. The Governor shall consult with the Higher Education Policy Commission prior to certifying a revised list of capital improvement projects to the authority.

(c) The authority shall expend the balance of the bond proceeds for certified projects at state parks, the capitol complex, other state facilities or tourism sites.

(1) A committee comprised of the secretary of the Department of Administration, the director of the Division of Natural Resources, the director of the West Virginia Development Office and a representative of the capitol building commission, other than the secretary of the Department of Administration, who shall be selected by the capitol building commission, shall submit a proposed list of capital improvement projects to the Governor on or before January 1, 2010. Thereafter, the Governor shall certify to the authority on or before February 1, 2010, a list of those capital improvement projects at state parks, the State Capitol complex, other state facilities or tourism sites that will receive funds from the proceeds of bonds issued pursuant to this section.

(2) At any time prior to the issuance of bonds under this section, the Governor may certify to the authority a revised list of capital improvement projects at state parks, the State Capitol Complex, other state facilities or tourism sites that will receive funds from the proceeds of bonds issued pursuant to this section. The Governor shall consult with the committee established by this subsection prior to certifying a revised list of capital improvement projects to the authority.

CHAPTER 97

(S. B. 574 - By Senators Boley, Yost, Sypolt, Wells, Barnes, Deem, Stollings, Kessler and Williams)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §2-2-1a of the Code of West Virginia, 1931, as amended, relating to making December 7 a special memorial day known as Pearl Harbor Day to honor all West Virginians who fought in World War II.

Be it enacted by the Legislature of West Virginia:

That §2-2-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1a. Special memorial days.

1 (a) The Governor shall, by proclamation, declare the
2 week beginning with the Sunday before Thanksgiving as a
3 special memorial week to be known as Native American
4 Indian Heritage Week.

5 (b) The first Tuesday after the first Monday of November
6 is designated Susan B. Anthony Day and shall only be a legal
7 holiday in all years ending in an even number. The Governor

8 shall annually issue a proclamation calling on all schools,
9 civic organizations, government departments and citizens to
10 undertake activities on the designated day and surrounding
11 days to pay tribute to the accomplishments of Susan B.
12 Anthony in securing the civil and political rights of all
13 Americans, including securing equal voting rights for
14 women.

15 (c) The Governor shall, by proclamation, declare
16 December 7 as a special memorial day, to be known as Pearl
17 Harbor Day, honoring all West Virginians who fought in
18 World War II and shall encourage all municipalities in the
19 state to do the same.

CHAPTER 98

(Com. Sub. for S. B. 337 - By Senators Snyder, Unger and Kessler)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §19-23-10, §19-23-13 and §19-23-13b of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22-18a of said code; and to amend and reenact §29-22C-27 of said code, all relating to receipts and expenditures of moneys in the conduct of the racing industry in the state generally; providing as an additional purpose for which certain moneys may be used the purpose of greyhound adoption programs to include spaying and neutering; modifying the distribution of funds derived from horse racetrack unredeemed pari-mutuel tickets and other sources to owners, breeders and owners of sires of certain winning horses; providing for the

deposit of surplus funds held for those purposes into horse racetrack regular purse funds; removing provisions requiring that certain unexpended balances be paid to certain horse racetrack licensees and expended for certain purposes; combining and distributing funds derived from dog racetrack unredeemed pari-mutuel tickets into the greyhound breeding development fund; removing authority for racing commission to expend certain excess moneys as purse money, to supplement purses and to establish stakes races and racing handicaps; removing requirements that certain moneys from unredeemed pari-mutuel tickets be allocated and paid by the racing commission into the greyhound breeding development fund, into a special account to be used for certain stakes races, into a trust to provide health and disability benefits to eligible active or disabled West Virginia jockeys, and into an unspecified trust administered by an organization representative of jockeys; providing for the payment of claims received on purses won on or before June 30, 2010; transferring a specified amount of funds from the state excess lottery revenue fund and additional amounts from certain special accounts to pay for those claims; extinguishing obligation of the state for payments made on certain claims; removing the requirement that a certain racing commission report to the legislative auditor include certain information; authorizing the racing commission to promulgate emergency rules; specifying which racing secretary is to be a member of a certain committee; removing expired requirements for the submission of a report; providing for the contingent distribution of an annual amount from the state excess lottery revenue fund into a certain thoroughbred racetrack purse fund, into certain thoroughbred racetrack unredeemed pari-mutuel tickets accounts, and into a certain greyhound breeding development fund; and changing the allocation of a certain distribution from the lottery racetrack table games fund to the purse funds of the thoroughbred racetracks from an equal allocation among the tracks to a pro rata distribution.

Be it enacted by the Legislature of West Virginia:

That §19-23-10, §19-23-13 and §19-23-13b of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §29-22-18a of said code be amended and reenacted; and that §29-22C-27 of said code be amended and reenacted, all to read as follows:

Chapter

19. Agriculture.

29. Miscellaneous Boards and Officers.

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.
§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; payment of past obligations.
§19-23-13b. West Virginia Thoroughbred Development Fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of $250. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of $150. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of $150. In the event thoroughbred racing, harness racing, dog racing or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one daily license tax in the amount of $250 shall be paid for that day. Any daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

17 (b) Any racing association licensed by the Racing
18 Commission to conduct thoroughbred racing and permitting
19 and conducting pari-mutuel wagering under the provisions of
20 this article shall, in addition to the daily license tax set forth
21 in subsection (a) of this section, pay to the Racing
22 Commission, from the commission deducted each day by the
23 licensee from the pari-mutuel pools on thoroughbred racing
24 a tax calculated on the total daily contribution of all pari-
25 mutuel pools conducted or made at any and every
26 thoroughbred race meeting of the licensee licensed under the
27 provisions of this article. The tax, on the pari-mutuel pools
28 conducted or made each day during the months of January,
29 February, March, October, November and December, shall
30 be calculated at four- tenths of one percent of the pool; and,
31 on the pari-mutuel pools conducted or made each day during
32 all other months, shall be calculated at one and four-tenths
33 percent of the pool: *Provided,* That out of the amount
34 realized from the three tenths of one percent decrease in the
35 tax effective for fiscal year 1991 and thereafter, which
36 decrease correspondingly increases the amount of
37 commission retained by the licensee, the licensee shall
38 annually expend or dedicate: (i) One half of the realized
39 amount for capital improvements in its barn area at the track,
40 subject to the Racing Commission's prior approval of the
41 plans for the improvements; and (ii) the remaining one half
42 of the realized amount for capital improvements as the
43 licensee may determine appropriate at the track. The term
44 "capital improvement" shall be as defined by the Internal
45 Revenue Code: *Provided, however,* That any racing
46 association operating a horse racetrack in this state having an
47 average daily pari-mutuel pool on horse racing of $280,000
48 or less per day for the race meetings of the preceding
49 calendar year shall, in lieu of payment of the pari-mutuel
50 pool tax, calculated as in this subsection, be permitted to
51 conduct pari-mutuel wagering at the horse racetrack on the
52 basis of a daily pari-mutuel pool tax fixed as follows: On the
53 daily pari-mutuel pool not exceeding $300,000 the daily pari-

mutuel pool tax shall be $1,000 plus the otherwise applicable percentage rate imposed by this subsection of the daily pari-mutuel pool, if any, in excess of $300,000: *Provided further,* That upon the effective date of the reduction of the daily pari-mutuel pool tax to $1,000 from the former $2,000, the association or licensee shall daily deposit $500 into the special fund for regular purses established by subdivision (1), subsection (b), section nine of this article: *And provided further,* That if an association or licensee qualifying for the foregoing alternate tax conducts more than one racing performance, each consisting of up to thirteen races in a calendar day, the association or licensee shall pay both the daily license tax imposed in subsection (a) of this section and the alternate tax in this subsection for each performance: *And provided further,* That a licensee qualifying for the foregoing alternate tax is excluded from participation in the fund established by section thirteen-b of this article: *And provided further,* That this exclusion shall not apply to any thoroughbred racetrack at which the licensee has participated in the West Virginia Thoroughbred Development Fund for more than four consecutive years prior to December 31, 1992.

(c) Any racing association licensed by the Racing Commission to conduct harness racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the Racing Commission, from the commission deducted each day by the licensee from the pari-mutuel pools on harness racing, as a tax, three percent of the first $100,000 wagered, or any part thereof; four percent of the next $150,000; and five and three-fourths percent of all over that amount wagered each day in all pari-mutuel pools conducted or made at any and every harness race meeting of the licensee licensed under the provisions of this article.

(d) Any racing association licensed by the Racing Commission to conduct dog racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the daily license tax required under subsection (a) of this section, pay to the Racing Commission, from the commission deducted each day by the licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first $50,000 or any part thereof of the pari-mutuel pools, five percent of the next $50,000 of the pari-mutuel pools, six percent of the next $100,000 of the pari-mutuel pools, seven percent of the next $150,000 of the pari-mutuel pools, and eight percent of all over $350,000 wagered each day: *Provided,* That the licensee shall deduct daily from the pari-mutuel tax an amount equal to one tenth of one percent of the daily pari-mutuel pools in dog racing in fiscal year 1990; fifteen hundredths of one percent in fiscal year 1991; two tenths of one percent in fiscal year 1992; one quarter of one percent in fiscal year 1993; and three tenths of one percent in fiscal year 1994 and every fiscal year thereafter. The amounts deducted shall be paid to the Racing Commission to be deposited by the Racing Commission in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission-Special Account-West Virginia Greyhound Breeding Development Fund". The purpose of the fund is to promote better breeding, training track facilities and racing of greyhounds in the state through awards and purses to bona fide resident registered greyhound owners of accredited West Virginia whelped greyhounds. In order to participate and be eligible to receive an award or purse through the fund, the registered greyhound owner must have an appropriate license from the Racing Commission to race in West Virginia. The registered greyhound dam at the time of breeding must be wholly or solely owned or leased by a bona fide resident or residents of West Virginia. The accredited West Virginia whelped greyhound must be wholly or solely owned by a bona fide resident or residents of this state. To qualify as a bona fide

resident of West Virginia, a registered greyhound owner may not claim residency in any other state. A registered greyhound owner must prove bona fide residency by providing to the commission personal income tax returns filed in the State of West Virginia for the most recent tax year and the three previous tax years, has real or personal property in this state on which the owner has paid real or personal property taxes during the most recent tax year and the previous three tax years and an affidavit stating that the owner claims no other state of residency. The Racing Commission shall maintain a registry for West Virginia bred greyhounds. The moneys shall be expended by the Racing Commission for purses for stake races, training track facilities, supplemental purse awards, administration, promotion, education and greyhound adoption programs involving West Virginia whelped dogs, owned by residents of this state under rules promulgated by the Racing Commission. The Racing Commission shall pay out of the greyhound breeding development fund to each of the licensed dog racing tracks the sum of $75,000 for the fiscal year ending June 30, 1994. The licensee shall deposit the sum into the special fund for regular purses established under the provisions of section nine of this article. The funds shall be expended solely for the purpose of supplementing regular purses under rules promulgated by the Racing Commission.

Supplemental purse awards will be distributed as follows: Supplemental purses shall be paid directly to the registered greyhound owner of an accredited greyhound.

The registered greyhound owner of accredited West Virginia whelped greyhounds that earn points at any West Virginia meet will receive a bonus award calculated at the end of each month as a percentage of the fund dedicated to the owners as purse supplements, which shall be a minimum of fifty percent of the total moneys deposited into the West Virginia Greyhound Breeding Development fund monthly.

The total amount of the fund available for the owners' awards shall be distributed according to the ratio of points earned by an accredited greyhound to the total amount earned in races by all accredited West Virginia whelped greyhounds for that month as a percentage of the funds dedicated to the owners' purse supplements. The point value at all greyhound tracks shall be the same as approved by the Racing Commission to be effective April 1, 2007. The West Virginia Greyhound Owners and Breeders Association shall submit a list of any additions or deletions to the registry of accredited West Virginia whelped greyhounds on the first of each month. The Racing Commission shall not require anyone to be a member of a particular association in order to participate in the West Virginia Greyhound Breeding Development Fund.

The registered greyhound owner of an accredited West Virginia whelped greyhound shall file a purse distribution form with the Racing Commission for a percentage of his or her dog's earnings to be paid directly to the registered greyhound owner or owners of the greyhound. Distribution shall be made on the fifteenth day of each month for the preceding month's achievements.

In no event shall points earned at a meet held at a track which did not make contributions to the West Virginia Greyhound Breeding Development Fund out of the daily pool on the day the meet was held qualify or count toward eligibility for supplemental purse awards.

Any balance in the purse supplement funds after all distributions have been made for the year revert to the general account of the fund for distribution in the following year: *Provided,* That not more than $2 million from the balance in the purse supplemental fund shall be used for the construction and maintenance of two dog training track facilities if such be approved by the Racing Commission:

Provided, however, That not more than $1 million may be allocated for the construction and maintenance of each training track: *Provided further,* That both training track facilities must be located in West Virginia. The West Virginia Racing Commission shall be authorized to promulgate rules governing dog training tracks: *And provided further,* That the Racing Commission shall: (1) Provide a process in its rules for competitive bidding of the construction or maintenance, or both, of the training tracks; and (2) set standards to assure that only the actual costs of construction and maintenance shall be paid out of the foregoing fund.

In an effort to further promote the breeding of quality West Virginia whelped greyhounds, a bonus purse supplement shall be established in the amount of $50,000 per annum, to be paid in equal quarterly installments of $12,500 per quarter using the same method to calculate and distribute these funds as the regular supplemental purse awards. This bonus purse supplement is for three years only, commencing on July 1, 1993, and ending June 30, 1996. This money would come from the current existing balance in the greyhound development fund.

Each pari-mutuel greyhound track shall provide stakes races for accredited West Virginia whelped greyhounds: *Provided,* That each pari-mutuel track shall have one juvenile and one open stake race annually. Each pari-mutuel dog track shall provide at least three restricted races for accredited West Virginia whelped greyhounds per race card: *Provided, however,* That sufficient dogs are available. To assure breeders of accredited West Virginia whelped greyhounds an opportunity to participate in the West Virginia Greyhound Breeding Development Fund the West Virginia Racing Commission by July 1, each year shall establish and announce the minimum number of accredited West Virginia whelped greyhounds that greyhound racing kennels at West

Virginia dog tracks must have on their racing active list during the calendar year following such action. The minimum number may vary from dog track to dog track. The minimum number shall be established after consultation with the West Virginia Greyhound Owners and Breeders Association and kennel owners and operators. Factors to be considered in establishing this minimum number shall be the number of individually registered accredited West Virginia whelped greyhounds whelped in the previous two years. The number of all greyhounds seeking qualification at each West Virginia dog track, the ratio of active running greyhounds to housed number of greyhounds at each West Virginia dog track, and the size and number of racing kennels at each West Virginia dog track. Any greyhound racing kennel not having the minimum number of accredited West Virginia whelped greyhounds determined by the West Virginia Racing Commission on their active list shall only be permitted to race the maximum allowable number on the active list less the number of accredited West Virginia whelped greyhounds below the established minimum number. Consistent violations of this minimum requirement may be reviewed by the Racing Commission and may constitute cause for denial or revocation of a kennel's racing license. The Racing Commission shall oversee and approve racing schedules and purse amounts.

Ten percent of the deposits into the greyhound breeding development fund beginning July 1, 1993 and continuing each year thereafter, shall be withheld by the Racing Commission and placed in a special revenue account hereby created in the State Treasury called the "administration, promotion, education, capital improvement and greyhound adoption programs to include spaying and neutering account". The Racing Commission is authorized to expend the moneys deposited in the administration, promotion, education, capital improvement and greyhound adoption programs to include spaying and neutering account at such times and in such amounts as the commission determines to

be necessary for purposes of administering and promoting the greyhound development program: *Provided,* That beginning with fiscal year 1995 and in each fiscal year thereafter in which the commission anticipates spending any money from the account, the commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill, the recommended expenditures, as well as requests of appropriations for the purpose of administration, promotion, education, capital improvement and greyhound adoption programs to include spaying and neutering. The commission shall make an annual report to the Legislature on the status of the administration, promotion, education, capital improvement and greyhound adoption programs to include spaying and neutering account, including the previous year's expenditures and projected expenditures for the next year.

The Racing Commission, for the fiscal year 1994 only, may expend up to $35,000 from the West Virginia Greyhound Breeding Development Fund to accomplish the purposes of this section without strictly following the requirements in the previous paragraph.

(e) All daily license and pari-mutuel pools tax payments required under the provisions of this section shall be made to the Racing Commission or its agent after the last race of each day of each horse or dog race meeting, and the pari-mutuel pools tax payments shall be made from all contributions to all pari-mutuel pools to each and every race of the day.

(f) Every association or licensee subject to the provisions of this article, including the changed provisions of sections nine and ten of this article, shall annually submit to the Racing Commission and the Legislature financial statements, including a balance sheet, income statement, statement of change in financial position and an audit of any electronic data system used for pari-mutuel tickets and betting, prepared

in accordance with generally accepted auditing standards, as certified by an experienced public accountant or a certified public accountant.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; payment of past obligations.

(a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of a horse or dog race meeting or the televised racing day, as the case may be, in connection with which the tickets were issued, shall be turned over by the licensee to the racing commission within fifteen days after the expiration of the ninety-day period, and the licensee shall give any information required by the racing commission concerning the outstanding and unredeemed tickets. The moneys shall be deposited by the racing commission in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission Special Account - Unredeemed Pari-Mutuel Tickets." Notice of the amount, date and place of each deposit shall be given by the racing commission, in writing, to the state treasurer. The racing commission shall then cause to be published a notice to the holders of the outstanding and unredeemed pari-mutuel tickets, notifying them to present their unredeemed tickets for payment at the principal office of the racing commission within ninety days from the date of the publication of the notice. The notice shall be published within fifteen days following the receipt of the outstanding and unredeemed pari-mutuel ticket moneys by the commission from the licensee as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county in which the horse or dog race meeting was held and the county in which the televised racing day wagering was conducted in this state.

(b) Any outstanding and unredeemed pari-mutuel tickets that are not presented for payment within ninety days from the date of the publication of the notice are thereafter irredeemable, and the moneys theretofore held for the redemption of the pari-mutuel tickets shall become the property of the racing commission and shall be expended as provided in subsections (c) and (d) of this section. The racing commission shall maintain separate accounts for each licensee and shall record in each separate account the moneys turned over by the licensee and the amount expended at the licensee's track for the purposes set forth in this subsection.

(c) In the fiscal year beginning on July 1, 2010, the racing commission shall keep separate the unredeemed pari-mutuel tickets received from each of the two licensee horse racetracks.

(1) The unredeemed pari-mutuel tickets attributable to each licensee horse racetrack together with funds distributed pursuant to section eighteen-a, article twenty-two, chapter twenty-nine of this code shall be used for claims received pursuant to this subsection by the Racing Commission each calendar quarter: *Provided*, That the first distribution after the effective date of amendments to this section made during the 2010 regular legislative session shall not occur until February 2011 and then each calendar quarter thereafter. Any claims made pursuant to this subsection must be submitted to the racing commission no later than fifteen days after the race where the funds are awarded. The funds in the two special accounts - unredeemed pari-mutuel tickets shall be distributed based on claims received from each horse racetrack as follows:

(A) To the owner of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: *Provided*, That the owner of the horse is at the time of the horse race a bona fide resident of this state, a sum equal to

ten percent of the purse won by the horse at that race: *Provided, however*, That in the event there are more than ten races in any performance, the award to the resident owner of the winning horse will be that fractional share of the purse with a numerator of one and a denominator representing the number of races on the day of the performance. The commission may require proof that the owner was, at the time of the race, a bona fide resident of this state. Upon proof by the owner that he or she filed a personal income tax return in this state for the previous two years and that he or she owned real or personal property in this state and paid taxes in this state on real or personal property for the previous two years, he or she shall be presumed to be a bona fide resident of this state; and

(B) To the breeder (that is, the owner of the mare) of the winning horse in any horse race at a horse race meeting held or conducted by any licensee: *Provided*, That the mare foaled in this state, a sum equal to ten percent of the purse won by the horse: *Provided, however*, That in the event there are more than ten races in any performance, the award to the breeder will be that fractional share of the purse with a numerator of one and a denominator representing the number of races on the day of the performance; and

(C) To the owner of the stallion which sired the winning horse in any horse race at a horse race meeting held or conducted by any licensee: *Provided*, That the mare which foaled the winning horse was served by a stallion standing and registered in this state, a sum equal to ten percent of the purse won by the horse: *Provided, however*, That in the event there are more than ten races in any performance, the award to the owner of the stallion will be percentage of the purse based upon the fractional share represented by the number of races on the day of the performance.

(2) If in any calendar quarter insufficient funds are available in each licensee horse racetrack's special account -

unredeemed pari-mutuel tickets administered by the Racing Commission for payments pursuant to subdivision (1), payments shall be made on a pro rata basis pursuant to paragraphs (A), (B) and (C) of subdivision (1) of this subsection of the claims submitted from races won at each horse racetrack. Once payments on each claim are made, whether in full or on a pro rata basis, no further obligation for payment is created by this subdivision. Claims received after the deadline are not valid.

(3) If after paying any claims pursuant to this subsection and funds remain in the accounts, those funds shall carry over to the next calendar quarter. If in any quarter the surplus in either account reaches a balance of $1 million, then that surplus balance shall be placed in to the regular purse fund of that licensee horse racetrack whose unredeemed pari-mutuel account achieves the surplus.

(d) Any unredeemed pari-mutuel tickets received from licensee dog racetracks shall be combined into a single balance and distributed quarterly to the West Virginia racing commission special account - West Virginia greyhound breeding development fund. The deposit made pursuant to this subsection does not create a continuing obligation of payment except to the extent that there are unredeemed pari-mutuel tickets from the licensee dog racetracks.

(e) The amendments to this section made during the 2010 regular legislative session shall become effective July 1, 2010.

(f) The Racing Commission shall satisfy obligations of the prior enactment of this section for all claims received on purses won on or before June 30, 2010. Claimants must submit all claims on or before July 15, 2010 for verification by the Racing Commission. Claims received after July 15, 2010 are not valid.

(1) A transfer of $2.5 million from the State Excess Lottery Revenue Fund available on the last day of the fiscal year which began July 1, 2009 shall be made to the nonappropriated fund with the State Treasurer known as the Unredeemed Pari-Mutuel Tickets Fund. The Racing Commission shall also transfer to the account with the State Treasurer monies from the racing commission special accounts - unredeemed pari-mutuel tickets for deposits received in each of those accounts that have been credited with unredeemed pari-mutuel tickets for races completed at any licensee racetrack as of June 30, 2010, and any other monies appropriated by the legislature. Unredeemed pari-mutuel tickets for races completed after June 30, 2010 must remain in the special accounts - unredeemed pari-mutuel tickets to satisfy future payments pursuant to this section.

(2) The Racing Commission is authorized to pay claims received for races completed on or before June 30, 2010 without regard to date of deposit or date of claim. Claims shall be paid in date order, with the oldest claims being paid first, until all claims have been satisfied. All payments made pursuant to this subsection for claims received on purses won on or before June 30, 2010 shall extinguish any further obligation by the state with respect to those claims.

(g) The commission shall submit to the legislative auditor a quarterly report and accounting of the income and expenditures in the special account created by this section known as the West Virginia racing commission special account - unredeemed pari-mutuel tickets.

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

(i) The cost of publication of the notice provided for in this section shall be paid from the funds in the hands of the

state treasurer collected from the pari-mutuel pools' tax provided for in section ten of this article, when not otherwise provided in the budget; but no such costs shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

(j) The racing commission is authorized to promulgate emergency rules, prior to September 1, 2010, to incorporate the revisions to this article enacted during the 2010 regular legislative session.

§19-23-13b. West Virginia Thoroughbred Development Fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.

(a) The Racing Commission shall deposit moneys required to be withheld by an association or licensee in subsection (b), section nine of this article in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission Special Account -- West Virginia Thoroughbred Development Fund": *Provided,* That after the West Virginia Lottery Commission has divided moneys between the West Virginia Thoroughbred Development Fund and the West Virginia Greyhound Breeding Development Fund pursuant to the provisions of sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code, the Racing Commission shall, beginning October 1, 2005, deposit the remaining moneys required to be withheld from an association or licensee designated to the Thoroughbred Development Fund under the provisions of subsection (b), section nine of this article, subdivision (3), subsection (e), section twelve-b of this article, subsection (b), section twelve-c of this article, paragraph (B), subdivision (3), subsection (b), section thirteen-c of this article and sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code into accounts for each thoroughbred

racetrack licensee with a banking institution of its choice with a separate account for each association or licensee. Each separate account shall be a special account to be known as "West Virginia Racing Commission Special Account – West Virginia Thoroughbred Development Fund" and shall name the licensee for which the special account has been established: *Provided, however,* That the Racing Commission shall deposit all moneys paid into the Thoroughbred Development Fund by a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992 from July 8, 2005 until the effective date of the amendment to this section passed during the fourth extraordinary session of the seventy-seventh Legislature shall be paid into the purse fund of that thoroughbred racetrack licensee: *Provided further,* That the moneys paid into the Thoroughbred Development Fund by a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992, shall be transferred into that licensee's purse fund until April 1, 2006. Notice of the amount, date and place of the deposits shall be given by the Racing Commission, in writing, to the State Treasurer. The purpose of the funds is to promote better breeding and racing of thoroughbred horses in the state through awards and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners: *And provided further,* That five percent of the deposits required to be withheld by an association or licensee in subsection (b), section nine of this article shall be placed in a special revenue account hereby created in the state Treasury called the "Administration and Promotion Account".

(b) The Racing Commission is authorized to expend the moneys deposited in the administration and promotion account at times and in amounts as the Commission determines to be necessary for purposes of administering and

promoting the thoroughbred development program: *Provided,* That during any fiscal year in which the Commission anticipates spending any money from the account, the Commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill the recommended expenditures, as well as requests of appropriations for the purpose of administration and promotion of the program. The Commission shall make an annual report to the Legislature on the status of the administration and promotion account, including the previous year's expenditures and projected expenditures for the next year.

(c) The fund or funds and the account or accounts established in subsection (a) of this section shall operate on an annual basis.

(d) Funds in the Thoroughbred Development Fund or funds in the separate accounts for each association or licensee as provided in subsection (a) of this section shall be expended for awards and purses except as otherwise provided in this section. Annually, the first $800,000 shall be available for distribution for a minimum of fourteen accredited stakes races at a racetrack which has participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to December 31, 1992. The weights for all accredited stakes races shall be weight for age. One of the stakes races shall be the West Virginia Futurity and the second shall be the Frank Gall Memorial Stakes. For the purpose of participating in the West Virginia Futurity only, all mares, starting with the breeding season beginning the first day of February through July 31, 2004, and each successive breeding season thereafter shall be bred back that year to an accredited West Virginia stallion only which is registered with the West Virginia Thoroughbred Breeders Association. The accredited stake

93 races shall be chosen by the committee set forth in subsection
94 (f) of this section.

95 (e) Awards and purses shall be distributed as follows:

96 (1) The breeders/raisers of accredited thoroughbred
97 horses that earn a purse at a participating West Virginia meet
98 shall receive a bonus award calculated at the end of the year
99 as a percentage of the fund dedicated to the breeders/raisers,
100 which shall be sixty percent of the fund available for
101 distribution in any one year. The total amount available for
102 the breeders'/raisers' awards shall be distributed according to
103 the ratio of purses earned by an accredited race horse to the
104 total amount earned in the participating races by all
105 accredited race horses for that year as a percentage of the
106 fund dedicated to the breeders/raisers. However, no
107 breeder/raiser may receive from the fund dedicated to
108 breeders'/raisers' awards an amount in excess of the earnings
109 of the accredited horse at West Virginia meets. In addition,
110 should a horse's breeder and raiser qualify for the same
111 award on the same horse, they will each be awarded one half
112 of the proceeds. The bonus referred to in this subdivision
113 may only be paid on the first $100,000 of any purse and not
114 on any amounts in excess of the first $100,000.

115 (2) The owner of an accredited West Virginia sire of an
116 accredited thoroughbred horse that earns a purse in any race
117 at a participating West Virginia meet shall receive a bonus
118 award calculated at the end of the year as a percentage of the
119 fund dedicated to sire owners, which shall be fifteen percent
120 of the fund available for distribution in any one year. The
121 total amount available for the sire owners' awards shall be
122 distributed according to the ratio of purses earned by the
123 progeny of accredited West Virginia stallions in the
124 participating races for a particular stallion to the total purses
125 earned by the progeny of all accredited West Virginia
126 stallions in the participating races. However, no sire owner

may receive from the fund dedicated to sire owners an amount in excess of thirty-five percent of the accredited earnings for each sire. The bonus referred to in this subdivision shall only be paid on the first $100,000 of any purse and not on any amounts in excess of the first $100,000.

(3) The owner of an accredited thoroughbred horse that earns a purse in any participating race at a West Virginia meet shall receive a restricted purse supplement award calculated at the end of the year, which shall be twenty-five percent of the fund available for distribution in any one year, based on the ratio of the earnings in the races of a particular race horse to the total amount earned by all accredited race horses in the participating races during that year as a percentage of the fund dedicated to purse supplements. However, the owners may not receive from the fund dedicated to purse supplements an amount in excess of thirty-five percent of the total accredited earnings for each accredited race horse. The bonus referred to in this subdivision shall only be paid on the first $100,000 of any purse and not on any amounts in excess of the first $100,000.

(4) In no event may purses earned at a meet held at a track which did not make a contribution to the Thoroughbred Development Fund out of the daily pool on the day the meet was held qualify or count toward eligibility for an award under this subsection.

(5) Any balance in the breeders/raisers, sire owners and purse supplement funds after yearly distributions shall first be used to fund the races established in subsection (f) of this section. Any amount not so used shall revert into the general account of the Thoroughbred Development Fund for each racing association or licensee for distribution in the next year.

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

(f)(1) Each pari-mutuel thoroughbred horse track shall provide at least one restricted race per racing day: *Provided,* That sufficient horses and funds are available. For purposes of this subsection, there are sufficient horses if there are at least seven single betting interests received for the race: *Provided, however,* That, if sufficient horses and funds are available, any thoroughbred horse racetrack whose licensee participated in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992, shall provide two restricted races per racing day, at least one of which may be split at the discretion of the racing secretary. The restricted race required by this section must be included in the first nine races written in the condition book for that racing day.

(2) The restricted races established in this subsection shall be administered by a three-member committee at each track consisting of:

(A) The racing secretary at each track;

(B) A member appointed by the authorized representative of a majority of the owners and trainers at the thoroughbred track; and

(C) A member appointed by the West Virginia Thoroughbred Breeders Association.

(3) Restricted races shall be funded by each racing association from:

(A) Moneys placed in the General Purse Fund: *Provided,* That a thoroughbred horse racetrack which did not participate in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive years prior to December 31, 1992, may fund restricted races in an amount not to exceed $1 million per year.

(B) Moneys as provided in subdivision (5), subsection (e) of this section, which shall be placed in a special fund called the "West Virginia Accredited Race Fund".

(4) The racing schedules, purse amounts and types of races are subject to the approval of the West Virginia Racing Commission.

(5) If less than seventy-five percent of the restricted races required by this subsection fail to receive enough entries to race, the Racing Commission shall, on a quarterly basis, dedicate funds in each fund back to the general purse fund of the racing association or licensee: *Provided,* That no moneys may be dedicated back to a General purse fund if the dedication would leave less than $250,000 in the fund.

(g) As used in this section, "West Virginia bred-foal" means a horse that was born in the State of West Virginia.

(h) To qualify for the West Virginia Accredited Race Fund, the breeder must qualify under one of the following:

(1) The breeder of the West Virginia bred-foal is a West Virginia resident;

(2) The breeder of the West Virginia bred-foal is not a West Virginia resident, but keeps his or her breeding stock in West Virginia year round; or

(3) The breeder of the West Virginia bred-foal is not a West Virginia resident and does not qualify under subdivision (2) of this subsection, but either the sire of the West Virginia bred-foal is a West Virginia stallion, or the mare is covered only by a West Virginia accredited stallion or stallions before December 31 of the calendar year following the birth of that West Virginia bred-foal.

(i) From July 1, 2001, West Virginia accredited thoroughbred horses have preference for entry in all accredited races at a thoroughbred race track at which the licensee participates in the West Virginia Thoroughbred Development Fund.

(j) Beginning July 1, 2006, any racing association licensed by the Racing Commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article must have a West Virginia Thoroughbred Racing Breeders Program.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article

22. State Lottery Act.
22C. West Virginia Lottery Racetrack Table Game Act.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18a. State Excess Lottery Revenue Fund.

(a) The State Lottery Fund in the State Treasury which is designated and known as the State Excess Lottery Revenue Fund is continued. The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received under the provisions of sections ten-b and ten-c, article twenty-two-a of this chapter and under article twenty-two-b of this chapter, except the amounts due the commission under subdivision (1), subsection (a), section one thousand four hundred eight, article twenty-two-b of this chapter, shall be deposited in the State Treasury and placed into the State Excess Lottery Revenue Fund. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by

15 the State Auditor and the State Treasurer as part of the
16 general revenue of the state.

17 (b) For the fiscal year beginning July 1, 2002, the
18 commission shall deposit: (1) $65 million into the subaccount
19 of the state Excess Lottery Revenue Fund hereby created in
20 the State Treasury to be known as the General Purpose
21 Account to be expended pursuant to appropriation of the
22 Legislature; (2) $10 million into the Education Improvement
23 Fund for appropriation by the Legislature to the PROMISE
24 Scholarship Fund created in section seven, article seven,
25 chapter eighteen-c of this code; (3) $19 million into the
26 Economic Development Project Fund created in subsection
27 (e) of this section for the issuance of revenue bonds and to be
28 spent in accordance with the provisions of said subsection;
29 (4) $20 million into the School Building Debt Service Fund
30 created in section six, article nine-d, chapter eighteen of this
31 code for the issuance of revenue bonds; (5) $40 million into
32 the West Virginia Infrastructure Fund created in section nine,
33 article fifteen-a, chapter thirty-one of this code to be spent in
34 accordance with the provisions of said article; (6) $10 million
35 into the Higher Education Improvement Fund for Higher
36 Education; and (7) $5 million into the State Park
37 Improvement Fund for Park Improvements. For the fiscal
38 year beginning July 1, 2003, the commission shall deposit:
39 (1) $65 million into the General Purpose Account to be
40 expended pursuant to appropriation of the Legislature; (2)
41 $17 million into the Education Improvement Fund for
42 appropriation by the Legislature to the PROMISE
43 Scholarship Fund created in section seven, article seven,
44 chapter eighteen-c of this code; (3) $19 million into the
45 Economic Development Project Fund created in subsection
46 (e) of this section for the issuance of revenue bonds and to be
47 spent in accordance with the provisions of said subsection;
48 (4) $20 million into the School Building Debt Service Fund
49 created in section six, article nine-d, chapter eighteen of this
50 code for the issuance of revenue bonds; (5) $40 million into

the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $7 million into the State Park Improvement Fund for Park Improvements.

(c) For the fiscal year beginning July 1, 2004, and subsequent fiscal years through the fiscal year ending June 30, 2009, the commission shall deposit: (1) $65 million into the General Purpose Account to be expended pursuant to appropriation of the Legislature; (2) $27 million into the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund created in section seven, article seven, chapter eighteen-c of this code; (3) $19 million into the Economic Development Project Fund created in subsection (e) of this section for the issuance of revenue bonds and to be spent in accordance with the provisions of said subsection; (4) $19 million into the School Building Debt Service Fund created in section six, article nine-d, chapter eighteen of this code for the issuance of revenue bonds: *Provided,* That for the fiscal year beginning July 1, 2008, and subsequent fiscal years, no moneys shall be deposited in the School Building Debt Service Fund pursuant to this subsection and instead $19 million shall be deposited into the Excess Lottery School Building Debt Service Fund; (5) $40 million into the West Virginia Infrastructure Fund created in section nine, article fifteen-a, chapter thirty-one of this code to be spent in accordance with the provisions of said article; (6) $10 million into the Higher Education Improvement Fund for Higher Education; and (7) $5 million into the State Park Improvement Fund for Park Improvements. No portion of the distributions made as provided in this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, may be used to pay debt service on bonded indebtedness until after the Legislature

87 expressly authorizes issuance of the bonds and payment of
88 debt service on the bonds through statutory enactment or the
89 adoption of a concurrent resolution by both houses of the
90 Legislature. Until subsequent legislative enactment or
91 adoption of a resolution that expressly authorizes issuance of
92 the bonds and payment of debt service on the bonds with
93 funds distributed under this subsection and subsection (b) of
94 this section, except distributions made in connection with
95 bonds issued under subsection (d) of this section, the
96 distributions may be used only to fund capital improvements
97 that are not financed by bonds and only pursuant to
98 appropriation of the Legislature.

99 (d) For the fiscal year beginning July 1, 2009, and
100 subsequent fiscal years, the commission shall deposit: (1) $65
101 million into the General Purpose Account to be expended
102 pursuant to appropriation of the Legislature; (2) $29 million
103 into the Education Improvement Fund for appropriation by
104 the Legislature to the PROMISE Scholarship Fund created in
105 section seven, article seven, chapter eighteen-c of this code;
106 (3) $19 million into the Economic Development Project Fund
107 created in subsection (e) of this section for the issuance of
108 revenue bonds and to be spent in accordance with the
109 provisions of said subsection; (4) $19 million into the Excess
110 Lottery School Building Debt Service Fund created in section
111 six, article nine-d, chapter eighteen of this code; (5) $40
112 million into the West Virginia Infrastructure Fund created in
113 section nine, article fifteen-a, chapter thirty-one of this code
114 to be spent in accordance with the provisions of said article;
115 (6) $10 million into the Higher Education Improvement Fund
116 for Higher Education; and (7) $5 million into the State Park
117 Improvement Fund for Park Improvements. No portion of
118 the distributions made as provided in this subsection and
119 subsection (b) of this section, except distributions made in
120 connection with bonds issued under subsection (e) of this
121 section, may be used to pay debt service on bonded
122 indebtedness until after the Legislature expressly authorizes

issuance of the bonds and payment of debt service on the bonds through statutory enactment or the adoption of a concurrent resolution by both houses of the Legislature. Until subsequent legislative enactment or adoption of a resolution that expressly authorizes issuance of the bonds and payment of debt service on the bonds with funds distributed under this subsection and subsection (b) of this section, except distributions made in connection with bonds issued under subsection (e) of this section, the distributions may be used only to fund capital improvements that are not financed by bonds and only pursuant to appropriation of the Legislature.

(e) The Legislature finds and declares that in order to attract new business, commerce and industry to this state, to retain existing business and industry providing the citizens of this state with economic security and to advance the business prosperity of this state and the economic welfare of the citizens of this state, it is necessary to provide public financial support for constructing, equipping, improving and maintaining economic development projects, capital improvement projects and infrastructure which promote economic development in this state.

(1) The West Virginia Economic Development Authority created and provided for in article fifteen, chapter thirty-one of this code shall, by resolution, in accordance with the provisions of this article and article fifteen, chapter thirty-one of this code, and upon direction of the Governor, issue revenue bonds of the Economic Development Authority in no more than two series to pay for all or a portion of the cost of constructing, equipping, improving or maintaining projects under this section or to refund the bonds at the discretion of the authority. Any revenue bonds issued on or after July 1, 2002, which are secured by state excess lottery revenue proceeds shall mature at a time or times not exceeding thirty years from their respective dates. The principal of and the

interest and redemption premium, if any, on the bonds shall be payable solely from the special fund provided in this section for the payment.

(2) The special revenue fund named the Economic Development Project Fund into which shall be is deposited the amounts to be deposited in the fund as specified in subsections (b), (c) and (d) of this section is continued. The Economic Development Project Fund shall consist of all such moneys, all appropriations to the fund, all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by this section, including any and all commercially customary and reasonable costs and expenses which may be incurred in connection with the issuance, refunding, redemption or defeasance of the bonds. The West Virginia Economic Development Authority may further provide in the resolution and in the trust agreement for priorities on the revenues paid into the Economic Development Project Fund that are necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this section. The bonds issued pursuant to this subsection shall be separate from all other bonds which may be or have been issued, from time to time, under the provisions of this article.

(3) After the West Virginia Economic Development Authority has issued bonds authorized by this section and after the requirements of all funds have been satisfied, including any coverage and reserve funds established in connection with the bonds issued pursuant to this subsection, any balance remaining in the Economic Development Project Fund may be used for the redemption of any of the outstanding bonds issued under this subsection which, by their terms, are then redeemable or for the purchase of the

outstanding bonds at the market price, but not to exceed the price, if any, at which redeemable, and all bonds redeemed or purchased shall be immediately canceled and shall not again be issued.

(4) Bonds issued under this subsection shall state on their face that the bonds do not constitute a debt of the State of West Virginia; that payment of the bonds, interest and charges thereon cannot become an obligation of the State of West Virginia; and that the bondholders' remedies are limited in all respects to the Special Revenue Fund established in this subsection for the liquidation of the bonds.

(5) The West Virginia Economic Development Authority shall expend the bond proceeds from the revenue bond issues authorized and directed by this section for projects certified under the provision of this subsection: *Provided,* That the bond proceeds shall be expended in accordance with the requirements and provisions of article five-a, chapter twenty-one of this code and either article twenty-two or twenty-two-a, chapter five of this code, as the case may be: *Provided, however,* That if the bond proceeds are expended pursuant to article twenty-two-a, chapter five of this code and if the Design-Build Board created under said article determines that the execution of a design-build contract in connection with a project is appropriate pursuant to the criteria set forth in said article and that a competitive bidding process was used in selecting the design builder and awarding the contract, the determination shall be conclusive for all purposes and shall be considered to satisfy all the requirements of said article.

(6) For the purpose of certifying the projects that will receive funds from the bond proceeds, a committee is hereby established and comprised of the Governor, or his or her designee, the Secretary of the Department of Revenue, the Executive Director of the West Virginia Development Office and six persons appointed by the Governor: *Provided,* That

227 at least one citizen member must be from each of the state's
228 three congressional districts. The committee shall meet as
229 often as necessary and make certifications from bond
230 proceeds in accordance with this subsection. The committee
231 shall meet within thirty days of the effective date of this
232 section.

233 (7) Applications for grants submitted on or before July 1,
234 2002, shall be considered refiled with the committee. Within
235 ten days from the effective date of this section as amended in
236 the year 2003, the lead applicant shall file with the committee
237 any amendments to the original application that may be
238 necessary to properly reflect changes in facts and
239 circumstances since the application was originally filed with
240 the committee.

241 (8) When determining whether or not to certify a project,
242 the committee shall take into consideration the following:

243 (A) The ability of the project to leverage other sources of
244 funding;

245 (B) Whether funding for the amount requested in the
246 grant application is or reasonably should be available from
247 commercial sources;

248 (C) The ability of the project to create or retain jobs,
249 considering the number of jobs, the type of jobs, whether
250 benefits are or will be paid, the type of benefits involved and
251 the compensation reasonably anticipated to be paid persons
252 filling new jobs or the compensation currently paid to
253 persons whose jobs would be retained;

254 (D) Whether the project will promote economic
255 development in the region and the type of economic
256 development that will be promoted;

(E) The type of capital investments to be made with bond proceeds and the useful life of the capital investments; and

(F) Whether the project is in the best interest of the public.

(9) A grant may not be awarded to an individual or other private person or entity. Grants may be awarded only to an agency, instrumentality or political subdivision of this state or to an agency or instrumentality of a political subdivision of this state.

The project of an individual or private person or entity may be certified to receive a low-interest loan paid from bond proceeds. The terms and conditions of the loan, including, but not limited to, the rate of interest to be paid and the period of the repayment, shall be determined by the Economic Development Authority after considering all applicable facts and circumstances.

(10) Prior to making each certification, the committee shall conduct at least one public hearing, which may be held outside of Kanawha County. Notice of the time, place, date and purpose of the hearing shall be published in at least one newspaper in each of the three congressional districts at least fourteen days prior to the date of the public hearing.

(11) The committee may not certify a project unless the committee finds that the project is in the public interest and the grant will be used for a public purpose. For purposes of this subsection, projects in the public interest and for a public purpose include, but are not limited to:

(A) Sports arenas, fields, parks, stadiums and other sports and sports-related facilities;

(B) Health clinics and other health facilities;

(C) Traditional infrastructure, such as water and wastewater treatment facilities, pumping facilities and transmission lines;

(D) State-of-the-art telecommunications infrastructure;

(E) Biotechnical incubators, development centers and facilities;

(F) Industrial parks, including construction of roads, sewer, water, lighting and other facilities;

(G) Improvements at state parks, such as construction, expansion or extensive renovation of lodges, cabins, conference facilities and restaurants;

(H) Railroad bridges, switches and track extension or spurs on public or private land necessary to retain existing businesses or attract new businesses;

(I) Recreational facilities, such as amphitheaters, walking and hiking trails, bike trails, picnic facilities, restrooms, boat docking and fishing piers, basketball and tennis courts, and baseball, football and soccer fields;

(J) State-owned buildings that are registered on the National Register of Historic Places;

(K) Retail facilities, including related service, parking and transportation facilities, appropriate lighting, landscaping and security systems to revitalize decaying downtown areas; and

(L) Other facilities that promote or enhance economic development, educational opportunities or tourism opportunities thereby promoting the general welfare of this state and its residents.

(12) Prior to the issuance of bonds under this subsection, the committee shall certify to the Economic Development Authority a list of those certified projects that will receive funds from the proceeds of the bonds. Once certified, the list may not thereafter be altered or amended other than by legislative enactment.

(13) If any proceeds from sale of bonds remain after paying costs and making grants and loans as provided in this subsection, the surplus may be deposited in an account in the State Treasury known as the Economic Development Project Bridge Loan Fund administered by the Economic Development Authority created in article fifteen, chapter thirty-one of this code. Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code. Loan repayment amounts, including the portion attributable to interest, shall be paid into the fund created in this subdivision.

(f) If the commission receives revenues in an amount that is not sufficient to fully comply with the requirements of subsections (b), (c), (d) and (i) of this section, the commission shall first make the distribution to the Economic Development Project Fund; second, make the distribution or distributions to the other funds from which debt service is to be paid; third, make the distribution to the Education Improvement Fund for appropriation by the Legislature to the PROMISE Scholarship Fund; and fourth, make the distribution to the General Purpose Account: *Provided,* That, subject to the provisions of this subsection, to the extent the revenues are not pledged in support of revenue bonds which are or may be issued, from time to time, under this section, the revenues shall be distributed on a pro rata basis.

349 (g) Each fiscal year, the commission shall, after meeting
350 the requirements of subsections (b), (c), (d) and (i) of this
351 section and after transferring to the State Lottery Fund
352 created under section eighteen of this article an amount equal
353 to any transfer from the State Lottery Fund to the Excess
354 Lottery Fund pursuant to subsection (f), section eighteen of
355 this article, deposit fifty percent of the amount by which
356 annual gross revenue deposited in the State Excess Lottery
357 Revenue Fund exceeds $225 million in a fiscal year in a
358 separate account in the State Lottery Fund to be available for
359 appropriation by the Legislature.

360 (h) When bonds are issued for projects under subsection
361 (d) (e) of this section or for the School Building Authority,
362 infrastructure, higher education or park improvement
363 purposes described in this section that are secured by profits
364 from lotteries deposited in the State Excess Lottery Revenue
365 Fund, the Lottery Director shall allocate first to the Economic
366 Development Project Fund an amount equal to one tenth of
367 the projected annual principal, interest and coverage
368 requirements on any and all revenue bonds issued, or to be
369 issued as certified to the Lottery Director; and second, to the
370 fund or funds from which debt service is paid on bonds
371 issued under this section for the School Building Authority,
372 infrastructure, higher education and park improvements an
373 amount equal to one tenth of the projected annual principal,
374 interest and coverage requirements on any and all revenue
375 bonds issued, or to be issued as certified to the Lottery
376 Director. In the event there are insufficient funds available
377 in any month to transfer the amounts required pursuant to this
378 subsection, the deficiency shall be added to the amount
379 transferred in the next succeeding month in which revenues
380 are available to transfer the deficiency.

381 (i) Prior to the distributions provided in subsection (d) of
382 this section, the Lottery Commission shall deposit into the
383 General Revenue Fund amounts necessary to provide

reimbursement for the refundable credit allowable under section twenty-one, article twenty-one, chapter eleven of this code.

(j)(1) The Legislature considers the following as priorities in the expenditure of any surplus revenue funds:

(A) Providing salary and/or increment increases for professional educators and public employees;

(B) Providing adequate funding for the Public Employees Insurance Agency; and

(C) Providing funding to help address the shortage of qualified teachers and substitutes in areas of need, both in number of teachers and in subject matter areas.

(2) The provisions of this subsection may not be construed by any court to require any appropriation or any specific appropriation or level of funding for the purposes set forth in this subsection.

(k) The Legislature further directs the Governor to focus resources on the creation of a prescription drug program for senior citizens by pursuing a Medicaid waiver to offer prescription drug services to senior citizens; by investigating the establishment of purchasing agreements with other entities to reduce costs; by providing discount prices or rebate programs for seniors; by coordinating programs offered by pharmaceutical manufacturers that provide reduced cost or free drugs; by coordinating a collaborative effort among all state agencies to ensure the most efficient and cost-effective program possible for the senior citizens of this state; and by working closely with the state's congressional delegation to ensure that a national program is implemented. The Legislature further directs that the Governor report his or her progress back to the Joint Committee on Government and Finance on an annual basis until a comprehensive program has been fully implemented.

416 (l) After all of the expenditures in subsections (a) through
417 (i) of this section have been satisfied in any fiscal year, the
418 next $2 million shall be distributed as follows:

419 (1) On the last day of the fiscal year that begins on July 1,
420 2010, and for each fiscal year thereafter, forty-six percent shall
421 be placed in the general purse fund of a thoroughbred racetrack
422 licensee that did not participate in the Thoroughbred
423 Development Fund for at least four consecutive calendar years
424 prior to December 31, 1992, for payment of regular purses;

425 (2) Forty-three and one half percent shall be distributed
426 to the racing commission special account - unredeemed pari-
427 mutual tickets established on behalf of a thoroughbred
428 racetrack licensee that did participate in the Thoroughbred
429 Development Fund for at least four consecutive calendar
430 years prior to December 31, 1992;

431 (3) Five and one half percent shall be distributed to the
432 racing commission special account - unredeemed pari-mutuel
433 tickets established on behalf of a thoroughbred racetrack
434 licensee that did not participate in the Thoroughbred
435 Development Fund for at least four consecutive calendar
436 years prior to December 31, 1992; and

437 (4) Five percent shall be distributed to the West Virginia
438 racing commission special account - greyhound breeding
439 development fund.

ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.

*§29-22C-27. West Virginia Lottery Racetrack Table Games Fund; Community-Based Service Fund; State Debt Reduction Fund; distribution of funds.

*CLERK'S NOTE: This section was also amended by S. B. 237 (Chapter 129) which passed subsequent to this act.

(a)(1) The special fund in the State Treasury known as the West Virginia Lottery Racetrack Table Games Fund is continued and all tax collected under this article shall be deposited with the State Treasurer and placed in the West Virginia Lottery Racetrack Table Games Fund. The fund shall be an interest-bearing account with all interest or other return earned on the money of the fund credited to and deposited in the fund.

(2) Notwithstanding any provision of this article to the contrary, all racetrack table games license fees received by the commission pursuant to section eight of this article shall be deposited into the Community-Based Service Fund which is continued in the State Treasury. Moneys of the fund shall be expended by the Bureau of Senior Services upon appropriation of the Legislature solely for the purpose of enabling the aged and disabled citizens of this state to maintain their residency in the community-based setting through the provision of home and community-based services.

(b) From the gross amounts deposited into the Racetrack Table Games Fund pursuant to subsection (a) of this section, the commission shall:

(1) Retain an amount for the administrative expenses of the commission as determined by the commission in accordance with subsection (e) of this section;

(2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred racetracks with West Virginia Lottery table games to the special funds established by each thoroughbred racetrack table games licensees for the payment of regular racetrack purses, the amount being divided on a pro rata basis between the special funds of each thoroughbred racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts from all greyhound

34 racetracks with West Virginia Lottery table games to the
35 special funds established by each greyhound racetrack table
36 games licensees for the payment of regular racetrack purses,
37 the amount being divided equally between the special funds
38 of each greyhound racetrack table games licensee;

39 (3) Transfer two percent of the adjusted gross receipts
40 from all licensed racetracks to the West Virginia
41 Thoroughbred Development Fund created under section
42 thirteen-b, article twenty-three, chapter nineteen of this code
43 and the West Virginia Greyhound Breeding Development
44 Fund created under section ten, article twenty-three, chapter
45 nineteen of this code. The total amount transferred under this
46 subdivision shall be divided pro rata among the development
47 funds for each racetrack table games licensee based on
48 relative adjusted receipts from each racetrack. The amounts
49 transferred to these funds may not be used for the benefit of
50 any person or activity other than at or associated with a
51 racetrack table games licensee;

52 (4) Transfer one percent of the adjusted gross receipts
53 from each licensed racetrack to the county commissions of
54 the counties where racetracks with West Virginia Lottery
55 table games are located. The one percent transferred under
56 this subdivision shall be divided pro rata among the counties
57 with a racetrack with West Virginia Lottery table games
58 based on relative adjusted gross receipts from each county's
59 racetrack: *Provided,* That the county board of education of a
60 growth county, as that term is defined in section three, article
61 twenty, chapter seven of this code, which has enacted the
62 Local Powers Act, and in which county a racetrack is located
63 that has participated in the West Virginia Thoroughbred
64 Development Fund since on or before January 1, 1991, shall
65 receive the one percent of adjusted gross receipts as provided
66 in this subdivision for the purpose of capital improvements;

(5) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the governing bodies of municipalities within counties where racetracks with West Virginia Lottery table games are located, which shall be allocated as follows:

(A) One half of the amounts transferred under this subdivision shall be allocated to the municipalities within each county having a racetrack table games licensee, based on relative adjusted gross receipts from West Virginia Lottery table games from those racetracks and the total amount allocated to the municipalities within a county shall be divided pro rata among the municipalities based on each municipality's population determined at the most recent United States decennial census of population: *Provided,* That: (i) For each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; (ii) a single municipality in a county where West Virginia Lottery racetrack table games are played may not receive a total share under this paragraph that is in excess of seventy-five percent of the total distribution under this paragraph for the county in which the municipality is located; and (iii) a municipality receiving moneys under this paragraph may not receive an amount which is less than that received by a municipality under provisions of subdivision (4), subsection (d) of this section; and

(B) One half of the amounts transferred under this subdivision shall be allocated pro rata to the municipalities within all the counties, having a racetrack table games licensee based on each municipality's population determined at the most recent United States decennial census of population: *Provided,* That: (i) A municipality which received funds above its pro rata share pursuant to subpart (iii), paragraph (A) of this subdivision may not receive an

allocation under this paragraph; (ii) for each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games are played may not receive a total share under this paragraph that is in excess of twenty-five percent of the total transfers under this paragraph: *Provided, however,* That the county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive the two percent of adjusted gross receipts as provided in this subdivision for the purpose of capital improvements;

(6) Transfer one half of one percent of the adjusted gross receipts to the governing bodies of municipalities in which a racetrack table games licensee is located. The municipalities shall each receive an equal share of the total amount allocated under this subdivision: *Provided,* That distribution under this subdivision may not be made to any municipality which did not have a licensed racetrack within its municipal boundaries as they existed on January 1, 2007: *Provided, however,* That if no racetrack table games licensee is located within a municipality, a transfer may not be made under this subdivision; and

(7) Distribute the remaining amounts, hereinafter referred to as the net amounts in the Racetrack Table Games Funds, in accordance with the provisions of subsection (d) of this section.

(c) Beginning with the fiscal year following the licensing of every licensed racetrack to offer West Virginia lottery

racetrack table games under this article, subsection (b) of this section shall be superseded and replaced by this subsection for distribution of the balances in the fund established by subsection (a) of this section. From the gross amounts deposited into the fund, the commission shall:

(1) Retain an amount for the administrative expenses of the commission as determined by the commission in accordance with subsection(e) of this section;

(2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred racetracks with West Virginia Lottery table games to the special funds established by each thoroughbred racetrack table games licensee for the payment of regular racetrack purses, the amount being divided on a pro rata basis between the special funds of each thoroughbred racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts from all greyhound racetracks with West Virginia Lottery table games to the special funds established by each greyhound racetrack table games licensee for the payment of regular racetrack purses, the amount being divided equally between the special funds of each greyhound racetrack table games licensee;

(3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development Fund created under section ten, article twenty-three, chapter nineteen of this code. The total amount transferred under this subdivision shall be divided pro rata among the development funds for each racetrack table games licensee based on relative adjusted receipts from each racetrack. The amounts transferred to these funds may not be used for the benefit of any person or activity other than at or associated with a racetrack table games licensee;

(4) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the county commissions of the counties where racetracks with West Virginia Lottery table games are located. The money transferred under this subdivision shall be divided pro rata among the counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross receipts from each county's racetrack: *Provided,* That the county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive one half of that county's share of adjusted gross receipts as provided in this subdivision for the purpose of capital improvements;

(5) Transfer three percent of the adjusted gross receipts from each licensed racetrack to the governing bodies of municipalities within counties where racetracks with West Virginia Lottery table games are located, which shall be allocated as follows:

(A) One half of the money transferred by this subdivision shall be allocated to the municipalities within each county, other than a county described in paragraph (C) of this subdivision, having a racetrack table games licensee based on relative adjusted gross receipts from West Virginia Lottery table games from those racetracks and the total amount allocated to the municipalities within a county shall be divided pro rata among the municipalities based on each municipality's population determined at the most recent United States decennial census of population: *Provided,* That: (i) For each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; (ii) a single

municipality in a county where West Virginia Lottery racetrack table games are played may not receive a total share under this paragraph that is in excess of seventy-five percent of the total distribution under this paragraph for the county in which the municipality is located; and (iii) a municipality receiving moneys under this paragraph may not receive an amount which is less than that received by a municipality under provisions of subdivision (4), subsection (d) of this section.

(B) One half of the money transferred under this subdivision shall be allocated pro rata to the municipalities within all the counties, other than a county described in paragraph (C) of this subdivision, having a racetrack table games licensee based on each municipality's population determined at the most recent United States decennial census of population: *Provided,* That: (i) A municipality which received funds above its pro rata share pursuant to subparagraph (iii), paragraph (A) of this subdivision shall not receive an allocation under this paragraph; (ii) for each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games are played may not receive a total share under this paragraph that is in excess of twenty-five percent of the total transfers under this paragraph.

(C) Notwithstanding the provisions of paragraphs (A) and (B) of this subdivision, when a racetrack is located in a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, the county board of education shall receive two thirds of the

share of adjusted gross receipts from West Virginia Lottery table games from the racetrack in the county as provided in this subdivision and the municipalities within the county shall share the remaining one third of the total amount allocated as provided in this paragraph. The municipal one-third share shall be divided pro rata among the municipalities based on each municipality's population determined at the most recent United States decennial census of population. All money transferred under this paragraph shall be used by the county board of education and by the municipalities for the purpose of capital improvements;

(6) Transfer one half of one percent of the adjusted gross receipts to the governing bodies of municipalities in which a racetrack table games licensee is located. The municipalities shall each receive an equal share of the total amount allocated under this subdivision: *Provided,* That distribution under this subdivision may not be made to any municipality that did not have a licensed racetrack within its municipal boundaries as they existed on January 1, 2007: *Provided, however,* That if no racetrack table games licensee is located within a municipality, a transfer may not be made under this subdivision; and

(7) Distribute the remaining amounts, hereinafter referred to as the net amounts in the Racetrack Table Games Funds, in accordance with the provisions of subsection (d) of this section.

(d) From the net amounts in the Racetrack Table Games Fund, the commission shall:

(1) Transfer seventy-six percent to the State Debt Reduction Fund which is hereby continued in the State Treasury. Moneys of the fund shall be expended solely for the purpose of accelerating the reduction of existing

unfunded liabilities and existing bond indebtedness of the state and shall be expended or transferred only upon appropriation of the Legislature;

(2) Transfer four percent, divided pro rata based on relative adjusted gross receipts from the individual licensed racetracks for and on behalf of all employees of each licensed racing association, into a special fund to be established by the Racing Commission to be used for payment into the pension plan for all employees of each licensed racing association;

(3) Transfer ten percent, to be divided and paid in equal shares, to each county commission in the state that is not eligible to receive a distribution under subdivision (4), subsection (b) of this section: *Provided,* That funds transferred to county commissions under this subdivision shall be used only to pay regional jail expenses and the costs of infrastructure improvements and other capital improvements; and

(4) Transfer ten percent, to be divided and paid in equal shares, to the governing bodies of each municipality in the state that is not eligible to receive a distribution under subdivisions (5) and (6), subsection (b) of this section: *Provided,* That funds transferred to municipalities under this subdivision shall be used only to pay for debt reduction in municipal police and fire pension funds and the costs of infrastructure improvements and other capital improvements.

(e) All expenses of the commission incurred in the administration and enforcement of this article shall be paid from the Racetrack Table Games Fund, including reimbursement of state law-enforcement agencies for services performed at the request of the commission pursuant to this article. The commission's expenses associated with a particular racetrack with authorized table games under this

article may not exceed three percent of the total annual adjusted gross receipts received from that licensee's operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the licensee's operation of table games under this article, except as provided in subdivision (2), subsection (a) of this section. However, for the fiscal year following the licensing of every licensed racetrack to offer West Virginia lottery racetrack table games under this article and for the fiscal year thereafter, the commission's expenses associated with a particular racetrack with authorized table games under this article may not exceed four percent of the total annual adjusted gross receipts received from that licensee's operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the licensee's operation of table games under this article, except as provided in subdivision (2), subsection (a) of this section. These expenses shall either be allocated to the racetrack with West Virginia Lottery table games for which the expense is incurred, if practicable, or be treated as general expenses related to all racetrack table games facilities and be allocated pro rata among the racetrack table games facilities based on the ratio that annual adjusted gross receipts from operation of table games at each racetrack with West Virginia Lottery table games bears to total annual adjusted gross receipts from operation of table games at all racetracks with West Virginia Lottery table games during the fiscal year of the state. From this allowance, the commission shall transfer at least $100,000 but not more than $500,000 into the Compulsive Gambling Treatment Fund created in section nineteen, article twenty-two-a of this chapter.

CHAPTER 99

(Com. Sub. for S. B. 498 - By Senators Kessler and Chafin)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §9-6-1 of the Code of West Virginia, 1931, as amended, relating to amending the civil definition of "neglect" by making it congruent with the definition of "criminal neglect"; replacing the term "mentally retarded" with "individuals with an intellectual disability"; and providing a definition for "caregiver".

Be it enacted by the Legislature of West Virginia:

That §9-6-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-1. Definitions.

1 As used in this article:

2 (1) "Adult protective services agency" means any public
3 or nonprofit private agency, corporation, board or
4 organization furnishing protective services to adults;

5 (2) "Abuse" means the infliction or threat to inflict
6 physical pain or injury on or the imprisonment of any
7 incapacitated adult or facility resident;

8 (3) "Neglect" means:

9 (A) The unreasonable failure by a caregiver to provide
10 the care necessary to assure the physical safety or health of
11 an incapacitated adult; or

12 (B) The unlawful expenditure or willful dissipation of the
13 funds or other assets owned or paid to or for the benefit of an
14 incapacitated adult or resident;

15 (4) "Incapacitated adult" means any person who by
16 reason of physical, mental or other infirmity is unable to
17 independently carry on the daily activities of life necessary to
18 sustaining life and reasonable health;

19 (5) "Emergency" or "emergency situation" means a
20 situation or set of circumstances which presents a substantial
21 and immediate risk of death or serious injury to an
22 incapacitated adult;

23 (6) "Legal representative" means a person lawfully
24 invested with the power and charged with the duty of taking
25 care of another person or with managing the property and
26 rights of another person, including, but not limited to, a
27 guardian, conservator, medical power of attorney
28 representative, trustee or other duly appointed person;

29 (7) "Nursing home" or "facility" means any institution,
30 residence, intermediate care facility for individuals with an
31 intellectual disability, care home or any other adult
32 residential facility, or any part or unit thereof, that is subject
33 to the provisions of articles five-c, five-d, five-e or five-h,
34 chapter sixteen of this code;

35 (8) "Regional long-term care ombudsman" means any
36 paid staff of a designated regional long-term care
37 ombudsman program who has obtained appropriate

38 certification from the Bureau for Senior Services and meets
39 the qualifications set forth in section seven, article five-l,
40 chapter sixteen of this code;

41 (9) "Facility resident" means an individual living in a
42 nursing home or other facility, as that term is defined in
43 subdivision (7) of this section;

44 (10) "Responsible family member" means a member of
45 a resident's family who has undertaken primary
46 responsibility for the care of the resident and who has
47 established a working relationship with the nursing home or
48 other facility in which the resident resides. For purposes of
49 this article, a responsible family member may include
50 someone other than the resident's legal representative;

51 (11) "State Long-term Care Ombudsman" means an
52 individual who meets the qualifications of section five, article
53 five-l, chapter sixteen of this code and who is employed by
54 the State Bureau for Senior Services to implement the State
55 Long-term Care Ombudsman Program;

56 (12) "Secretary" means the Secretary of the Department
57 of Health and Human Resources.

58 (13) 'Caregiver' means a person or entity who cares for
59 or shares in the responsibility for the care of an incapacitated
60 adult on a full-time or temporary basis, regardless of whether
61 such person or entity has been designated as a guardian or
62 custodian of the incapacitated adult by any contract,
63 agreement or legal procedures. Caregiver includes health
64 care providers, family members, and any person who
65 otherwise voluntarily accepts a supervisory role towards an
66 incapacitated adult.

CHAPTER 100

(S. B. 512 - By Senator Fanning)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2010.]

AN ACT to amend and reenact §20-2-19 of the Code of West Virginia, 1931, as amended, relating to trap markings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-19. Marking of traps.

All traps used for taking game or fur-bearing animals shall be marked with a durable plate or tag attached to the snare, trap or trap chain bearing the name and address of the owner of the trap.

CHAPTER 101

(S. B. 511 - By Senator Fanning)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2010.]

AN ACT to amend and reenact §20-2-21 of the Code of West Virginia, 1931, as amended, relating to Castor canadensis, or beaver, trapping and tagging of pelts.

Be it enacted by the Legislature of West Virginia:

That §20-2-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-21. Reporting Castor canadensis (beaver); pelts taken and tagged.

Each trapper shall present each Castor canadensis (beaver) or its pelt to a game checking station or representative of the division within thirty days after the close of a legal season. A tag provided by the division shall be affixed to each Castor canadensis pelt and remain attached to the pelt until it is processed into commercial fur.

CHAPTER 102

(Com. Sub. for H. B. 4531 - By Delegates Brown, Miley, Hatfield, Guthrie, Lawrence, Poore and Caputo)

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

AN ACT to amend and reenact §25-1-16 of the Code of West Virginia, 1931, as amended; to further amend said code by adding thereto a new section, designated §31-20-30a; and to amend and reenact §49-5E-6 of said code, all relating to the proper care of inmates in state institutions or facilities; authorizing the transfer of inmates with mental health needs; authorizing the transfer of inmates for medical reasons under appropriate supervision; providing criteria, standards and limitations relating to the proper treatment of pregnant inmates; authorizing restraint of pregnant inmates when necessary; and providing criteria, standards and limitations relating to the proper treatment of pregnant juveniles in the custody of the Division of Juvenile Services.

Be it enacted by the Legislature of West Virginia:

That §25-1-16 of the Code of West Virginia, 1931, as amended be amended and reenacted; that said code be amended by adding thereto a new section, designated §31-20-30a; and that §49-5E-6 of said code be amended and reenacted, all to read as follows:

Chapter

25. Division of Corrections.
31. Corporations.
49. Child Welfare.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-16. Transfer of inmates of state institutions or facilities.

1 The State Commissioner of Corrections shall have authority
2 to cause the transfer of any inmate from any correctional facility
3 to any other state or federal institution or facility which is
4 better equipped for the care or treatment of such inmate, or
5 for other good cause or reason.

6 Whenever an inmate committed to the custody of
7 corrections becomes mentally ill and his or her needs cannot
8 be properly met within the correctional facility, the
9 commissioner shall proceed in accordance with section thirty-
10 one, article five, chapter twenty-eight of this code.

11 Whenever an inmate committed to the custody of
12 corrections needs medical attention, other than mental health
13 care, not available at said prison, the warden or administrator
14 of said correctional facility shall immediately notify the
15 Commissioner of Corrections who, after proper investigation,
16 shall cause the transfer of said inmate to a facility properly
17 equipped to render the medical attention necessary. Such
18 inmate, while receiving treatment in said hospital, shall be
19 under an appropriate level of supervision at all times and
20 shall forthwith be returned to his or her correctional facility
21 upon release from said facility.

22 In providing or arranging for the necessary medical and
23 other care and treatment of a pregnant inmate, the warden or
24 administrator of the correctional facility shall take reasonable
25 measures to assure that pregnant inmates will not be restrained
26 after reaching the second trimester of pregnancy until the end
27 of the pregnancy: *Provided*, That if the inmate, based upon

her classification, discipline history, or other factors deemed relevant by the warden or administrator poses a threat of escape, or to the safety of herself, the public, staff or the fetus, the inmate may be restrained in a manner reasonably necessary: *Provided, however*, That prior to directing the application of restraints and where there is no threat to the safety of the inmate, the public, staff or the fetus, the warden, administrator or designee shall consult with an appropriate health care professional to assure that the manner of restraint will not pose an unreasonable risk of harm to the inmate or the fetus.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-30a. Mechanical restraints during pregnancy.

In providing or arranging for the necessary medical and other care and treatment of inmates committed to the Regional Jail Authority's custody, the authority shall assure that pregnant inmates will not be restrained after reaching the second trimester of pregnancy until the end of the pregnancy: *Provided*, That if the inmate, based upon her classification, discipline history, or other factors deemed relevant by the authority poses a threat of escape, or to the safety of herself, the public, staff or the fetus, the inmate may be restrained in a manner reasonably necessary: *Provided, however*, That prior to directing the application of restraints and where there is no threat to the safety of the inmate, the public, staff or the fetus, the director or designee shall consult with an appropriate health care professional to assure that the manner of restraint will not pose an unreasonable risk of harm to the inmate or the fetus.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-6. Medical and other treatment of juveniles in custody of the division; coordination of care and claims processing and administration by the department; authorization of certain cooperative agreements.

1 (a) Notwithstanding any other provision of law to the
2 contrary, the director, or his or her designee, is hereby
3 authorized to consent to the medical or other treatment of any
4 juvenile in the legal or physical custody of the director or the
5 division.

6 (b) In providing or arranging for the necessary medical
7 and other care and treatment of juveniles committed to the
8 division's custody, the director shall utilize service providers
9 who provide the same or similar services to juveniles under
10 existing contracts with the Department of Health and Human
11 Resources. In order to obtain the most advantageous
12 reimbursement rates, to capitalize on an economy of scale
13 and to avoid duplicative systems and procedures, the
14 department shall administer and process all claims for
15 medical or other treatment of juveniles committed to the
16 division's custody.

17 (c) In providing or arranging for the necessary medical
18 and other care and treatment of juveniles committed to the
19 division's custody, the director shall assure that pregnant
20 inmates will not be restrained after reaching the second
21 trimester of pregnancy until the end of the pregnancy:
22 *Provided*, That if the inmate, based upon her classification,
23 discipline history or other factors deemed relevant by the
24 director poses a threat of escape, or to the safety of herself,
25 the public, staff, or the unborn child, the inmate may be
26 restrained in a manner reasonably necessary: *Provided,*

27 *however*, That prior to directing the application of restraints
28 and where there is no threat to the safety of the inmate, the
29 public, staff or the fetus, the director or designee shall consult
30 with an appropriate health care professional to assure that the
31 manner of restraint will not pose an unreasonable risk of
32 harm to the inmate or the fetus.

33 (d) For purposes of implementing the mandates of this
34 section, the director is hereby authorized and directed to enter
35 into any necessary agreements with the Department of Health
36 and Human Resources. Any such agreement shall specify, at
37 a minimum, for the direct and incidental costs associated with
38 such care and treatment to be paid by the Division of Juvenile
39 Services.

CHAPTER 103

**(Com. Sub. for H. B. 4615 -
By Delegate Campbell)**

[Passed March 12, 2010; in effect from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to amend and reenact §29-12A-16 of the Code of West Virginia, 1931, as amended, relating to authorizing political subdivisions to establish risk pools to insure their workers' compensation risks; providing that political subdivisions may not make application to the Insurance Commissioner to operate a risk pool until rules promulgated to regulate such programs have been made effective; and authorizing the Insurance Commissioner to promulgate emergency rules.

Be it enacted by the Legislature of West Virginia:

That §29-12A-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12A. GOVERNMENTAL TORT CLAIMS AND INSURANCE REFORM ACT.

§29-12A-16. Procurement of liability insurance and self-insurance.

1 (a) A political subdivision may use public funds to secure
2 insurance with respect to its potential liability and that of its
3 employees for damages in civil actions for injury, death or
4 loss to persons or property allegedly caused by an act or
5 omission of the political subdivision or any of its employees,
6 including insurance coverage procured through the State
7 Board of Risk and Insurance Management. The insurance
8 may be at the limits for the circumstances, and subject to the
9 terms and conditions that are determined by the political
10 subdivision in its discretion.

11 The insurance may be for the period that is set forth in
12 specifications for competitive bids or, when competitive
13 bidding is not required, for the period that is mutually agreed
14 upon by the political subdivision and insurance company.
15 The period does not have to be, but can be, limited to the
16 fiscal cycle under which the political subdivision is funded
17 and operates.

18 (b)(1) Regardless of whether a political subdivision
19 procures a policy or policies of liability insurance pursuant to
20 subsection (a) of this section or otherwise:

21 (A) Any political subdivision may establish and maintain a
22 self-insurance program relative to its potential liability and that
23 of its employees for damages in civil actions for injury, death, or
24 loss to persons or property allegedly caused by an act or
25 omission of the political subdivision or any of its employees; or

26 (B) Any group of two or more political subdivisions may
27 establish and maintain a self-insurance pool relative to their

28 collective potential liability and that of their collective
29 employees for damages in civil actions for injury, death or
30 loss to persons or property allegedly caused by an act or
31 omission of the political subdivision or any of its employees.

32 (2) Beginning July 1, 2010, any group of two or more
33 political subdivisions may, upon approval of the Insurance
34 Commissioner, establish and maintain a self-insurance pool
35 to insure their workers' compensation risks: *Provided,* That
36 political subdivisions may not make application to the
37 Insurance Commissioner to operate a risk pool until rules
38 promulgated pursuant to subsection (g) of this section
39 regulating such programs have been made effective.

40 (3) If it so chooses, the political subdivision or group of
41 political subdivisions may contract with any person, any
42 licensed West Virginia insurance agent, other political
43 subdivision, municipal association, county association or
44 regional council of governments for purposes of the
45 administration of the program or pool.

46 (c) Political subdivisions that have established self-
47 insurance programs relative to their potential liability and that
48 of their employees, as described in paragraph (A),
49 subdivision (1), subsection (b) of this section, may mutually
50 agree that their self-insurance programs may be jointly
51 administered in a specified manner.

52 (d) The purchase of liability insurance, or the
53 establishment and maintenance of a self-insurance program,
54 by a political subdivision does not constitute a waiver of any
55 immunity it may have pursuant to this article or any defense
56 of the political subdivision or its employees.

57 (e) The authorization for political subdivisions to secure
58 insurance and to establish and maintain self-insurance
59 programs and pools, as set out in subsections (a) and (b) in
60 this section, are in addition to any other authority to secure

insurance or to establish and maintain self-insurance that is granted pursuant to this code or the Constitution of this state, and they are not in derogation of any other authorization.

(f) An insurance agent licensed in West Virginia is authorized to establish or write policies for a self-insurance program or pool for political subdivisions, pursuant to the provisions of this section.

(g) The Insurance Commissioner shall propose rules for legislative approval, pursuant to the provisions of chapter twenty-nine-a of this code, setting forth the criteria for establishing and maintaining self-insurance programs and pools for political subdivisions, and may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code.

CHAPTER 104

(Com. Sub. for H. B. 4260 -
By Delegates Perry and Ashley)

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

AN ACT to repeal §33-12B-2 and §33-12B-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-12B-1, §33-12B-3, §33-12B-5, §33-12B-9, §33-12B-10 and §33-12B-11 of said code; to amend said code by adding thereto a new section, designated §33-12B-10a, all relating to insurance adjusters; providing definitions; permitting an adjuster to designate a home state; establishing a new crop adjuster license and its qualifications; revising the requirements for nonresident

adjusters; revising licensing renewal requirements; requiring notification by adjusters of legal actions taken against them; granting the Insurance Commissioner the authority to examine the business practices of persons holding or applying for adjuster licenses; clarifying the hearing process to be used concerning adverse administrative actions; providing for placing an adjuster on probation for violation of the provisions of the chapter or rules; providing for suspension or revocation of license for failure to pay administrative penalty; increasing maximum administrative penalty for violations; and providing for judicial review.

Be it enacted by the Legislature of West Virginia:

That §33-12B-2 and §33-12B-13 of the Code of West Virginia, 1931, as amended, be repealed; that §33-12B-1, §33-12B-3, §33-12B-5, §33-12B-9,§33-12B-10 and §33-12B-11 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-12B-10a, all to read as follows:

ARTICLE 12B. ADJUSTERS.

§33-12B-1. Definitions.
§33-12B-3. Company, public and crop adjusters; concurrency; direct conflict prohibited.
§33-12B-5. Qualifications for adjuster's license; examinations; exemptions.
§33-12B-9. Licensing of nonresident adjusters.
§33-12B-10. Expiration of license; renewal.
§33-12B-10a. Reporting of actions.
§33-12B-11. Denial, revocation, suspension, probation or refusal to renew license; penalties.

§33-12B-1. Definitions.

1 (a) An "adjuster" is any individual who, for compensation,
2 fee or commission, investigates and settles claims arising under
3 property, casualty or surety insurance contracts, on behalf solely
4 of either the insurer or insured. A licensed attorney who is
5 qualified to practice law in this state is deemed not to be an
6 adjuster for the purposes of this article.

(b) "Company adjuster" means an adjuster representing the interests of the insurer, including an independent contractor and a salaried employee of the insurer.

(c) "Home state" means the District of Columbia or any state or territory of the United States in which an adjuster maintains his or her principal place of residence or business and in which he or she is licensed to act as a resident adjuster. If a person's principal place of residence or business does not license adjusters for the type of adjuster license sought in this state, he or she shall designate as his or her home state any state in which he or she has such a license.

(d) "Public adjuster" means an independent contractor representing solely the financial interests of the insured named in the policy.

(e) "Crop adjuster" means a person who adjusts crop insurance claims under the federal crop insurance program administered by the United States Department of Agriculture.

§33-12B-3. Company, public and crop adjusters; concurrency; direct conflict prohibited.

The commissioner shall license an individual as a company adjuster, public adjuster or crop adjuster. An individual may be licensed concurrently under separate licenses but shall not act as an adjuster representing the interests of the insured and the insurer with respect to the same claim.

§33-12B-5. Qualifications for adjuster's license; examinations; exemptions.

(a) For the protection of the people of West Virginia, the commissioner shall not issue, renew or permit to exist any adjuster's license, except to an individual who:

(1) Is eighteen years of age or more.

(2) Is a resident of West Virginia, except for nonresident adjusters as provided in section nine of this article.

(3) Satisfies the commissioner that he or she is trustworthy and competent.

(b)(1) The commissioner may, at his or her discretion, test the competency of an applicant for a license under this section by examination. However, in order to qualify for a crop adjuster license, an applicant must pass a written examination that tests the knowledge of the individual concerning the insurance laws of this state and the duties and responsibilities of a multi-peril crop adjuster. In lieu of such an examination, the commissioner may accept certification that the individual has passed a proficiency examination approved by the federal Risk Management Agency.

(2) If such an examination is required, each examinee shall pay a $25 examination fee for each examination to the commissioner, which fees shall be used for the purposes set forth in section thirteen, article three of this chapter. The commissioner may, at his or her discretion, designate an independent testing service to prepare and administer such examination subject to direction and approval by the commissioner, and examination fees charged by such service shall be paid by the applicant.

(c) The requirements of this section do not apply to licenses issued to emergency adjusters.

§33-12B-9. Licensing of nonresident adjusters.

(a) A nonresident applicant for an adjuster license who holds a similar license in his or her home state may be licensed as a nonresident adjuster in this state if the applicant's home state has established, by law or regulation

like requirements for the licensing of a resident of this state as a nonresident adjuster.

(b) As a condition of continuing a nonresident adjuster license, the licensee must maintain a license in his or her home state.

(c) If a nonresident adjuster desires to become a resident adjuster he or she must apply to become one within ninety days of establishing legal residency in this state.

(d) If a nonresident adjuster has his or her license suspended, terminated or revoked by his or her home state, the adjuster must immediately notify the commissioner of that action.

§33-12B-10. Expiration of license; renewal.

(a) All licenses of adjusters shall expire at midnight on May 31 next following the date of issuance and the commissioner shall renew annually the license of all such licensees who qualify and make application therefor. However, the commissioner may, in his or her discretion, establish the dates of expiration of licenses in any manner deemed advisable for an efficient distribution of the workload of his or her office.

(b) An adjuster whose license expires may, if application is made within one year of the expiration date, be reissued a license upon payment of twice the renewal fee.

(c) The commissioner may waive any renewal requirement for any adjuster who is unable to comply due to military service, long-term medical disability or other extenuating circumstance.

(d) As a condition of the renewal of a crop adjuster license, the commissioner may require that the licensee demonstrate that he or she has maintained certification of proficiency issued or approved by the federal Risk Management Agency.

§33-12B-10a. Reporting of actions.

(a) An adjuster shall report to the commissioner any administrative action taken against the adjuster in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter, including decertification or other action related to the adjuster's proficiency to adjust multi-peril crop insurance claims. The report shall include a copy of the order, consent to order and any other relevant legal documents.

(b) Within thirty days of the initial pretrial hearing date, an adjuster shall report to the commissioner any criminal prosecution of the adjuster in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

§33-12B-11. Denial, revocation, suspension, probation or refusal to renew license; penalties.

(a) The commissioner may examine and investigate the business affairs and conduct of persons applying for or holding an adjuster license to determine whether such person is trustworthy and competent or has been or is engaged in any violation of the insurance laws or rules of this state or in any unfair or deceptive acts or practices in any state.

(b) If the commissioner denies an application for a license, he or she shall notify the applicant or licensee in writing of the reason for such action. The applicant or licensee may, within ten days of receipt of such notice, make written demand for a hearing before the commissioner to determine the reasonableness of the action, and such hearing shall be held in accordance with the provisions of section thirteen, article two of this chapter.

(c) Whenever, after notice and hearing, the commissioner is satisfied that any adjuster has violated any provision of this

17 chapter or of rules promulgated hereunder, or is incompetent
18 or untrustworthy, he or she shall place the adjuster on
19 probation or revoke, suspend, or, if renewal of license is
20 pending, refuse to renew the license of such adjuster. In
21 addition to placing a licensee on probation or revoking,
22 suspending or refusing to renew his or her license, the
23 commissioner may in his or her discretion order such licensee
24 to pay to the state of West Virginia an administrative penalty
25 in a sum not to exceed $1000 for each violation. Upon the
26 failure of the licensee to pay such penalty within thirty days,
27 his or her license shall be revoked or suspended by the
28 commissioner.

29 (d) Orders issued pursuant to subsection (b) or (c) of this
30 section are subject to the judicial review provisions of section
31 fourteen, article two of this chapter.

CHAPTER 105

(Com. Sub. for H. B. 4038 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2010.]

AN ACT to repeal §33-17-9a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-12C-6a; to amend and reenact §33-17-9b of said code; and to amend said code by adding thereto a new article, designated §38-10E-1 and §38-10E-2, all relating to imposing a statutory lien on fire insurance proceeds in the event of a total loss to real property; requiring insurance companies to notify insured and municipality or county after

determining that a claim involves a total loss to real property; defining terms; requiring a municipality or county to perfect the lien within thirty days of notice of a total loss determination; providing for release of the lien upon satisfaction of certain conditions; and authorizing the Insurance Commissioner to declare surplus lines insurers ineligible for certain violations.

Be it enacted by the Legislature of West Virginia:

That §33-17-9a of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §33-12C-6a; to amend and reenact §33-17-9b of said code; and to amend said code by adding thereto a new article, designated §38-10E-1 and §38-10E-2, all to read as follows:

Chapter
33. Insurance.
38. Liens.

CHAPTER 33. INSURANCE.

Article
12C. Surplus Line.
17. Fire and Marine Insurance.

ARTICLE 12C. SURPLUS LINE.

§33-12C-6a. Debris removal liens; noncompliance; penalties.

1 The commissioner may declare a surplus lines insurer
2 ineligible for committing any violation of the provisions of
3 article ten-e, chapter thirty-eight of this code.

ARTICLE 17. FIRE AND MARINE INSURANCE.

§33-17-9b. Claims for total loss; debris removal proceeds.

1 (a) No proceeds shall be paid by an insurance company
2 that has issued a policy which provides coverage for debris
3 removal for cleanup, removal of refuse, debris, remnants, or

4 remains of a dwelling or structure upon a claim of total loss
5 unless and until the insurance company receives certification
6 that the refuse, debris, remnants, or remains of the dwelling
7 or structure have been cleaned up, removed or otherwise
8 disposed of. In the event the insurance company receives,
9 within six months of the date of loss, certification that such
10 cleanup, removal or disposal costs have been incurred by a
11 municipality, county or other governmental entity, rather than
12 the policyholder, such debris removal and cleanup proceeds
13 shall be paid to the municipality, county or other government
14 entity which has incurred such costs: *Provided,* That any
15 company that has issued a policy that provides coverage for
16 damage to real property as a result of fire or explosion,
17 regardless of whether such policy includes coverage for
18 debris removal, shall comply with the provisions of section
19 one, article ten-e, chapter thirty-eight of this code.

20 No insurance company subject to this section which
21 complies with this section may be held liable for any claim
22 that may arise out of the cleanup, removal or disposal of
23 debris pursuant to this section.

24 (b) An insurance company subject to this section that
25 complies with this section and with section one, article ten-e,
26 chapter thirty-eight of this code shall be deemed to have fully
27 satisfied all contractual obligations to the policyholder
28 regarding debris removal; in no event shall an insurance
29 company be required to pay moneys in excess of policy
30 limits.

31 (c) Compliance with this section and section one, article
32 ten-e, chapter thirty-eight of the code may not be deemed a
33 violation of section nine of this article.

CHAPTER 38. LIENS.

ARTICLE 10E. LIEN ON INSURANCE PROCEEDS FOR DEBRIS REMOVAL.

§38-10E-1. Debris removal; notice of insurance proceeds; lien of municipality and county.
§38-10E-2. Release of lien.

§38-10E-1. Debris removal; notice of insurance proceeds; lien of municipality and county.

(a)(1) Notwithstanding any provision of this code to the contrary, the receipt by an insurance company of a claim under a fire insurance policy for a total loss to real property creates a statutory lien on the insurance proceeds payable for such claim in favor of the municipality in which the property is situate or, if the property is located outside a municipality, the county in which the property is situate, in an amount equal to the greater of: (A) $5,000; or (B) ten percent of the policy limits for loss to the real property, including any coverage for debris removal: *Provided,* That the amount of thelien may not exceed the policy limits of coverage for the real property plus debris removal, if any: *Provided, however,* That the lien created by this subsection does not apply to proceeds payable under the policy for any losses other than those to the real property insured, including loss of personal property and payments for temporary housing and related living expenses.

(2) The terms "municipality" and "treasurer" have the same meanings ascribed to them in section two, article one, chapter eight of this code.

(b) Within ten days of a determination by the insurer that a covered claim constitutes a total loss, the insurance company shall send certified letters to the insured and, as applicable, to the treasurer of the municipality in which the propertyis situate or, if the property is situate outside a municipality, to the sheriff of the county in which the property is situate, stating any amount claimed; the limits and conditions of coverage; the location of the property; the terms and limits of coverage designated by the insurance policy for securing, cleanup and removal, if any; any time limitations

imposed on the insured for securing, cleanup and removal; and the policyholder's name and mailing address.

(c)(1) The lien created pursuant to subsection (a) of this section shall be discharged unless the municipality or county, whichever is applicable, within thirty days of the receipt of the letter sent in accordance with subsection (b) of this section, perfects and preserves such lien by filing a notice thereof with the clerk of the county commission of the county in which such property is situate: *Provided,* That upon filing of a notice of lien in accordance with this subdivision, the amount of the lien created in subsection (a) shall thereafter be for the estimated cost of cleanup contained in such notice of lien: *Provided, however,* That the discharge of a lien based on the municipality's or county's failure to file a notice pursuant to this subdivision does not affect any other remedies the municipality or county may have with respect to such property or the liability of the property owner.

(2) A notice of lien filed in accordance with this subsection shall include a statement of the estimated cost to the municipality or county for the cleanup of the damaged property, removal of any refuse, debris, remnants or remains of the building and appurtenances, and securing the structure: *Provided,* That such estimated cost may not exceed the amount of the lien created pursuant to subsection (a) of this section.

(3) A notice of lien filed in accordance with this section shall be notarized and shall be sufficient if in form and effect as follows:

Notice of Lien for Debris Removal

To (name of insurance company):

You will please take notice that the undersigned, on behalf of the (municipality or county) (of County, if a

municipality), West Virginia, has estimated that the cost of removing debris and otherwise cleaning up (a certain building, other structure or improvement) on real estate known as (an adequate and ascertainable description of the real estate) would be (estimated cleanup cost).

You are further notified that, in order to secure the payment of such sum, the undersigned, on behalf of the (municipality or county) and pursuant to the provisions of section one, article ten-e, chapter thirty-eight of the West Virginia Code, claims a lien in such amount upon the interest of (policyholder's name) in a fire insurance policy (the policy number or other identifying information) issued by (the insurance company's name and address).

(Signature of treasurer or municipal officer exercising the power and authority commonly exercised by a treasurer, or sheriff)

(Title)

(d) The clerk of the county commission shall, upon the filing of such notice, index the same in a book in his or her office called "Debris Removal Liens" as a lien against the insurance proceeds in favor of the municipality or county and shall send a copy of the notice to the insurer.

§38-10E-2. Release of lien.

(a) A lien recorded in accordance with section one of this article shall be released if the municipality or county determines that the property has been satisfactorily cleaned up or repaired, the city or county determines that satisfactory measures have been taken to assure that the property will be repaired or cleaned up within a reasonable time, with the property owner first being given the opportunity to make said clean-up or removal within sixty days, or that the insurance

company has paid the amount of the lien to the municipality or county or such person designated to receive such moneys: *Provided*, That if the insurer has paid the amount of the lien to the treasurer or sheriff and the subsequent cost of cleanup is less than that amount, the difference shall be returned to the insurer.

(b) Upon the satisfaction of a lien in accordance with subsection (a) of this section, the treasurer or sheriff, whichever is applicable, shall sign a release and cause it to be recorded by the clerk of the county commission in the "Debris Removal Liens" book and, immediately upon recordation, he or she shall send a certified copy thereof to the insurance company: *Provided,* That if a lien has been paid or otherwise satisfied and the treasurer or sheriff refuses to cause such lien to be released, the insurance company or policyholder may apply to the circuit court for an order compelling the clerk to record a release.

CHAPTER 106

(Com. Sub. for S. B. 665 - By Senator Prezioso)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to repeal §33-15B-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-15B-1, §33-15B-2, §33-15B-3 and §33-15B-5 of said code, all relating to health care forms; explaining legislative purpose; defining scope of article; transferring certain duties regarding uniform forms from the Health Care Authority to the Insurance

Commissioner; adding Department of Health and Human Resources to advisory committee; authorizing Insurance Commissioner to propose rules; and prescribing penalties.

Be it enacted by the Legislature of West Virginia:

That §33-15B-4 of the Code of West Virginia, 1931, as amended, be repealed; and that §33-15B-1, §33-15B-2, §33-15B-3 and §33-15B-5 of said code be amended and reenacted, all to read as follows:

ARTICLE 15B. UNIFORM HEALTH CARE ADMINISTRATION ACT.

§33-15B-1. Legislative findings; purpose.
§33-15B-2. Scope of article.
§33-15B-3. Insurance Commissioner to propose rules; use of standardized forms and classifications; advisory group.
§33-15B-5. Penalties for violation.

§33-15B-1. Legislative findings; purpose.

The Legislature hereby finds that there is a need to provide guidelines regarding uniform health care administration in order to best serve consumers, health care providers and insurers and to organize and streamline the claims process. The purpose of this article is to authorize the Insurance Commissioner to develop standard forms and procedures regarding health care claims and to require that all insurers, third party payers, and health care providers implement and use such standards in a uniform manner.

§33-15B-2. Scope of article.

The provisions of this article apply to all health care providers in the state; all health insurers writing or issuing accident and sickness policies, including hospital service

4 corporations, health service corporations, medical service
5 corporations, dental service corporations and HMOs; all third
6 party payers; all state agencies and departments, including,
7 but not limited to, the public employees insurance agency and
8 providers of services under Medicare and Medicaid; and all
9 entities involved in the payment of health care claims.

§33-15B-3. Insurance Commissioner to propose rules; use of standardized forms and classifications; advisory group.

1 (a) The commissioner shall propose rules for legislative
2 approval, in accordance with the provisions of chapter
3 twenty-nine-a of this code, regarding the implementation and
4 use of uniform health care administrative forms. Such rules
5 shall establish, where practicable, the acceptance and use
6 throughout the health care system of standard administrative
7 forms, terms or procedures, including, but not limited to, the
8 following:

9 (1) The standard CMS 1500 health insurance claim form,
10 as amended, or other similar forms, terms, and definitions to
11 be used which are consistent with health care and insurance
12 industry standards.

13 (2) International classification of disease, ninth clinical
14 modifications (ICD-9-CM) and common procedural
15 terminology (CPT) codes, as amended, or other similar
16 forms, terms, and definitions to be used which are consistent
17 with health care and insurance industry standards.

18 (3) National uniform billing data element
19 specifications(UB-04), as amended, and as supplemented by
20 the West Virginia uniform billing committee, or other similar
21 forms, terms, and definitions to be used which are consistent
22 with health care and insurance industry standards.

23 (4) Consideration of current practices involving
24 reimbursement of claims and explanation of benefits, and the
25 implementation of standards and guidelines regarding
26 explanation of benefits, including, but not limited to,
27 consideration of line item explanations of payments or denial
28 of payments.

29 (b) The legislative rules required herein shall be
30 developed with the advice of an advisory group to be
31 appointed by the commissioner. Such advisory group shall
32 consist of representatives of consumers, providers, payors,
33 and regulatory agencies, including representatives from the
34 following: The department of health and human resources;
35 the West Virginia health care authority; West Virginia dental
36 association; West Virginia pharmacists association; the West
37 Virginia hospital association; commercial health insurers;
38 third party administrators; the West Virginia state medical
39 association; the West Virginia nurses association; public
40 employees insurance agency; and consumers.

41 (c) The commissioner and the advisory group shall
42 review the legislative rules to be proposed pursuant to this
43 section as necessary and update the same in a timely manner
44 in order to conform to current legislation and health care and
45 insurance industry standards and trends.

§33-15B-5. Penalties for violation.

1 Any person, partnership, corporation, limited liability
2 company, professional corporation, health care provider,
3 insurer or other payer, or other entity violating any provision
4 of this article shall be subject to a fine imposed by the
5 commissioner of not more than $1000 for each violation and,
6 in addition to or in lieu of any fine imposed, the West
7 Virginia health care authority is empowered to withhold rate
8 approval or a certificate of need for any health care provider
9 violating any provision of this article.

CHAPTER 107

(Com. Sub. for S. B. 483 - By Senators Minard and Chafin)

[Amended and again passed March 20, 2010 as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §33-25A-2 and §33-25A-5 of the Code of West Virginia, 1931, as amended, all relating to health maintenance organizations; authority to provide a point of service option; and authority for the Office of the Insurance Commissioner to develop standards for a point of service option by legislative and emergency rule.

Be it enacted by the Legislature of West Virginia:

That §33-25A-2 and §33-25A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-2. Definitions.
§33-25A-5. Powers of health maintenance organizations.

§33-25A-2. Definitions.

1 (1) "Basic health care services" means physician,
2 hospital, out-of-area, podiatric, chiropractic, laboratory, X
3 ray, emergency, treatment for serious mental illness as
4 provided in section three-a, article sixteen of this chapter, and
5 cost-effective preventive services including immunizations,

6 well-child care, periodic health evaluations for adults,
7 voluntary family planning services, infertility services, and
8 children's eye and ear examinations conducted to determine
9 the need for vision and hearing corrections, which services
10 need not necessarily include all procedures or services
11 offered by a service provider.

12 (2) "Capitation" means the fixed amount paid by a health
13 maintenance organization to a health care provider under
14 contract with the health maintenance organization in
15 exchange for the rendering of health care services.

16 (3) "Commissioner" means the commissioner of insurance.

17 (4) "Consumer" means any person who is not a provider
18 of care or an employee, officer, director or stockholder of any
19 provider of care.

20 (5) "Copayment" means a specific dollar amount, or
21 percentage, except as otherwise provided for by statute, that
22 the subscriber must pay upon receipt of covered health care
23 services and which is set at an amount or percentage
24 consistent with allowing subscriber access to health care
25 services.

26 (6) "Employee" means a person in some official
27 employment or position working for a salary or wage
28 continuously for no less than one calendar quarter and who
29 is in such a relation to another person that the latter may
30 control the work of the former and direct the manner in
31 which the work shall be done.

32 (7) "Employer" means any individual, corporation,
33 partnership, other private association, or state or local
34 government that employs the equivalent of at least two full-
35 time employees during any four consecutive calendar
36 quarters.

37 (8) "Enrollee", "subscriber" or "member" means an
38 individual who has been voluntarily enrolled in a health
39 maintenance organization, including individuals on whose
40 behalf a contractual arrangement has been entered into with
41 a health maintenance organization to receive health care
42 services.

43 (9) "Evidence of coverage" means any certificate,
44 agreement or contract issued to an enrollee setting out the
45 coverage and other rights to which the enrollee is entitled.

46 (10) "Health care services" means any services or goods
47 included in the furnishing to any individual of medical,
48 mental or dental care, or hospitalization or incident to the
49 furnishing of the care or hospitalization, osteopathic services,
50 chiropractic services, podiatric services, home health, health
51 education or rehabilitation, as well as the furnishing to any
52 person of any and all other services or goods for the purpose
53 of preventing, alleviating, curing or healing human illness or
54 injury.

55 (11) "Health maintenance organization" or "HMO"
56 means a public or private organization which provides, or
57 otherwise makes available to enrollees, health care services,
58 including at a minimum basic health care services and which:

59 (A) Receives premiums for the provision of basic health
60 care services to enrollees on a prepaid per capita or prepaid
61 aggregate fixed sum basis, excluding copayments;

62 (B) Provides physicians' services primarily: (i) Directly
63 through physicians who are either employees or partners of
64 the organization; or (ii) through arrangements with individual
65 physicians or one or more groups of physicians organized on
66 a group practice or individual practice arrangement; or (iii)
67 through some combination of paragraphs (i) and (ii) of this
68 subdivision;

69 (C) Assures the availability, accessibility and quality,
70 including effective utilization, of the health care services
71 which it provides or makes available through clearly
72 identifiable focal points of legal and administrative
73 responsibility; and

74 (D) Offers services through an organized delivery system in
75 which a primary care physician or primary care provider is
76 designated for each subscriber upon enrollment. The primary
77 care physician or primary care provider is responsible for
78 coordinating the health care of the subscriber and is responsible
79 for referring the subscriber to other providers when necessary:
80 *Provided,* That when dental care is provided by the health
81 maintenance organization the dentist selected by the subscriber
82 from the list provided by the health maintenance organization
83 shall coordinate the covered dental care of the subscriber, as
84 approved by the primary care physician or the health
85 maintenance organization.

86 (12) "Impaired" means a financial situation in which,
87 based upon the financial information which would be
88 required by this chapter for the preparation of the health
89 maintenance organization's annual statement, the assets of
90 the health maintenance organization are less than the sum of
91 all of its liabilities and required reserves including any
92 minimum capital and surplus required of the health
93 maintenance organization by this chapter so as to maintain its
94 authority to transact the kinds of business or insurance it is
95 authorized to transact.

96 (13) "Individual practice arrangement" means any
97 agreement or arrangement to provide medical services on
98 behalf of a health maintenance organization among or
99 between physicians or between a health maintenance
100 organization and individual physicians or groups of
101 physicians, where the physicians are not employees or
102 partners of the health maintenance organization and are not
103 members of or affiliated with a medical group.

104 (14) "Insolvent" or "insolvency" means a financial
105 situation in which, based upon the financial information that
106 would be required by this chapter for the preparation of the
107 health maintenance organization's annual statement, the
108 assets of the health maintenance organization are less than
109 the sum of all of its liabilities and required reserves.

110 (15) "Medical group" or "group practice" means a
111 professional corporation, partnership, association or other
112 organization composed solely of health professionals
113 licensed to practice medicine or osteopathy and of other
114 licensed health professionals, including podiatrists, dentists
115 and optometrists, as are necessary for the provision of health
116 services for which the group is responsible: (a) A majority of
117 the members of which are licensed to practice medicine or
118 osteopathy; (b) who as their principal professional activity
119 engage in the coordinated practice of their profession; (c)
120 who pool their income for practice as members of the group
121 and distribute it among themselves according to a
122 prearranged salary, drawing account or other plan; and (d)
123 who share medical and other records and substantial portions
124 of major equipment and professional, technical and
125 administrative staff.

126 (16) "Point of service option" means a delivery system
127 that permits an enrollee to receive health care services from
128 a provider outside of the panel of providers with which the
129 health maintenance organization has a contractual
130 arrangement under the terms and conditions of the enrollee's
131 contract with the health maintenance organization or the
132 insurance carrier that provides the point of service option.

133 (17) "Premium" means a prepaid per capita or prepaid
134 aggregate fixed sum unrelated to the actual or potential
135 utilization of services of any particular person which is
136 charged by the health maintenance organization for health
137 services provided to an enrollee.

138 (18) "Primary care physician" means the general
139 practitioner, family practitioner, obstetrician/gynecologist,
140 pediatrician or specialist in general internal medicine who is
141 chosen or designated for each subscriber who will be
142 responsible for coordinating the health care of the subscriber,
143 including necessary referrals to other providers.

144 (19) "Primary care provider" means a person who may be
145 chosen or designated in lieu of a primary care physician for
146 each subscriber, who will be responsible for coordinating the
147 health care of the subscriber, including necessary referrals to
148 other providers, and includes:

149 (A) An advanced nurse practitioner practicing in
150 compliance with article seven, chapter thirty of this code and
151 other applicable state and federal laws, who develops a
152 mutually agreed upon association in writing with a primary
153 care physician on the panel of and credentialed by the health
154 maintenance organization; and

155 (B) A certified nurse-midwife, but only if chosen or
156 designated in lieu of a subscriber's primary care physician or
157 primary care provider during the subscriber's pregnancy and
158 for a period extending through the end of the month in which
159 the sixty-day period following termination of pregnancy
160 ends.

161 (C) Nothing in this subsection may be construed to
162 expand the scope of practice for advanced nurse practitioners
163 as governed by article seven, chapter thirty of this code or
164 any legislative rule, or for certified nurse-midwives, as
165 defined in article fifteen, chapter thirty of this code.

166 (20) "Provider" means any physician, hospital or other
167 person or organization which is licensed or otherwise
168 authorized in this state to furnish health care services.

169 (21) "Uncovered expenses" means the cost of health care
170 services that are covered by a health maintenance
171 organization, for which a subscriber would also be liable in
172 the event of the insolvency of the organization.

173 (22) "Service area" means the county or counties
174 approved by the commissioner within which the health
175 maintenance organization may provide or arrange for health
176 care services to be available to its subscribers.

177 (23) "Statutory surplus" means the minimum amount of
178 unencumbered surplus which a corporation must maintain
179 pursuant to the requirements of this article.

180 (24) "Surplus" means the amount by which a
181 corporation's assets exceeds its liabilities and required
182 reserves based upon the financial information which would
183 be required by this chapter for the preparation of the
184 corporation's annual statement except that assets pledged to
185 secure debts not reflected on the books of the health
186 maintenance organization shall not be included in surplus.

187 (25) "Surplus notes" means debt which has been
188 subordinated to all claims of subscribers and general
189 creditors of the organization.

190 (26) "Qualified independent actuary" means an actuary
191 who is a member of the American academy of actuaries or
192 the society of actuaries and has experience in establishing
193 rates for health maintenance organizations and who has no
194 financial or employment interest in the health maintenance
195 organization.

196 (27) "Quality assurance" means an ongoing program
197 designed to objectively and systematically monitor and
198 evaluate the quality and appropriateness of the enrollee's
199 care, pursue opportunities to improve the enrollee's care and

200 to resolve identified problems at the prevailing professional
201 standard of care.

202 (28) "Utilization management" means a system for the
203 evaluation of the necessity, appropriateness and efficiency of
204 the use of health care services, procedure and facilities.

§33-25A-5. Powers of health maintenance organizations.

1 (a) Upon obtaining a certificate of authority as required
2 under this article, a health maintenance organization may
3 enter into health maintenance contracts in this state and
4 engage in any activities, consistent with the purposes and
5 provisions of this article, which are necessary to the
6 performance of its obligations under such contracts, subject
7 to the limitations provided in this article. A health
8 maintenance organization may offer to its enrollees in
9 conjunction with the benefits provided to them through their
10 contractual arrangement for health services with the health
11 maintenance organization a point of service option to be
12 provided either by the health maintenance organization
13 directly or by an insurance carrier licensed in this state with
14 which the health maintenance organization has a contractual
15 arrangement. Benefits for health care services within the
16 health maintenance organization's contracted provider panel
17 shall comply with all other provisions of this article.

18 (b) The commissioner shall propose rules for legislative
19 approval in accordance with the provisions of article three,
20 chapter twenty-nine-a of this code limiting or regulating the
21 powers of health maintenance organizations which the
22 commissioner finds to be in the public interest. The
23 commissioner may promulgate emergency rules pursuant to
24 the provisions of section fifteen, article three, chapter twenty-
25 nine-a of this code to implement standards and requirements
26 for a point of service option.

CHAPTER 108

**(Com. Sub. for H. B. 4128-
By Delegate Perry)**

[Passed March 3, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 10, 2010.]

AN ACT to repeal §33-34-11 of the Code of West Virginia, 1931, as amended; to repeal §33-34A-1, §33-34A-2, §33-34A-3, §33-34A-4, §33-34A-5, §33-34A-6, §33-34A-7 and §33-34A-8 of said code; to amend and reenact §33-34-3 and §33-34-4 of said code; and to further amend said article by adding thereto a new section, designated §33-34-3a, all relating to determining when insurance companies are to be deemed to be in hazardous financial condition; deleting severability provisions; providing for consideration of impact on creditors; providing for entry of an order by the commissioner placing the insurer under administrative supervision; revising standards and authority for the Insurance Commissioner's identification of companies in potentially hazardous condition; providing for additional remedies; removing requirement of hearing prior to entry of order of supervision; requiring a prompt hearing and providing procedure; and revising confidentiality provisions.

Be it enacted by the Legislature of West Virginia:

That §33-34-11 of the Code of West Virginia, 1931, as amended, be repealed; that §33-34A-1, §33-34A-2, §33-34A-3, §33-34A-4, §33-34A-5, §33-34A-6, §33-34A-7 and §33-34A-8 of said code be repealed; that §33-34-3 and §33-34-4 of said code be amended and reenacted; and that said article be amended by adding thereto a new section, designated §33-34-3a, all to read as follows:

ARTICLE 34. ADMINISTRATIVE SUPERVISION.

§33-34-3. Administrative supervision; order; review.
§33-34-3a. Standards to determine hazardous condition; commissioner's authority.
§33-34-4. Confidentiality of certain proceedings and records.

§33-34-3. Administrative supervision; order; review.

(a) An insurer may be subject to administrative supervision by the commissioner if upon examination or at any other time it appears in the commissioner's discretion that:

(1) The insurer's condition renders the continuance of its business hazardous to the public, to its insureds or to its creditors;

(2) The insurer has or appears to have exceeded its powers granted under its certificate of authority and applicable law;

(3) The insurer has failed to comply with the applicable provisions of this chapter or chapter twenty-three of this code;

(4) The business of the insurer is being conducted fraudulently; or

(5) The insurer gives its consent.

(b) If the commissioner determines that one or more of the conditions set forth in subsection (a) of this section exist, the commissioner shall enter an order placing the insurer under administrative supervision of the commissioner. The order shall:

(1) Notify the insurer of the commissioner's determination and set forth the conduct, conditions and

grounds upon which the commissioner based the determination;

(2) Set forth all requirements necessary to abate the determination; and

(3) Notify the insurer that it is under the supervision of the commissioner and that the commissioner is applying and effectuating the provisions of the article.

(c) (1) If placed under administrative supervision, the insurer shall have sixty days, or another period of time as designated by the commissioner, to comply with the requirements of the commissioner subject to the provisions of this article.

(2) If it is determined after notice and hearing that conditions giving rise to the supervision still exist at the end of the supervision period specified above, the commissioner may enter an order to extend such period.

(3) If it is determined by the commissioner that conditions giving rise to the supervision have been corrected, the commissioner shall enter an order to release the insurer from supervision.

(d) (1) An insurer subject to an order placing the insurer under administrative supervision may contest and seek review of the order, or any extensions or modifications thereof, pursuant to the provisions of section thirteen, article two of this chapter. Every notice of hearing shall state the time and place of the hearing and the conduct, condition or ground upon which the commissioner based the order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than ten days nor more than thirty days after notice is served.

(2) A hearing upon an order of the commissioner in which the commissioner is alleging, pursuant to subdivision (1), subsection (a) of this section that the insurer's condition renders the continuance of its business hazardous to the public, its insureds or its creditors shall be held privately unless the insurer requests a public hearing, in which case the hearing shall be public.

(3) During the period of supervision, the insurer may contest an action taken or proposed to be taken by the supervisor specifying the manner wherein the action being complained of would not result in improving the condition of the insurer.

§33-34-3a. Standards to determine hazardous condition; commissioner's authority.

(a) *Standards*. -- In making a determination pursuant to subdivision (1), subsection (a), section three of this chapter as to whether the continued operation of an insurer transacting an insurance business in this state might be deemed to be hazardous to the public, to its insureds or to its creditors, the commissioner may consider the following standards either singly or in combination:

(1) Adverse findings reported in financial condition and market conduct examination reports, audit reports and actuarial opinions, reports or summaries;

(2) The National Association of Insurance Commissioners' insurance regulatory information system and its other financial analysis solvency tools and reports;

(3) Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with

19 respect to such reserves and related actuarial items including,
20 but not limited to, the investment earnings on such assets and
21 the considerations anticipated to be received and retained
22 under such policies and contracts;

23 (4) The ability of an assuming reinsurer to perform and
24 whether the insurer's reinsurance program provides sufficient
25 protection for the insurer's remaining surplus, after taking
26 into account the insurer's cash flow and the classes of
27 business written as well as the financial condition of the
28 assuming reinsurer;

29 (5) Whether the insurer's operating loss in the last twelve-
30 month period or any shorter period of time, including but not
31 limited to net capital gain or loss, change in nonadmitted assets
32 and cash dividends paid to shareholders, is greater than fifty
33 percent of such insurer's remaining surplus as regards
34 policyholders in excess of the minimum required;

35 (6) Whether the insurer's operating loss in the last
36 twelve-month period or any shorter period of time, excluding
37 net capital gains, is greater than twenty percent of the
38 insurer's remaining surplus as regards policyholders in
39 excess of the minimum required;

40 (7) Whether a reinsurer, obligor or any entity within the
41 insurer's insurance holding company system is insolvent,
42 threatened with insolvency or delinquent in payment of its
43 monetary or other obligations and which in the opinion of the
44 commissioner may affect the solvency of the insurer;

45 (8) Contingent liabilities, pledges or guaranties which
46 either individually or collectively involve a total amount
47 which in the opinion of the commissioner may affect the
48 solvency of the insurer;

(9) Whether any controlling person of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;

(10) The age and collectability of receivables;

(11) Whether the management of an insurer, including officers, directors or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

(12) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(13) Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner;

(14) Whether management of an insurer has filed any false or misleading sworn financial statement, released a false or misleading financial statement to lending institutions or to the general public, or made a false or misleading entry or omitted an entry of material amount in the books of the insurer;

(15) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(16) Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;

78 (17) Whether management has established reserves that
79 do not comply with minimum standards established by this
80 chapter or the rules promulgated thereunder, statutory
81 accounting standards, sound actuarial principles and
82 standards of practice;

83 (18) Whether management persistently engages in material
84 under-reserving that results in adverse development;

85 (19) Whether transactions among affiliates, subsidiaries
86 or controlling persons for which the insurer receives assets or
87 capital gains, or both, do not provide sufficient value,
88 liquidity or diversity to assure the insurer's ability to meet its
89 outstanding obligations as they mature; and

90 (20) Any other finding determined by the commissioner
91 to be hazardous to the insurer's insureds, creditors or the
92 general public.

93 (b) *Commissioner's authority*. -- For the purposes of
94 making a determination of an insurer's financial condition
95 under this section, the commissioner may:

96 (1) Disregard any credit or amount receivable resulting
97 from transactions with a reinsurer that is insolvent, impaired
98 or otherwise subject to a delinquency proceeding;

99 (2) Make appropriate adjustments, including disallowance,
100 to asset values attributable to investments in or transactions
101 with parents, subsidiaries or affiliates consistent with the
102 NAIC Accounting Policies And Procedures Manual, state
103 laws and rules;

104 (3) Refuse to recognize the stated value of accounts
105 receivable if the ability to collect receivables is highly
106 speculative in view of the age of the account or the financial
107 condition of the debtor; or

(4) Increase the insurer's liability in an amount equal to any contingent liability, pledge or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.

(c) *Order.* -- If the commissioner determines that the continued operation of the insurer may be hazardous to its insureds, creditors or the general public, then the commissioner may order the insurer to do one or more of the following: *Provided,* That if the insurer is a foreign insurer, the commissioner's order may be limited to the extent provided by statute:

(1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(2) Reduce, suspend or limit the volume of business being accepted or renewed;

(3) Reduce general insurance and commission expenses by specified methods;

(4) Increase the insurer's capital and surplus;

(5) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

(6) File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;

(7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

(8) Document the adequacy of premium rates in relation to the risks insured;

(9) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the commissioner.

(10) Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner;

(11) Provide a business plan to the commissioner in order to continue to transact business in the state; or

(12) Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any nonlife insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

§33-34-4. Confidentiality of certain proceedings and records.

(a) Notwithstanding any other provision of law and except as set forth in this section, proceedings, hearings, notices, correspondence, reports, records and other information in the possession of the commissioner relating to the supervision of any insurer shall not be subject to disclosure as provided in article one, chapter twenty-nine-b of this code, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action, except as provided by this section. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(b) The personnel of the offices of the Insurance Commissioner shall have access to these proceedings, hearings, notices, correspondence, reports, records or

17 information as permitted by the commissioner. Neither the
18 commissioner nor any person who received documents,
19 materials or other information while acting under the
20 authority of the commissioner shall be permitted or required
21 to testify in any private civil action concerning any such
22 documents, materials or information.

23 (c) The commissioner may share the notices,
24 correspondence, reports, records or information with other
25 state, federal and international regulatory agencies, with the
26 National Association of Insurance Commissioners and its
27 affiliates and subsidiaries, and with state, federal and
28 international law enforcement authorities, if the
29 commissioner determines that the disclosure is necessary or
30 proper for the enforcement of the laws of this or another state
31 of the United States, and provided that the recipient agrees to
32 maintain the confidentiality of the documents, material or
33 other information. No waiver of any applicable privilege or
34 claim of confidentiality shall occur as a result of the sharing
35 of documents, materials or other information pursuant to this
36 subsection.

37 (d) The commissioner may open the proceedings or
38 hearings or make public the notices, correspondence, reports,
39 records or other information if the commissioner deems that
40 it is in the best interest of the public, the insurer, its insureds,
41 creditors or the general public.

42 (e) This section does not apply to hearings, notices,
43 correspondence, reports, records or other information
44 obtained upon the appointment of a receiver for the insurer
45 by a court of competent jurisdiction.

CHAPTER 109

**(Com. Sub. for H. B. 4273 -
By Delegate Morgan)**

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

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §33-46A-4a, relating to professional employer organizations; providing that a professional employer organization operating without a license is subject to the same enforcement provisions and criminal penalties as unauthorized insurers; and authorizing insurance fraud unit to conduct investigations.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended be amended by adding thereto a new section, designated §33-46A-4a, to read as follows:

ARTICLE 46A. PROFESSIONAL EMPLOYER ORGANIZATIONS.

§33-46A-4a. Operation of a PEO without a license; enforcement; penalties; fraud unit may investigate.

1 (a) Any person who operates a PEO without a license
2 issued in accordance with this article is subject to the all of
3 the injunctive, criminal, civil and administrative relief and

4 criminal penalties as provided in article forty-four of this
5 chapter for the unauthorized transaction of insurance.

6 (b) In addition to the other investigative authority granted
7 to the commissioner in this chapter, the insurance fraud unit
8 created pursuant to the provisions of section eight, article
9 forty-one of this chapter may investigate suspected violations
10 of this article.

CHAPTER 110

(Com. Sub. for H. B. 3301 - By Delegates Moye, Schoen, Klempa, Campbell, Sumner, Caputo, D. Poling and Barker)

[Passed March 9, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2010.]

AN ACT to amend and reenact §21-1B-5 and §21-1B-7 of the Code of West Virginia, 1931, as amended, and to further amend said code by adding thereto a new section, designated §21-1B-8, all relating to employment of unauthorized workers; creating a penalty for failure to maintain certain records; authorizing the Commissioner to issue notices to produce records and citations under certain circumstances; and requiring such citations to be presented to a magistrate or circuit judge.

Be it enacted by the Legislature of West Virginia:

That §21-1B-5 and §21-1B-7of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that said code be amended by adding a new section, designated §21-1B-8, all to read as follows:

ARTICLE 1B. VERIFYING LEGAL EMPLOYMENT STATUS OF WORKERS.

§21-1B-5. Penalties.
§21-1B-7. Suspension or revocation of license.
§21-1B-8. Citation for violation.

§21-1B-5. Penalties.

1 (a) Any employer who knowingly and willfully fails to
2 maintain records as required by section four of this article is
3 guilty of a misdemeanor and, upon conviction thereof, shall
4 be fined one hundred dollars for each offense. Failure to
5 keep records on each employee constitutes a separate offense.

6 (b) Any employer who knowingly violates the provisions
7 of section three of this article by employing, hiring, recruiting
8 or referring an unauthorized worker is guilty of a misdemeanor
9 and, upon conviction thereof, is subject to the following
10 penalties:

11 (1) For a first offense, a fine of not less than one hundred
12 dollars nor more than one thousand dollars for each violation;

13 (2) For a second offense, a fine of not less than five
14 hundred dollars nor more than five thousand dollars for each
15 violation;

16 (3) For a third or subsequent offense, a fine of not less
17 than one thousand dollars nor more than ten thousand dollars,
18 or confinement in jail for not less than thirty days nor more
19 than one year, or both.

20 (c) Any employer who knowingly and willfully provides
21 false records as to the legal status or authorization to work of
22 any employee to the commissioner or his or her authorized
23 representative is guilty of a misdemeanor and, upon conviction

thereof, shall be confined in jail not more than one year or fined not more than two thousand five hundred dollars, or both.

(d) Any employer who knowingly and willfully and with fraudulent intent sells, transfers or otherwise disposes of substantially all of the employer's assets for the purpose of evading the record-keeping requirements of section four of this article is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than ten thousand dollars, or both.

§21-1B-7. Suspension or revocation of license.

(a) If, upon examination of the record or records of conviction, the commissioner determines that an employer has been convicted of a third or subsequent offense under subsection (b), section five of this article or has been convicted of the offenses described in subsection (c) or (d) of said section, the commissioner may enter an order imposing the following disciplinary actions:

(1) Permanently revoke or file an action to revoke any license held by the employer; or

(2) Suspend a license or move for a suspension of any license held by the employer for a specified period;

(b) The order shall contain the reasons for the revocation or suspension and the revocation or suspension periods. Further, the order shall give the procedures for requesting a hearing. The person shall be advised in the order that because of the receipt of the record of conviction by the commissioner a presumption exists that the person named in the record of conviction is the person named in the commissioner's order and this constitutes sufficient evidence

20 to support a revocation or suspension and that the sole
21 purpose for the hearing held under this section is for the
22 person requesting the hearing to present evidence that he or
23 she is not the person named in the record of conviction. A
24 copy of the order shall be forwarded to the person by
25 registered or certified mail, return receipt requested. No
26 revocation or suspension shall become effective until ten
27 days after receipt of a copy of the order.

§21-1B-8. Citation for violation.

1 (a) If, upon inspection or investigation, the commissioner
2 believes that an employer has violated a provision of this
3 article, the commissioner shall issue a notice to produce
4 records or documents to the employer. Each notice shall be
5 in writing and shall describe with particularity the nature of
6 the violation, including a reference to the provision of this
7 article alleged to have been violated. The employer shall
8 have up to seventy-two hours, or for good cause shown to the
9 commissioner, a greater period of time, to produce
10 employment status verification records.

11 (b) If after the time period allowed under subsection (a)
12 of this section the employer is unable to produce the required
13 documents to satisfy the commissioner that there is no
14 violation of this article, the commissioner may issue a
15 citation to the employer. Each citation shall be in writing on
16 a standard form as prescribed by the commissioner and shall
17 describe with particularity the nature of the violation,
18 including a reference to the provision of this article alleged
19 to have been violated. Each citation issued under this section
20 or a copy or copies thereof shall be prominently presented to
21 a magistrate or circuit judge in the county where the violation
22 occurred.

CHAPTER 111

(Com. Sub. for H. B. 4359 - By Delegates D. Poling, Klempa, Ferro, Longstreth, D. Walker, Varner, Morgan and Caputo)

[Passed March 11, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 19, 2010.]

AN ACT to amend and reenact §21-1C-2 of the Code of West Virginia, 1931, as amended, relating to requiring local labor for public construction projects; reducing the dollar amount of the applicable construction project to $500,000; reducing the amount of miles for the local labor market to fifty miles; and clarifying the definition of local labor market.

Be it enacted by the Legislature of West Virginia:

That §21-1C-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1C. WEST VIRGINIA JOBS ACT.

§21-1C-2. Definitions.

As used in this article:

(1) The term "construction project" means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract in an amount equal to or greater than $500,000. The term "construction project" does not include temporary or emergency repairs;

8 (2) (A) The term "employee" means any person hired or
9 permitted to perform hourly work for wages by a person, firm
10 or corporation in the construction industry;

11 (B) The term "employee" does not include:

12 (i) Bona fide employees of a public authority or individuals
13 engaged in making temporary or emergency repairs;

14 (ii) Bona fide independent contractors; or

15 (iii) Salaried supervisory personnel necessary to assure
16 efficient execution of the employee's work;

17 (3) The term "employer" means any person, firm or
18 corporation employing one or more employees on any public
19 improvement and includes all contractors and subcontractors;

20 (4) The term "local labor market" means every county in
21 West Virginia and any county outside of West Virginia if any
22 portion of that county is within fifty miles of the border of
23 West Virginia;

24 (5) The term "public authority" means any officer, board,
25 commission or agency of the State of West Virginia and its
26 subdivisions, including counties and municipalities. Further,
27 the economic grant committee, economic development
28 authority, infrastructure and jobs development council and
29 School Building Authority shall be required to comply with
30 the provisions of this article for loans, grants or bonds
31 provided for public improvement construction projects;

32 (6) The term "public improvement" includes the
33 construction of all buildings, roads, highways, bridges,
34 streets, alleys, sewers, ditches, sewage disposal plants,
35 waterworks, airports and all other structures that may be let
36 to contract by a public authority, excluding improvements
37 funded, in whole or in part, by federal funds.

CHAPTER 112

**(Com. Sub. for H. B. 4623 -
By Delegate Mahan)**

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

AN ACT to amend and reenact §21-5E-5 of the Code of West Virginia, 1931, as amended, relating to the Equal Pay Commission; adding members to the Equal Pay commission; and removing the termination date of the Equal Pay Commission.

Be it enacted by the Legislature of West Virginia:

That §21-5E-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.

§21-5E-5. Establishment of the Equal Pay Commission; appointment of members.

1 (a) The Equal Pay Commission is continued. The
2 commission shall be composed of the following thirteen
3 members:

4 (1) Five members of the House of Delegates, appointed
5 by the Speaker;

6 (2) Five members of the Senate, appointed by the
7 President; and

8 (3) Three state employee representatives, including one labor
9 union member representing state employees, as agreed to by the
10 Speaker and President; the Director of the Women's Commission,
11 or his or her designee; and the Director of the Office of Equal
12 Employment Opportunity, or his or her designee.

13 (b) The commission shall seek input from and invite the
14 Commissioner of Labor or his or her designee and the
15 Director of the Personnel Division of the Department of
16 Administration or his or her designee to attend meetings of
17 the commission.

18 (c) One of the members of the Senate and one of the
19 members of the House of Delegates, as designated by the
20 President and the Speaker respectively, shall serve as
21 cochairs of the commission.

22 (d) The members of the House of Delegates, the members
23 of the Senate and the state employee representative members
24 shall be appointed to serve two-year terms.

25 (e) Any member whose term has expired shall serve until
26 his or her successor has been duly appointed. Any person
27 appointed to fill a vacancy shall serve only for the unexpired
28 term. Any member is eligible for reappointment.

29 (f) Any vacancies occurring in the membership of the
30 commission shall be filled in the same manner as the original
31 appointment for the position being vacated. The vacancy
32 shall not affect the power of the remaining members to
33 execute the duties of the commission.

CHAPTER 113

(S. B. 388 - By Senators Bowman, Boley, Browning, Foster, Minard, Palumbo, Snyder, Sypolt, White, Williams and Yost)

[Passed March 10, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact §8A-2-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8A-8-3 of said code, all relating to municipal planning commissions and municipal boards of zoning appeals; and specifying the number of members by municipal classifications.

Be it enacted by the Legislature of West Virginia:

That §8A-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8A-8-3 of said code be amended and reenacted, all to read as follows:

Article
2. **Planning Commissions.**
8. **Board of Zoning Appeals.**

ARTICLE 2. PLANNING COMMISSIONS.

§8A-2-3. Municipal planning commission.

(a) A municipal planning commission in a Class I, II or III city shall have not less than five nor more than fifteen members, the exact number to be specified in the ordinance creating the planning commission. A municipal planning

5 commission in a Class IV town or village shall have not less
6 than three nor more than nine members, the exact number to
7 be specified in the ordinance creating the planning
8 commission.

9 (b) The members of a municipal planning commission
10 must be:

11 (1) Residents of the municipality; and

12 (2) Qualified by knowledge and experience in matters
13 pertaining to the development of the municipality.

14 (c) At least three fifths of all of the members must have
15 been residents of the municipality for at least three years
16 prior to nomination or appointment and confirmation.

17 (d) The members of a municipal planning commission
18 must fairly represent different areas of interest, knowledge
19 and expertise, including, but not limited to, business,
20 industry, labor, government and other relevant disciplines.
21 One member must be a member of the municipal governing
22 body or a designee and one member must be a member of the
23 administrative department of the municipality or a designee.
24 The term of membership for these two members is the same
25 as their term of office.

26 (e) The Legislature finds that there are persons willing to
27 serve on planning commissions who may also own interests
28 in businesses that regularly conduct business in front of or
29 with planning commission staff. Such persons may have
30 experience and expertise which would be valuable assets to
31 a planning commission. For those reasons, notwithstanding
32 any other provisions in this code to the contrary, any person
33 employed by, owning an interest in or otherwise associated
34 with a business that regularly conducts business in front of or
35 with planning commission staff may also serve as a member

of a planning commission and shall not be disqualified from serving as a member because of a conflict of interest as defined in section fifteen, article ten, chapter sixty-one of this code and shall not be subject to prosecution under provisions of that chapter when the violation is created solely as a result of his or her relationship with the business. This member must recuse himself or herself from any vote, discussion, participation or other activity regarding the conflicting issue.

(f) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses who regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be in violation of subsection (g), section five, article two, chapter six-b of this code if the member recuses himself or herself from any vote, discussion, participation or other activity regarding the conflicting issue: *Provided*, That such members do not constitute a majority of the members of the planning commission at the same time.

(g) The remaining members of the municipal planning commission first selected shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall serve three-year terms. Vacancies shall be filled for the unexpired term and made in the same manner as original selections were made.

(h) The members of a municipal planning commission shall serve without compensation, but shall be reimbursed for

all reasonable and necessary expenses actually incurred in the performance of their official duties.

(i) Nominations for municipal planning commission membership shall be made by the administrative authority and confirmed by the governing body when the administrative authority and the governing body are separate, or appointed and confirmed by the governing body where the administrative authority and governing body are the same.

(j) An individual may serve as a member of a municipal planning commission, a county planning commission, a multicounty planning commission, a regional planning commission or a joint planning commission, at the same time.

(k) The governing body of the municipality may establish procedures for the removal of members of the planning commission for inactivity, neglect of duty or malfeasance. The procedures must contain provisions requiring that the person to be removed be provided with a written statement of the reasons for removal and an opportunity to be heard on the matter.

ARTICLE 8. BOARD OF ZONING APPEALS.

§8A-8-3. Municipal board of zoning appeals.

(a) A municipal board of zoning appeals in a Class I, II or III city shall have five members to be appointed by the governing body of the municipality. A municipal board of zoning appeals in a Class IV town or village shall have not less than three nor more than five members to be appointed by the governing body of the municipality.

(b) The members of a municipal board of zoning appeals must be:

(1) Residents of the municipality for at least three years preceding his or her appointment;

(2) Cannot be a member of the municipal planning commission; and

(3) Cannot hold any other elective or appointive office in the municipal government.

(c) Upon the creation of a board of zoning appeals, the members shall be appointed for the following terms: One for a term of one year; two for a term of two years; and two for a term of three years. The terms shall expire on the first day of January of the first, second and third year, respectively, following their appointment. Thereafter, members shall serve three-year terms. If a vacancy occurs, the governing body of the municipality shall appoint a member for the unexpired term.

(d) The governing body of the municipality may appoint up to three additional members to serve as alternate members of the municipal board of zoning appeals. The alternate members must meet the same eligibility requirements as set out in subsection (b) of this section. The term for an alternate member is three years. The governing body of the municipality may appoint alternate members on a staggered term schedule.

(e) An alternate member shall serve on the board when one of the regular members is unable to serve. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called on to serve.

(f) The municipal board of zoning appeals shall establish rules and procedures for designating an alternate member. An alternate member shall have the same powers and duties of a regular board member.

(g) The members and alternate members of a county board of zoning appeals shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

CHAPTER 114

(S. B. 595 - By Senators McCabe and Minard)

[Passed March 11, 2010; in effect from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact §8A-4-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8A-5-12 of said code, all relating to subdivisions; extending the approval term of certain uses and permits associated with a subdivision plan or plat and extending the vesting period for a subdivision or land development plan or plat.

Be it enacted by the Legislature of West Virginia:

That §8A-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8A-5-12 of said code be amended and reenacted, all to read as follows:

Article
4. **Subdivision and Land Development Ordinance.**
5. **Subdivision or Land Development Plan and Plat.**

ARTICLE 4. SUBDIVISION AND LAND DEVELOPMENT ORDINANCE.

§8A-4-2. Contents of subdivision and land development ordinance.

(a) A subdivision and land development ordinance shall include the following provisions:

(1) A minor subdivision or land development process, including criteria, requirements and a definition of minor subdivision;

(2) The authority of the planning commission and its staff to approve a minor subdivision or land development;

(3) A major subdivision or land development process, including criteria and requirements;

(4) The authority of the planning commission to approve a major subdivision or land development;

(5) The standards for setback requirements, lot sizes, streets, sidewalks, walkways, parking, easements, rights-of-way, drainage, utilities, infrastructure, curbs, gutters, street lights, fire hydrants, storm water management and water and wastewater facilities;

(6) Standards for flood-prone or subsidence areas;

(7) A review process for subdivision or land development plans and plats by the planning commission;

(8) An approval process for subdivision or land development plans and plats by the planning commission, including the authority to approve subdivision or land development plans and plats with conditions;

(9) A process to amend final approved subdivision or land development plans and plats;

(10) A requirement that before development of the land is commenced, subdivision and land development plans and

plats must be approved by the applicable planning commission, in accordance with the comprehensive plan, if a comprehensive plan has been adopted;

(11) A requirement that after approval of the subdivision or land development plat by the planning commission and before the subdivision or development of the land is commenced, the subdivision and land development plat shall be recorded in the office of the clerk of the county commission where a majority of the land to be developed lies;

(12) A schedule of fees to be charged which are proportioned to the cost of checking and verifying proposed plats;

(13) The process for granting waivers from the minimum standards of the subdivision and land development ordinance;

(14) Improvement location permit process, including a requirement that a structure or development of land is prohibited without an improvement location permit;

(15) The acceptable methods of payment to cover the cost of the water and sewer service infrastructure, which can include, but are not limited to, bonds, impact fees, escrow fees and proffers;

(16) The process for cooperating and coordinating with other governmental agencies affected by the subdivision and land development and use; and

(17) Penalties for violating the subdivision and land development ordinance.

(b) A subdivision and land development ordinance may include the following provisions:

(1) Establishing a board of subdivision and land development appeals with the same powers, duties and appeals process as set out for the board of zoning appeals under the provisions of article eight of this chapter;

(2) Requirements for green space, common areas, public grounds, walking and cycling paths, recreational trails, parks, playgrounds and recreational areas;

(3) Encourage the use of renewable energy systems and energy-conserving building design;

(4) Vested property right, including requirements;

(5) Exemptions of certain types of land development from the subdivision and land development ordinance requirements, including, but not limited to, single-family residential structures and farm structures; and

(6) Any other provisions consistent with the comprehensive plan the governing body considers necessary.

(c) All requirements, for the vesting of property rights contained in an ordinance enacted pursuant to this section that require the performance of any action within a certain time period for any subdivision or land development plan or plat valid under West Virginia law and outstanding as of January 1, 2010, shall be extended until July 1, 2012, or longer as agreed to by the municipality, county commission or planning commission. The provisions of this subsection also apply to any requirement that a use authorized pursuant to a special exception, special use permit, conditional use permit or other agreement or zoning action be terminated or ended by a certain date or within a certain number of years.

ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND PLAT.

PART I. MINOR SUBDIVISION OR LAND DEVELOPMENT PROCESS.

*§8A-5-12. Vested property right.

(a) A vested property right is a right to undertake and complete the land development. The right is established when the land development plan and plat is approved by the planning commission and is only applicable under the terms and conditions of the approved land development plan and plat.

(b) Failure to abide by the terms and conditions of the approved land development plan and plat will result in forfeiture of the right.

(c) The vesting period for an approved land development plan and plat which creates the vested property right is five years from the approval of the land development plan and plat by the planning commission.

(d) Without limiting the time when rights might otherwise vest, a landowner's rights vest in a land use or development plan and cannot be affected by a subsequent amendment to a zoning ordinance or action by the planning commission when the landowner:

(1) Obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project;

(2) Relies in good faith on the significant affirmative governmental act; and

(3) Incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

***CLERK'S NOTE:** This section was also amended by S. B. 41 (Chapter 115) which passed subsequent to this act.

(e) A vested right is a property right, which cannot be taken without compensation. A court may award damages against the local government in favor of the landowner for monetary losses incurred by the landowner and court costs and attorneys' fees, resulting from the local government's bad faith refusal to recognize that the landowner has obtained vested rights.

(f) Any subdivision or land development plan or plat, whether recorded or not yet recorded, valid under West Virginia law and outstanding as of January 1, 2010, shall remain valid until July 1, 2012, or such later date provided for by the terms of the planning commission or county commission's local ordinance or for a longer period as agreed to by the planning commission or county commission. Any other plan or permit associated with the subdivision or land development plan or plat shall also be extended for the same time period. *Provided, That* the land development plan or plat has received at least preliminary approval by the planning commission or county commission by March 1, 2010.

CHAPTER 115

(S. B. 41 - By Senators McCabe, Minard, Foster, Palumbo and Chafin)

[Passed March 11, 2010; in effect from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact §8A-5-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-13E-2 and §16-13E-4 of said code; and to amend said code by adding thereto a new section, designated §16-13E-10a, all relating to generally to subdivision or land development plans

or plats; extending the vesting period for certain subdivision or land development plans and plats; providing definitions relating to the development of community enhancement districts; and excepting from a utility's submission relating to petitions for the creation of a district the capacity of the district to provide its own utility services.

Be it enacted by the Legislature of West Virginia:

That §8A-5-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §16-13E-2 and §16-13E-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-13E-10a, all to read as follows:

Chapter

8A. Land Use Planning.
16. Public Health.

CHAPTER 8A. LAND USE PLANNING.

ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND PLAT.

*§8A-5-12. Vested property right.

(a) A vested property right is a right to undertake and complete the land development. The right is established when the land development plan and plat is approved by the planning commission and is only applicable under the terms and conditions of the approved land development plan and plat.

(b) Failure to abide by the terms and conditions of the approved land development plan and plat will result in forfeiture of the right.

*CLERK'S NOTE: This section was also amended by S. B. 595 (Chapter 114) which passed prior to this act.

9 (c) Subject to section ten-a, article thirteen-e, chapter
10 sixteen of this code, the vesting period for an approved land
11 development plan and plat which creates the vested property
12 right is five years from the approval of the land development
13 plan and plat by the planning commission.

14 (d) Without limiting the time when rights might
15 otherwise vest, a landowner's rights vest in a land use or
16 development plan and cannot be affected by a subsequent
17 amendment to a zoning ordinance or action by the planning
18 commission when the landowner:

19 (1) Obtains or is the beneficiary of a significant
20 affirmative governmental act which remains in effect
21 allowing development of a specific project;

22 (2) Relies in good faith on the significant affirmative
23 governmental act; and

24 (3) Incurs extensive obligations or substantial expenses
25 in diligent pursuit of the specific project in reliance on the
26 significant affirmative governmental act.

27 (e) A vested right is a property right, which cannot be
28 taken without compensation. A court may award damages
29 against the local government in favor of the landowner for
30 monetary losses incurred by the landowner and court costs
31 and attorneys' fees resulting from the local government's
32 bad faith refusal to recognize that the landowner has
33 obtained vested rights.

34 (f) Any subdivision or land development plan or plat,
35 whether recorded or not yet recorded, valid under West
36 Virginia law and outstanding as of January 1, 2010, shall
37 remain valid until July 1, 2012, or such later date provided
38 for by the terms of the planning commission or county
39 commission's local ordinance or for a longer period as
40 agreed to by the planning commission or county

commission. Any other plan or permit associated with the subdivision or land development plan or plat shall also be extended for the same time period. *Provided,* That the land development plan or plat has received at least preliminary approval by the planning commission or county commission by March 1, 2010.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13E. COMMUNITY ENHANCEMENT ACT.

§16-13E-2. Definitions.
§16-13E-4. Petition for creation or expansion of community enhancement district; petition requirements.
§16-13E-10a. Extension of vesting period for land development plans and plats; approval of phases.

§16-13E-2. Definitions.

For purposes of this article:

(a) "Assessment bonds" means special obligation bonds or notes issued by a community enhancement district which are payable from the proceeds of assessments.

(b) "Assessment" means the fee, including interest, paid by the owner of real property located within a community enhancement district to pay for the cost of a project or projects constructed upon or benefitting or protecting such property and administrative expenses related thereto, which fee is in addition to all taxes and other fees levied on the property.

(c) "Board" means a Community Enhancement Board created pursuant to this article.

(d) "Community enhancement district" or "district" means a community enhancement district created pursuant to this article.

(e) "Cost" means the cost of:

(1) Construction, reconstruction, renovation and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or to be acquired by the district;

(2) All machinery and equipment, including machinery and equipment needed to expand or enhance county or city services to the district;

(3) Financing charges and interest prior to and during construction and, if deemed advisable by the district or governing body, for a limited period after completion of the construction;

(4) Interest and reserves for principal and interest, including costs of municipal bond insurance and any other type of financial guaranty;

(5) Costs of issuance in connection with the issuance of assessment bonds;

(6) The design of extensions, enlargements, additions and improvements to the facilities of any district;

(7) Architectural, engineering, financial and legal services;

(8) Plans, specifications, studies, surveys and estimates of costs and revenues;

(9) Administrative expenses necessary or incident to determining to proceed with any project; and

(10) Other expenses as may be necessary or incident to the construction, acquisition and financing of a project.

(f) "Development concept" means the following items, to the extent set forth or specified in the subject subdivision or land development plan and plat:

(1) The maximum aggregate number of lots or parcels into which the subject land is to be subdivided.

(2) The size and boundaries of the individual lots or parcels into which the subject land is to be subdivided.

(3) The density of the land development.

(4) Designation of use of the individual lots or parcels.

(5) The location of roads, streets, parking lots, sidewalks and other paved areas.

(6) The location of ingress and egress for the land development.

(7) Setback lines and distances and buildable areas.

(8) The finished layout and grade of the land.

(g) "Development concept vesting period" means the period commencing upon approval of the subject land development plan and plat by the planning commission and terminating on the maturity date of the subject assessment bonds or tax increment financing obligation. The development concept vesting period pertains only to the vested property right in a development concept that is established upon approval by the planning commission of a land development plan and plat in which a development concept is set forth or specified.

(h) "Five-year vesting period" means the five-year vesting period for an approved land development plan and plat provided under subsection (c), section twelve, article five, chapter eight-a of this code.

(i) "Governing body" means, in the case of a county, the county commission and in the case of a municipality, the mayor and council together, the council or the board of directors as charged with the responsibility of enacting ordinances and determining the public policy of such municipality.

(j) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; any watershed enhancement districts, soil conservation districts, sanitary districts, public service districts, drainage districts, school districts, urban renewal authorities or regional governmental authorities established pursuant to this code.

(k) "Person" means an individual, firm, partnership, corporation, voluntary association or any other type of entity.

(l) "Project" means the design, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipping, maintenance, repair (including replacements) and start-up operation of water source of supply, treatment, transmission and distribution facilities, sewage treatment, collection and transmission facilities, stormwater systems, police stations, fire stations, libraries, museums, schools, other public buildings, hospitals, piers, docks, terminals, drainage systems, culverts, streets, roads, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), motor vehicle parking facilities

(including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropriate, useful, convenient or incidental to the regulation, control and parking of motor vehicles), public transportation, public recreation centers, public recreation parks, swimming pools, tennis courts, golf courses, equine facilities, motor vehicle competition and recreational facilities, flood protection or relief projects, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, widening, lighting or otherwise improving any street, avenue, road, highway, alley or way, or the building or renewing of sidewalks and flood protection; and the terms shall mean and include any project as a whole, and all integral parts thereof, including all necessary, appropriate, useful, convenient or incidental appurtenances and equipment in connection with any one or more of the above.

§16-13E-4. Petition for creation or expansion of community enhancement district; petition requirements.

(a) The owners of at least sixty-one percent of the real property, determined by acreage, located within the boundaries of the area described in the petition, by metes and bounds or otherwise in a manner sufficient to describe the area, may petition a governing body to create or expand a community enhancement district.

(b) The petition for the creation or expansion of a community enhancement district shall include, where applicable, the following:

(1) The proposed name and proposed boundaries of such district and a list of the names and addresses of all owners of real property within the proposed district;

(2) A detailed project description;

(3) A map showing the proposed project, including all proposed improvements;

(4) A list of estimated project costs and the preliminary plans and specifications for such improvements, if available;

(5) A list of nonproject costs and how they will be financed;

(6) A consultant study outlining the projected assessments, setting forth the methodology for determining the assessments and the methodology for allocating portions of an initial assessment against a parcel expected to be subdivided in the future to the various lots into which the parcel will be subdivided and demonstrating that such assessments will adequately cover any debt service on bonds issued to finance the project and ongoing administrative costs;

(7) A development schedule;

(8) A list of recommended members for the board;

(9) If the project includes water, wastewater or sewer improvements, written evidence from the utility or utilities that will provide service to the district, if any, that said utility or utilities:

(A) Currently has adequate capacity to provide service without significant upgrades or modifications to its treatment, storage or source of supply facilities, except facilities which the community enhancement district will provide as described in the petition;

(B) Will review and approve all plans and specifications for the improvements to determine that the improvements

conform to the utility's reasonable requirements and, if the improvement consists of water transmission or distribution facilities, that the improvements provide for adequate fire protection for the district; and

(C) If built in conformance with said plans and specifications, will accept the improvements following their completion, unless such projects are to be owned by the district;

(10) If the project includes improvements other than as set forth in subdivision (9) of this subsection that will be transferred to another governmental agency, written evidence that such agency will accept such transfer, unless such projects are to be owned by the district;

(11) The benefits that can be expected from the creation of the district and the project; and

(12) A certification from each owner of real property within the proposed district who joins in the petition that he or she is granting an assessment against his or her property in such an amount as to pay for the costs of the project and granting a lien for said amount upon said property enforceable in accordance with this article.

(c) After reviewing the petition presented pursuant to this section, the governing body may by order or ordinance determine the necessity and economic feasibility of creating a community enhancement district and developing, constructing, acquiring, improving or extending a project therein. If the governing body determines that the creation of a community enhancement district and construction of the project is necessary and economically feasible, it shall set a date for the public meeting required under section five of

this article and shall cause the petition to be filed with the clerk of the county commission or the clerk or recorder of the municipality, as the case may be, and be made available for inspection by interested persons before the meeting.

(d) Notwithstanding any other contrary provision of this article, nothing in this article shall modify:

(1) The jurisdiction of the Public Service Commission to determine the convenience and necessity of the construction of utility facilities, to resolve disputes between utilities relating to which utility should provide service to a district or otherwise to regulate the orderly development of utility infrastructure in the state; or

(2) The authority of the Infrastructure and Jobs Development Council as to the funding of utility facilities to the extent that loans, loan guarantees, grants or other funding assistance from a state infrastructure agency are involved.

§16-13E-10a. Extension of vesting period for land development plans and plats; approval of phases.

(a) The five-year vesting period is extended to the development concept vesting period with respect to the development concept if: (i) The land development will be wholly contained within a community enhancement district; and (ii) either:

(A) Such community enhancement district has been created and is in existence, and such facts have been communicated to the planning commission, at the time the planning commission approves the subject land development plan and plat (whether such plan and plat is

denominated final, preliminary, phased preliminary, concept or otherwise); or

(B) Such community enhancement district is created after the initial approval of the subject land development plan and plat and the planning commission subsequently ratifies the approval of such plan and plat with the knowledge of the existence of the community enhancement district; and (iii) assessment bonds or tax increment financing obligations payable from or secured by, in whole, or in part, assessments against real property located within the district are issued within the five-year vesting period.

(b) Nothing herein shall be deemed to extend or otherwise modify the five-year vesting period with respect to items other than those included in the development concept.

(c) When a land development will be wholly contained within a community enhancement district, a land development plan and plat that otherwise pertains to and seeks approval of only a portion or phase of the land development may also contain the development concept for a greater portion, multiple phases or the entirety of the land development if the plan and plat expressly so provides. Approval of a land development plan and plat by the planning commission constitutes approval of, and the establishment of a vested property right in, the entire development concept contained in the land development plan and plat.

(d) This section shall apply to all community enhancement districts, regardless of whether created prior or subsequent to enactment of this section.

CHAPTER 116

(Com. Sub. for S. B. 240 - By Senators Minard, Snyder, Prezioso, Unger, Boley and K. Facemyer)

[Passed March 11, 2010; in effect from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact article 2, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Administration; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rule with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rule with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Division of Personnel to promulgate a legislative rule relating to the administration of the division; authorizing the Department of Administration to promulgate a legislative rule relating to state-owned vehicles; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers Retirement System; authorizing the

Consolidated Public Retirement Board to promulgate a legislative rule relating to the Public Employees Retirement System; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement and loan interest factors; and authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the West Virginia State Police.

Be it enacted by the Legislature of West Virginia:

That article 2, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Division of Personnel.
§64-2-2. Department of Administration.
§64-2-3. Consolidated Public Retirement Board.

§64-2-1. Division of Personnel.

The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section ten, article six, chapter nineteen of this code, (Administrative Rule of the West Virginia Division of Personnel, 143 CSR 1), is authorized with the following amendments:

On page six, subsection 3.88, by striking out "1000 " and inserting in lieu thereof "720 ";

And,

On page twenty, subsection 9.4, by striking out "1000 " and inserting in lieu thereof "720 ".

§64-2-2. Department of Administration.

The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section forty-eight, article three, chapter five-a of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 21, 2009, relating to the Department of Administration (State Owned Vehicles, 148 CSR 3), is authorized, with the following amendment:

On page two, subsection 2.15, by striking out said subsection 2.15 in its entirety and inserting in lieu thereof a new subsection 2.15 to read as follows:

'2.15. "Vehicle" means any state or agency owned passenger-type vehicle including but is not limited to sedans, station wagons, minivans, pickup trucks classified as less than one ton, sport utility vehicles, or vans used primarily for the transportation of the driver and no more than 15 passengers.';

On page nine, subsection 10.3, in the first sentence of said subsection, by striking out the words 'Vehicles shall be leased from the Travel Management Office' and inserting in lieu thereof the words 'The Travel Management Office may lease vehicles to spending units'; and

On page ten, subsection 10.10, by striking out the words 'An invoice will be issued on a regular basis.' and inserting in lieu thereof the words 'The Travel Management Office shall issue regular invoices to spending units for vehicle leases and services.'

§64-2-3. Consolidated Public Retirement Board.

(a) The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section one, article ten-d, chapter five of this code, modified by the

Consolidated Public Retirement Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 23, 2009, relating to the Consolidated Public Retirement Board (Teachers' Retirement System, 162 CSR 4), is authorized.

(b) The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section one, article ten-d, chapter five of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 23, 2009, relating to the Consolidated Public Retirement Board (Public Employees Retirement System, 162 CSR 5), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section one, article ten-d, chapter five of this code, relating to the Consolidated Public Retirement Board (Refund, Reinstatement and Loan Interest Factors, 162 CSR 7), is authorized.

(d) The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section one, article ten-d, chapter five of this code, modified by the Consolidated Public Retirement Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 23, 2009, relating to the Consolidated Public Retirement Board (West Virginia State Police, 162 CSR 9), is authorized with the following amendment:

On page four, subsection 6.3., by striking out the words "subdivision 9.3.2." and inserting in lieu thereof the words "subsection 3.2.".

CHAPTER 117

(Com. Sub. for S. B. 273 - By Senators Minard, Snyder, Prezioso, Unger, Boley and K. Facemyer)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Environmental Protection; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to solid waste management; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the covered electronic devices takeback program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management systems; authorizing the Department of Environmental Protection to promulgate a

legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources of air pollution which cause or contribute to nonattainment; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to acid rain provisions and permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the National Pollutant Discharge Elimination System (NPDES) Program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing groundwater standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to water pollution control permit fee schedules; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the WV/NPDES rules for coal mining facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to monitoring wells; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to monitoring well design standards; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to oil and gas wells and other wells.

Be it enacted by the Legislature of West Virginia:

That article 3, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

(a) The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section five, article fifteen, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 11, 2009, relating to the Department of Environmental Protection (Solid Waste Management, 33 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on April 9, 2009, authorized under the authority of section twenty-nine, article fifteen-a, chapter twenty-two of this code, relating to the Department of Environmental Protection (Covered Electronic Devices Takeback Program, 33 CSR 11), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 14, 2009, relating to the Department of Environmental Protection (Hazardous Waste Management Systems, 33 CSR 20), is authorized.

(d) The legislative rule filed in the State Register on July 28, 2009, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (Ambient Air Quality Standards, 45 CSR 8), is authorized.

(e) The legislative rule filed in the State Register on July 28, 2009, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 14, 2009, relating to the Department of Environmental Protection (Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration, 45 CSR 14), is authorized.

(f) The legislative rule filed in the State Register on July 28, 2009, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (Standards of Performance for New Stationary Sources, 45 CSR 16), is authorized.

(g) The legislative rule filed in the State Register on July 28, 2009, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution Which Cause or Contribute to Nonattainment, 45 CSR 19), is authorized.

(h) The legislative rule filed in the State Register on July 28, 2009, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (Control of Air Pollution from Hazardous Waste Treatment, Storage or Disposal Facilities, 45 CSR 25), is authorized.

(i) The legislative rule filed in the State Register on July 28, 2009, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (Acid Rain Provisions and Permits, 45 CSR 33), is authorized.

(j) The legislative rule filed in the State Register on July 28, 2009, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (Emission Standards for Hazardous Air Pollutants, 45 CSR 34), is authorized.

(k) The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section four, article eleven, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 17, 2009, relating to the Department of Environmental Protection (National Pollutant Discharge Elimination System (NPDES) Program, 47 CSR 10), is authorized.

(l) The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section four, article twelve, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 18, 2009, relating to the Department of Environmental Protection (Requirements Governing Ground Water Standards, 47 CSR 12), is authorized with the following amendment:

On pages three through five by striking out all of Appendix A and inserting in lieu thereof a new Appendix A to read as follows:

90 **APPENDIX A**

91 **Organic Compounds**

92 **Constituent**	**Limit (mg/L)** **(except where noted)**
93 Alachlor	0.002
94 Aldicarb	0.003
95 Aldicarb sulfone	0.002
96 Aldicarb sulfoxide	0.004
97 Atrazine	0.003
98 Benzene	0.005
99 Benzo (a) pyrene (PAH)	0.0002
100 Bromodichloromethane (THM)[1]	0.08
101 Bromoform (THM)[1]	0.08
102 Carbofuran	0.04
103 Carbon tetrachloride	0.005
104 Chlordane	0.002
105 Chloroform (THM)[1]	0.08
106 2, 4-D	0.07
107 Dalapon	0.2
108 Di(2-ethylhexyl)adipate	0.4
109 Di(2-ethylhexyl)phthalate	0.006
110 Dibromochloromethane (THM)[1]	0.08
111 Dibromochloropropane (DBCP)	0.0002
112 Dichloroacetic acid	0.06
113 Dichlorobenzene p-	0.075
114 Dichlorobenzene o-	0.6
115 Dichlorobenzene m-	0.6
116 Dichloroethane (1, 2)	0.005
117 Dichloroethylene (1, 1-)	0.007
118 Dichloroethylene (cis-1, 2-)	0.07
119 Dichloroethylene (trans-1, 2-)	0.1
120 Dichloromethane	0.005
121 Dichloropropane (1, 2-)	0.005
122 Dinoseb	0.007

123	Diquat	0.02
124	Endothall	0.1
125	Endrin	0.002
126	Ethylbenzene	0.7
127	Ethylene dibromide (EDB	0.00005
128	Glyphosate	0.7
129	Heptachlor	0.0004
130	Heptachlor epoxide	0.0002
131	Hexachlorobenzene	0.001
132	Hexachlorocyclopentadiene	0.05
133	Lindane	0.0002
134	Methoxychlor	0.04
135	Monochloroacetic acid[2]	0.06
136	Monochlorobenzene	0.1
137	Oxamyl (Vydate)	0.2
138	Pentachlorophenol	0.001
139	Picloram	0.5
140	Polychlorinated biphenyls	0.0005
141	Simazine	0.004
142	Styrene	0.1
143	2, 3, 7, 8-TCDD (Dioxin)	0.00000003
144	Tetrachlorethylene	0.005
145	Toluene	1.0
146	Toxaphene	0.003
147	2, 4, 5-TP (Silvex)	0.05
148	Trichloroacetic acid[2]	0.06
149	Trichlorobenzene (1, 2, 4-)	0.07
150	Trichloroethane (1, 1, 1-)	0.2
151	Trichloroethane (1, 1, 2-)	0.005
152	Trichloroethylene	0.005
153	Vinyl Chloride	0.002
154	Xylenes (Total)	10

155 **Inorganic Compounds**

	Constituent	Limit (mg/L) (except where noted)
157	Arsenic	0.01
158	Asbestos	7 MFL[3]
159	Barium	2.0
160	Beryllium	0.004
161	Bromate	0.01
162	Cadmium	0.005
163	Chloramine	4.0
164	Chlorine	4.0
165	Chlorine dioxide	0.8
166	Chlorite	1.0
167	Chromium (Total)	0.1
168	Copper	1.3
169	Cyanide	0.2
170	Fluoride	4.0
171	Lead	0.015
172	Mercury (Inorganic)	0.002
173	Nitrate (as N)	10
174	Nitrate (as N)	1.0
175	Total Nitrate and Nitrite (both as N)	10
176	Selenium	0.05
177	Thallium	0.002

178 **Radionuclides**

179	Beta particle and photon activity	4 mrem[4]
180	Gross alpha particle activity	15 pCi/L[5]
181	Combined Radium 226 and 228	5 pCi/L
182	Radon	300 pCi/L
183	Uranium	30 μg/L[6]

1-The total of the trihalomethanes (THM) is 0.08 mg/L

2-The total of the haloacetic acids is 0.06 mg/L

3 – MFL = million fibers per liter

4 – mrem = millirem (rem = roentgen – equivalent – man)

5 – pCi = picocurie

6 – ug/L = microgram per liter

(m) The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section ten, article eleven, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 17, 2009, relating to the Department of Environmental Protection (Water Pollution Control Permit Fee Schedules, 47 CSR 26), is authorized.

(n) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section four, article eleven, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 17, 2009, relating to the Department of Environmental Protection (WV/NPDES Rules for Coal Mining Facilities, 47 CSR 30), is authorized with the following amendments:

On page ten, subparagraph 4.5.a.6.L., by striking out the words "Licensed Land" and inserting in lieu there of the word "Professional";

And,

On page fourteen, part 4.5.d.1.A.11., by striking out the words "Licensed Land" and inserting in lieu there of the word "Professional".

(o) The legislative rule filed in the State Register on July 27, 2009, authorized under the authority of section five, article twelve, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2009, relating to the Department of Environmental Protection (Monitoring Wells, 47 CSR 59), is authorized.

(p) The legislative rule filed in the State Register on July 27, 2009, authorized under the authority of section five, article twelve, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2009, relating to the Department of Environmental Protection (Monitoring Well Design Standards, 47 CSR 60), is authorized with the following amendment:

On page seventeen, subdivision 19.3.a., after the words "eighty percent (80%)" by inserting the word "silica".

(q) The legislative rule filed in the State Register on April 21, 2009, authorized under the authority of section two, article six, chapter twenty-two, of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 15, 2010, relating to the Department of Environmental Protection (oil and gas wells and other wells, 35 CSR 4), is authorized with the following amendment:

On page twenty-five, subdivision 16.4.d., by striking out the words "authorized by the Office, based on soil analysis from the operator, to be suitable to prevent seepage or leakage" and inserting in lieu thereof the words "deemed to

247 be suitable to prevent seepage or leakage based on soil
248 analysis from the operator and standards developed and
249 certified by a registered professional engineer and approved
250 by the Office. Before deeming pits suitable to prevent
251 seepage or leakage without a synthetic liner, the chief shall
252 notify the surface owner that the surface owner is entitled to
253 receive notice of the application for the well work permit and
254 that the operator has requested that the pit be deemed suitable
255 to prevent seepage or leakage without a synthetic liner. If the
256 surface owner objects, the chief shall hold a hearing pursuant
257 to article five, chapter twenty-nine-A of the Code of West
258 Virginia before determining that the pit is suitable to prevent
259 seepage or leakage.

CHAPTER 118

(Com. Sub. for S. B. 286 - By Senators Minard, Snyder, Prezioso, Unger, Boley and K. Facemyer)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate

certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Health Care Authority to promulgate a legislative rule relating to hospital ambulatory health care facilities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to Grade "A" pasturized milk; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fees for services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the distribution of state aid funds to local boards of health; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the nurse aid abuse registry; and authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to out-of-school time child care center licensing requirements.

Be it enacted by the Legislature of West Virginia:

That article 5, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Health Care Authority.
§64-5-2. Department of Health and Human Resources.

§64-5-1. Health Care Authority.

1 The legislative rule filed in the State Register on July 15,
2 2009, authorized under the authority of section four, article
3 two-d, chapter sixteen of this code, modified by the Health
4 Care Authority to meet the objections of the Legislative
5 Rule-Making Review Committee and refiled in the State
6 Register on August 14, 2009, relating to the Health Care

Authority (Hospital Ambulatory Health Care Facilities, 65 CSR 27), is authorized.

§64-5-2. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section five, article seven, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 30, 2009, relating to the Department of Health and Human Resources (Grade "A" Pasturized Milk, 64 CSR 34), is authorized.

(b) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section eleven, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 30, 2009, relating to the Department of Health and Human Resources (Fees for Services, 64 CSR 51), is authorized.

(c) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 30, 2009, relating to the Department of Health and Human Resources (Distribution of State Aid Funds to Local Boards of Health, 64 CSR 67), is authorized.

(d) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section two, article six, chapter nine of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20,

2009, relating to the Department of Health and Human Resources (Nurse Aid Abuse Registry, 69 CSR 6), is authorized with the following amendments:

On page seven, section nine, by striking out "§69-6-9 " and inserting in lieu thereof "§69-6-8 ",

And, by renumbering the remaining sections.

(e) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section four, article two-b, chapter forty-nine of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 20, 2010, relating to the Department of Health and Human Resources (Out-of-School-Time Child Care Center Licensing Requirements, 78 CSR 21), is authorized with the following amendment:

On page three, subsection 3.7., after the word "except" by striking out the colon and subdivisions 3.7.a. through 3.7.f. in their entirety and inserting in lieu thereof the words "those facilities, centers, programs, and individuals set forth in W. Va. Code §49-2B-3(e).".

On page five, subsection 3.27, line six, by striking the words "was regulated care and";

On page nineteen, paragraph 7.9.a.3, by striking the paragraph in its entirety and renumbering the remaining paragraphs;

On page nineteen, paragraph 7.9.b.3, by striking the paragraph in its entirety and renumbering the remaining paragraphs; and

On page nineteen, paragraph 7.9.c.3, by striking the paragraph in its entirety and renumbering the remaining paragraphs.

CHAPTER 119

(Com. Sub. for H. B. 4081 - By Delegates Brown, D. Poling, Miley, Talbott, Overington and Sobonya)

[Passed March 11, 2010; in effect from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Military Affairs and Public Safety; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the State Police to promulgate legislative rules relating to West Virginia State Police Career Progression System (81 CSR 3) and carrying of handguns by retired or medically discharged members (81 CSR 6); authorizing the Fire Commission to promulgate legislative rules relating to the state

fire code (87 CSR 1) and state building code (87 CSR 4); authorizing the Division of Corrections to promulgate legislative rules relating to the recording of inmate telephone calls (90 CSR 5) and the monitoring of inmate mail (90 CSR 7); authorizing the Division of Homeland Security and Emergency Management to promulgate a legislative rule relating to industrial accident rapid response (170 CSR 2).

Be it enacted by the Legislature of West Virginia:

That article 6, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. AUTHORIZATION FOR THE DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. State Police.
§64-6-2. Fire Commission.
§64-6-3. Division of Corrections.
§64-6-4. Division fo Homeland Security and Emergency Management.

§64-6-1. State Police.

(a) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section five, article two, chapter fifteen, of this code, modified by the State Police to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 12, 2010, relating to the State Police (West Virginia State Police Career Progression System, 81 CSR 3), is authorized.

(b) The legislative rule filed in the state register on July 31, 2009, authorized under the authority of section twenty-five, article two, chapter fifteen, of this code, modified by the State Police to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 12, 2010, relating to the State Police (carrying of

handguns by retired or medically discharged members, 81 CSR 6), is authorized.

§64-6-2. Fire Commission.

(a) The legislative rule filed in the state register on July 21, 2009, authorized under the authority of section five, article three, chapter twenty-nine, of this code, modified by the Fire Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2009, relating to the Fire Commission (state fire code, 87 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 21, 2009, authorized under the authority of section five-b, article three, chapter twenty-nine, of this code, modified by the Fire Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2009, relating to the Fire Commission (state building code, 87 CSR 4), is authorized, with the following amendments:

On page two, subdivision 4.1.6, by restoring the subdivision to its current language; and

On page three, subdivision 4.1.7, following the word "inches" and the period and before the word "Section" by inserting the following words: "Section R313: Automatic Fire Sprinkler Systems, in its entirety, is specifically excluded from the scope of this rule series.".

§64-6-3. Division of Corrections.

(a) The legislative rule filed in the State Register on June 16, 2009, authorized under the authority of section seventeen, article one, chapter twenty-five, of this code, modified by the Division of Corrections to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on

July 22, 2009, relating to the Division of Corrections (recording of inmate telephone calls, 90 CSR 5), is authorized.

(b) The legislative rule filed in the State Register on June 16, 2009, authorized under the authority of section eighteen, article one, chapter twenty-five, of this code, modified by the Division of Corrections to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on July 22, 2009, relating to the Division of Corrections (monitoring of inmate mail, 90 CSR 7), is authorized.

§64-6-4. Division of Homeland Security and Emergency Management.

The legislative rule filed in the State Register on August 4, 2009, authorized under the authority of section three-A, article five-B, chapter fifteen, of this code, relating to the Division of Homeland Security and Emergency Management (industrial accident rapid response, 170 CSR 2), is authorized, with the following amendments:

On page 3, section 3, subsection 3.1., line 4 after the word "Director" by inserting the following, "within fifteen minutes of ascertaining the occurrence of an emergency event at an industrial facility";

On page five, after the section caption "§170-2-5. Penalties." by inserting a new subsection 5.1, to read as follows:

5.1. Penalty Amount. The director shall impose a civil penalty on the industrial facility if he or she determines that the industrial facility failed to comply with the reporting or communications and access requirements in this rule. In no case shall the total penalty for all violations exceed $100,000 for an emergency event.;

And renumbering the remaining subsections.

CHAPTER 120

(Com. Sub. for S. B. 407 - By Senators Minard, Snyder, Prezioso, Unger, Boley and K. Facemyer)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the State Tax Department to promulgate a legislative rule relating to the film industry investment tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to the Consumers Sales and Service Tax and Use Tax - drugs, durable medical goods, mobility-enhancing equipment and prosthetic devices per se exemption; motor

vehicles per se exemption; authorizing the State Tax Department to promulgate a legislative rule relating to the residential solar energy tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to the corporation net income tax; authorizing the Directors of the West Virginia Health Insurance Plan to promulgate a legislative rule relating to a premium subsidy; authorizing the Directors of the West Virginia Health Insurance Plan to promulgate a legislative rule relating to a preexisting conditions exclusion; authorizing the Insurance Commissioner to promulgate a legislative rule relating to variable life insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to annuity disclosure; authorizing the Insurance Commissioner to promulgate a legislative rule relating to Medicare supplement insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to coordination of health benefits; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the West Virginia Life and Health Insurance Guaranty Association Act notice requirements; authorizing the Insurance Commissioner to promulgate a legislative rule relating to mental health parity; authorizing the Insurance Commissioner to promulgate a legislative rule relating to viatical settlements; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the preventive care pilot program; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the use of senior-specific certifications and professional designations in the sale of life insurance and annuities; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing and operations procedures; authorizing the West Virginia State Athletic Commission to promulgate a legislative rule relating to the administration of the commission; and authorizing the Lottery Commission to promulgate a legislative rule relating to limited gaming facilities.

Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. State Tax Department.
§64-7-2. Directors of the West Virginia Health Insurance Plan.
§64-7-3. Insurance Commissioner.
§64-7-4. Alcohol Beverage Control Commission.
§64-7-5. Athletic Commission.
§64-7-6. Lottery Commission.

§64-7-1. State Tax Department.

(a) The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section nine, article thirteen-x, chapter eleven of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 21, 2010, relating to the State Tax Department (Film Industry Investment Tax Credit, 110 CSR 13X), is authorized.

(b) The legislative rule filed in the State Register on June 23, 2009, authorized under the authority of section five, article ten, chapter eleven of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 30, 2009, relating to the State Tax Department (Consumer Sales and Service Tax and Use Tax - Drugs, Durable Medical Goods, Mobility Enhancing Equipment and Prosthetic Devices Per Se Exemption; and Motor Vehicles Per Se Exemption, 110 CSR 15C), is authorized.

(c) The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section three, article thirteen-z, chapter eleven of this code, modified by the

State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 30, 2009, relating to the State Tax Department (Residential Solar Energy Tax Credit, 110 CSR 21D), is authorized with the following amendments:

On page two, beginning on line twenty, by striking out subdivision 2.2.d in its entirety and redesignating the remaining subdivisions accordingly;

On page five, subsection 4.2, line twenty-one, following the word "incentive", by changing the comma to a period and striking out the remainder of the sentence;

On page nine, subsection 9.1, line thirteen, following the words "until the" by striking out the following:

"earlier of the following:

9.1.a. Four taxable years have elapsed; or

9.1.b. The full";

And,

On page nine, line twenty-two, by striking out subsection 9.4 in its entirety.

(d) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section five, article ten, chapter eleven of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 21, 2010, relating to the State Tax

Department (Corporation Net Income Tax, 110 CSR 24), is authorized with the following amendments:

On page eight, 5.1.a.3, line eighteen, following the words "superseding state", by striking out the word "of" and inserting in lieu thereof the word "or";

On page sixteen, 7.5.c.1, line eleven, following the words "~~such the~~", by inserting the word "the";

On page eighteen, 7.6.c.1, line twenty-three, by striking out the word "employees" and inserting in lieu thereof the word "employees";

On page twenty-nine, 7a.1.a, line thirty-one, following the words "apportionment method" by inserting the words "are subject to apportionment as described in the following paragraph";

On page thirty, 7a.1.a.1, line ten, following the words "special apportionment members" by striking out the comma;

On page thirty-one, 8.4.a, line twenty-three, following the words "which are determined" by striking out the comma;

On page thirty-two, 8.5.a.2, line ten, following the words "W. Va. Code §11-24-8(e)" by striking out the comma;

On page forty-one, 13a.1.a, line one, following the words "insurance company" by striking out the comma;

On page forty-one, 13a.1.a, line three, following the words "shall not be included" by inserting the word "in";

On page forty-two, 13a.2.b.2, line twelve, following the words "the stock of", by striking out the words "~~such~~ <u>that</u>" and inserting in lieu thereof the word "the";

On page forty-two, 13a.2.b.2, line fifteen, following the words "income of", by striking out the words "~~such~~ this" and inserting in lieu thereof the word "the";

On page forty-three, 13a.3.a.6, line thirty-four, following the words "~~below~~ in", by striking out the word "paragraph" and inserting in lieu thereof the word "subparagraph";

On page fifty-four, 13a.3.d.1, line fourteen, following the word "member" by striking out the comma;

On page seventy, 13d.4.a.2, line thirteen, by reinserting the word "see";

On page ninety-nine, 13e.2.a.3, beginning on line three, following the word "privileges", by reinserting the word "must" and striking out the word "shall";

On page ninety-nine, 13e.2.a.3, line four, following the words "and it", by reinserting the word "must" and striking out the word "shall";

On page one hundred, 13e.4.c, line seventeen, following the words "group return" by striking out the comma;

On page one hundred, 13e.4.e, line twenty-two, following the words "group return" by striking out the comma;

On page one hundred two, 13e.8, line twenty-two, following the word "corporation" and the comma, by striking out the word "then";

On page one hundred ten, 26.4, line nineteen, following the words "transactions include", by inserting a colon;

On page one hundred ten, 26.4, line twenty, following the word "property" and the semi-colon, by striking out the

words "sales or transfers" and inserting in lieu thereof the words "the sale or transfer";

On page one hundred ten, 26.4, line twenty-one, by striking out the words "the owner or for consideration" and inserting in lieu thereof the words "the owner; or consideration";

And,

On page one hundred fifteen, 27.2.c.6, line five, following the word "annual", by striking out the word "of".

§64-7-2. Directors of the West Virginia Health Insurance Plan.

(a) The legislative rule filed in the State Register on July 17, 2009, authorized under the authority of section seven-b, article forty-eight, chapter thirty-three of this code, modified by the Directors of the West Virginia Health Insurance Plan to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2010, relating to the Directors of the West Virginia Health Insurance Plan (Premium Subsidy, 113 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 17, 2009, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the Directors of the West Virginia Health Insurance Plan to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 26, 2010, relating to the Directors of the West Virginia Health Insurance Plan (Pre-existing Conditions Exclusion, 113 CSR 2), is authorized.

§64-7-3. Insurance Commissioner.

(a) The legislative rule filed in the State Register on July 17, 2009, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 26, 2010, relating to the Insurance Commissioner (Variable Life Insurance, 114 CSR 11D), is authorized.

(b) The legislative rule filed in the State Register on July 17, 2009, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2010, relating to the Insurance Commissioner (Annuity Disclosure, 114 CSR 11E), is authorized.

(c) The legislative rule filed in the State Register on July 17, 2009, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 26, 2010, relating to the Insurance Commissioner (Medicare Supplement Insurance, 114 CSR 24), is authorized.

(d) The legislative rule filed in the State Register on July 17, 2009, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (Coordination of Health Benefits, 114 CSR 28), is authorized with the following amendments:

On page one, subsection 1.1, after the word "after" by striking out the words "the effective date of this rule" and inserting in lieu thereof the words "January 21, 2011,";

And,

On page one, subsection 1.1, after the word "before" by striking out the words "the effective date of this rule" and inserting in lieu thereof the words "January 21, 2011,".

(e) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (West Virginia Life and Health Insurance Guaranty Association Act Notice Requirements, 114 CSR 36), is authorized.

(f) The legislative rule filed in the State Register on July 17, 2009, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 17, 2009, relating to the Insurance Commissioner (Mental Health Parity, 114 CSR 64), is authorized.

(g) The legislative rule filed in the State Register on July 24, 2009, authorized under the authority of section seventeen, article thirteen-c, chapter thirty-three of this code, relating to the Insurance Commissioner (Viatical Settlements, 114 CSR 80), is authorized with the following amendments:

On page two, subsection 2.6., after the word "viators" by striking out the words "by viatical settlement providers";

On page four, subsection 4.2., subdivision b., after the word "domicile" by striking out the words "and a West Virginia business license from the Secretary of State's Office";

On page five, by striking out subdivision 4.2.c. in its entirety;

And, by renumbering the remaining subdivisions;

On page five, subsection 4.2., subdivision f., by striking out the words "all information" and inserting in lieu thereof the word "informational";

On page five, subsection 4.2., subdivision f., after the word "viators" by inserting the words "describing the viatical settlement process";

On page five, subsection 4.3., subdivision b., after the word "five" by inserting the word "consecutive";

On page six, by striking out subsection 4.6. in its entirety;

And, by renumbering the remaining subsections;

On page six, subsection 4.8., after the word "license." by striking out the words "All viatical settlement broker licenses, as fixed by the Commissioner, shall expire at midnight on the thirty first day of May next following the date of issuance." and inserting in lieu thereof the words "The date upon which the viatical settlement broker license shall expire for individuals and entities shall be at the discretion of the Commissioner.";

On page six, subsection 4.10., subdivision a., after the word "directions" by striking out the word "posited" and inserting in lieu thereof the word "posted";

On page nine, subsection 6.2., after the word "broker" by inserting the words "and each insurance producer whose viatical settlement activities are incidental to their business activities";

On page twelve, section 9, after the word "A" by striking out the word "person" and inserting in lieu thereof the words "viatical settlement provider";

On page twelve, section 9, after the word "similar" by striking the word "ro" and inserting in lieu thereof the word "to";

And,

On page fourteen, subsection 12.1., subdivision b., after the words "case of" by striking the word "in" and inserting in lieu thereof the word "an".

(h) The legislative rule filed in the State Register on July 17, 2009, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 25, 2010, relating to the Insurance Commissioner (Preventive Care Pilot Program, 114 CSR 87), is authorized.

(i) The legislative rule filed in the State Register on July 17, 2009, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 12, 2009, relating to the Insurance Commissioner (Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, 114 CSR 89), is authorized.

§64-7-4. Alcohol Beverage Control Commission.

The legislative rule filed in the State Register on July 16, 2009, authorized under the authority of section twenty-two-a, article sixteen, chapter eleven of this code, modified by the

Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 21, 2010, relating to the Alcohol Beverage Commission (Nonintoxicating Beer Licensing and Operations Procedures, 176 CSR 1), is authorized.

§64-7-5. Athletic Commission.

The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section twenty-four, article five-a, chapter twenty-nine of this code, modified by the Athletic Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register January 8, 2010, relating to the Athletic Commission (Administrative Rules of the West Virginia State Athletic Commission, 177 CSR 1), is authorized.

§64-7-6. Lottery Commission.

The legislative rule filed in the State Register on July 27, 2009, authorized under the authority of section five, article twenty-five, chapter twenty-nine of this code, modified by the Lottery Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 20, 2010, relating to the Lottery Commission (Limited Gaming Facility Rule, 179 CSR 4), is authorized with the following amendments:

On page fifty-one, line seven, following the word "through", by striking out the numeral "37 " and inserting in lieu thereof the numeral "38 ";

On page fifty-one, beginning on line eight, by striking out section thirty-eight in its entirety;

On page eighty-one, 57.5.c, line thirty-four, following the word "section", by striking out the word "fifty-three" and inserting in lieu thereof the word "thirty-three";

On page eighty-four, 57.6.d, line six, following the word "~~fifteen~~", by striking out the word "thirty-three" and inserting in lieu thereof the word "sixteen";

On page one hundred twelve, 88.2.b, line thirteen, following the word "paragraphs", by striking out the numerals "88.l.i.2 to 88.l.i.4 " and inserting in lieu thereof the numerals "88.l.g.2 to 88.l.g.4 ";

On page one hundred thirty-three, beginning on line seventeen, by striking out the following:

"~~115.5.c.2.~~ 115.5.b.1. Dice;

~~115.5.c.3.~~ 115.5.b.1. Tokens;

~~115.5.c.4.~~ 115.5.b.1. Playing cards; and

~~115.5.c.5.~~ 115.5.b.1. Positions on the roulette wheel."

and inserting in lieu thereof the following:

"~~115.5.c.2.~~ 115.5.b.2. Dice;

~~115.5.c.3.~~ 115.5.b.3. Tokens;

~~115.5.c.4.~~ 115.5.b.4. Playing cards; and

~~115.5.c.5.~~ 115.5.b.5. Positions on the roulette wheel.";

On page one hundred forty-one, line two, following the numeral "~~119.3.b.~~" by striking out the numeral "119.2.a." and inserting in lieu thereof the numeral "119.2.b.";

On page one hundred forty-one, line three, following the numeral "~~119.3.c.~~" by striking out the numeral "119.2.a." and inserting in lieu thereof the numeral "119.2.c.";

On page one hundred forty-three, line twenty, following the numeral "~~121.3.a.3.~~" by striking out the numeral

43 "121.3.a.4." and inserting in lieu thereof the numeral
44 "121.3.a.2.";

45 On page one hundred forty-three, line twenty-one, following
46 the numeral "~~121.3.a.4.~~" by striking out the numeral
47 "121.3.a.5." and inserting in lieu thereof the numeral
48 "121.3.a.3.";

49 On page one hundred fifty-eight, 145.1, line thirty-one,
50 by striking out the numeral "§25-25-22a" and inserting in
51 lieu the numeral "§29-25-22a";

52 And,

53 On page one hundred seventy, 173.1, line thirty-one,
54 following the word "gambling", by inserting a comma.

CHAPTER 121

(Com. Sub. for S. B. 291 - By Senators Minard, Snyder, Prezioso, Unger, Boley and K. Facemyer)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Transportation; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing

certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the denial, suspension, revocation, restriction or nonrenewal of driving privileges; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the collection of tax on the sale of a motor vehicle; authorizing the Commissioner of Highways to promulgate a legislative rule relating to the use of state road rights-of-way and adjacent areas; and authorizing the Commissioner of Highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways.

Be it enacted by the Legislature of West Virginia:

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of Motor Vehicles.
§64-8-2. Commissioner of Highways.

§64-8-1. Division of Motor Vehicles.

(a) The legislative rule filed in the State Register on October 29, 2009, authorized under the authority of section nine, article two, chapter seventeen-a of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 23, 2009, relating to the Division of Motor Vehicles (Denial, Suspension, Revocation, Restriction or Nonrenewal of Driving Privileges, 91 CSR 5), is authorized, with the following amendments:

On page four, paragraph 3.3.c.1, line one, by striking the words "does not present a danger to the public safety or welfare" and inserting in lieu thereof the words "is competent to operate a motor vehicle";

On page four paragraph 3.3.c.2., line one, by striking the words "does not present a danger to the public safety or welfare" and inserting in lieu thereof the words "is competent to operate a motor vehicle";

On page four paragraph 3.3.c.3., line one, by striking the word "licensee" and inserting in lieu thereof the word "licensee's";

On page four paragraph 3.3.c.3., line one, by striking the words "present a danger to the public safety or welfare and his or her";

On page eight, subdivision 3.6.a, line four, after the number "3.2 " by inserting a comma and striking the word "or";

On page eight, subdivision 3.6.a, line four, after the number "3.3 " by inserting the following, "and 3.6 ";

On page twenty-two, subdivision 9.2.e., line one, after the word "court or", by striking the word "an" and inserting in lieu thereof the words "a designated"; and

On page twenty-two, subdivision 9.2.e., line three, by striking the words "presents a danger to public safety or welfare"and inserting in lieu thereof the words "is competent to operate a motor vehicle".

(b) The legislative rule filed in the State Register on October 29, 2009, authorized under the authority of section three-c, article fifteen, chapter eleven of this code, relating to the Division of Motor Vehicles (Collection of Tax on the Sale of a Motor vehicle, 91 CSR 9), is authorized.

§64-8-2. Commissioner of Highways.

(a) The legislative rule filed in the State Register on August 4, 2009, authorized under the authority of section one, article twenty, chapter seventeen of this code, modified by the Commissioner of Highways to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2009, relating to the Commissioner of Highways (Use of State Road Rights of Way and Adjacent Areas, 157 CSR 6), is authorized.

(b) The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section seven, article eighteen, chapter twenty-two of this code, modified by the Commissioner of Highways to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2009, relating to the Commissioner of Highways (Transportation of Hazardous Wastes upon the Roads and Highways, 157 CSR 7), is authorized.

CHAPTER 122

(Com. Sub. for H. B. 4108 - By Delegates Brown, D. Poling, Miley and Talbott)

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

AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of

certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the State Board of Examiners for Licensed Practical Nurses to promulgate a legislative rule relating to policies and procedures for development and maintenance of educational programs in practical nursing (10 CSR 1); authorizing the Board of Examiners in Counseling to promulgate legislative rules relating to marriage and family license renewal and continuing professional education (27 CSR 10), licensed professional counselor fees (27 CSR 2), licensed professional counselor license renewal and continuing professional education requirements (27 CSR 3), marriage and family therapists licensing (27 CSR 8), and marriage and family therapists fees (27 CSR 9); authorizing the Board of Medicine to promulgate a legislative rule relating to fees for services rendered by the Board of Medicine including assistance to the Board-designated physician health program for physicians, podiatrists and physician assistants (11 CSR 4); authorizing the Conservation Agency to promulgate a legislative rule relating to the operation of the West Virginia State Conservation Committee and conservation districts (63 CSR 1); authorizing the Commissioner of Agriculture to promulgate legislative rule relating to animal disease control (61 CSR 1), integrated pest management programs in schools and child care centers and facilities (61 CSR 12J), West Virginia shellfish (61 CSR 23B), and best management practices for land application of waste products from aquaculture facilities (61 CSR 27); authorizing the Board of Barbers and Cosmetologists to promulgate legislative rule

relating to continuing education (3 CSR 11), qualifications, training, examination and licensure of instructors in barbering and beauty culture (3 CSR 2), licensing schools of barbering and beauty culture (3 CSR 3), operation of barber, beauty shops and schools of barbering and beauty culture (3 CSR 5), schedule of fees (3 CSR 6), and schedule of fines (3 CSR 7); authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to licensure of speech-pathology and audiology (29 CSR 1); authorizing the Real Estate Appraiser Licensing and Certification Board to promulgate legislative rules relating to the requirements for licensure and certification (190 CSR 2) and the renewal of licensure or certification (190 CSR 3); authorizing the Board of Osteopathy to promulgate legislative rules relating to fees for services rendered by the Board (24 CSR 5), licensing procedures for osteopathic physicians (24 CSR 1), and the formation and approval of professional limited liability companies (24 CSR 4); authorizing the Secretary of State to promulgate legislative rules relating to early voting in person satellite precincts (153 CSR 13), Vote-by-mail Pilot Project Phase 1: Class IV Early Voting by Mail (153 CSR 38) and Vote-by-mail Pilot Project Phase 2: Voting by Mail (153 CSR 39); authorizing the Board of Occupational Therapy to promulgate legislative rules relating to the administrative rules of the Board of Occupational Therapy and licensure of occupational therapists and occupational therapy assistants (13 CSR 1), fees for services rendered by the Board (13 CSR 3), continuing education and competence (13 CSR 4), competency standards for advance practice by occupational therapists and occupational therapy assistants (13 CSR 5) and ethical standards of practice (13 CSR 6); authorizing the Board of Psychologists to promulgate a legislative rule relating to the qualifications for licensure as a psychologist or a school psychologist (17 CSR 3); and authorizing the Governor's Office of Health Enhancement and Lifestyle Planning to promulgate a legislative rule relating to prescription drug advertising expense reporting (210 CSR 1).

Be it enacted by the Legislature of West Virginia:

That article nine, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. State Board of Examiners for Licensed Practical Nurses.
§64-9-2. Board of Examiners in Counseling.
§64-9-3. Board of Medicine.
§64-9-4. Conservation Agency.
§64-9-5. Commissioner of Agriculture.
§64-9-6. Board of Barbers and Cosmetologists.
§64-9-7. Board of Examiners for Speech-Language Pathology and Audiology.
§64-9-8. Real Estate Appraiser Licensing and Certification Board.
§64-9-9. Board of Osteopathy.
§64-9-10. Secretary of State.
§64-9-11. Board of Occupational Therapy.
§64-9-12. Board of Psychologists.
§64-9-13. Governor's Office of Health Enhancement and Lifestyle Planning.

§64-9-1. State Board of Examiners for Licensed Practical Nurses.

The legislative rule filed in the State Register on July 9, 2009, authorized under the authority of section five, article seven-a, chapter thirty, of this code, modified by the State Board of Examiners for Licensed Practical Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 19, 2009, relating to the State Board of Examiners for Licensed Practical Nurses (policies and procedures for development and maintenance of educational programs in practical nursing, 10 CSR 1), is authorized.

§64-9-2. Board of Examiners in Counseling.

(a) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section six, article

thirty-one, chapter thirty, of this code, modified by the Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 25, 2009, relating to the Board of Examiners in Counseling (licensed professional counselor fees, 27 CSR 2), is authorized.

(b) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section six, article thirty-one, chapter thirty, of this code, modified by the Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 19, 2009, relating to the Board of Examiners in Counseling (licensed professional counselor license renewal and continuing professional education requirements, 27 CSR 3), is authorized with the following amendment:

On page one, subsection 1.2., by striking out "§30-31-5(b)(18)" and inserting in lieu thereof "§30-31-6".

(c) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section six, article thirty-one, chapter thirty, of this code, modified by the Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 25, 2009, relating to the Board of Examiners in Counseling (marriage and family therapists licensing, 27 CSR 8), is authorized.

(d) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section six, article thirty-one, chapter thirty, of this code, modified by the Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 25, 2009, relating to the Board of Examiners in Counseling (marriage and family therapists fees, 27 CSR 9), is authorized.

(e) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section six, article thirty-one, chapter thirty, of this code, modified by the Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 19, 2009, relating to the Board of Examiners in Counseling (marriage and family license renewal and continuing professional education, 27 CSR 10), is authorized with the following amendments:

On page one, subsection 1.2., by striking out "§30-31-5(b)" and inserting in lieu thereof "§30-31-6".

On page one section 2.1, by striking the words "of Marriage and Family Therapist and code of ethics." and inserting in lieu thereof the following words, "for Marriage and Family Therapy Code of Ethics.";

On page two section 2.7 by striking the words, "you attend" and inserting in lieu thereof the word, "attended";

On page three section 4.1, striking the word "Therapist" and inserting in lieu of the word, "Therapy";

On page four section 4.9 striking the word "therapist" and inserting in lieu of the following word, "therapy";

On page four section 4.10 striking the words, "of Marriage and Family Therapist" and inserting in lieu thereof the following words, "for Marriage and Family Therapy";

On page six, subparagraph (I) by striking the apostrophe;

On page seven, subparagraph (D) by striking the apostrophe;

On page eight paragraph 6 by striking the words, "of Marriage and Family Therapist" and inserting in lieu thereof the following words, "for Marriage and Family Therapy";

On page nine, subparagraph (C) by striking out the words, "of Marriage and Family Therapist" and inserting in lieu of the following words, "for Marriage and Family Therapy".

§64-9-3. Board of Medicine.

The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section seven, article three, chapter thirty, of this code, relating to the Board of Medicine (fees for services rendered by the Board of Medicine including assistance to the Board-designated physician health program for physicians, podiatrists and physician assistants, 11 CSR 4), is authorized.

§64-9-4. Conservation Agency.

The legislative rule filed in the State Register on July 29, 2009, authorized under the authority of section six, article twenty-one-a, chapter nineteen, of this code, modified by the Conservation Agency to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 23, 2009, relating to the Conservation Agency (operation of the West Virginia State Conservation Committee and conservation districts, 63 CSR 1), is authorized.

§64-9-5. Commissioner of Agriculture.

(a) The legislative rule filed in the State Register on July 28, 2009, authorized under the authority of section two, article nine, chapter nineteen, of this code, modified by the Commissioner of Agriculture to meet the objections of the

Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2009, relating to the Commissioner of Agriculture (animal disease control, 61 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 21, 2009, authorized under the authority of section four, article sixteen-a, chapter nineteen, of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 4, 2009, relating to the Commissioner of Agriculture (integrated pest management programs in schools and child care centers and facilities, 61 CSR 12J), is authorized.

(c) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section one, article twenty-nine, chapter nineteen, of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 23, 2009, relating to the Commissioner of Agriculture (West Virginia shellfish, 61 CSR 23B), is authorized with the following amendments:

On page 4, by striking out subdivision 4.1.i. in its entirety and inserting in lieu thereof a new subdivision 4.1.i. to read as follows:

"Refer violations to a court of competent jurisdiction for the violation of this rule as allowed under West Virginia laws. Nothing in this rule shall be construed as requiring the commissioner to report for prosecution or institute an embargo, detainment or quarantine for the violation of this rule when he or she believes that the public interest may best be served by a written notice of the violation."

On page 6, after subdivision 7.1.j. by adding a new subsection, designated 7.2 to read as follows:

38 "7.2. Any person who violates the provisions of this rule
39 shall have his or her Shellfish Certificate suspended until the
40 facility is in compliance with the provisions of this rule.";

41 On pages 6 and 7, by striking §61-23A-8 in its entirety;

42 And, by renumbering the remaining section.

43 (d) The legislative rule filed in the State Register on July
44 15, 2009, authorized under the authority of section six, article
45 twenty-nine, chapter nineteen, of this code, modified by the
46 Commissioner of Agriculture to meet the objections of the
47 Legislative Rule-Making Review Committee and refiled in
48 the State Register on January 14, 2010, relating to the
49 Commissioner of Agriculture (best management practices for
50 land application of waste products from aquaculture facilities,
51 61 CSR 27), is authorized.

§64-9-6. Board of Barbers and Cosmetologists.

1 (a) The legislative rule filed in the State Register on July
2 31, 2009, authorized under the authority of section six, article
3 twenty-seven, chapter thirty, of this code, modified by the
4 Board of Barbers and Cosmetologists to meet the objections
5 of the Legislative Rule-Making Review Committee and
6 refiled in the State Register on December 14, 2009, relating
7 to the Board of Barbers and Cosmetologists (qualifications,
8 training, examination and licensure of instructors in barbering
9 and beauty culture, 3 CSR 2), is authorized with the
10 following amendments:

11 On page one, after the caption "SERIES 2", by striking
12 out the word "Licensure" and inserting in lieu thereof the
13 word "Certification";

14 On page one, subsection 1.1, by striking out the word
15 "licensure" and inserting in lieu thereof the word
16 "certification";

On page one, in the "§3-2-2" caption, by striking out the word "Licensure" and inserting in lieu thereof the word "Certification".

On page one, subsection 2.1, by striking out said subsection 2.1 in its entirety and inserting in lieu thereof a new subsection 2.1 to read as follows:

2.1. An individual seeking certification must:;

On page one, subdivision 2.1.3, by striking out the word "offered" and inserting in lieu thereof the word "approved".

On page two, subdivision 2.1.9, by striking out said subdivision 2.1.9 in its entirety and inserting in lieu thereof a new subdivision 2.1.9 to read as follows:

"2.1.9. Submit a letter from a school owner or manager certifying that the applicant has completed 375 hours of instructor training and attesting to the applicant's professional capabilities."

On page two, subdivision 2.1.11, at the beginning of said subdivision, by striking out the word "Must";

On page two, subdivision 2.1.12, at the beginning of said subdivision, by striking out the word "Must";

On page two, subdivision 2.1.13, by striking out the word "license" and inserting in lieu thereof the word "certification";

On page two, subsection 3.1, by striking out the word "licensure" and inserting in lieu thereof the word "certification";

On page two, subdivision 3.1.1, by striking out the word "Licensure" and inserting in lieu thereof the word "Certification";

On page two, subdivision 3.1.6, by striking out said subdivision 3.1.6 in its entirety and inserting in lieu thereof a new subdivision 3.1.6 to read as follows:

"3.1.6. Submit a letter from a school owner or manager certifying that the applicant has completed 375 hours of instructor training and attesting to the applicant's professional capabilities and employment and instructing experience."

On page three, subdivision 3.1.8, at the beginning of said subdivision, by striking out the word "Must";

On page three, subdivision 3.1.9, at the beginning of said subdivision, by striking out the word "Must";

On page three, subdivision 3.1.10, by striking out the word "license" and inserting in lieu thereof the word "certification";

On page three, subsection 3.2, by striking out subsection 3.2 in its entirety and inserting in lieu thereof a new subsection 3.2 to read as follows:

3.2. An instructor certification must be renewed annually or biennially on or before January 1.;

On page three, subsection 3.3, by striking out the word "registered" and inserting in lieu thereof the word "certified";

On page three, subsection 3.3, by striking out the word "license" and inserting in lieu thereof the word "certificate";

On page three, in the "§3-2-4" caption, by striking out the word "Licensure" and inserting in lieu thereof the word "Certification";

On page three, subsection 4.1, by striking out the word "licensure" and inserting in lieu thereof the word "certification";

On page three, subsection 4.1, in the last sentence, by striking out the underlined word "student";

On page four, in the "§3-2-5" caption, by striking out the word "Licensure" and inserting in lieu thereof the word "Certification";

On page four, subsection 5.2, by striking out the last sentence that reads: "This ~~rule~~ section applies to only 1800 hour barber graduates.";

On page five, in the "§3-2-6" caption, by striking out the word "Licensure" and inserting in lieu thereof the word "Certification";

On page five, by striking out subsection 6.1 in its entirety and renumbering the remaining subsections;

On page five, subsection 6.2, by striking out the word "license" and inserting in lieu thereof the words "a certificate";

On page six, by striking out subsection 7.1 in its entirety and inserting in lieu thereof a new subsection 7.1 to read as follows:

7.1. An applicant from another state seeking certification as an instructor or master instructor is eligible for certification by reciprocity if the applicant has acquired

training in another state equal to the requirements established in this rule for the respective certificate requested: Provided, that the state in which said applicant is certified extends the same privilege to certified instructors from this State.;

On page six, in the "§3-2-8" caption, by striking out the word "License" and inserting in lieu thereof the word "Certificate";

On page six, subsection 8.1, by striking out the word "license" and inserting in lieu thereof the word "certificate";

On page six, subsection 8.2, by striking out the word 'whose' and inserting in lieu thereof the words "who is";

On page six, subsection 8.2, by striking out the word "licensed" and inserting in lieu thereof the word "certified";

And,

On page six, subsection 9.1, by striking out the words "contested case".

(b) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 14, 2009, relating to the Board of Barbers and Cosmetologists (licensing schools of barbering and beauty culture, 3 CSR 3), is authorized with the following amendments:

On page one, subdivision 2.1.d, by striking said subdivision 2.1.d in its entirety and inserting in lieu thereof a new subdivision 2.1.d to read as follows:

"The applicant has employed or contracted with at least 2 licensed master instructors, and such additional licensed instructors as necessary to meet the instructor-to-student ratio requirements of 3 CSR 4 (Title 3, Legislative Rule of the Board of Barbers and Cosmetologists, Series 4, Operational Standards for Schools of Barbering and Beauty Culture).";

On page two, subdivision 3.1.5, by striking out subdivision 3.1.5 in its entirety and inserting in lieu thereof a new subdivision 3.1.5 to read as follows:

3.1.5. A copy of a proposed floor plan of the school, which arrangement shall have at least two (2) classrooms for each profession taught and a room for clinical and demonstration work. On page three, subdivision 3.1.13, by striking said subdivision 3.1.13 in its entirety and inserting in lieu thereof a new subdivision 3.1.13 to read as follows:

"A statement by the applicant that the school is handicapped accessible.";

On page four, subsection 3.6, by striking said subsection 3.6 in its entirety and inserting in lieu thereof a new subsection 3.6 to read as follows:

"Applicants who acquire or relocate an existing school must meet the requirements set forth in this section.";

On page four, subsection 4.4, after the words "The Board" by striking the word "shall" and inserting in lieu thereof the word "may", and after the words "general grounds" by inserting the word "suspend,"; and

On page four, subdivision 4.4.3, by striking said subdivision 4.4.3 in its entirety and inserting in lieu thereof a new subdivision 4.4.3 to read as follows:

"A licensee, owner, administrator, manager, director or other key interested party is convicted of a felony or misdemeanor relating to the school or its operation.".

(c) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 14, 2009, relating to the Board of Barbers and Cosmetologists (operation of barber, beauty shops and schools of barbering and beauty culture, 3 CSR 5), is authorized with the following amendments:

On page one, subsection 1.1, by striking out the subsection and inserting in lieu thereof "Scope - This legislative rule governs the sanitary requirements for salons and schools licensed by the Board of Barbers and Cosmetologists.";

On page one, subsection 2.1, after the word "All", by striking out the words "barber, beauty, nail and aesthetic shops/salons or schools of barbering and beauty culture" and inserting in lieu thereof the words "salons or schools";

On page one, subsection 2.2, after the word "All", by striking out the words "shop's or school's" and inserting in lieu thereof the words "salons' and schools'";

On page one, subsection 2.2, after the word "such", by striking out the word "shop" and inserting in lieu thereof the word "salon";

On page one, subsection 2.2, after the word "such", by striking out the word "shops" and inserting in lieu thereof the word "salons";

On page one, subsection 2.3, after the word "Each", by striking out the words "barber, cosmetologist, aesthetician, nail technician/manicurist,";

On page two, subsection 2.6, by striking out the word "in" and inserting in lieu thereof the word "is";

On page two, subsection 2.8, after the word "All", by striking out the words "barber, beauty, nail and aesthetic shops/";

On page two, subsection 2.9, after the word "for", by striking out the words "barber, beauty, nail and aesthetic shops/";

On page two, subsection 2.9, after the word "in", by striking out the words "barber or beauty shops" and inserting in lieu thereof the word "salons";

On page two, subsection 2.9, by striking out the word "Shops" and inserting in lieu thereof the word "salons";

On page three, subsection 2.15, after the word "each", by striking out the word "shop" and inserting in lieu thereof the word "salon";

On page three, subsection 2.15, after the word "the", by striking out the word "shop" and inserting in lieu thereof the word "salon";

On page three, subsection 2.16, after the word "Each", by striking out the words "barber, aesthetician, nail technician/manicurist, or cosmetologist" and inserting in lieu thereof the word "licensee";

On page three, subsection 2.16, after the word "student", by striking out the words "barber, aesthetician, nail technician/manicurist, or cosmetologist";

On page three, subsection 2.16, after the word "such", by striking out the words "barber, aesthetician, nail technician/ manicurist, or cosmetologist" and inserting in lieu thereof the word "licensee";

On page three, subsection 2.17, after the word "Every", by striking out the words "barber, aesthetician, nail technician/manicurist, or cosmetologist" and inserting in lieu thereof the word "licensee";

On page three, subsection 2.19, by striking out the words "marks and where possible" and inserting in lieu thereof the words "and, where possible";

On page three, subsection 2.20, by striking out subsection 2.20 in its entirety and inserting in lieu thereof a new subsection 2.20 to read as follows:

2.20. Any member of the Board, or its inspectors may enter or inspect any barber, beauty, nail and aesthetic shops/salons or school of barbering or beauty culture during business hours to check any part of the premises in order to ascertain whether or not any part of these rules are being violated, and to take any other action necessary to properly enforce the law;

On page four, subsection 2.21, after the word "every", by striking out the words "barber, beauty, nail and aesthetic shops/salons" and inserting in lieu thereof the word "salon";

On page four, subsection 2.24, after the word "All", by striking out the words "barber, beauty, nail and aesthetic shops/salons and beauty shops or" and inserting in lieu thereof the words "salons and";

On page four, subsection 2.24, after the word "the", by striking out the word "shop" and inserting in lieu thereof the words "salon or school";

On page four, subsection 2.25, by striking out the word "have" and inserting in lieu thereof the word "operate";

On page four, subsection 2.25, after the word "the", by striking out the word "shop" and inserting in lieu thereof the word "salon";

On page four, subsection 2.26, after the word "All", by striking out the words "barber, beauty, nail and aesthetic shops/salons and shop" and inserting in lieu thereof the word "salon";

On page four, subsection 2.27, after the word "All", by striking out the words "barber, beauty, nail and aesthetic shops/salons and beauty shops" and inserting in lieu thereof the word "salons";

On page four, subsection 2.27, by striking out the words "water marks or stains,";

On page four, subsection 3.1, after the word "all", by striking out the words "barber, beauty, nail and aesthetic shops/salons, barber or beauty" and inserting in lieu thereof the words "salons and";

On page four, subsection 3.1, after the word "all", by striking out the words "licensed barbers, cosmetologists, aestheticians, nail technicians/manicurists" and inserting in lieu thereof the word "licensees";

And,

On page four, subsection 4.1, after the word "a" by striking out the words "contested case".

(d) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section six, article

twenty-seven, chapter thirty, of this code, relating to the Board of Barbers and Cosmetologists (schedule of fees, 3 CSR 6), is authorized with the following amendments:

On page one, subsection 1.1, after the word "Cosmetologists" by striking out the remainder of the sentence;

And,

On page one, subsection 1.2, by striking out "§30-27-1" and inserting in lieu thereof "§30-27-6".

(e) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 14, 2009, relating to the Board of Barbers and Cosmetologists (schedule of fines, 3 CSR 7), is authorized with the following amendment:

On page one, section 2, after the words "any person licensed" by striking out the words "and/or licensed facility" and inserting in lieu thereof the following words "or holding a salon license";

On page ten, subsection 2.63, by striking out the word "Failure" and inserting in lieu thereof the word "Failing";

On page eleven, subsection 2.64, by striking out the word "Failure" and inserting in lieu thereof the word "Failing";

On page eleven, subsection 2.65, by striking out the words "Failure for a shop or shop owner" and inserting in lieu thereof the word "Failing";

302 On page eleven, subsection 2.66, by striking out the
303 words "Failure for a shop or shop manager" and inserting in
304 lieu thereof the word "Failing";

305 On page eleven, by striking out subsection 2.68 in its
306 entirety and by renumbering the remaining subsections;

307 And,

308 On page twelve, by striking out subsections 2.71 and 2.72
309 in their entirety.

310 (f) The legislative rule filed in the State Register on July
311 31, 2009, authorized under the authority of section six, article
312 twenty-seven, chapter thirty, of this code, modified by the
313 Board of Barbers and Cosmetologists to meet the objections
314 of the Legislative Rule-Making Review Committee and
315 refiled in the State Register on December 14, 2009, relating
316 to the Board of Barbers and Cosmetologists (continuing
317 education, 3 CSR 11), is authorized with the following
318 amendments:

319 On page one, subsection 1.1, by striking out the words
320 "barbering, cosmetology, manicuring/nail technology, and
321 aesthetics" and inserting in lieu thereof the words "beauty
322 culture in West Virginia";

323 On page one, subsection 1.2, by striking out "§30-27-6-
324 9" and inserting in lieu thereof "§30-27-6".

325 On page one, after the section heading "§3-11-2
326 Definitions" by striking out everything after the said section
327 heading and inserting in lieu thereof the following, all to read
328 as follows:

329 "2.1. 'Approved academic course' means a formal course
330 of study offered by an accredited postsecondary educational
331 institution as it relates to the barbering, cosmetology,
332 manicuring/nail technology, and aesthetics.

2.2. 'Approved provider' means a local, state or national agency, organization or association recognized by the Board.

2.3. 'Audit' means the selection of licensees for verification of satisfactory completion of continuing education during a specified time period, or the selection of approved providers for verification of adherence to continuing education approved provider requirements during a specified time period.

2.4. 'Beauty Culture' means the act or practice of aesthetics, barbering, barbering crossover, barber permanent waving, cosmetology, cosmetology crossover and nail care.;

2.5. 'Contact person' means a person submitting a Request for Approval Form.

2.6. 'Continuing education' means planned, organized learning activities engaged in following initial licensure and designed to maintain, improve, or expand beauty knowledge and skills or to develop new knowledge and skills related to beauty culture practice, education, or theory development.

2.7. 'Continuing education activity' means a learning activity that is planned, organized and administered to enhance the professional knowledge and skills underlying the professional performance that the licensee uses to provide services the public. To qualify as continuing education, the activity must provide sufficient depth and scope of a subject area.

2.8. 'Continuing education credit' means credit earned for completing a continuing education activity, expressed in units as provided in section 3.1 of this rule.

2.9. 'Continuing Education Provider License' means a licensed provider of continuing education.

2.10. 'Documentation' means proof of participation in a continuing education activity.

2.11. 'Formal offering' means an extension course, independent study, or other course which is offered, for college credit, by a recognized educational institution.

2.12. 'Informal offering' means a workshop, seminar, institute, conference, lecture, or short term course, which is offered for credit in continuing education units.

2.13. 'Objectives' means an expression in measurable and observable terms of what the participant will learn as a result of the educational activity.

2.14. 'Sponsor' means an organization, including professional societies, academic institutions, individuals, corporations, or governmental agencies, which plans, organizes, supports, endorses, subsidizes and/or administers educational activities, and is responsible for the content, quality and integrity of the educational activity.

§3-11-3. Continuing Education.

3.1. Each applicant for renewal or reinstatement of a license shall verify that he or she has satisfactorily completed four (4) credits of continuing education during the prescribed year reporting period.

3.1.a. Units of measurement for continuing education credits are calculated as follows:

30 to 49 minutes = 0.5 CE credits

50 to 74 minutes = 1 CE credits

75 to 99 minutes = 1.5 CE credits

100 minutes = 2 CE credits

Activities lasting less than 30 minutes are not eligible for credit.

3.1.b. Writing an article which is published in a magazine directly related to the profession will qualify for 4 credits of continuing education within the continuing education reporting period. A copy of the article must be maintained by the licensee for a period of 3 years following the continuing education activity.

3.2. Credits may not be granted for identical continuing education activities submitted during any single year reporting period. Credits may not be accumulated for use in a future single year reporting period.

3.3. Documentation of continuing education credits must be submitted with applications for license renewal.

§3-11-4. Exceptions to Continuing Education Requirements.

4.1. Reciprocity applicants and newly licensed applicants are exempt from the continuing education requirements until the first renewal period after initial West Virginia licensure.

4.2. A licensee who resides outside of West Virginia and who holds a current license to practice in a state other than West Virginia shall satisfy the continuing education requirements for West Virginia in order to renew his or her license in this state.

4.3. The Board may grant a waiver to a licensee who has a physical or mental disability or illness or who is providing direct care to a member of his or her immediate family during all or a portion of the reporting period. A waiver provides for an extension of time or exception from some or all of the

continuing education requirements. Any licensee may request an application for a waiver from the Board. The Board may approve or deny an application for waiver after review of the application. The Board may not grant a waiver of continuing education requirements for more than one (1) year reporting period.

§3-11-5. Failure to Meet Requirements or Exceptions to Requirements.

5.1. The Board may place the licensee on inactive status without penalty and may waive the continuing education requirements, providing that the licensee notifies the Board in writing of his or her desire to have the Board place his or her license on inactive status before the last day of the reporting period.

5.2. The Board may suspend the license of any person who fails to notify the Board, in writing, prior to the last day of the reporting period that he or she wishes to place his or her license on the inactive status.

§3-11-6. Reinstatement of a License on Inactive Status or Issuance of a Probational Temporary License.

6.1. A person wishing to reinstate a license from inactive status or from suspended status shall:

6.1.a. Make application for reinstatement of the license from inactive status or suspended status;

6.1.b. Meet the continuing education requirements as set forth in this rule; and

6.1.c. Pay the fee for reinstatement suspended license as specified in the Board's rule, Schedule of fees for services rendered.

§3-11-7. Audit of Licensee.

7.1.The Board may select any licensee who holds a current license to audit for compliance with continuing education requirements no fewer than 60 days prior to the expiration of the license.

7.2. To comply with the audit request from the Board, a licensee shall submit legible copies of certificates of attendance at continuing education activities.

7.3. The licensee shall submit the required documents within thirty (30) days of the date he or she receives notification of the audit. The Board may grant an extension of time for submission of the documents, on an individual basis in cases of hardship, if the licensee makes a written request for an extension of time and provides justification for such the request.

7.4. Licensees shall keep certificates of attendance at continuing education activities, letters verifying special approval for informal offerings from non-approved providers, transcripts of courses, and documentation of compliance with exceptions for a three (3) year period following the continuing education activities.

7.5. The Board shall complete the audit within 30 days of receipt of required documentation and shall notify the licensee of the satisfactory completion of the audit.

7.6. If a person fails to submit the audit information requested by the Board, the Board may not renew the license Board before the information is received and the audit is completed.

7.7. Licensees shall notify the Board of any changes of mailing address, and are not absolved from the audit requirements.

§3-11-8. Minimum Standards for Approved Provider.

8.1. All providers of continuing education shall complete an application, and pay the required fees, and obtain a Continuing Education Provider License, before offering to provide continuing education.

8.2. The Board shall maintain a current list of approved providers which is available to the public upon request.

8.3. The Board shall notify providers who fail to meet the minimum acceptable provider standards, in writing, of specific deficiencies and offer a reasonable period of time to correct deficiencies.

8.4. The Board may remove an approved provider who fails to meet the approved provider standards from the list of approved providers.

8.5. The providers shall provide a certificate to the licensee indicating the following information:

8.5.a. Name of licensee who attended the continuing education class;

8.5.b. The date attended;

8.5.c. The value of continuing education credits; and

8.5.d. Contact information for the continuing education provider.

8.6. The providers shall provide a list to the State Board in a Microsoft Excel format in paper and disc form within 30 days of the continuing education class. The list shall include:

8.6.a. Names of licensees;

8.6.b. License numbers of licensee;

8.6.c. Location of class;

8.6.d. The date held; and

8.6.e. Title of continuing education class or activity.

8.7. The application for a continuing education provider license shall provide detailed descriptions of the subject areas, sponsors, speakers, instructors, training courses, events, demonstrations or shows for which the applicant seeks approval.

§3-11-9. Continuing Education Subjects/Events.

9.1. Continued education offerings shall consist of one or more of the following subject areas or events:

9.1.a. Product information or training;

9.1.b. Events, speakers, or shows by third party administrators held at beauty schools/conventions;

9.1.c. Tax, business, or computer training or courses;

9.1.d. Styling or application demonstrations;

9.1.e. Sanitation courses;

9.1.f. HIV/AIDS awareness and other communicable disease awareness courses;

9.1.g. Training or courses on West Virginia state laws governing the practices licensed by the board; and

9.1.h. Continuing education activities sponsored by the National Cosmetology Association (NCA), National

Interstate Council of State Boards of Cosmetology (NIC), National Cosmetology Seminar, Aesthetic International Association, National Association of Barbering and Hairstyling, National Association of Barber Boards of American approved courses, seminars, and demonstrations or any other national association approved by the Board.

§3-11-10. Activities Not Acceptable for Continuing Education Credit.

10.1. The following activities are not acceptable for continuing education credit:

10.1.a. Job related practice;

10.1.b. Development and presentation of programs as part of the licensee's on-going job responsibilities;

10.1.c. Orientation to and update of policies and procedures specific to the licensee's employing facility;

10.1.d. Activities which are part of a licensee's usual job responsibility; and/or

10.1.e. In-house training from a regular employee, manager or owner of the facility.".

§64-9-7. Board of Examiners for Speech-Language Pathology and Audiology.

The legislative rule filed in the State Register on the seventeenth day of June, two thousand nine, authorized under the authority of section ten, article thirty-two, chapter thirty, of this code, modified by the Board of Examiners for Speech-Language Pathology and Audiology to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on July 23, 2009, relating to the Board

of Examiners for Speech-Language Pathology and Audiology (licensure of speech-pathology and audiology, 29 CSR 1), is authorized with the following amendment:

On page 6, subsection 12.2, by striking out the second sentence of the subsection "These continuing education hours may only be credited if they are acquired during the 2-year licensure period, unless the licensee falls under 12.1.a." and inserting in lieu thereof a new second sentence "Licensees who exceed the minimum continuing education requirement may carry a maximum of 6 hours forward to the next reporting period only.".

§64-9-8. Real Estate Appraiser Licensing and Certification Board.

(a) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section nine, article thirty-eight, chapter thirty, of this code, modified by the Real Estate Appraiser Licensing and Certification Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 22, 2009, relating to the Real Estate Appraiser Licensing and Certification Board (requirements for licensure and certification, 190 CSR 2), is authorized.

(b)The legislative rule filed in the State Register on March 23, 2009, authorized under the authority of section nine, article thirty-eight, chapter thirty, of this code, relating to the Real Estate Appraiser Licensing and Certification Board (renewal of licensure or certification, 190 CSR 3), is authorized.

§64-9-9. Board of Osteopathy.

(a) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section four,

article fourteen, chapter thirty, of this code, modified by the Board of Osteopathy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 3, 2009, relating to the Board of Osteopathy (licensing procedures for osteopathic physicians, 24 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section nine-a, article fourteen, chapter thirty, of this code, modified by the Board of Osteopathy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 24, 2009, relating to the Board of Osteopathy (formation and approval of professional limited liability companies, 24 CSR 4), is authorized.

(c) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section four, article fourteen, chapter thirty, of this code, modified by the Board of Osteopathy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 23, 2009, relating to the Board of Osteopathy (fees for services rendered by the Board, 24 CSR 5), is authorized.

§64-9-10. Secretary of State.

(a) The legislative rule filed in the State Register on the July 31, 2009, authorized under the authority of two-a, article three, chapter three, of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 19, 2009, relating to the Secretary of State (early voting in person satellite precincts, 153 CSR 13), is authorized with the following amendment:

9 On page 5, section 7.3, after the word, "workers" by
10 inserting a comma and the following words, "of differing
11 political affiliation,".

12 (b) The legislative rule filed in the State Register on July
13 31, 2009, authorized under the authority of three, article
14 three-a, chapter three, of this code, modified by the Secretary
15 of State to meet the objections of the Legislative Rule-
16 Making Review Committee and refiled in the State Register
17 on November 5, 2009, relating to the Secretary of State
18 (Vote-by-mail Pilot Project Phase 1: Class IV Early Voting
19 by Mail, 153 CSR 38), is authorized.

20 (c) The legislative rule filed in the State Register on July
21 31, 2009, authorized under the authority of three, article
22 three-a, chapter three, of this code, modified by the Secretary
23 of State to meet the objections of the Legislative Rule-
24 Making Review Committee and refiled in the State Register
25 on November 5, 2009, relating to the Secretary of State
26 (Vote-by-mail Pilot Project Phase 2: Voting by Mail, 153
27 CSR 39), is authorized with the following amendments:

28 On page 2, by inserting a new subdivision designated,
29 3.1.e. to read as follows:

30 "3.1.e. A municipality shall submit the required
31 information to the Office of the Secretary of State by
32 November 11, 2010.";

33 On page 2, subparagraph 3.1.d.6, by striking the word,
34 "pubic" and inserting the word, "public";

35 On page 3, subdivision 3.2.a, by striking the words, "an
36 ordinance" and inserting the words, "a resolution".

§64-9-11. Board of Occupational Therapy.

(a) The legislative rule filed in the State Register on July 7, 2009, authorized under the authority of section seven, article twenty-eight, chapter thirty, of this code, modified by the Board of Occupational Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 24, 2009, relating to the Board of Occupational Therapy (administrative rules of the Board of Occupational Therapy and licensure of occupational therapists and occupational therapy assistants, 13 CSR 1), is authorized with the following amendments:

On page five, subsection 9.1., after the colon, by inserting a new subdivision to read as follows:

9.1.a. Is of good moral character;

And, by renumbering the remaining subdivisions;

On page twelve, after the words, 'are dependent upon the', by inserting a colon;

On page twelve, by striking subdivisions 12.5.b and 12.5.c their entirety and inserting in lieu thereof new subdivisions 12.5.b and 12.5.c to read as follows:

12.5.b. A licensed supervising occupational therapist or occupational therapy assistant must maintain direct continuous supervision over aides;

12.5.c. A licensed supervising occupational therapist must maintain direct continuous supervision over occupational therapy students. As the occupational therapy student demonstrates competency in performance, supervision can progress to direct close supervision at the discretion of the supervising occupational therapist;

And,

On page twelve, by inserting two new subdivisions designated 12.5.d and 12.5.e to read as follows:

12.5.d. A licensed supervising occupational therapist or occupational therapy assistant must maintain direct continuous supervision over occupational therapy assistant students. As the occupational therapy assistant student demonstrates competency in performance, supervision can progress to direct close supervision at the discretion of the supervising occupational therapist / occupational therapy assistant;

12.5.e. Direct supervision is demonstrated through co-signatures on all paperwork or electronic notes pertaining to the practice of occupational therapy for the person requiring direct supervision. All paperwork or electronic notes pertaining to the practice of occupational therapy must be signed and dated, electronically or otherwise, by the supervising licensed occupational therapist.

(b) The legislative rule filed in the State Register on July 7, 2009, authorized under the authority of section seven, article twenty-eight, chapter thirty, of this code, modified by the Board of Occupational Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 24, 2009, relating to the Board of Occupational Therapy (fees for services rendered by the Board, 13 CSR 3), is authorized with the following amendment:

On page one, subsection 1.2., by striking out "§30-28-6" and inserting "§30-28-7".

(c) The legislative rule filed in the State Register on July 7, 2009, authorized under the authority of section seven, article twenty-eight, chapter thirty, of this code, modified by the Board of Occupational Therapy to meet the objections of

the Legislative Rule-Making Review Committee and refiled in the State Register on November 24, 2009, relating to the Board of Occupational Therapy (continuing education and competence, 13 CSR 4), is authorized with the following amendment:

On page one, subsection 1.2., by striking out "§30-28-6" and inserting in lieu thereof "§30-28-7".

(d) The legislative rule filed in the State Register on July 7, 2009, authorized under the authority of section seven, article twenty-eight, chapter thirty, of this code, modified by the Board of Occupational Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 24, 2009, relating to the Board of Occupational Therapy (competency standards for advance practice by occupational therapists and occupational therapy assistants, 13 CSR 5), is authorized with the following amendments:

On page one, subsection 1.2, by striking out "§30-28-6" and inserting in lieu thereof "§30-28-7";

On page two, by striking subdivisions 4.5.a, 4.5.b, 4.5.c, and 4.5.d in their entirety and inserting in lieu thereof new subdivisions 4.5.a, 4.5.b, and 4.5.c to read as follows:

4.5.a. Accredited educational programs;

4.5.b. Specific certification as endorsed by the American Occupational Therapy Association or its successor, or as approved by the WVBOT;

4.5.c. Successful completion of an appropriate continuing education course which includes theory, indications, contra-indications and applications;

And,

On page two, by inserting a new subdivision 4.6.a to read as follows:

4.6.a. The Board shall conduct random audits of occupational therapy assistants to substantiate competency in physical agent modalities.

(e) The legislative rule filed in the State Register on July 7, 2009, authorized under the authority of section seven, article twenty-eight, chapter thirty, of this code, modified by the Board of Occupational Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 24, 2009, relating to the Board of Occupational Therapy (ethical standards of practice, 13 CSR 6), is authorized with the following amendment:

On page one, subsection 1.2., by striking out "§30-28-6" and inserting in lieu thereof "§30-28-7".

§64-9-12. Board of Psychologists.

The legislative rule filed in the State Register on July 27, 2009, authorized under the authority of section six, article twenty-one, chapter thirty, of this code, modified by the Board of Psychologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 14, 2010, relating to the Board of Psychologists (qualifications for licensure as a psychologist or a school psychologist, 17 CSR 3), is authorized with the following amendment:

On page 3, section 5.1, after the words "*W.Va. Code* §30-21-2.", by adding the following:

"For the purposes of this rule, the supervised professionally oriented teaching, supervising and research

14 activities of applicants who are full-time, university clinical
15 faculty members may apply towards the required hours of
16 supervised work experience."

§64-9-13. Governor's Office of Health Enhancement and Lifestyle Planning.

1 The legislative rule filed in the State Register on October
2 30,2009, authorized under the authority of section eight,
3 article twenty-nine-H, chapter sixteen, of this code, relating
4 to the Governor's Office of Health Enhancement and
5 Lifestyle Planning (prescription drug advertising expense
6 reporting, 210 CSR 1), is authorized.

CHAPTER 123

(Com. Sub. for H. B. 4110 - By Delegates Brown, D. Poling, Miley, Talbott, Overington and Sobonya)

[Passed March 11, 2010; in effect from passage.]
[Approved by the Governor on March 22, 2010.]

AN ACT to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Commerce; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by

the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Natural Resources to promulgate legislative rules relating to commercial whitewater outfitters (58 CSR 12), deer hunting (58 CSR 50) and special fishing (58 CSR 61); authorizing the Board of Trustees of the Outdoor Heritage Conservation Fund to promulgate a legislative rule relating to the Outdoor Heritage Conservation Fund (205 CSR 1); authorizing the Division of Tourism to promulgate a legislative rule relating to direct advertising grants program (144 CSR 1); authorizing the Hatfield-McCoy Regional Recreation Authority to promulgate a legislative rule relating to use of facilities (204 CSR 1); and authorizing the Division of Energy to promulgate a legislative rule relating to community development assessment and real property valuation procedures for the Office of Coalfield Community Development (207 CSR 1).

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Division of Natural Resources.
§64-10-2. Board of Trustees of the Outdoor Heritage Conservation Fund.
§64-10-3. Division of Tourism.
§64-10-4. Hatfield-McCoy Regional Recreation Authority.
§64-10-5. Division of Energy.

§64-10-1. Division of Natural Resources.

(a) The legislative rule filed in the State Register on July 8, 2009, authorized under the authority of section twenty-three-a, article two, chapter twenty, of this code, relating to the Division of Natural Resources (commercial whitewater outfitters, 58 CSR 12), is authorized.

(b) The legislative rule filed in the State Register on July 10, 2009, authorized under the authority of section seven, article one, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 14, 2009, relating to the Division of Natural Resources (deer hunting, 58 CSR 50), is authorized.

(c) The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section seven, article one, chapter twenty, of this code, relating to the Division of Natural Resources (special fishing, 58 CSR 61), is authorized.

§64-10-2. Board of Trustees of the Outdoor Heritage Conservation Fund.

The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section six, article two-g, chapter five-b, of this code, modified by the Board of Trustees of the Outdoor Heritage Conservation Fund to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 21, 2009, relating to the Board of Trustees of the Outdoor Heritage Conservation Fund (Outdoor Heritage Conservation Fund, 205 CSR 1), is authorized.

§64-10-3. Division of Tourism.

The legislative rule filed in the State Register on July 30, 2009, authorized under the authority of section nine, article two, chapter five-b, of this code, relating to the Division of Tourism (direct advertising grants program, 144 CSR 1), is authorized, with the following amendments:

On page two, following subdivision 2.13.5., by inserting the following: "2.13.6. Destination Camping.";

On page four, subdivision 3.8.2., line three, following the word "organizations", by deleting the words "may have";

On page four, subdivision 3.8.3., line one, following the word "If" by striking the word "they", and inserting in lieu thereof the following "the applicant and all of the partners";

On page four, subdivision 3.8.4., line one, following the word "If", by striking the word "they are", and inserting in lieu thereof the words "the applicant or any partner is";

On page four, subdivision 3.8.4., line two, following the word "their", by inserting the word "respective";

On page four, subdivision 3.8.4., line three, by striking the word "organization" and inserting in lieu thereof the word "organizations";

On page nine, subdivision 9.1.4., line four, following the word "reimbursement", by inserting the word "of";

And,

On page ten, subdivision 9.1.9., line four, by striking "12.4.14" and inserting in lieu thereof "§12-4-14".

§64-10-4. Hatfield-McCoy Regional Recreation Authority.

The legislative rule filed in the State Register on July 29, 2009, authorized under the authority of section five, article fourteen, chapter twenty, of this code, relating to the Hatfield-McCoy Regional Recreation Authority (rules for use of facilities, 204 CSR 1), is authorized with the following amendment:

On page six, subsection 4.4., by striking the last sentence of the subsection in its entirety.

§64-10-5. Division of Energy.

The legislative rule filed in the State Register on July 31, 2009, authorized under the authority of section twelve, article two-a, chapter five-b, of this code, modified by the Division of Energy to meet the objections of the legislative rule-making review committee and refiled in the State Register on December 15, 2009, relating to the Division of Energy (community development assessment and real property valuation procedures for the Office of Coalfield Community Development, 207 CSR 1), is authorized, with the following amendments:

On page five, subdivision 5.4.d, line five, following the word "chief", by inserting a comma and the words "appointed by the director pursuant to *W. Va. Code* §5B-2A-4,";

On page five, subdivision 5.6.a, line one preceding the words "An evaluation" by inserting the words "The office shall include";

On page five, subdivision 5.6.b, line one preceding the words "The identification" by inserting the words "The office shall include";

On page five, paragraph 5.6.c.1, line four, by striking the words "coalfield community development statement" and inserting in lieu thereof the words "the applicable county's master land use plan";

On page six, section 5.7, line three, following the word "existing" by striking the words "community development statements" and inserting in lieu thereof the words "master land use plan";

On page six, section 5.7, line seven, following the word "modification", by inserting "of the land use master plan";

On page six, section 5.7, line fourteen, following the word "existing", by striking the words "community impact statement" and inserting in lieu thereof the words "land use master plan";

On page six, section 5.7, line seventeen, following the word "existing" by striking the words "community development statement" and inserting in lieu thereof "master land use plan";

On page six, section 5.8, line two, following the word "update" by striking the words "of this action report";

And,

On page seven, subdivision 6.5.g, line three, following the word "statement", by inserting the words "on file with the Office".

CHAPTER 124

(S. B. 477 - By Senators Tomblin, (Mr. President), Palumbo, Stollings and Plymale)

[Passed March 1, 2010; in effect from passage.]
[Approved by the Governor on March 8, 2010.]

AN ACT to amend and reenact §4-1-23 of the Code of West Virginia, 1931, as amended, relating to reports to be filed with the Legislature; requiring copies of the reports to be submitted to the Legislative Librarian; requiring the copies to be submitted as required by the Legislative Manager or in electronic form via the Internet; and providing that failure to comply is nonfeasance.

Be it enacted by the Legislature of West Virginia:

That §4-1-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.

§4-1-23. Reports to be sent to the Legislative Librarian.

1 (a) Any state officer, person, office, agency, commission
2 or board required by any section of this code to provide a
3 report to the Legislature or any committee, commission or
4 person employed or elected to the Legislature, shall submit
5 an additional copy of the report to the Legislative Librarian
6 transmitted electronically via the Internet or as otherwise
7 required by the Legislative Manager.

8 (b) Failure to comply with this section is nonfeasance of
9 office.

CHAPTER 125

(Com. Sub. for S. B. 70 - By Senators McCabe, Foster, Unger, Palumbo and Chafin)

[Passed March 13, 2010; in effect July 1, 2010.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §11-8-6e of the Code of West Virginia, 1931, as amended, relating to the clarification in the code that a municipality or county issuing bonds approved by an election pursuant to article one, chapter thirteen of said code is not subject to the restriction described in subsection (c), section six-e, article eight, chapter eleven of said code.

Be it enacted by the Legislature of West Virginia:

That §11-8-6e of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 8. LEVIES.

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

(a) Notwithstanding any other provision of law, where any annual appraisal, triennial appraisal or general valuation of property would produce an assessment that would cause an increase of one percent or more in the total projected property tax revenues that would be realized were the then current regular levy rates by the county commission and the municipalities to be imposed, the rate of levy shall be reduced proportionately as between the county commission and the municipalities and for all classes of property for the forthcoming tax year so as to cause such rate of levy to produce no more than one hundred one percent of the previous year's projected property tax revenues from extending the county commission and municipality levy rates, unless there has been compliance with subsection (c) of this section.

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

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

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

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

(3) Total the current year's property tax revenue resulting from regular levies for each county commission and municipality and multiply the resulting sum by one hundred one percent: *Provided,* That the one hundred one percent figure shall be increased by the amount the county's or municipality's increased levy provided for in subsection (b), section eight, article one-c of this chapter;

(4) Divide the total regular levy tax revenues, thus increased in subdivision (3) of this subsection, by the total weighted net assessed value as calculated in subdivision (2) of this subsection and multiply the resulting product by one hundred; the resulting number is the Class I regular levy rate, stated as cents-per-one hundred dollars of assessed value;

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

(c) The governing body of a county or municipality may, after conducting a public hearing, which may be held at the same time and place as the annual budget hearing, increase the rate above the reduced rate required in this section if any such increase is deemed to be necessary by such governing body: *Provided,* That in no event shall the governing body of a county or municipality increase the rate above the reduced rate required by subsection (b) of this section for any single year in a manner which would cause total property tax revenues accruing to the governing body of the county or municipality, excepting additional revenue attributable to assessed valuations of newly created properties not assessed in the previous year's tax book for each class of property, to exceed by more than ten percent those property tax revenues

received by the governing body of the county or municipality for the next preceding year: *Provided, however,* That this provision shall not restrict the ability of a county or municipality to enact excess levies as authorized under existing statutory or constitutional provisions: *Provided further,* That this provision does not restrict the ability of a county or municipality to issue bonds and enact sufficient levies to pay for such bonds pursuant to article one, chapter thirteen of this code when such issuance has been approved by an election administered pursuant to that article.

Notice of the public hearing and the meeting in which the levy rate shall be on the agenda shall be given at least seven days before the date for each public hearing by the publication of a notice in at least one newspaper of general circulation in such county or municipality: *Provided,* That a Class IV town or village as defined in section two, article one, chapter eight of this code, in lieu of the publication notice required by this subsection, may post no less than four notices of each public hearing, which posted notices shall contain the information required by the publication notice and which shall be in available, visible locations including the town hall. The notice shall be at least the size of one-eighth page of a standard size newspaper or one-fourth page of a tabloid-size newspaper and the headline in the advertisement shall be in a type no smaller than twenty-four point. The publication notice shall be placed outside that portion, if any, of the newspaper reserved for legal notices and classified advertisements and shall also be published as a Class II-O legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county. The notice shall be in the following form and contain the following information, in addition to such other information as the local governing body may elect to include:

NOTICE OF PROPOSED TAX INCREASE.

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

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

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

3. Effective Rate Increase: The (name of the county or municipality) proposes to adopt a tax rate of $..... per $100 of assessed value for Class I property, $..... per $100 of assessed value for Class II property, $..... per $100 of assessed value for Class III property and $..... per $100 of assessed value for Class IV property. The difference between the lowered tax rates and the proposed rates would be $..... per $100, or ..... percent for Class I; $..... per $100, or ..... percent for Class II; $..... per $100, or ..... percent for Class III and $..... per $100, or ..... percent for Class IV. These differences will be known as the "effective tax rate increases".

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

4. Revenue produced last year: $.....

5. Revenue projected under the effective rate increases: $.....

6. Revenue projected from new property or improvements: $.....

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

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

(e) This section shall be effective as to any regular levy rate imposed by the county commission or a municipality for taxes due and payable on or after July 1, 1991. If any provision of this section is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provision or its application and to this end the provisions of this section are declared to be severable.

CHAPTER 126

(S. B. 547 - By Senators Tomblin, (Mr. President) and Stollings)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §11-8-12 and §11-8-12a of the Code of West Virginia, 1931, as amended, all relating to the dates of certain meetings of county boards of education related to levies.

Be it enacted by the Legislature of West Virginia:

That §11-8-12 and §11-8-12a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8. LEVIES.

§11-8-12. Levy estimate by board of education; certification and publication.
§11-8-12a. Adjourned session of board of education to hear objections to proposed levies; approval of estimate and levy by Tax Commissioner; first levy for bonded and other indebtedness and indebtedness not bonded, second for Permanent Improvement Fund, then for current expenses.

§11-8-12. Levy estimate by board of education; certification and publication.

Each board of education shall, at the session provided for in section nine of this article, if the laying of a levy has been authorized by the voters of the district under article nine, chapter eighteen of the code, ascertain the condition of the fiscal affairs of the district, and make a statement setting forth:

(1) The amount due, and the amount that will become due and collectible during the current fiscal year except from the levy of taxes to be made for the year;

(2) The interest, sinking fund and amortization requirements for the fiscal year of bonded indebtedness legally incurred upon a vote of the people, as provided by law, by any school district existing prior to May 22, 1933, before the adoption of the Tax Limitation Amendment;

(3) Other contractual indebtedness not bonded, legally incurred by any such school district existing prior to May 22, 1933, before the adoption of the Tax Limitation Amendment, owing by such district;

(4) The amount to be levied for the permanent improvement fund;

(5) The total of all other expenditures to be paid out of the receipts for the current fiscal year, with proper allowance for delinquent taxes, exonerations and contingencies;

(6) The amount of such total to be raised by the levy of taxes for the current fiscal year;

(7) The proposed rate of levy in cents on each $100 assessed valuation of each class of property;

(8) The separate and aggregate amounts of the assessed valuation of real, personal and public utility property within each class.

The secretary of the board shall forward immediately a certified copy of the statement to the Auditor and shall publish the statement immediately. The session shall then stand adjourned until the third Tuesday in April, at which time it shall reconvene except where otherwise permitted by section nine of this article: *Provided*, That no provision of this section or section nine of this article may be construed to abrogate any requirement imposed on the board of education by article nine-b, chapter eighteen of this code.

§11-8-12a. Adjourned session of board of education to hear objections to proposed levies; approval of estimate and levy by Tax Commissioner; first levy for bonded and other indebtedness and indebtedness not bonded, second for Permanent Improvement Fund, then for current expenses.

Each board of education, when it reconvenes as provided by section twelve of this article, shall proceed in a manner

similar in all respects to that provided for in section ten-a of this article. The board may not finally enter any levy until it has been approved in writing by the Auditor. After receiving the approval, the board shall enter the statement as approved in its record of proceedings, together with the written approval.

The board shall levy as many cents per $100 assessed valuation on each class of property in the county or in the area of a preexisting school district, as the case may be, as will produce the amounts, according to the last assessment, shown to be necessary by the statement in the following order:

First, for the bonded debt and for the contractual debt not bonded, if any, of any school district of the county existing before May 22, 1933, and incurred before the adoption of the Tax Limitation Amendment;

Second, for the Permanent Improvement Fund;

Third, for general current expenses.

The rates of levy for each purpose may not exceed the amounts fixed by section six-c unless another rate is authorized by the Tax Commissioner or set by the Legislature in accordance with this article. When less than the maximum levies are imposed, the levies on each class of property shall be in the same proportions as the maximums authorized.

CHAPTER 127

(Com. Sub. for S. B. 696 - By Senators Kessler, Browning, Chafin, Jenkins, Palumbo, Snyder, Stollings, Williams, Yost and Hall)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §47B-10-1 and §47B-10-4 of the Code of West Virginia, 1931, as amended, all relating generally to limited liability partnerships; updating registration requirements; establishing procedures for and consequences of administrative dissolution and reinstatement; and setting notice requirements and appellate options with regard to administrative decisions on dissolution and reinstatement.

Be it enacted by the Legislature of West Virginia:

That §47B-10-1 and §47B-10-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. LIMITED LIABILITY PARTNERSHIP.

§47B-10-1. Registered limited liability partnerships.
§47B-10-4. Applicability of article to foreign and interstate commerce.

§47B-10-1. Registered limited liability partnerships.

1 (a) To become a registered limited liability partnership,
2 a partnership shall deliver and file with the Secretary of State
3 a statement of registration stating:

4 (1) The name of the partnership;

5 (2) The address of its principal office;

6 (3) The address of a registered office;

7 (4) The name and address of a registered agent for
8 service of process, if any;

9 (5) An e-mail address to where informational notices and
10 reminders of annual filings may be sent, unless there is a
11 technical inability to comply;

12 (6) A brief statement of the business in which the
13 partnership engages;

14 (7) The name and address of each partner authorized to
15 execute instruments on behalf of the partnership;

16 (8) Any other matters that the partnership determines to
17 include; and

18 (9) That the partnership thereby registers as a registered
19 limited liability partnership.

20 (b) The registration shall be executed by one or more
21 partners authorized to execute a registration.

22 (c) The registration shall be accompanied by a fee of
23 $250.

24 (d) The Secretary of State shall register as a registered
25 limited liability partnership any partnership that submits a
26 completed registration with the required fee and deliver to the
27 partnership or its representative a receipt for the record and
28 the fees.

(e) A partnership registered under this section shall pay, in each year following the year in which its registration is filed, an annual fee of $500. The fee shall be accompanied by a notice, on a form provided by the Secretary of State, of any material changes in the information contained in the partnership's registration. The annual notice and fee is due between January 1 and July 1 of each year.

(f) Registration is effective:

(1) Immediately after the date a registration is filed; or

(2) On a date specified in the statement of registration, which date shall not be more than sixty days after the date of filing.

(g) Registration remains effective until:

(1) It is voluntarily withdrawn by filing with the Secretary of State a statement of withdrawal; or

(2) It is administratively dissolved by the Secretary of State: *Provided*, That the Secretary of State commenced a proceeding to dissolve the limited liability partnership and notification of the administrative proceeding to dissolve the limited liability partnership was delivered to the limited liability partnership. The Secretary of State may commence the administrative proceeding due to:

(A) A limited liability partnership's failure to pay fees imposed by this chapter or any other law within sixty days after the fees were due; or

(B) A limited liability partnership's failure to deliver its annual notice to the Secretary of State within sixty days after the notice was due.

(h) The procedure for administrative dissolution is as follows:

(1) If the Secretary of State determines that one or more grounds exist under this section for dissolving a limited liability partnership, he or she shall notify the limited liability partnership in writing, of his or her determination.

(2) If the limited liability partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after service of the Secretary of State's notice, the Secretary of State shall administratively dissolve the limited liability partnership by issuing a certificate of administrative dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall send a copy of the administrative dissolution to the limited liability partnership.

(i) A limited liability partnership administratively dissolved continues its existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs and notify claimants of such.

(j) The administrative dissolution of a limited liability partnership does not terminate the authority of its registered agent.

(k) A limited liability partnership administratively dissolved under this section may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must:

(1) Recite the name of the limited liability partnership and the effective date of its administrative dissolution;

87 (2) State that the ground or grounds for dissolution either
88 did not exist or have been eliminated;

89 (3) Contain a certificate from the tax commissioner
90 reciting that all taxes owed by the limited liability partnership
91 have been paid.

92 (l) If the Secretary of State determines that the
93 application contains the information required by subsection
94 (k) of this section and that the information is correct, he or
95 she shall cancel the certificate of dissolution and prepare a
96 certificate of reinstatement that recites his or her
97 determination and the effective date of reinstatement, file the
98 original of the certificate and send a copy to the limited
99 liability partnership.

100 (m) When the reinstatement is effective, it relates back to
101 and takes effect as of the effective date of the administrative
102 dissolution and the limited liability partnership resumes
103 carrying on its business as if the administrative dissolution
104 had never occurred.

105 (n) If the Secretary of State denies a limited liability
106 partnership's application for reinstatement following
107 administrative dissolution, he or she shall notify the limited
108 liability partnership in writing to explain the reason or
109 reasons for denial.

110 (o) The limited liability partnership may appeal the denial
111 of reinstatement to the circuit court of the county where the
112 limited liability partnership is located within thirty days after
113 service of the Secretary of State's notice. The appeal to the
114 circuit court to set aside the dissolution shall include copies
115 of the Secretary of State's certificate of dissolution, the
116 limited liability's application for reinstatement and the
117 Secretary of State's notice of denial.

(p) The circuit court may summarily order the Secretary of State to reinstate the dissolved limited liability partnership or may take other action the circuit court considers appropriate.

(q) The circuit court's final decision may be appealed as in other civil proceedings.

(r) The status of a partnership as a registered limited liability partnership and the liability of the partners thereof shall not be affected by:

(1) Errors in the information contained in a statement of registration under subsection (a) of this section or notice under subsection (e) of this section; or

(2) Changes after the filing of the statement of registration or notice in the information stated in the registration or notice.

(s) The Secretary of State may provide forms for the statement of registration under subsection (a) of this section or a notice under subsection (e) of this section.

(t) All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state General Revenue Fund and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

§47B-10-4. Applicability of article to foreign and interstate commerce.

(a) A registered limited liability partnership formed under this article may conduct its business, carry on its operations and have and exercise the powers granted by this chapter in any state, territory, district or possession of the United States or in any foreign country.

(b) It is the intent of the Legislature that the legal existence of registered limited liability partnerships formed under this article be recognized outside the boundaries of this state and that the laws of this state governing such registered limited liability partnerships doing business outside this state be granted the protection of full faith and credit under the Constitution of the United States.

(c) Notwithstanding section six, article one of this chapter, the internal affairs of registered limited liability partnerships formed under this article, including the liability of partners for debts, obligations and liabilities of or chargeable to the partnership, shall be subject to and governed by the laws of this state.

(d) Before transacting business in this state, a foreign registered limited liability partnership shall:

(1) Comply with any statutory or administrative registration or filing requirements governing the specific type of business in which the partnership is engaged; and

(2) File a notice with the Secretary of State, stating the name of the partnership or if its name is unavailable for use in this state, a limited partnership name that satisfies the requirements of section four-e of this article, including a copy of the resolution of its partners adopting the fictitious name; the address of its principal office; the address of a registered office and the name and address of a registered agent for service of process, if any; an e-mail address to where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply;

34 a brief statement of the business in which the partnership
35 engages; the name and address of each partner authorized to
36 execute instruments on behalf of the partnership and any
37 other matters that the partnership determines to include; and
38 a brief statement of the business in which the partnership
39 engages. Such notice shall be effective for two years from
40 the date of filing, after which time the partnership shall file
41 a new notice.

42 (e) The name of a foreign registered limited liability
43 partnership doing business in this state shall contain the
44 words "Registered Limited Liability Partnership" or the
45 abbreviation "L.L.P." or "LLP" as the last words or letters of
46 its name.

47 (f) Notwithstanding section six, article one of this
48 chapter, the internal affairs of foreign registered limited
49 liability partnerships, including the liability of partners for
50 debts, obligations and liabilities of or chargeable to the
51 partnership, shall be subject to and governed by the laws of
52 the jurisdiction in which the foreign registered limited
53 liability partnership is registered.

CHAPTER 128

(S. B. 627 - By Senators Stollings, Browning and Unger)

[Passed March 13, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend and reenact §22-15A-3 and §22-15A-4 of the Code of West Virginia, 1931, as amended, all relating to the crime of littering; increasing criminal and civil penalties; and

directing the Secretary of the Department of Environmental Protection to organize a statewide litter reporting program.

Be it enacted by the Legislature of West Virginia:

That §22-15A-3 and §22-15A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-3. West Virginia litter control and recycling programs; transfer of programs and employees; additional duties of secretary; grants to counties and municipalities; and rules relating thereto.
§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

§22-15A-3. West Virginia litter control and recycling programs; transfer of programs and employees; additional duties of secretary; grants to counties and municipalities; and rules relating thereto.

(a) After July 1, 2005, the litter control and recycling programs heretofore operated and managed by the Division of Natural Resources shall transfer to the Department of Environmental Protection.

With the transfer of the West Virginia Litter Control and Recycling Programs from the jurisdiction of the Division of Natural Resources to the jurisdiction of the Department of Environmental Protection, all records, assets and contracts, along with rights and obligations thereunder, obtained or signed on behalf of the Litter Control and Recycling Programs are hereby transferred and assigned to the Department of Environmental Protection.

(b) The Commissioner of the Division of Natural Resources and the Secretary of the Department of Environmental Protection shall determine which employees of the Division of Natural Resources will be transferred to the Department of Environmental Protection. All employees including administrators of the litter control and recycling programs are subject to being transferred to the Department of Environmental Protection. Employees in the classified service who have gained permanent status as of the effective date of this article, enacted during the 2005 regular session of the Legislature, will not be subject to further qualifying examination in their respective classifications by reason of the transfer required by the provisions of this section. Nothing contained in this section may be construed to either abridge the rights of employees within the classified service of the state to the procedures and protections set forth in article six, chapter twenty-nine of this code or to preclude the reclassification or reallocation of positions in accordance with procedures set forth in said article. The Division of Personnel shall work with the commission and secretary to efficiently transfer employees from the Division of Natural Resources to the Department of Environmental Protection.

(c) In addition to all other powers, duties and responsibilities granted and assigned to the Secretary of the Department of Environmental Protection in this chapter and elsewhere by law, the secretary, in the administration of the West Virginia Litter Control Program created by this section, shall:

(1) Coordinate all industry and business organizations seeking to aid in the litter control and recycling effort;

(2) Cooperate with all local governments to accomplish coordination of local litter control and recycling efforts;

(3) Encourage, organize, coordinate and increase public awareness of and participation in all voluntary litter control

and recycling campaigns, including citizen litter watch programs, seeking to focus the attention of the public on the litter control and recycling programs of the state and local governments and of private recycling centers;

(4) Recommend to local governing bodies that they adopt ordinances similar to the provisions of section four of this article;

(5) Investigate the methods and success of techniques of litter control, removal and disposal utilized in other states, and develop, encourage, organize and coordinate local litter control programs funded by grants awarded pursuant to subsection (d) of this section utilizing such successful techniques;

(6) Investigate the availability of, and apply for, funds available from any and all private or public sources to be used in the litter control program created by this section;

(7) Attract to the state persons or industries that purchase, process or use recyclable materials;

(8) Contract for the development, production and broadcast of radio and television messages promoting the West Virginia Litter Control Program. The messages should increase public awareness of and promote citizen responsibility toward the reduction of litter; and

(9) Encourage, organize, coordinate and increase public awareness of, and participation in, a volunteer litter reporting program state-wide.

(d) All authority to promulgate rules pursuant to article three, chapter twenty-nine-a of this code establishing criteria for awarding direct or matching grants for the study of available research and development in the fields of litter control, removal and disposal, methods for the

implementation of such research and development, and the development of public educational programs concerning litter control is hereby transferred from the Division of Natural Resources to the Secretary of the Department of Environmental Protection as of the effective date of enactment of this section and article during the 2005 session of the Legislature: *Provided,* That any rule promulgated by the Division of Natural Resources relating to such grants shall remain in force and effect as though promulgated by the Department of Environmental Protection until the Secretary amends the rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(e) All authority to promulgate rules pursuant to article three, chapter twenty-nine-a of this code designating public areas where litter receptacles shall be placed and the minimum number of litter receptacles in accordance with subsection (g), section four of this article is hereby transferred from the Division of Natural Resources to the Secretary of the Department of Environmental Protection as of the effective date of enactment of this section and article during the 2005 session of the Legislature. Any rule promulgated by the Division of Natural Resources relating to littering receptacles shall remain in effect as if promulgated by the Secretary until amended by the Secretary.

(f) Commencing on July 1, 2005, the Secretary shall expend annually at least fifty percent of the moneys credited to the Litter Control Fund in the previous fiscal year for matching grants to counties and municipalities for the initiation and administration of litter control programs. The secretary shall promulgate rules pursuant to article three, chapter twenty-nine-a of this code establishing criteria for the awarding of matching grants.

(g) The Secretary of the Department of Environmental Protection in cooperation with the Commissioner of Highways, the Department of Commerce, the West Virginia

State Police, the United States Forestry Service and other local, state and federal law-enforcement agencies shall be responsible for the administration and enforcement of all laws and rules relating to the maintenance of cleanliness and improvement of appearances on and along highways, roads, streets, alleys and any other private or public areas of the state. These other agencies shall make recommendations to the Secretary, from time to time, concerning means and methods of accomplishing litter control consistent with the provisions of this chapter. Such cooperation shall include, but not be limited to, contracts with the Commissioner of Highways to operate a litter control program.

(h) All other state agencies and local governments shall cooperate with the Secretary in effecting the purposes of the litter control program.

§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

(a) (1) No person shall place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter as defined in section two of this article, in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the state or within one hundred feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(2) It is unlawful for any person to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown any litter from a motor vehicle or other conveyance or to perform any act which constitutes a violation of the motor vehicle laws contained in section fourteen, article fourteen, chapter seventeen-c of this code.

(3) If any litter is placed, deposited, dumped, discharged, thrown or caused to be placed, deposited, dumped or thrown from a motor vehicle, boat, airplane or other conveyance, it is prima facie evidence that the owner or the operator of the motor vehicle, boat, airplane or other conveyance intended to violate the provisions of this section.

(4) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount not exceeding one hundred pounds in weight or twenty-seven cubic feet in size, is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than $100 nor more than $1,000, or in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than eight nor more than sixteen hours, or both.

(5) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any litter, not collected for commercial purposes, in an amount greater than one hundred pounds in weight or twenty-seven cubic feet in size, but less than five hundred pounds in weight or two hundred sixteen cubic feet in size is guilty of a misdemeanor. Upon conviction he or she is subject to a fine of not less than $1,000 nor more than $2,000, or in the discretion of the court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley or any other public park or public property, or waters of the state, as designated by the court, for not less than sixteen nor more than thirty-two hours, or both.

(6) Any person who violates the provisions of this section by placing, depositing, dumping or throwing or causing to be

placed, deposited, dumped or thrown any litter in an amount greater than five hundred pounds in weight or two hundred sixteen cubic feet in size or any amount which had been collected for commercial purposes is guilty of a misdemeanor. Upon conviction, the person is subject to a fine not less than $2,500 or not more than $25,000 or confinement in jail for not more than one year or both. In addition, the violator may be guilty of creating or contributing to an open dump as defined in section two, article fifteen, chapter twenty-two of this code and subject to the enforcement provisions of section fifteen of said article.

(7) Any person convicted of a second or subsequent violation of this section is subject to double the authorized range of fines and community service for the subsection violated.

(8) The sentence of litter clean up shall be verified by environmental inspectors from the Department of Environmental Protection. Any defendant receiving the sentence of litter clean up shall provide, within a time to be set by the court, written acknowledgment from an environmental inspector that the sentence has been completed and the litter has been disposed of lawfully.

(9) Any person who has been found by the court to have willfully failed to comply with the terms of a litter clean up sentence imposed by the court pursuant to this section is subject to, at the discretion of the court, double the amount of the original fines and community service penalties originally ordered by the court.

(10) All law-enforcement agencies, officers and environmental inspectors shall enforce compliance with this section within the limits of each agency's statutory authority.

(11) No portion of this section restricts an owner, renter or lessee in the lawful use of his or her own private property

or rented or leased property or to prohibit the disposal of any industrial and other wastes into waters of this state in a manner consistent with the provisions of article eleven, chapter twenty-two of this code. But if any owner, renter or lessee, private or otherwise, knowingly permits any such materials or substances to be placed, deposited, dumped or thrown in such location that high water or normal drainage conditions will cause any such materials or substances to wash into any waters of the state, it is prima facie evidence that the owner, renter or lessee intended to violate the provisions of this section: *Provided,* That if a landowner, renter or lessee, private or otherwise, reports any placing, depositing, dumping or throwing of these substances or materials upon his or her property to the prosecuting attorney, county commission, the Division of Natural Resources or the Department of Environmental Protection, the landowner, renter or lessee will be presumed to not have knowingly permitted the placing, depositing, dumping or throwing of the materials or substances.

(b) Any indication of ownership found in litter shall be prima facie evidence that the person identified violated the provisions of this section: *Provided,* That no inference may be drawn solely from the presence of any logo, trademark, trade name or other similar mass reproduced things of identifying character appearing on the found litter.

(c) Every person who is convicted of or pleads guilty to disposing of litter in violation of subsection (a) of this section shall pay a civil penalty in the sum of not less than $200 nor more than $1,000 as costs for clean up, investigation and prosecution of the case, in addition to any other court costs that the court is otherwise required by law to impose upon a convicted person.

The clerk of the circuit court, magistrate court or municipal court in which these additional costs are imposed

115 shall, on or before the last day of each month, transmit fifty
116 percent of a civil penalty received pursuant to this section to
117 the State Treasurer for deposit in the State Treasury to the
118 credit of a special revenue fund to be known as the Litter
119 Control Fund which is hereby continued and transferred to
120 the Department of Environmental Protection. Expenditures
121 for purposes set forth in this section are not authorized from
122 collections but are to be made only in accordance with
123 appropriation and in accordance with the provisions of article
124 three, chapter twelve of this code and upon fulfillment of the
125 provisions set forth in article two, chapter five-a of this code.
126 Amounts collected which are found from time to time to
127 exceed the funds needed for the purposes set forth in this
128 article may be transferred to other accounts or funds and
129 designated for other purposes by appropriation of the
130 Legislature.

131 (d) The remaining fifty percent of each civil penalty
132 collected pursuant to this section shall be transmitted to the
133 county or regional solid waste authority in the county where
134 the litter violation occurred. Moneys shall be expended by
135 the county or regional solid waste authority for the purpose
136 of litter prevention, clean up and enforcement. The county
137 commission shall cooperate with the county or regional solid
138 waste authority serving the respective county to develop a
139 coordinated litter control program pursuant to section eight,
140 article four, chapter twenty-two-c of this code.

141 (e) The Commissioner of the Division of Motor Vehicles,
142 upon registering a motor vehicle or issuing an operator's or
143 chauffeur's license, shall issue to the owner or licensee, as
144 the case may be, a summary of this section and section
145 fourteen, article fourteen, chapter seventeen-c of the code.

146 (f) The Commissioner of the Division of Highways shall
147 cause appropriate signs to be placed at the state boundary on
148 each primary and secondary road, and at other locations

149 throughout the state, informing those entering the state of the
150 maximum penalty provided for disposing of litter in violation
151 of subsection (a) of this section.

152 (g) Any state agency or political subdivision that owns,
153 operates or otherwise controls any public area as may be
154 designated by the Secretary by rule promulgated pursuant to
155 subdivision (8), subsection (a), section three of this article
156 shall procure and place litter receptacles at its own expense
157 upon its premises and shall remove and dispose of litter
158 collected in the litter receptacles. After receiving two written
159 warnings from any law-enforcement officer or officers to
160 comply with this subsection or the rules of the Secretary, any
161 state agency or political subdivision that fails to place and
162 maintain the litter receptacles upon its premises in violation
163 of this subsection or the rules of the Secretary shall be fined
164 $30 per day of the violation.

CHAPTER 129

(S. B. 237 - By Senators McCabe, Snyder, Browning, Unger, Guills, Yost, Stollings, Chafin, Plymale, Edgell, Foster, Bowman, Kessler, Caruth and Palumbo)

[Passed March 13, 2010; in effect from passage.]
[Approved by the Governor on March 31, 2010.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §13-2H-1, §13-2H-2, §13-2H-3, §13-2H-4, §13-2H-5, §13-2H-6, §13-2H-7, §13-

2H-8, §13-2H-9, §13-2H-10, §13-2H-11 and §13-2H-12; and to amend and reenact §29-22C-27 of said code, all relating to funding distributions from state lottery revenues generally; providing authorization for municipalities, county commissions and certain boards of education to issue revenue bonds secured by lottery revenue for the purpose of acquiring or constructing public projects; and changing the allocation of a certain distribution from the lottery racetrack table games fund to the purse funds of the thoroughbred racetracks from an equal allocation among the tracks to a pro rata distribution.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §13-2H-1, §13-2H-2, §13-2H-3, §13-2H-4, §13-2H-5, §13-2H-6, §13-2H-7, §13-2H-8, §13-2H-9, §13-2H-10, §13-2H-11 and §13-2H-12; and that §29-22C-27 of said code be amended and reenacted, all to read as follows:

Chapter

13. Public Bonded Indebtedness.
29. Miscellaneous Officers.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 2H. LOTTERY REVENUE BOND ACT.

§13-2H-1. Short title.
§13-2H-2. Definitions.
§13-2H-3. Powers conferred on counties and municipalities.
§13-2H-4. Issuance of lottery revenue bonds by county.
§13-2H-5. Issuance of lottery revenue bonds by municipality.
§13-2H-6. Issuance of lottery revenue bonds by board of education.
§13-2H-7. Use of proceeds from sale of bonds.
§13-2H-8. Redemption of bonds.
§13-2H-9. Refunding bonds.
§13-2H-10. Joint establishment by two or more governmental bodies.
§13-2H-11. Exemption from taxation.
§13-2H-12. Construction of article.

§13-2H-1. Short title.

1 This article may be known as and may be cited as the
2 Lottery Revenue Bond Act.

§13-2H-2. Definitions.

1 Unless the context clearly indicates otherwise, as used in
2 this article:

3 (a) "Board of education" means a county board of
4 education of a growth county, as that term is defined in
5 section three, article twenty, chapter seven of this code,
6 which has enacted the Local Powers Act and in which county
7 a racetrack is located that has participated in the West
8 Virginia Thoroughbred Development Fund since on or before
9 January 1, 1991, and is receiving lottery revenues.

10 (b) "Governmental body" means any municipality,
11 county or board of education that receives lottery revenues.

12 (c) "Lottery revenues" means the funds distributed to a
13 governmental body pursuant to the provisions of sections ten
14 and ten-b, article twenty-two-a, chapter twenty-nine of this
15 code; section one thousand four hundred eight, article
16 twenty-two-b of said chapter, or section twenty-seven, article
17 twenty-two-c of said chapter or section twenty-two, article
18 twenty-five, chapter twenty-nine of this code.

19 (d) "Lottery revenue bonds" means bonds, debentures,
20 notes, certificates of participation, certificates of beneficial
21 interest, certificates of ownership or other evidences of
22 indebtedness or ownership that are issued by a governmental
23 body, the proceeds of which are used directly or indirectly to
24 finance or refinance public projects pursuant to this article
25 and are secured by the lottery revenues of the governmental
26 body.

(e) "Lottery revenue fund" means the fund required to be established by the governmental body to deposit lottery revenues if the governmental body issues lottery revenue bonds.

(f) "Public project" means any project approved by a governmental body to acquire, improve, renovate, extend, enlarge, increase, repair, construct, equip, maintain and operate public buildings, structures, fixtures, property, public infrastructure and appurtenant facilities of any type or types for which the governmental body is permitted by law to expend public funds including, but not limited to, those projects as defined in section one, article sixteen, chapter eight of this code. Additionally, a public project would include all roads and transportation infrastructure.

§13-2H-3. Powers conferred on counties and municipalities.

In addition to any other powers which a county or municipality may now have, each county, by and through its county commission, and each municipality, by and through its council or other governing body in lieu thereof, may: (a) Acquire, whether by purchase, construction, gift, lease or otherwise, one or more public projects, or additions thereto, which shall be located within this state; and (b) issue and deliver lottery revenue bonds secured by lottery revenues to finance or refinance public projects.

§13-2H-4. Issuance of lottery revenue bonds by county.

(a) The county commission may issue lottery revenue bonds of the county as provided in this section to finance or refinance all or part of a public project and pledge all or any part of the lottery revenues for the payment of the principal of and interest on such lottery revenue bonds and for reserves therefor: *Provided,* That a county commission receiving lottery revenues pursuant to the provisions of subdivision (3),

subsection (c), section twenty-seven, article twenty-two-c, chapter twenty-nine of this code may only pledge fifty percent of the lottery revenues to the payment of principal and interest on the lottery revenue bonds and for reserves therefor. Any pledge of lottery revenue funds for lottery revenue bonds is a prior and superior charge on the lottery revenues and Lottery Revenue Fund over the use of any of the moneys to pay for the cost of any of the purposes on a cash basis.

(b) The lottery revenue bonds may be authorized and issued by the county commission to finance or refinance, in whole or in part, public projects in an aggregate principal amount not exceeding the amount which the county commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the lottery revenues and the Lottery Revenue Fund. A county commission issuing lottery revenue bonds shall establish a fund to deposit lottery revenues and call such fund the Lottery Revenue Fund. The county commission shall thereafter deposit all lottery revenues pledged to the payment of principal and interest of lottery revenue bonds into the Lottery Revenue Fund.

(c) The issuance of lottery revenue bonds may be authorized by an order of the county commission. The lottery revenue bonds shall: (1) Bear a date or dates; (2) mature at a time or times not exceeding forty years from their respective dates; (3) be in a specific denomination; (4) be in a registered form with exchangeability and interchangeability privileges; (5) be payable in a medium of payment and at a place or places within or without the state; (6) be subject to terms of prior redemption at those prices; and (7) may have such other terms and provisions as determined by the county commission. The lottery revenue bonds shall be signed by the president of the county commission under the seal of the county commission, attested by the clerk of the county

commission. Lottery revenue bonds may be sold in a manner as the county commission determines is for the best interests of the county.

(d) The county commission may enter into: (1) Trust agreements with banks or trust companies within or without the state and in trust agreements or orders authorizing the issuance of bonds; (2) valid and legally binding covenants with the holders of the lottery revenue bonds as to the custody, safeguarding and disposition of the proceeds of the lottery revenue bonds, the moneys in the Lottery Revenue Fund, sinking funds, reserve funds or any other moneys or funds; as to the rank and priority, if any, or different issues of lottery revenue bonds by the county commission under the provisions of this section; (3) agreements as to such provisions as payment, term, security, default and remedy provisions as the county commission shall consider necessary or desirable; and

(4) Agreements as to any other matters or provisions which are considered necessary and advisable by the county commission in the best interests of the county and to enhance the marketability of such lottery revenue bonds.

(e) The lottery revenue bonds are negotiable instruments under the Uniform Commercial Code of this state and are not obligations or debts of the state or of the county issuing the bonds and the credit or taxing power of the state or county may not be pledged therefor, but the lottery revenue bonds may be payable only from the revenue pledged therefor as provided in this section.

(f) A holder of lottery revenue bonds has a lien against the lottery revenues and the Lottery Revenue Fund for payment of the lottery revenue bond and the interest thereon and may bring suit to enforce the lien.

(g) A county commission may issue and secure additional bonds payable out of the lottery revenues and the Lottery Revenue Fund which bonds may rank on a parity with, or be subordinate or superior to, other bonds issued by the county commission and payable from the Lottery Revenue Fund.

§13-2H-5. Issuance of lottery revenue bonds by municipality.

(a) A municipality may issue lottery revenue bonds as provided in this section to finance or refinance all or part of a public project and pledge all or any part of the lottery revenues for the payment of the principal of and interest on the lottery revenue bonds and for reserves therefor: *Provided,* That a municipality receiving lottery revenues pursuant to the provisions of subdivision (4), subsection (c), section twenty-seven, article twenty-two-c, chapter twenty-nine of this code may only pledge fifty percent of the lottery revenues to the payment of principal and interest on the lottery revenue bonds and for reserves therefor. Any pledge of lottery revenue funds for lottery revenue bonds is a prior and superior charge on the lottery revenues and Lottery Revenue Fund over the use of any of the moneys to pay for the cost of any of such purposes on a cash basis.

(b) The lottery revenue bonds may be authorized and issued by the municipality to finance or refinance, in whole or in part, public projects in an aggregate principal amount not exceeding the amount which the municipality determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the lottery revenues and the Lottery Revenue Fund. A municipality issuing lottery revenue bonds shall establish a fund to deposit lottery revenues and call the fund the Lottery Revenue Fund. The municipality shall thereafter deposit all lottery revenues pledged to the payment of principal and interest of lottery revenue bonds into the Lottery Revenue Fund.

(c) The issuance of lottery revenue bonds may be authorized by an ordinance of the municipality and such lottery revenue bonds shall be issued pursuant to the provisions of article sixteen, chapter eight of this code.

(d) The lottery revenue bonds are negotiable instruments under the Uniform Commercial Code of this state and may not be considered to be obligations or debts of the state or of the municipality issuing the bonds and the credit or taxing power of the state or municipality may not be pledged therefor, but the lottery revenue bonds may be payable only from the revenue pledged therefor as provided in this section.

(e) A holder of lottery revenue bonds has a lien against the lottery revenues and the Lottery Revenue Fund for payment of the lottery revenue bond and the interest thereon and may bring suit to enforce the lien.

(f) A municipality may issue and secure additional bonds payable out of the lottery revenues and the Lottery Revenue Fund which bonds may rank on a parity with, or be subordinate or superior to, other bonds issued by the municipality and payable from the Lottery Revenue Fund.

§13-2H-6. Issuance of lottery revenue bonds by board of education.

(a) A board of education may issue and deliver lottery revenue bonds secured by lottery revenues to finance or refinance public projects. The board of education may issue lottery revenue bonds of the school district as provided in this section to finance or refinance all or part of a public project and pledge all or any part of the lottery revenues for the payment of the principal of and interest on lottery revenue bonds and for reserves therefor. Any pledge of lottery revenue funds for lottery revenue bonds is a prior and superior charge on the lottery revenues and Lottery Revenue

11 Fund over the use of any of the moneys to pay for the cost of
12 any of such purposes on a cash basis.

13 (b) Lottery revenue bonds may be authorized and issued
14 by the board of education to finance or refinance, in whole or
15 in part, public projects in an aggregate principal amount not
16 exceeding the amount which the board of education
17 determines can be paid as to both principal and interest and
18 reasonable margins for a reserve therefor from the lottery
19 revenues and the Lottery Revenue Fund. A board of
20 education issuing lottery revenue bonds shall establish a fund
21 to deposit lottery revenues and call the fund the Lottery
22 Revenue Fund. The board of education shall thereafter
23 deposit all lottery revenues pledged to the payment of
24 principal and interest of lottery revenue bonds into the
25 Lottery Revenue Fund.

26 (c) The issuance of lottery revenue bonds may be
27 authorized by an order of the board of education and the
28 lottery revenue bonds shall: (1) Bear a specific date or dates;
29 (2) mature at such time or times not exceeding forty years
30 from their respective dates; (3) be in a specific denomination;
31 (4) be in registered form with exchangeability and
32 interchangeability privileges; (5) be payable in the medium
33 of payment and at a specific place or places within or without
34 the state; (6) be subject to terms of prior redemption at
35 specific prices; and (7) have such other terms and provisions
36 as determined by the board of education. The lottery revenue
37 bonds shall be signed by the president of the board of
38 education under the seal of the board of education, attested
39 by the secretary of the board of education. Lottery revenue
40 bonds may be sold in the manner as the board of education
41 determines is for the best interests of the school district.

42 (d) The board of education may enter into: (1) Trust
43 agreements with banks or trust companies, within or without
44 the state; (2) trust agreements or the orders authorizing the

issuance of the bonds; (3) valid and legally binding covenants with the holders of the lottery revenue bonds as to the custody, safeguarding and disposition of the proceeds of the lottery revenue bonds, the moneys in the Lottery Revenue Fund, sinking funds, reserve funds or any other moneys or funds; (4) agreements as to the rank and priority, if any, or different issues of lottery revenue bonds by the board of education under the provisions of this section; (5) agreements as to the provisions of payment, term, security, default and remedy provisions as the board of education may consider necessary or desirable; and (6) agreements as to any other matters or provisions which are considered necessary and advisable by the board of education in the best interests of the school district and to enhance the marketability of such lottery revenue bonds.

(e) The lottery revenue bonds are negotiable instruments under the Uniform Commercial Code of this state and may not be considered to be obligations or debts of the state or of the board of education issuing the bonds and the credit or taxing power of the state or board of education may not be pledged therefor, but the lottery revenue bonds may be payable only from the revenue pledged therefor as provided in this section.

(f) A holder of lottery revenue bonds has a lien against the lottery revenues and the Lottery Revenue Fund for payment of the lottery revenue bond and the interest thereon and may bring suit to enforce the lien.

(g) A board of education may issue and secure additional bonds payable out of the lottery revenues or Lottery Revenue Fund which bonds may rank on a parity with, or be subordinate or superior to, other bonds issued by the board of education and payable from the Lottery Revenue Fund.

§13-2H-7. Use of proceeds from sale of bonds.

(a) The proceeds from the sale of any bonds issued under authority of this article may be applied only for the purpose for which the bonds were issued: *Provided,* That any accrued interest received in any sale shall be applied to the payment of the principal of or the interest on the bonds sold. If for any reason any portion of the proceeds are not needed for the purpose for which the bonds were issued, then the unneeded portion of the proceeds shall be applied to the purchase of bonds for cancellation or payment of the principal of or the interest on the bonds or held in reserve for the payment thereof.

(b) The costs of any public project shall be considered to include the following:

(1) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, capital improvements and facilities, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, the removal or containment of, or the restoration of soil or groundwater affected by environmental pollution, environmental remediation, the acquisition of equipment and site clearing, grading and preparation;

(2) Financing costs, including, but not limited to, any interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance and any redemption premiums, credit enhancement or other related costs;

(3) Real property acquisition costs;

(4) Professional service costs, including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;

(5) Imputed administrative costs, including, but not limited to, reasonable charges for time spent by governmental body employees in connection with the implementation of a project;

(6) Relocation costs, including, but not limited to, those relocation payments made following condemnation and job training and retraining and costs for utility relocation; and

(7) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the implementation of project plans.

§13-2H-8. Redemption of bonds.

The lottery revenue bonds issued pursuant to this article may contain a provision therein to the effect that they, or any of them, may be called for redemption at any time prior to maturity by the governmental body and at such redemption prices or premiums, which terms shall be stated in the bond.

§13-2H-9. Refunding bonds.

Any lottery revenue bonds issued hereunder and at any time outstanding may, at any time and from time to time, be refunded by a county, municipality or board of education by the issuance of its refunding bonds in such amount as the governmental body may determine necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon; to make any improvements or alterations in the public project; and any premiums and commissions necessary to be paid in connection therewith. Any refunding may be effected whether the bonds to be refunded have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be

refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby: *Provided,* That the holders of any bonds so to be refunded may not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of this article shall be payable from the lottery revenues, the Lottery Revenue Fund or from other moneys or the principal of and interest on or other investment yield from investments or proceeds of bonds or other applicable funds and moneys, including investments of proceeds of any refunding bonds, and are subject to the provisions contained in section five, six or seven of this article, as applicable.

§13-2H-10. Joint establishment by two or more governmental bodies.

Any two or more governmental bodies may jointly acquire by construction or purchase, or both, or finance one or more public projects or additions thereto by the issuance and delivery of lottery revenue bonds in which case such governmental bodies shall jointly exercise all the rights, authority, power and duties herein conferred upon a county commission, a municipality or a board of education when acting singly and they shall also be subject to the same limitations, restrictions and conditions as are herein imposed on a singly governmental body in connection with the acquisition or finance of a public project. Notwithstanding the signing and sealing requirements set forth in section four, five or six of this article, one of such governing bodies may sign and seal bonds issued pursuant to this article on both its own behalf and on behalf of all other participating governing bodies, and signature in the manner set forth in the said section four, five or six, as applicable, by one governing body shall be effect as to all other participating governing

19 bodies. The respective governing bodies, acting jointly, may
20 also provide by agreement among themselves, any other
21 terms and conditions of such joint participation.

§13-2H-11. Exemption from taxation.

1 The lottery revenue bonds issued pursuant to this article
2 and the income therefrom are exempt from all taxation by the
3 State of West Virginia, or by any county, school district,
4 municipality or political subdivision thereof, except
5 inheritance, estate and transfer taxes; and the real and
6 personal property which a county commission, a municipality
7 or board of education may acquire pursuant to the provisions
8 of this article shall be exempt from taxation by the state, or
9 any county, municipality or other levying body, as public
10 property, so long as the same is owned by such county,
11 municipality or board of education.

§13-2H-12. Construction of article.

1 This article may not be construed as a restriction or
2 limitation upon any powers which a county, municipality or
3 board of education might otherwise have under any laws of
4 this state, but shall be construed as alternative or additional.
5 This article may not be construed as requiring an election by
6 the voters of a county, municipality or board of education
7 prior to the issuance of bonds hereunder by a county,
8 municipality or board of education and may not be construed
9 as requiring any proceeding under any law or laws, other than
10 that which is required by this article.

CHAPTER 29. MISCELLANEOUS AND OFFICERS.

ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.

*§29-22C-27. West Virginia Lottery Racetrack Table Games Fund; Community-Based Service Fund; State Debt Reduction Fund; distribution of funds.

1 (a) (1) The special fund in the State Treasury known as
2 the West Virginia Lottery Racetrack Table Games Fund is
3 continued and all tax collected under this article shall be
4 deposited with the State Treasurer and placed in the West
5 Virginia Lottery Racetrack Table Games Fund. The fund
6 shall be an interest-bearing account with all interest or other
7 return earned on the money of the fund credited to and
8 deposited in the fund.

9 (2) Notwithstanding any provision of this article to the
10 contrary, all racetrack table games license fees received by
11 the commission pursuant to section eight of this article shall
12 be deposited into the Community-Based Service Fund which
13 is continued in the State Treasury. Moneys of the fund shall
14 be expended by the Bureau of Senior Services upon
15 appropriation of the Legislature solely for the purpose of
16 enabling the aged and disabled citizens of this state to
17 maintain their residency in the community-based setting
18 through the provision of home and community-based
19 services.

20 (b) From the gross amounts deposited into the Racetrack
21 Table Games Fund pursuant to subsection (a) of this section,
22 the commission shall:

23 (1) Retain an amount for the administrative expenses of
24 the commission as determined by the commission in
25 accordance with subsection (e) of this section;

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*CLERK'S NOTE: This section was also amended by S. B. 337 (Chapter 98) which passed prior to this act.

(2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred racetracks with West Virginia Lottery table games to the special funds established by each thoroughbred racetrack table games licensees for the payment of regular racetrack purses, the amount being divided on a pro rata basis between the special funds of each thoroughbred racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts from all greyhound racetracks with West Virginia Lottery table games to the special funds established by each greyhound racetrack table games licensees for the payment of regular racetrack purses, the amount being divided equally between the special funds of each greyhound racetrack table games licensee;

(3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development Fund created under section ten, article twenty-three, chapter nineteen of this code. The total amount transferred under this subdivision shall be divided pro rata among the development funds for each racetrack table games licensee based on relative adjusted receipts from each racetrack. The amounts transferred to these funds may not be used for the benefit of any person or activity other than at or associated with a racetrack table games licensee;

(4) Transfer one percent of the adjusted gross receipts from each licensed racetrack to the county commissions of the counties where racetracks with West Virginia Lottery table games are located. County commissions may pledge this money to make payments on lottery revenue bonds issued pursuant to article two-h, chapter thirteen of this code. The one percent transferred under this subdivision shall be divided pro rata among the counties with a racetrack with West Virginia Lottery table games based on relative adjusted

gross receipts from each county's racetrack: *Provided,* That the county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive the one percent of adjusted gross receipts as provided in this subdivision for the purpose of public projects, as defined in section two, article two-h, chapter thirteen of this code or to make payments on lottery revenue bonds issued to finance public projects;

(5) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the governing bodies of municipalities within counties where racetracks with West Virginia Lottery table games are located. Municipalities may pledge the money to make payments on lottery revenue bonds issued pursuant to article two-h, chapter thirteen of this code. This money shall be allocated as follows:

(A) One half of the amounts transferred under this subdivision shall be allocated to the municipalities within each county having a racetrack table games licensee, based on relative adjusted gross receipts from West Virginia Lottery table games from those racetracks and the total amount allocated to the municipalities within a county shall be divided pro rata among the municipalities based on each municipality's population determined at the most recent United States decennial census of population: *Provided,* That: (i) For each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; (ii) a single municipality in a county where West Virginia Lottery racetrack table games are played may not receive a total share under this paragraph that is in excess of seventy-five percent of the total distribution under this paragraph for the

county in which the municipality is located; and (iii) a municipality receiving moneys under this paragraph may not receive an amount which is less than that received by a municipality under provisions of subdivision (4), subsection (d) of this section; and

(B) One half of the amounts transferred under this subdivision shall be allocated pro rata to the municipalities within all the counties, having a racetrack table games licensee based on each municipality's population determined at the most recent United States decennial census of population: *Provided,* That: (i) A municipality which received funds above its pro rata share pursuant to subpart (iii), paragraph (A) of this subdivision may not receive an allocation under this paragraph; (ii) for each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games are played may not receive a total share under this paragraph that is in excess of twenty-five percent of the total transfers under this paragraph: *Provided, however,* That the county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive the two percent of adjusted gross receipts as provided in this subdivision for the purpose of public projects, as defined in section two, article two-h, chapter thirteen of this code, or to make payments on lottery revenue bonds issued to finance the public projects;

(6) Transfer one half of one percent of the adjusted gross receipts to the governing bodies of municipalities in which a racetrack table games licensee is located. The municipalities

shall each receive an equal share of the total amount allocated under this subdivision: *Provided,* That distribution under this subdivision may not be made to any municipality which did not have a licensed racetrack within its municipal boundaries as they existed on January 1, 2007: *Provided, however,* That if no racetrack table games licensee is located within a municipality, a transfer may not be made under this subdivision. The municipality may pledge this money to make payments on lottery revenue bonds issued pursuant to article two-h, chapter thirteen of this code; and

(7) Distribute the remaining amounts, hereinafter referred to as the net amounts in the Racetrack Table Games Funds, in accordance with the provisions of subsection (d) of this section.

(c) Beginning with the fiscal year following the licensing of every licensed racetrack to offer West Virginia Lottery racetrack table games under this article, subsection (b) of this section shall be superseded and replaced by this subsection for distribution of the balances in the fund established by subsection (a) of this section. From the gross amounts deposited into the fund, the commission shall:

(1) Retain an amount for the administrative expenses of the commission as determined by the commission in accordance with subsection(e) of this section;

(2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred racetracks with West Virginia Lottery table games to the special funds established by each thoroughbred racetrack table games licensee for the payment of regular racetrack purses, the amount being divided on a pro rata basis between the special funds of each thoroughbred racetrack table games licensee and transfer two and one-half percent of adjusted gross receipts from all greyhound racetracks with West Virginia Lottery table games to the

special funds established by each greyhound racetrack table games licensee for the payment of regular racetrack purses, the amount being divided equally between the special funds of each greyhound racetrack table games licensee;

(3) Transfer two percent of the adjusted gross receipts from all licensed racetracks to the West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development Fund created under section ten, article twenty-three, chapter nineteen of this code. The total amount transferred under this subdivision shall be divided pro rata among the development funds for each racetrack table games licensee based on relative adjusted receipts from each racetrack. The amounts transferred to these funds may not be used for the benefit of any person or activity other than at or associated with a racetrack table games licensee;

(4) Transfer two percent of the adjusted gross receipts from each licensed racetrack to the county commissions of the counties where racetracks with West Virginia Lottery table games are located. The money transferred under this subdivision shall be divided pro rata among the counties with a racetrack with West Virginia Lottery table games based on relative adjusted gross receipts from each county's racetrack: *Provided,* That the county board of education of a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, shall receive one half of that county's share of adjusted gross receipts as provided in this subdivision for the purpose of capital improvements;

(5) Transfer three percent of the adjusted gross receipts from each licensed racetrack to the governing bodies of

municipalities within counties where racetracks with West Virginia Lottery table games are located, which shall be allocated as follows:

(A) One half of the money transferred by this subdivision shall be allocated to the municipalities within each county, other than a county described in paragraph (C) of this subdivision, having a racetrack table games licensee based on relative adjusted gross receipts from West Virginia Lottery table games from those racetracks and the total amount allocated to the municipalities within a county shall be divided pro rata among the municipalities based on each municipality's population determined at the most recent United States decennial census of population: *Provided,* That: (i) For each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; (ii) a single municipality in a county where West Virginia Lottery racetrack table games are played may not receive a total share under this paragraph that is in excess of seventy-five percent of the total distribution under this paragraph for the county in which the municipality is located; and (iii) a municipality receiving moneys under this paragraph may not receive an amount which is less than that received by a municipality under provisions of subdivision (4), subsection (d) of this section.

(B) One half of the money transferred under this subdivision shall be allocated pro rata to the municipalities within all the counties, other than a county described in paragraph (C) of this subdivision, having a racetrack table games licensee based on each municipality's population determined at the most recent United States decennial census of population: *Provided,* That: (i) A municipality which received funds above its pro rata share pursuant to subparagraph (iii), paragraph (A) of this subdivision shall not

receive an allocation under this paragraph; (ii) for each allocation, when a municipality is physically located in two or more counties, only that portion of its population residing in the county where the authorized table games are located shall be considered; and (iii) a single municipality in a county where West Virginia Lottery racetrack games are played may not receive a total share under this paragraph that is in excess of twenty-five percent of the total transfers under this paragraph.

(C) Notwithstanding the provisions of paragraphs (A) and (B) of this subdivision, when a racetrack is located in a growth county, as that term is defined in section three, article twenty, chapter seven of this code, which has enacted the Local Powers Act, and in which county a racetrack is located that has participated in the West Virginia Thoroughbred Development Fund since on or before January 1, 1991, the county board of education shall receive two thirds of the share of adjusted gross receipts from West Virginia Lottery table games from the racetrack in the county as provided in this subdivision and the municipalities within the county shall share the remaining one third of the total amount allocated as provided in this paragraph. The municipal one-third share shall be divided pro rata among the municipalities based on each municipality's population determined at the most recent United States decennial census of population. All money transferred under this paragraph shall be used by the county board of education and by the municipalities for the purpose of capital improvements;

(6) Transfer one half of one percent of the adjusted gross receipts to the governing bodies of municipalities in which a racetrack table games licensee is located. The municipalities shall each receive an equal share of the total amount allocated under this subdivision: *Provided,* That distribution under this subdivision may not be made to any municipality that did not have a licensed racetrack within its municipal

boundaries as they existed on January 1, 2007: *Provided, however,* That if no racetrack table games licensee is located within a municipality, a transfer may not be made under this subdivision; and

(7) Distribute the remaining amounts, hereinafter referred to as the net amounts in the Racetrack Table Games Funds, in accordance with the provisions of subsection (d) of this section.

(d) From the net amounts in the Racetrack Table Games Fund, the commission shall:

(1) Transfer seventy-six percent to the State Debt Reduction Fund which is hereby continued in the State Treasury. Moneys of the fund shall be expended solely for the purpose of accelerating the reduction of existing unfunded liabilities and existing bond indebtedness of the state and shall be expended or transferred only upon appropriation of the Legislature;

(2) Transfer four percent, divided pro rata based on relative adjusted gross receipts from the individual licensed racetracks for and on behalf of all employees of each licensed racing association, into a special fund to be established by the Racing Commission to be used for payment into the pension plan for all employees of each licensed racing association;

(3) Transfer ten percent, to be divided and paid in equal shares, to each county commission in the state that is not eligible to receive a distribution under subdivision (4), subsection (b) of this section: *Provided,* That funds transferred to county commissions under this subdivision shall be used only to pay regional jail expenses and the costs of infrastructure improvements and other capital improvements: *Provided, however,* That up to fifty percent of these funds may be pledged to make payments on lottery

revenue bonds issued pursuant to article two-h, chapter thirteen of this code; and

(4) Transfer ten percent, to be divided and paid in equal shares, to the governing bodies of each municipality in the state that is not eligible to receive a distribution under subdivisions (5) and (6), subsection (b) of this section: *Provided,* That funds transferred to municipalities under this subdivision shall be used only to pay for debt reduction in municipal police and fire pension funds and the costs of infrastructure improvements and other capital improvements: *Provided, however,* That up to fifty percent of these funds may be pledged to make payments on lottery revenue bonds issued pursuant to article two-h, chapter thirteen of this code.

(e) All expenses of the commission incurred in the administration and enforcement of this article shall be paid from the Racetrack Table Games Fund, including reimbursement of state law-enforcement agencies for services performed at the request of the commission pursuant to this article. The commission's expenses associated with a particular racetrack with authorized table games under this article may not exceed three percent of the total annual adjusted gross receipts received from that licensee's operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the licensee's operation of table games under this article, except as provided in subdivision (2), subsection (a) of this section. However, for the fiscal year following the licensing of every licensed racetrack to offer West Virginia lottery racetrack table games under this article and for the fiscal year thereafter, the commission's expenses associated with a particular racetrack with authorized table games under this article may not exceed four percent of the total annual adjusted gross receipts received from that licensee's operation of table games under this article, including, but not limited to, all license fees or other amounts attributable to the

licensee's operation of table games under this article, except as provided in subdivision (2), subsection (a) of this section. These expenses shall either be allocated to the racetrack with West Virginia Lottery table games for which the expense is incurred, if practicable, or be treated as general expenses related to all racetrack table games facilities and be allocated pro rata among the racetrack table games facilities based on the ratio that annual adjusted gross receipts from operation of table games at each racetrack with West Virginia Lottery table games bears to total annual adjusted gross receipts from operation of table games at all racetracks with West Virginia Lottery table games during the fiscal year of the state. From this allowance, the commission shall transfer at least $100,000 but not more than $500,000 into the Compulsive Gambling Treatment Fund created in section nineteen, article twenty-two-a of this chapter.

CHAPTER 130

(S. B. 604 - By Senators Bowman, White and Plymale)

[Passed March 10, 2010; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2010.]

AN ACT to amend and reenact §27-5-11 of the Code of West Virginia, 1931, as amended, relating to extending the termination date of the modified mental hygiene procedures pilot project by two years.

Be it enacted by the Legislature of West Virginia:

That §27-5-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-11. Modified procedures for temporary compliance orders for certain medication dependent persons with prior hospitalizations or convictions; to institute modified mental hygiene procedures; procedures; forms.

1 (a) The Supreme Court of Appeals shall, in consultation
2 with the Secretary of the Department of Health and Human
3 Resources and local mental health services consumers and
4 providers, implement in at least four and no more than six
5 judicial circuits, beginning on July 1, 2006, modified mental
6 hygiene procedures that are consistent with the requirements
7 set forth in this section. The judicial circuits selected for
8 implementing the modified procedures shall be circuits in
9 which the Supreme Court of Appeals determines, after
10 consultation with the Secretary of the Department of Health
11 and Human Resources and local mental health consumers
12 and service providers, that adequate resources will be
13 available to implement the modified procedures. The
14 Secretary of the Department of Health and Human
15 Resources, after consultation with the Supreme Court of
16 Appeals and local mental health services consumers and
17 service providers, shall prescribe appropriate forms to
18 implement the modified procedures and shall annually
19 prepare a report on the use of the modified procedures and
20 transmit the report to the Legislature on or before the last day
21 of each calendar year. The Supreme Court of Appeals may,
22 after consultation with the Secretary of the Department of
23 Health and Human Resources and local mental health
24 services consumers and providers during the pilot program
25 period, further modify any specific modified procedures that

26 are implemented: *Provided,* That the modified procedures
27 must be consistent with the requirements of this chapter and
28 this section. If the Secretary of the Department of Health and
29 Human Resources determines that the use of any modified
30 procedure in one or more judicial circuits is placing an
31 unacceptable additional burden upon state mental health
32 resources, the Supreme Court of Appeals shall, in
33 consultation with the secretary, modify the procedures used
34 in such a fashion as will address the concerns of the
35 secretary, consistent with the requirements of this chapter.
36 The provisions of this section and the modified procedures
37 thereby authorized shall cease to have any force and effect on
38 June 30, 2012, unless extended by an act of the Legislature
39 prior to that date.

40 (b)(1) The modified procedures shall authorize that a
41 verified petition seeking a treatment compliance order may
42 be filed by any person alleging:

43 (A) That an individual, on two or more occasions within
44 a twenty-four month period prior to the filing of the petition,
45 as a result of mental illness, has been hospitalized pursuant
46 to the provisions of this chapter; or that the individual has
47 been convicted of one or more crimes of violence against the
48 person within a twenty-four month period prior to the filing
49 of the petition and the individual's failure to take prescribed
50 medication or follow another prescribed regimen to treat a
51 mental illness was a significant aggravating or contributing
52 factor in the circumstances surrounding the crime;

53 (B) That the individual's previous hospitalizations due to
54 mental illness or the individual's crime of violence occurred
55 after or as a result of the individual's failure to take
56 medication or other treatment as prescribed by a physician to
57 treat the individual's mental illness; and

(C) That the individual, in the absence of a court order requiring him or her to take medication or other treatment as prescribed, is unlikely to do so and that his or her failure to take medication or follow other regimen or treatment as prescribed is likely to lead to further instances in the reasonably near future in which the individual becomes likely to cause serious harm or commit a crime of violence against the person.

(2) Upon the filing of a petition seeking a treatment compliance order and the petition's review by a circuit judge or mental hygiene commissioner, counsel shall be appointed for the individual if the individual does not already have counsel and a copy of the petition and all supporting evidence shall be furnished to the individual and their counsel. If the circuit judge or mental hygiene commissioner determines on the basis of the petition that it is necessary to protect the individual or to secure their examination, a detention order may be entered ordering that the individual be taken into custody and examined by a psychiatrist or licensed psychologist. A hearing on the allegations in the petition, which may be combined with a hearing on a probable cause petition conducted pursuant to the provisions of section two of this article or a final commitment hearing conducted pursuant to the provisions of section four of this article, shall be held before a circuit judge or mental hygiene commissioner. If the individual is taken into custody and remains in custody as a result of a detention order, the hearing shall be held within forty-eight hours of the time that the individual is taken into custody.

(3) If the allegations in the petition seeking a treatment compliance order are proved by the evidence adduced at the hearing, which must include expert testimony by a psychiatrist or licensed psychologist, the circuit judge or mental hygiene commissioner may enter a treatment

92 compliance order for a period not to exceed six months upon
93 making the following findings:

94 (A) That the individual is eighteen years of age or older;

95 (B) That on two or more occasions within a twenty-four
96 month period prior to the filing of the petition an individual,
97 as a result of mental illness, has been hospitalized pursuant
98 to the provisions of this chapter; or that on at least one
99 occasion within a twenty-four month period prior to the filing
100 of the petition has been convicted of a crime of violence
101 against any person;

102 (C) That the individual's previous hospitalizations due to
103 mental illness occurred as a result of the individual's failure
104 to take prescribed medication or follow a regimen or course
105 of treatment as prescribed by a physician or psychiatrist to
106 treat the individual's mental illness; or that the individual has
107 been convicted for crimes of violence against any person and
108 the individual's failure to take medication or follow a
109 prescribed regimen or course of treatment of the individual's
110 mental illness was a significant aggravating or contributing
111 factor in the commission of the crime;

112 (D) That a psychiatrist or licensed psychologist who has
113 personally examined the individual within the preceding
114 twenty-four months has issued a written opinion that the
115 individual, without the aid of the medication or other
116 prescribed treatment, is likely to cause serious harm to
117 himself or herself or to others;

118 (E) That the individual, in the absence of a court order
119 requiring him or her to take medication or other treatment as
120 prescribed, is unlikely to do so and that his or her failure to
121 take medication or other treatment as prescribed is likely to
122 lead to further instances in the reasonably near future in

which the individual becomes likely to cause serious harm or commit a crime of violence against any person;

(F) That, where necessary, a responsible entity or individual is available to assist and monitor the individual's compliance with an order requiring the individual to take the medication or follow other prescribed regimen or course of treatment;

(G) That the individual can obtain and take the prescribed medication or follow other prescribed regimen or course of treatment without undue financial or other hardship; and

(H) That, if necessary, a medical provider is available to assess the individual within forty-eight hours of the entry of the treatment compliance order.

(4) The order may require an individual to take medication and treatment as prescribed and if appropriate to attend scheduled medication and treatment-related appointments: *Provided,* That a treatment compliance order shall be subject to termination or modification by a circuit judge or mental hygiene commissioner if a petition is filed seeking termination or modification of the order and it is shown in a hearing on the petition that there has been a material change in the circumstances that led to the entry of the original order that justifies the order's modification or termination: *Provided, however,* That a treatment compliance order may be extended by a circuit judge or mental hygiene commissioner for additional periods of time not to exceed six months, upon the filing of a petition seeking an extension and after a hearing on the petition or upon the agreement of the individual.

(5)(A) After the entry of a treatment compliance order in accordance with the provisions of subdivisions (3) and (4),

154 subsection (b) of this section, if a verified petition is filed
155 alleging that an individual has not complied with the terms of
156 a medication and treatment compliance order and if a circuit
157 judge or mental hygiene commissioner determines from the
158 petition and any supporting evidence that there is probable
159 cause to believe that the allegations in the petition are true,
160 counsel shall be appointed for the individual and a copy of
161 the petition and all supporting evidence shall be furnished to
162 the individual and his or her counsel. If the circuit judge or
163 mental hygiene commissioner considers it necessary to
164 protect the individual or to secure his or her examination, a
165 detention order may be entered to require that the individual
166 be examined by a psychiatrist or psychologist. A hearing on
167 the allegations in the petition, which may be combined with
168 a hearing on a probable cause petition conducted pursuant to
169 section two of this article or a final commitment hearing
170 conducted pursuant to section four of this article, shall be
171 held before a circuit judge or mental hygiene commissioner.
172 If the individual is taken and remains in custody as a result of
173 a detention order, the hearing shall be held within forty-eight
174 hours of the time that the individual is taken into custody.

175 (B) At a hearing on any petition filed pursuant to the
176 provisions of paragraph (A), subdivision (5), subsection (b)
177 of this section, the circuit judge or mental hygiene
178 commissioner shall determine whether the individual has
179 complied with the terms of the medication and treatment
180 compliance order. If the individual has complied with the
181 order, the petition shall be dismissed: *Provided,* That if the
182 evidence presented to the circuit judge or mental hygiene
183 commissioner shows that the individual has complied with
184 the terms of the existing order, but the individual's prescribed
185 medication, dosage or course of treatment needs to be
186 modified, then the newly modified medication and treatment
187 prescribed by a psychiatrist who personally examined the
188 individual may be properly incorporated into a modified

order. If the order has not been complied with, the circuit judge or mental hygiene commissioner, after inquiring into the reasons for noncompliance and whether any aspects of the order should be modified, may continue the individual upon the terms of the original order and direct the individual to comply with the order or may modify the order in light of the evidence presented at the hearing. If the evidence shows that the individual at the time of the hearing is likely to cause serious harm to himself or herself, herself or others as a result of the individual's mental illness, the circuit judge or mental hygiene commissioner may convert the proceeding into a probable cause proceeding and enter a probable cause order directing the involuntary admission of the individual to a mental health facility for examination and treatment: *Provided, however,* That all applicable due process and hearing requirements of contained in sections two and three of this article have been fully satisfied.

(c)(1) The modified procedures may authorize that upon the certification of a qualified mental health professional, as described in subdivision (2) of this subsection, that there is probable cause to believe that an individual who has been hospitalized two or more times in the previous twenty-four months because of mental illness is likely to cause serious harm to himself or herself, herself or to others as a result of the mental illness if not immediately restrained and that the best interests of the individual would be served by immediate hospitalization, a circuit judge, mental hygiene commissioner or designated magistrate may enter a temporary probable cause order directing the involuntary hospitalization of the individual at a mental health facility for immediate examination and treatment.

(2) The modified procedures may authorize the chief judge of a judicial circuit, or circuit judge if there is no chief judge, to enter orders authorizing specific psychiatrists or

223 licensed psychologists, whose qualifications and training
224 have been reviewed and approved by the Supreme Court of
225 Appeals, to issue certifications that authorize and direct the
226 involuntary admission of an individual subject to the
227 provisions of this section on a temporary probable cause
228 basis to a mental health facility for examination and
229 treatment: *Provided,* That the authorized psychiatrist or
230 licensed psychologist must conclude and certify based on
231 personal observation prior to certification that the individual
232 is mentally ill and, because of such mental illness, is
233 imminently likely to cause serious harm to himself or herself
234 or to others if not immediately restrained and promotion of
235 the best interests of the individual requires immediate
236 hospitalization. Immediately upon certification, the
237 psychiatrist or licensed psychologist shall provide notice of
238 the certification to a circuit judge, mental hygiene
239 commissioner or designated magistrate in the county where
240 the individual resides.

241 (3) No involuntary hospitalization pursuant to a
242 temporary probable cause determination issued pursuant to
243 the provisions of this section shall continue in effect for more
244 than forty-eight hours without the filing of a petition for
245 involuntary hospitalization and the occurrence of a probable
246 cause hearing before a circuit judge, mental hygiene
247 commissioner or designated magistrate. If at any time the
248 chief medical officer of the mental health facility to which
249 the individual is admitted determines that the individual is
250 not likely to cause serious harm as a result of mental illness,
251 the chief medical officer shall discharge the individual and
252 immediately forward a copy of the individual's discharge to
253 the circuit judge, mental hygiene commissioner or designated
254 magistrate.

CHAPTER 131

(Com. Sub. for H. B. 4525 - By Delegates Caputo, Miley, Hunt, Butcher, Craig, Boggs, Mahan, Kominar, Varner, Hamilton and White)

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

AN ACT to amend and reenact §22A-1-21 of the Code of West Virginia, 1931, as amended; to amend and reenact §22A-2A-301, §22A-2A-304 and §22A-2A-310 of said code; to amend and reenact §22A-6-3, §22A-6-4, §22A-6-6 and §22A-6-7 of said code; to amend and reenact §22A-7-4 and §22A-7-6 of said code; and to amend and reenact §22A-11-2 and §22A-11-3 of said code, all relating to board's under the jurisdiction of the Office of Miners' Health, Safety and Training; removing boards from under the jurisdiction of the Office of Miners' Health, Safety and Training; changing board membership; changing voting procedures; permitting a clarifying resolution; requiring the Health and Safety Administrator to provide administrative assistance; permitting the Health and Safety Administrator to expend funds for certain purposes; adding to the boards' powers; changing voting procedure; clarifying voting procedures; clarifying reporting requirements; establishing reporting time lines; and permitting appropriations from general revenue.

Be it enacted by the Legislature of West Virginia:

That §22A-1-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §22A-2A-301, §22A-2A-304 and §22A-2A-310 of said code be amended and reenacted; that §22A-6-3, §22A-6-4, §22A-6-6 and §22A-6-7 of said code be amended and reenacted; that §22A-7-4 and §22A-7-6 of said code be amended and reenacted; and that §22A-11-2 and §22A-11-3 of said code be amended and reenacted, all to read as follows:

Article

1. **Office of Miner's Health, Safety and Training; Administration; Enforcement.**
2A. **Use of Diesel-Powered Equipment in Underground Coal Mines.**
6. **Board of Coal Mine Health and Safety.**
7. **Board of Miner Training, Education and Certification.**
11. **Mine Safety Technology.**

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-21. Penalties.

(a)(1) Any operator of a coal mine in which a violation occurs of any health or safety rule or who violates any other provisions of this chapter shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which shall be not more than $3,000, for each violation, unless the director determines that it is appropriate to impose a special assessment for said violation, pursuant to the provisions of subdivision (2), subsection (b) of this section. Each violation constitutes a separate offense. In determining the amount of the penalty, the director shall consider the operator's history of previous violations, whether the operator was negligent, the appropriateness of the penalty to the size of the business of the operator charged, the gravity of the violation and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

(2) Revisions to the assessment of civil penalties shall be proposed as legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.

19 (3) Any miner who knowingly violates any health or
20 safety provision of this chapter or health or safety rule
21 promulgated pursuant to this chapter is subject to a civil
22 penalty assessed by the director under subdivision (4) of this
23 subsection which shall not be more than $250 for each
24 occurrence of the violation.

25 (4) A civil penalty under subdivision (1) or (2) of
26 subsection (a) of this section or subdivision (1) or (2) of
27 subsection (b) of this section shall be assessed by the director
28 only after the person charged with a violation under this
29 chapter or rule promulgated pursuant to this chapter has been
30 given an opportunity for a public hearing and the director has
31 determined, by a decision incorporating the director's
32 findings of fact in the decision, that a violation did occur and
33 the amount of the penalty which is warranted and
34 incorporating, when appropriate, an order in the decision
35 requiring that the penalty be paid. Any hearing under this
36 section shall be of record.

37 (5) If the person against whom a civil penalty is assessed
38 fails to pay the penalty within the time prescribed in the
39 order, the director may file a petition for enforcement of the
40 order in any appropriate circuit court. The petition shall
41 designate the person against whom the order is sought to be
42 enforced as the respondent. A copy of the petition shall
43 immediately be sent by certified mail, return receipt
44 requested, to the respondent and to the representative of the
45 miners at the affected mine or the operator, as the case may
46 be. The director shall certify and file in the court the record
47 upon which the order sought to be enforced was issued. The
48 court has jurisdiction to enter a judgment enforcing,
49 modifying and enforcing as modified, or setting aside, in
50 whole or in part, the order and decision of the director or it
51 may remand the proceedings to the director for any further
52 action it may direct. The court shall consider and determine
53 de novo all relevant issues, except issues of fact which were
54 or could have been litigated in review proceedings before a

55 circuit court under section twenty of this article and, upon the
56 request of the respondent, those issues of fact which are in
57 dispute shall be submitted to a jury. On the basis of the
58 jury's findings the court shall determine the amount of the
59 penalty to be imposed. Subject to the direction and control
60 of the Attorney General, attorneys appointed for the director
61 may appear for and represent the director in any action to
62 enforce an order assessing civil penalties under this
63 subdivision.

64 (b) (1) Any operator who knowingly violates a health or
65 safety provision of this chapter or health or safety rule
66 promulgated pursuant to this chapter, or knowingly violates
67 or fails or refuses to comply with any order issued under
68 section fifteen of this article, or any order incorporated in a
69 final decision issued under this article, except an order
70 incorporated in a decision under subsection (a) of this section
71 or subsection (b), section twenty-two of this article, shall be
72 assessed a civil penalty by the director under subdivision (5),
73 subsection (a) of this section of not more than $5,000 and for
74 a second or subsequent violation assessed a civil penalty of
75 not more than $10,000, unless the director determines that it
76 is appropriate to impose a special assessment for said
77 violation, pursuant to the provisions of subdivision (2) of this
78 subsection.

79 (2) In lieu of imposing a civil penalty pursuant to the
80 provisions of subsection (a) of this section or subdivision (1)
81 of this subsection, the director may impose a special
82 assessment if an operator violates a health or safety provision
83 of this chapter or health or safety rule promulgated pursuant
84 to this chapter and the violation is of serious nature and
85 involves one or more of the following by the operator:

86 (A) Violations involving fatalities and serious injuries;

87 (B) Failure or refusal to comply with any order issued
88 under section fifteen of this article;

(C) Operation of a mine in the face of a closure order;

(D) Violations involving an imminent danger;

(E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances; or

(F) A discrimination violation under section twenty-two of this article.

In situations in which the director determines that there are factors present which would make it appropriate to impose a special assessment, the director shall assess a civil penalty of at least $5,000 and of not more than $10,000.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), section twenty-two of this article, any director, officer or agent of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned in the jail not more than six months, or both fined and imprisoned. The conviction of any person under this subsection shall result in the revocation of any certifications

121 held by the person under this chapter which certified or
122 authorized the person to direct other persons in coal mining
123 by operation of law and bars that person from being issued
124 any license under this chapter, except a miner's certification,
125 for a period of not less than one year or for a longer period as
126 may be determined by the director.

127 (e) Whoever willfully distributes, sells, offers for sale,
128 introduces or delivers in commerce any equipment for use in
129 a coal mine, including, but not limited to, components and
130 accessories of the equipment, who willfully misrepresents the
131 equipment as complying with the provisions of this law, or
132 with any specification or rule of the director applicable to the
133 equipment, and which does not comply with the law,
134 specification or rule, is guilty of a misdemeanor and, upon
135 conviction thereof, is subject to the same fine and
136 imprisonment that may be imposed upon a person under
137 subsection (d) of this section.

138 (f) There is continued in the Treasury of the State of West
139 Virginia a Special Health, Safety and Training Fund. All
140 civil penalty assessments collected under this section shall be
141 collected by the director and deposited with the Treasurer of
142 the State of West Virginia to the credit of the Special Health,
143 Safety and Training Fund. The fund shall be used by the
144 director who is authorized to expend the moneys in the fund
145 for the administration of this chapter.

ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.

PART 3. WEST VIRGINIA DIESEL EQUIPMENT COMMISSION.

§22A-2A-301. The West Virginia Diesel Equipment Commission.
§22A-2A-304. Nomination and appointment of members.
§22A-2A-310. Duties of commission following promulgation of initial rules.

§22A-2A-301. The West Virginia Diesel Equipment Commission.

The West Virginia Diesel Equipment Commission, consisting of six members, is continued, and commencing July 1, 2010, is a separate independent commission within the Department of Commerce.

§22A-2A-304. Nomination and appointment of members.

(a) Prior to the appointment of a person to the commission, the Governor shall request the nomination of a candidate for the appointment. If the position is to be filled by a person who can reasonably be expected to represent the viewpoint or interests of underground coal operators in this state, the Governor shall request the nomination from the major trade association representing underground coal operators in this state. If the position is to be filled by a person who can reasonably be expected to represent the viewpoint or interests of working miners in this state, the Governor shall request the nomination from the highest ranking officer of the major employee organization representing coal miners in this state. The Director of the Office of Miner's Health, Safety and Training or his or her designee and the Health Safety Administrator shall serve as a nonvoting ex officio member.

(b) The Governor shall appoint a member to serve for the term for which the person was nominated, and until his or her successor has been nominated and appointed: *Provided*, That if a successor is not appointed within one hundred twenty days after the expiration of a member's term, a vacancy is deemed to exist. The Governor may reject a nomination and decline to appoint a nominee only if the person does not have the qualifications, integrity and responsibility necessary to enable the person to perform his or her duties as a member of the commission.

(c) Appointments to fill vacancies on the commission shall be for the unexpired term of the member to be replaced.

§22A-2A-310. Duties of commission following promulgation of initial rules.

(a) After the promulgation of the initial rules, the commission shall have as its primary duties the implementation of this article and the evaluation and adoption of state of the art technology and methods, reflected in engines and engine components, emission control equipment and procedures, that when applied to diesel-powered underground mining machinery shall reasonably reduce or eliminate diesel exhaust emissions and enhance protections of the health and safety of miners. The technology and methods adopted by the commission shall have been demonstrated to be reliable. In making a decision to adopt new technology and methods, the commission shall consider the highest achievable measures of protection for miners' health and safety through available technology, engineering controls and performance requirements and shall further consider the cost, availability, adaptability and suitability of any available technology, engineering controls and performance requirements as they relate to the use of diesel equipment in underground coal mines. Any state of the art technology or methods adopted by the commission shall not reduce or compromise the level of health and safety protection of miners.

(b) Upon application of a coal mine operator, the commission shall consider site-specific requests for the use of diesel equipment in underground coal mines and for the use of alternative diesel-related health and safety technologies and methods. The commission's action on applications submitted under this subsection shall be on a mine-by-mine basis. Upon receipt of a site-specific application, the commission shall conduct an investigation, which investigation shall include consultation with the mine operator and the authorized representatives of the miners at the mine. Authorized representatives of the miners shall

include a Mine Health and Safety Committee elected by miners at the mine, a person or persons employed by an employee organization representing miners at the mine or a person or persons authorized as the representative or representatives of miners of the mine in accordance with MSHA regulations at 30 C.F.R. Pt. 40 (relating to representative of miners). Where there is no authorized representative of the miners, the commission shall consult with a reasonable number of miners at the mine. Upon completion of the investigation, the commission may approve the application for the site-specific request: *Provided*, That an application for a site-specific request under this subsection may be approved only upon a majority vote of all six members of the commission. All six members must be present when a vote is taken.

(1) Within one hundred eighty days of receipt of an application for use of alternative technologies or methods, the commission shall complete its investigation. The time period may be extended with the consent of the applicant.

(2) The commission shall have thirty days in which to render a final decision approving or rejecting the application.

(3) The commission members shall not approve an application made under this section if, at the conclusion of the investigation, the commission members have made a determination that the use of the alternative technology or method will reduce or compromise the level of health and safety protection of miners.

(4) The written approval of an application for the use of alternative technologies or methods shall include the results of the commission's investigation and describe the specific conditions of use for the alternative technology or method.

(5) The written decision to reject an application for the use of alternative technologies or methods shall include the

results of the commission's investigation and shall outline in detail the basis for the rejection.

(c) The commission shall establish conditions for the use of diesel-powered equipment in shaft and slope construction operations at coal mines.

(d) In performing its functions, the commission shall have access to the services of the Board of Coal Mine Health and Safety. The board shall provide administrative support and assistance pursuant to section six, article six of this chapter, to enable the commission to carry out its duties.

(e) Any action taken by the commission to either approve or reject the use of an alternative technology or method, or establish conditions under subsection (c) of this section, shall be final and binding and not subject to further review except where a decision by the commission may be deemed to be an abuse of discretion or contrary to law. If any party affected by a decision of the commission believes that the decision is an abuse of discretion or contrary to law, that party may file a petition for review with the circuit court of Kanawha County in accordance with the provisions of the administrative procedures act relating to judicial review of governmental determinations. The court, in finding that any decision made by the commission is an abuse of discretion or contrary to law, shall vacate and, if appropriate, remand the case.

(f) The powers and duties of the commission shall be limited to the matters regarding the use of diesel-powered equipment in underground coal mines.

(g) Appropriations for the funding of the commission and to effectuate the purposes of this article shall be made to a budget account hereby established for that purpose in the General Revenue Fund. Expenditures from this fund are provided for in section six, article six of this chapter.

100 (h) The commission may issue a clarifying resolution
101 about the initial rules and other matters consistent with the
102 powers and duties of the commission under this article. A
103 unanimous vote is required for any clarifying resolution by
104 the commission.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.
§22A-6-4. Board powers and duties.
§22A-6-6. Health and Safety Administrator; qualifications; duties; employees; compensation.
§22A-6-7. Coal Mine Safety and Technical Review Committee; membership; method of nomination and appointment; meetings; quorum; powers and duties of the committee; powers and duties of the Board of Coal Mine Health and Safety.

§22A-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

1 (a) The Board of Coal Mine Health and Safety is
2 continued, and commencing July 1, 2010, is a separate
3 independent board within the Department of Commerce. The
4 board consists of six voting members and one ex officio,
5 nonvoting member who are residents of this state, and who
6 are appointed as follows:

7 (1) The Governor shall appoint, by and with the advice
8 and consent of the Senate, three members to represent the
9 viewpoint of those operators in this state. When such
10 members are to be appointed, the Governor shall request
11 from the major trade association representing operators in
12 this state a list of three nominees for each such position on
13 the board. All such nominees shall be persons with special
14 experience and competence in health and safety. There shall
15 be submitted with such list a summary of the qualifications
16 of each nominee. If the full lists of nominees are submitted
17 in accordance with the provisions of this subdivision, the
18 Governor shall make the appointments from the persons so
19 nominated. For purposes of this subdivision, the major trade

association representing operators in this state is that association which represents operators accounting for over one half of the coal produced in mines in this state in the year prior to the year in which the appointment is to be made.

(2) The Governor shall appoint, by and with the advice and consent of the Senate, three members who can reasonably be expected to represent the viewpoint of the working miners of this state. When members are to be appointed, the Governor shall request from the major employee organization representing coal miners within this state a list of three nominees for each position on the board. The highest ranking official within the major employee organization representing coal miners within this state shall submit a list of three nominees for each such position on the board. The nominees shall have a background in health and safety. The Governor shall make the appointments from the requested list of nominees.

(3) All appointments made by the Governor under the provisions of subdivisions (1) and (2) of this subsection shall be with the advice and consent of the Senate; and

(4) The Director of the Office of Miner's Health, Safety and Training or his or her designee shall serve as an ex officio, nonvoting member.

(b) Members serving on the board on July 1, 2010, may continue to serve until the expiration of their terms. The term is three years. Members are eligible for reappointment.

(c) The Governor shall appoint, subject to the approval of a majority of the members of the board appointed under subdivisions (1) and (2), subsection (a) of this section, a Health and Safety Administrator in accordance with the provisions of section six of this article, who shall certify all official records of the board. The Health and Safety Administrator shall be a full-time officer of the Board of Coal Mine Health and Safety with the duties provided for in

section six of this article. The Health and Safety Administrator shall have such education and experience as the Governor deems necessary to properly investigate areas of concern to the board in the development of rules governing mine health and safety. The Governor shall appoint as Health and Safety Administrator a person who has an independent and impartial viewpoint on issues involving mine safety. The Health and Safety Administrator shall be a person who has not been during the two years immediately preceding appointment, and is not during his or her term, an officer, trustee, director, substantial shareholder, contractor, consultant or employee of any coal operator, or an employee or officer of an employee organization or a spouse of any such person. The Health and Safety Administrator shall have the expertise to draft proposed rules and shall prepare such rules as are required by this code and on such other areas as will improve coal mine health and safety.

(d) The board shall meet at least once during each calendar month, or more often as may be necessary, and at other times upon the call of the chair, or upon the request of any three members of the board. Under the direction of the board, the Health and Safety Administrator shall prepare an agenda for each board meeting giving priority to the promulgation of rules as may be required from time to time by this code, and as may be required to improve coal mine health and safety. The Health and Safety Administrator shall provide each member of the board with notice of the meeting and the agenda as far in advance of the meeting as practical, but in any event, at least five days prior thereto. No meeting of the board shall be conducted unless said notice and agenda are given to the board members at least five days in advance, as provided herein, except in cases of emergency, as declared by the director, in which event members shall be notified of the board meeting and the agenda: *Provided*, That upon agreement of a majority of the quorum present, any scheduled meeting may be ordered recessed to another day certain without further notice of additional agenda.

When proposed rules are to be finally adopted by the board, copies of such proposed rules shall be delivered to members not less than five days before the meeting at which such action is to be taken. If not so delivered, any final adoption or rejection of rules shall be considered on the second day of a meeting of the board held on two consecutive days, except that by the concurrence of at least four members of the board, the board may suspend this rule of procedure and proceed immediately to the consideration of final adoption or rejection of rules. When a member fails to appear at three consecutive meetings of the board or at one half of the meetings held during a one-year period, the Health and Safety Administrator shall notify the member and the Governor of such fact. Such member shall be removed by the Governor unless good cause for absences is shown.

(e) Whenever a vacancy on the board occurs, nominations and appointments shall be made in the manner prescribed in this section: *Provided*, That in the case of an appointment to fill a vacancy, nominations of three persons for each such vacancy shall be requested by and submitted to the Governor within thirty days after the vacancy occurs by the major trade association or major employee organization, if any, which nominated the person whose seat on the board is vacant. The vacancy shall be filled by the Governor within thirty days of his or her receipt of the list of nominations.

(f) A quorum of the board is four members which shall include at least two members representing the viewpoint of operators and at least two members representing the viewpoint of the working miners, and the board may act officially by a majority of those members who are present, except that no vote of the board may be taken unless all six voting members are present.

§22A-6-4. Board powers and duties.

(a) The board shall adopt as standard rules the "coal mine health and safety provisions of this chapter". Such standard

rules and any other rules shall be adopted by the board without regard to the provisions of chapter twenty-nine-a of this code. The Board of Coal Mine Health and Safety shall devote its time toward promulgating rules in those areas specifically directed by this chapter and those necessary to prevent fatal accidents and injuries.

(b) The board shall review such standard rules and, when deemed appropriate to improve or enhance coal mine health and safety, revise the same or develop and promulgate new rules dealing with coal mine health and safety.

(c) The board shall develop, promulgate and revise, as may be appropriate, rules as are necessary and proper to effectuate the purposes of article two of this chapter and to prevent the circumvention and evasion thereof, all without regard to the provisions of chapter twenty-nine-a of this code:

(1) Upon consideration of the latest available scientific data in the field, the technical feasibility of standards, and experience gained under this and other safety statutes, such rules may expand protections afforded by this chapter notwithstanding specific language therein, and such rules may deal with subject areas not covered by this chapter to the end of affording the maximum possible protection to the health and safety of miners.

(2) No rules promulgated by the board shall reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by this chapter.

(3) Any miner or representative of any miner, or any coal operator has the power to petition the circuit court of Kanawha County for a determination as to whether any rule promulgated or revised reduces the protection afforded miners below that provided by this chapter, or is otherwise contrary to law: *Provided,* That any rule properly

promulgated by the board pursuant to the terms and conditions of this chapter creates a rebuttable presumption that said rule does not reduce the protection afforded miners below that provided by this chapter.

(4) The director shall cause proposed rules and a notice thereof to be posted as provided in section eighteen, article one of this chapter. The director shall deliver a copy of such proposed rules and accompanying notice to each operator affected. A copy of such proposed rules shall be provided to any individual by the director's request. The notice of proposed rules shall contain a summary in plain language explaining the effect of the proposed rules.

(5) The board shall afford interested persons a period of not less than thirty days after releasing proposed rules to submit written data or comments. The board may, upon the expiration of such period and after consideration of all relevant matters presented, promulgate such rules with such modifications as it may deem appropriate.

(6) On or before the last day of any period fixed for the submission of written data or comments under subdivision (5) of this section, any interested person may file with the board written objections to a proposed rule, stating the grounds therefor and requesting a public hearing on such objections. As soon as practicable after the period for filing such objections has expired, the board shall release a notice specifying the proposed rules to which objections have been filed and a hearing requested.

(7) Promptly after any such notice is released by the board under subdivision (6) of this section, the board shall issue notice of, and hold a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearings, the board shall make findings of fact which shall be public, and may promulgate such rules

with such modifications as it deems appropriate. In the event the board determines that a proposed rule should not be promulgated or should be modified, it shall within a reasonable time publish the reasons for its determination.

(8) All rules promulgated by the board shall be published in the state register and continue in effect until modified or superseded in accordance with the provisions of this chapter.

(d) To carry out its duties and responsibilities, the board is authorized to employ such personnel, including legal counsel, experts and consultants, as it deems necessary. In addition, the board, within the appropriations provided for by the Legislature, may conduct or contract for research and studies and is entitled to the use of the services, facilities and personnel of any agency, institution, school, college or university of this state.

(e) The director shall within sixty days of a coal mining fatality or fatalities provide the board with all available reports regarding such fatality or fatalities.

The board shall review all reports and any recommended rules submitted by the director, receive any additional information, and may, on its own initiative, ascertain the cause or causes of such coal mining fatality or fatalities. Within ninety days of the receipt of the Federal Mine Safety and Health Administration's fatal accident report and the director's report and recommended rules, the board shall review and consider the presentation of said report and rules and, if a majority of all voting board members determines that additional rules can assist in the prevention of the specific type of fatality, the board shall either accept and promulgate the director's recommended rules, amend the director's recommended rules or draft new rules, as are necessary to prevent the recurrence of such fatality. If the board chooses to amend the director's recommended rules or

draft its own rules, a vote is required within one hundred twenty days as to whether to promulgate the amended rule or the rule drafted by the board: *Provided*, That the board may, by majority vote, find that exceptional circumstances exist and the deadline cannot be met: *Provided, however*, That under no circumstances shall such deadline be extended by more than a total of ninety days. A majority vote of the board is required to promulgate any such rule.

The board shall annually, not later than July 1, review the major causes of coal mining injuries during the previous calendar year, reviewing the causes in detail, and shall promulgate such rules as may be necessary to prevent the recurrence of such injuries.

Further, the board shall, on or before January 10, of each year, submit a report to the Governor, President of the Senate and Speaker of the House, which report shall include, but is not limited to:

(1) The number of fatalities during the previous calendar year, the apparent reason for each fatality as determined by the office of miners' health, safety and training and the action, if any, taken by the board to prevent such fatality;

(2) Any rules promulgated by the board during the last year;

(3) What rules the board intends to promulgate during the current calendar year;

(4) Any problem the board is having in its effort to promulgate rules to enhance health and safety in the mining industry;

(5) Recommendations, if any, for the enactment, repeal or amendment of any statute which would cause the enhancement of health and safety in the mining industry;

(6) Any other information the board deems appropriate;

(7) In addition to the report by the board, as herein contained, each individual member of said board has right to submit a separate report, setting forth any views contrary to the report of the board, and the separate report, if any, shall be appended to the report of the board and be considered a part thereof.

§22A-6-6. Health and Safety Administrator; qualifications; duties; employees; compensation.

(a) The Governor shall appoint the Health and Safety Administrator of the board for a term of employment of one year. The Health and Safety Administrator shall be entitled to have his or her contract of employment renewed on an annual basis except where such renewal is denied for cause: *Provided,* That the Governor has the power at any time to remove the Health and Safety Administrator for misfeasance, malfeasance or nonfeasance: *Provided, however,* That the board has the power to remove the Health and Safety Administrator without cause upon the concurrence of five members of the board.

(b) The Health and Safety Administrator shall work at the direction of the board, independently of the director of the office of miners' health, safety and training and has such authority and shall perform such duties as may be required or necessary to effectuate this article.

(c) In addition to the Health and Safety Administrator, there shall be such other employees hired by the Health and Safety Administrator as the board determines to be necessary. The health and safety administrator shall provide supervision and direction to the other employees of the board in the performance of their duties.

(d) The employees of the board shall be compensated at rates determined by the board. The salary of the Health and Safety Administrator shall be fixed by the Governor: *Provided,* That the salary of the Health and Safety Administrator shall not be reduced during his or her annual term of employment or upon the renewal of his or her contract for an additional term. Such salary shall be fixed for any renewed term at least ninety days before the commencement thereof.

(e) (1) Appropriations for the salaries of the Health and Safety Administrator and any other employees of the board and for necessary office and operating expenses shall be made to a budget account established for those purposes in the General Revenue Fund. Such account shall be separate from any accounts or appropriations for the Office of Miners' Health, Safety and Training.

(2) Expenditures from the funds established in section three hundred ten, article two-a; section seven, article six; section four, article seven; section three, article eleven of this chapter shall be by the Health and Safety Administrator for administrative and operating expenses, such operating expenses include mine health and safety, research, education and training programs as determined by the entities.

(f) The Health and Safety Administrator shall review all coal mining fatalities and major causes of injuries as mandated by section four of this article. An analysis of such fatalities and major causes of injuries shall be prepared for consideration by the board within ninety days of the occurrence of the accident.

(g) At the direction of the board, the administrator shall also conduct an annual study of occupational health issues relating to employment in and around coal mines of this state and submit a report to the board with findings and proposals

to address the issues raised in such study. The administrator is responsible for preparing the annual reports required by subsection (e), section four of this article and section nine of this article.

(h) The administrator shall provide administrative assistance to the West Virginia Diesel Commission, The State Coal Mine Safety and Technical Review Committee, Board of Coal Mine Health and Safety, Board of Miner Training, Education and Certification, and the Mine Safety Technology Task Force, and serve as the legislative liaison for budgetary issues. The Administrator shall serve as an ex officio, nonvoting member on the West Virginia Diesel Commission, The State Coal Mine Safety and Technical Review Committee, Board of Miner Training, Education and Certification, and the Mine Safety Technology Task Force.

(i) The administrator shall submit to each board or commission for its approval, the proposed budget of the board or commission before submitting it to the Secretary of Revenue.

§22A-6-7. Coal Mine Safety and Technical Review Committee; membership; method of nomination and appointment; meetings; quorum; powers and duties of the committee; powers and duties of the Board of Coal Mine Health and Safety.

(a) The State Coal Mine Safety and Technical Review Committee is continued, and commencing July 1, 2010, is a separate independent committee within the Department of Commerce. The purposes of this committee are to:

(1) Assist the Board of Coal Mine Health and Safety in the development of technical data relating to mine safety issues, including related mining technology;

8 (2) Provide suggestions and technical data to the board
9 and propose rules with general mining industry application;

10 (3) Accept and consider petitions submitted by individual
11 mine operators or miners seeking site-specific rule making
12 pertaining to individual mines and make recommendations to
13 the board concerning such rule making; and

14 (4) Provide a forum for the resolution of technical issues
15 encountered by the board, safety education and coal
16 advocacy programs.

17 (b) The committee shall consist of two members who
18 shall be residents of this state, and who shall be appointed as
19 hereinafter specified in this section:

20 (1) The Governor shall appoint one member to represent
21 the viewpoint of the coal operators in this state from a list
22 containing one or more nominees submitted by the major
23 trade association representing coal operators in this state
24 within thirty days of submission of such nominee or
25 nominees.

26 (2) The Governor shall appoint one member to represent
27 the viewpoint of the working miners of this state from a list
28 containing one or more nominees submitted by the highest
29 ranking official within the major employee organization
30 representing coal mines within this state within thirty days of
31 submission of the nominee or the nominees.

32 (3) The members appointed in accordance with the
33 provisions of subdivisions (1) and (2) of this subsection shall
34 be initially appointed to serve a term of three years. The
35 members serving on the effective date of this article may
36 continue to serve until their terms expire.

37 (4) The members appointed in accordance with the
38 provisions of subdivisions (1) and (2) of this subsection may

be, but are not required to be, members of the Board of Coal Mine Health and Safety, and shall be compensated on a per diem basis in the same amount as provided in section ten of this article, plus all reasonable expenses.

(c) The committee shall meet at least once during each calendar month, or more often as may be necessary.

(d) A quorum of the committee shall require both members, and the committee may only act officially by a quorum.

(e) The committee may review any matter relative to mine safety and mining technology, and may pursue development and resolution of issues related thereto. The committee may make recommendations to the board for the promulgation of rules with general mining industry application. Upon receipt of a unanimous recommendation for rule making from the committee and only thereon, the board may adopt or reject such rule, without modification except as approved by the committee: *Provided,* That any adopted rule shall not reduce or compromise the level of safety or protection below the level of safety or protection afforded by applicable statutes and rules. When so promulgated, such rules shall be effective, notwithstanding the provisions of applicable statutes.

(f) (1) Upon application of a coal mine operator, or on its own motion, the committee has the authority to accept requests for site-specific rule making on a mine-by-mine basis, and make unanimous recommendations to the board for site-specific rules thereon. The committee has authority to approve a request if it concludes that the request does not reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by any applicable statutes or rules. Upon receipt of a request for site-specific rule making, the committee may conduct an investigation of the conditions in the specific mine

in question, which investigation shall include consultation with the mine operator and authorized representatives of the miners. Such authorized representatives of the miners shall include any person designated by the employees at the mine, persons employed by an employee organization representing one or more miners at the mine, or a person designated as a representative by one or more persons at the mine.

(2) If the committee determines to recommend a request made pursuant to subdivision (1) of this subsection, the committee shall provide the results of its investigation to the Board of Coal Mine Health and Safety along with recommendations for the development of the site-specific rules applicable to the individual mine, which recommendations may include a written proposal containing draft rules.

(3) Within thirty days of receipt of the committee's recommendation, the board shall adopt or reject, without modification, except as approved by the committee, the committee's recommendation to promulgate site-specific rules applicable to an individual mine adopting such site-specific rules only if it determines that the application of the requested rule to such mine will not reduce or compromise the level of safety or protection afforded miners below that level of safety or protection afforded by any applicable statutes. When so promulgated, such rules shall be effective notwithstanding the provisions of applicable statutes.

(g) The board shall consider all rules proposed by the Coal Mine Safety and Technical Review Committee and adopt or reject, without modification, except as approved by the committee, such rules, dispensing with the preliminary procedures set forth in subdivisions (1) through (7), subsection (a), section five; and, in addition, with respect to site-specific rules also dispensing with the procedures set forth in subdivisions (4) through (8), subsection (c), section four of this article.

(h) In performing its functions, the committee has access to the services of the coal mine Health and Safety Administrator appointed under section six of this article. The director shall make clerical support and assistance available in order that the committee can carry out its duties. Upon the request of both members of the committee, the Health and Safety Administrator shall draft proposed rules and reports or make investigations.

(i) The powers and duties provided for in this section for the committee are not intended to replace or precondition the authority of the Board of Coal Mine Health and Safety to act in accordance with sections one through six and eight through ten of this article.

(j) Appropriations for the funding of the committee and to effectuate this section shall be made to a budget account hereby established for that purpose in the General Revenue Fund. Such account shall be separate from any accounts or appropriations for the office of miners' health, safety and training.

ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.

§22A-7-4. Board of Miner Training, Education and Certification continued; membership; method of appointment; terms.
§22A-7-6. Duties of the director and office.

§22A-7-4. Board of Miner Training, Education and Certification continued; membership; method of appointment; terms.

(a) The Board of Miner Training, Education and Certification is continued, and commencing July 1, 2010, is a separate independent board within the Department of Commerce. The board consists of six voting members and two ex officio, nonvoting members, who are selected in the following manner:

(1) One member shall be appointed by the Governor to represent the viewpoint of surface mine operators in this state. When such member is to be appointed, the Governor shall request from the major association representing surface coal operators in this state a list of three nominees to the board. The Governor shall select from said nominees one person to serve on the board. For purposes of this subsection, the major association representing the surface coal operators in this state is that association, if any, which represents surface mine operators accounting for over one half of the coal produced in surface mines in this state in the year prior to that year in which the appointment is made.

(2) Two members shall be appointed by the Governor to represent the interests of the underground operators of this state. When said members are to be appointed, the Governor shall request from the major association representing the underground coal operators in this state a list of six nominees to the board. The Governor shall select from said nominees two persons to serve on the board. For purposes of this subsection, the major association representing the underground operators in this state is that association, if any, which represents underground operators accounting for over one half of the coal produced in underground mines in this state in the year prior to that year in which the appointments are made.

(3) Three members shall be appointed by the Governor who can reasonably be expected to represent the interests of the working miners in this state. If the major employee organization representing coal miners in this state is divided into administrative districts, the employee organization of each district shall, upon request by the Governor, submit a list of three nominees for membership on the board. If such major employee organization is not so divided into administrative districts, such employee organization shall, upon request by the Governor, submit a list of twelve nominees for membership on the board. The Governor shall make such appointments from the persons so nominated:

Provided, That in the event nominations are made by administrative districts, not more than one member shall be appointed from the nominees of any one district unless there are less than three such districts in this state.

(4) The Director of the Office of Miner's Health, Safety and Training or his or her designee, and the Health and Safety Administrator of the Board of Coal Mine Health and Safety shall serve as ex officio, nonvoting members.

(5) All appointments made by the Governor under this section shall be with the advice and consent of the Senate: *Provided*, That persons so appointed while the Senate of this state is not in session are permitted to serve up to one year in an acting capacity, or until the next session of the Legislature, whichever is less.

(b) The board shall be appointed by the Governor. Members serving on the effective date of this article may continue on the board until their terms expire. Appointed members serve for a term of three years. The board shall meet at the call of the chair, at the call of the director, or upon the request of any two members of the board: *Provided*, That no meeting of the board for any purpose shall be conducted unless the board members are notified at least five days in advance of a proposed meeting. In cases of an emergency, members may be notified of a board meeting by the most appropriate means of communication available.

(c) Whenever a vacancy on the board occurs, appointments shall be made in the manner prescribed in this section: *Provided*, That in the case of an appointment to fill a vacancy nominations shall be submitted to the Governor within thirty days after the vacancy occurs. The vacancy shall be filled by the Governor within thirty days of receipt of the list of nominations.

(d) Each appointed member of the board shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Any such amounts shall be paid out of the State Treasury upon a requisition upon the State Auditor, properly certified by such members of the board.

(e) A quorum of the board is four members, with two representing the viewpoint of the operators and two representing the viewpoint of the labor organization. The board may act officially by a majority of those members who are present. No vote of the board may be taken unless all six voting members are present.

(f) In performing its functions, the board shall have access to the services of the Board of Coal Mine Health and Safety. The Board of Coal Mine Health and Safety shall provide administrative support and assistance, pursuant to section six, article six of this chapter, to enable the board to carry out its duties.

(g) Appropriations to the board to effectuate the purposes of this article shall be made to a budget account established for that purpose.

§22A-7-6. Duties of the director and office.

The director shall propose rules for legislative approval, pursuant to chapter twenty-nine-a of this code, that are necessary to establish a program to implement the provisions of this article. Such program shall include, but not be limited to, implementation of a program of instruction in each of the miner occupational specialties and the conduct of examinations to test each applicant's knowledge and understanding of the

8 training and instruction which he or she is required to have
9 prior to the receipt of a certificate.

10 The director is authorized and directed to utilize state
11 mine inspectors, mine safety instructors, the state mine
12 foreman examiner, private and public institutions of
13 education and such other persons as may be available in
14 implementing the program of instruction and examinations.

15 The director may, at any time, make such
16 recommendations to the board as he or she may deem
17 appropriate.

18 The director shall supply any information upon request of
19 the board as long as the information is not in violation of any
20 other laws.

21 The director is authorized and directed to utilize such
22 state and federal moneys and personnel as may be available
23 to the office for educational and training purposes in the
24 implementation of the provisions of this article.

ARTICLE 11. MINE SAFETY TECHNOLOGY.

§22A-11-2. Mine Safety Technology Task Force continued; membership; method of nomination and appointment.
§22A-11-3. Task force powers and duties.

§22A-11-2. Mine Safety Technology Task Force continued; membership; method of nomination and appointment.

1 (a) The Mine Safety Technology Task Force is continued,
2 and commencing July 1, 2010, is a separate independent task
3 force within the Department of Commerce.

4 (b) The task force shall consist of seven voting members
5 and two ex officio, nonvoting members who are appointed as
6 specified in this section:

7 (1) The Governor shall appoint, by and with the advice
8 and consent of the Senate, three members to represent the
9 viewpoint of operators in this state. When these members are
10 to be appointed, the Governor shall request from the major
11 trade association representing operators in this state a list of
12 three nominees for each position on the task force. All
13 nominees shall be persons with special experience and
14 competence in coal mine health and safety. There shall be
15 submitted with the list, a summary of the qualifications of
16 each nominee. For purposes of this subdivision, the major
17 trade association representing operators in this state is that
18 association which represents operators accounting for over
19 one half of the coal produced in mines in this state in the year
20 prior to the year in which the appointment is to be made.

21 (2) The Governor shall appoint, by and with the advice
22 and consent of the Senate, three members who can
23 reasonably be expected to represent the viewpoint of the
24 working miners of this state. When members are to be
25 appointed, the Governor shall request from the major
26 employee organization representing coal miners within this
27 state a list of three nominees for each position on the task
28 force. The highest ranking official within the major employee
29 organization representing coal miners within this state shall
30 submit a list of three nominees for each position on the board.
31 The nominees shall have a background in coal mine health
32 and safety.

33 (3) The Governor shall appoint, by and with the advice
34 and consent of the Senate, one certified mine safety
35 professional from the College of Engineering and Mineral
36 Resources at West Virginia University;

37 (4) The Health and Safety Administrator, pursuant to
38 section six, article six of this chapter, shall serve as a member
39 of the task force as an ex officio, nonvoting member; and

(5) The Director of the Office of Miner's Health, Safety and Training or his or her designee, shall serve as a ex officio, nonvoting member.

(c) Each appointed member of the task force shall serve at the will and pleasure of the Governor.

(d) Whenever a vacancy on the task force occurs, nominations and appointments shall be made in the manner prescribed in this section: *Provided*, That in the case of an appointment to fill a vacancy, nominations of three persons for each vacancy shall be requested by and submitted to the Governor within thirty days after the vacancy occurs by the major trade association or major employee organization, if any, which nominated the person whose seat on the task force is vacant.

(e) Each member of the task force shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. In the event the expenses are paid by a third party, the member shall not be reimbursed by the state. The reimbursement shall be paid out of the State Treasury upon a requisition upon the State Auditor, properly certified by the Office of Miners' Health, Safety and Training. An employer shall not prohibit a member of the task force from exercising leave of absence from his or her place of employment in order to attend a meeting of the task force or a meeting of a subcommittee of the task force, or to prepare for a meeting of the task force, any contract of employment to the contrary notwithstanding.

§22A-11-3. Task force powers and duties.

(a) The task force shall provide technical and other assistance to the office related to the implementation of the

new technological requirements set forth in the provisions of section fifty-five, article two, of this chapter, as amended and reenacted during the regular session of the Legislature in the year 2006, and requirements for other mine safety technologies.

(b) The task force, working in conjunction with the director, shall continue to study issues regarding the commercial availability, the functional and operational capability and the implementation, compliance and enforcement of the following protective equipment:

(1) Self-contained self-rescue devices, as provided in subsection (f), section fifty-five, article two of this chapter;

(2) Wireless emergency communication devices, as provided in subsection (g), section fifty-five, article two of this chapter;

(3) Wireless emergency tracking devices, as provided in subsection (h), section fifty-five, article two of this chapter; and

(4) Any other protective equipment required by this chapter or rules promulgated in accordance with the law that the director determines would benefit from the expertise of the task force.

(c) The task force shall on a continuous basis study, monitor and evaluate:

(1) The potential for enhancing coal mine health and safety through the application of existing technologies and techniques;

(2) Opportunities for improving the integration of technologies and procedures to increase the performance and survivability of coal mine health and safety systems;

(3) Emerging technological advances in coal mine health and safety; and

(4) Market forces impacting the development of new technologies, including issues regarding the costs of research and development, regulatory certification and incentives designed to stimulate the marketplace.

(d) On or before July 1 of each year, the task force shall submit a report to the Governor and the Board of Coal Mine Health and Safety that shall include, but not be limited to:

(1) A comprehensive overview of issues regarding the implementation of the new technological requirements set forth in the provisions of section fifty-five, article two of this chapter, or rules promulgated in accordance with the law;

(2) A summary of any emerging technological advances that would improve coal mine health and safety;

(3) Recommendations, if any, for the enactment, repeal or amendment of any statute which would enhance technological advancement in coal mine health and safety; and

(4) Any other information the task force considers appropriate.

(e) In performing its duties, the task force shall, where possible, consult with, among others, mine engineering and mine safety experts, radiocommunication and telemetry experts and relevant state and federal regulatory personnel.

(f) Appropriations to the task force commission and to effectuate the purposes of this article shall be made to one or more budget accounts established for that purpose.

CHAPTER 132

(Com. Sub. for S. B. 376 - By Senators Minard, Jenkins, McCabe and Plymale)

[Amended and again passed March 20, 2010, as a result of the objections of the Governor; in effect July 1, 2010.]
[Approved by the Governor on April 2, 2010.]

AN ACT to amend and reenact §31-18-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §31A-2-4c of said code; to amend and reenact §38-1-8a of said code; to amend and reenact §44-13-4a of said code; and to amend and reenact §59-1-10 of said code, all relating to gathering, compilation and publication of residential mortgage foreclosure data; expanding the powers and duties of the West Virginia Housing Development Fund to include the receipt, compilation and publication of mortgage foreclosure data and reports contained in reports of sale filed by trustees with county clerks; providing the West Virginia Housing Development Fund with the authority to require additional information to be filed with the reports of sale; transferring the jurisdiction, powers and duties relative to the receiving, compiling into an electronic data base and making the data available from the Commissioner of Banking to the West Virginia Housing Development Fund; providing that mortgage financial data and reports received by the Commissioner of Banking under the code provisions prior to the effective date be supplied to the West Virginia Housing Development Fund; providing that the portion of the fee paid for recording the trustee's report of sale that is paid by county clerks to the Division of Banking be paid to the West Virginia Housing Development Fund; and establishing an effective date of July 1, 2010.

Be it enacted by the Legislature of West Virginia:

That §31-18-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31A-2-4C of said code be amended and reenacted; that §38-1-8a of said code be amended and reenacted; that §44-13-4a of said code be amended and reenacted; and that §59-1-10 of said code be amended and reenacted, all to read as follows:

Chapter

31. Corporations.
31A. Banks and Banking.
38. Liens.
44. Administration of Estates and Trusts.
59. Fees, Allowances and Costs; Newspaper; Legal Advertisements.

CHAPTER 31. CORPORATIONS.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-6. Corporate powers.

The housing development fund is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose, including, but not limited to, the following:

(1) To make or participate in the making of federally insured construction loans to sponsors of land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(2) To make temporary loans, with or without interest, but with such security for repayment as the housing development fund determines reasonably necessary and practicable, from the operating loan fund, if created,

16 established, organized and operated in accordance with the
17 provisions of section nineteen of this article, to defray
18 development costs to sponsors of land development,
19 residential housing or nonresidential projects which are
20 eligible or potentially eligible for federally insured
21 construction loans, federally insured mortgages, federal
22 mortgages or uninsured construction loans or uninsured
23 mortgage loans;

24 (3) To make or participate in the making of long-term
25 federally insured mortgage loans to sponsors of land
26 development, residential housing or nonresidential projects.
27 Such loans shall be made only upon determination by the
28 housing development fund that long-term mortgage loans are
29 not otherwise available, wholly or in part, from private
30 lenders upon reasonably equivalent terms and conditions;

31 (4) To establish residential housing and nonresidential
32 and land development projects for counties declared to be in
33 a disaster area by the Federal Emergency Management
34 Agency or other agency or instrumentality of the United
35 States or this state;

36 (5) To accept appropriations, gifts, grants, bequests and
37 devises and to utilize or dispose of the same to carry out its
38 corporate purpose;

39 (6) To make and execute contracts, releases,
40 compromises, compositions and other instruments necessary
41 or convenient for the exercise of its powers, or to carry out its
42 corporate purpose;

43 (7) To collect reasonable fees and charges in connection
44 with making and servicing loans, notes, bonds, obligations,
45 commitments and other evidences of indebtedness, and in
46 connection with providing technical, consultative and project
47 assistance services;

(8) To invest any funds not required for immediate disbursement in any of the following securities:

(i) Direct obligations of or obligations guaranteed by the United States of America or for the payment of the principal and interest on which the full faith and credit of the United States of America is pledged;

(ii) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan bank system; export-import bank of the United States; federal land banks; Tennessee valley authority; United States postal service; inter-American development bank; international bank for reconstruction and development; small business administration; Washington metropolitan area transit authority; general services administration; federal financing bank; federal home loan mortgage corporation; student loan marketing association; farmer's home administration; the federal national mortgage association or the government national mortgage association; or any bond, debenture, note, participation certificate or other similar obligation to the extent such obligations are guaranteed by the government national mortgage association or federal national mortgage association or are issued by any other federal agency and backed by the full faith and credit of the United States of America;

(iii) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes, preliminary loan notes, or project notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

(iv) Certificates of deposit, time deposits, investment agreements, repurchase agreements or similar banking arrangements with a member bank or banks of the federal reserve system or a bank the deposits of which are insured by the federal deposit insurance corporation, or its successor, or a savings and loan association or savings bank the deposits of which are insured by the federal savings and loan insurance corporation, or its successor, or government bond dealers reporting to, trading with and recognized as primary dealers by a federal reserve bank: *Provided*, That such investments shall only be made to the extent insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation or to the extent that the principal amount thereof shall be fully collateralized by obligations which are authorized investments for the housing development fund pursuant to this section;

(v) Direct obligations of or obligations guaranteed by the state of West Virginia;

(vi) Direct and general obligations of any other state, municipality or other political subdivision within the territorial United States: *Provided*, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond-rating agency;

(vii) Any bond, note, debenture or annuity issued by any corporation organized and operating within the United States: *Provided*, That such corporation shall have a minimum net worth of fifteen million dollars and its securities or its parent corporation's securities are listed on one or more of the national stock exchanges: *Provided, however*, That: (1) Such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements; and (2) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during

its preceding ten fiscal years; and (3) the bonds, notes or debentures of such corporation to be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof by at least two or more nationally recognized rating services such as Standard and Poor's, Dunn & Bradstreet, Best's or Moody's;

(viii) If entered into solely for the purpose of reducing investment, interest rate, liquidity or other market risks in relation to obligations issued or to be issued or owned or to be owned by the housing development fund, options, futures contracts (including index futures but exclusive of commodities futures, options or other contracts), standby purchase agreements or similar hedging arrangements listed by a nationally recognized securities exchange or a corporation described in paragraph (vii) above;

(ix) Certificates, shares or other interests in mutual funds, unit trusts or other entities registered under section eight of the United States Investment Company Act of 1940, but only to the extent that the terms on which the underlying investments are to be made prevent any more than a minor portion of the pool which is being invested in to consist of obligations other than investments permitted pursuant to this section; and

(x) To the extent not inconsistent with the express provisions of this section, obligations of the West Virginia state board of investments or any other obligation authorized as an investment for the West Virginia state board of investments under article six, chapter twelve of this code or for a public housing authority under article fifteen, chapter sixteen of this code;

(9) To sue and be sued;

(10) To have a seal and alter the same at will;

148 (11) To make, and from time to time, amend and repeal
149 bylaws and rules and regulations not inconsistent with the
150 provisions of this article;

151 (12) To appoint such officers, employees and consultants
152 as it deems advisable and to fix their compensation and
153 prescribe their duties;

154 (13) To acquire, hold and dispose of real and personal
155 property for its corporate purposes;

156 (14) To enter into agreements or other transactions with
157 any federal or state agency, any person and any domestic or
158 foreign partnership, corporation, association or organization;

159 (15) To acquire real property, or an interest therein, in its
160 own name, by purchase or foreclosure, where such
161 acquisition is necessary or appropriate to protect any loan in
162 which the housing development fund has an interest and to
163 sell, transfer and convey any such property to a buyer and, in
164 the event of such sale, transfer or conveyance cannot be
165 effected with reasonable promptness or at a reasonable price,
166 to lease such property to a tenant;

167 (16) To purchase or sell, at public or private sale, any
168 mortgage or other negotiable instrument or obligation
169 securing a construction, rehabilitation, improvement, land
170 development, mortgage or temporary loan;

171 (17) To procure insurance against any loss in connection
172 with its property in such amounts, and from such insurers, as
173 may be necessary or desirable;

174 (18) To consent, whenever it deems it necessary or
175 desirable in the fulfillment of its corporate purpose, to the
176 modification of the rate of interest, time of payment or any
177 installment of principal or interest, or any other terms, of

178 mortgage loan, mortgage loan commitment, construction
179 loan, rehabilitation loan, improvement loan, temporary loan,
180 contract or agreement of any kind to which the housing
181 development fund is a party;

182 (19) To make and publish rules and regulations
183 respecting its federally insured mortgage lending, uninsured
184 mortgage lending, construction lending, rehabilitation
185 lending, improvement lending and lending to defray
186 development costs and any such other rules and regulations
187 as are necessary to effectuate its corporate purpose;

188 (20) To borrow money to carry out and effectuate its
189 corporate purpose and to issue its bonds or notes as evidence
190 of any such borrowing in such principal amounts and upon
191 such terms as shall be necessary to provide sufficient funds
192 for achieving its corporate purpose, except that no notes shall
193 be issued to mature more than ten years from date of issuance
194 and no bonds shall be issued to mature more than fifty years
195 from date of issuance;

196 (21) To issue renewal notes, to issue bonds to pay notes
197 and, whenever it deems refunding expedient, to refund any
198 bonds by the issuance of new bonds, whether the bonds to be
199 refunded have or have not matured except that no such
200 renewal notes shall be issued to mature more than ten years
201 from date of issuance of the notes renewed and no such
202 refunding bonds shall be issued to mature more than fifty
203 years from the date of issuance;

204 (22) To apply the proceeds from the sale of renewal notes
205 or refunding bonds to the purchase, redemption or payment
206 of the notes or bonds to be refunded;

207 (23) To make grants and provide technical services to
208 assist in the purchase or other acquisition, planning,
209 processing, design, construction, or rehabilitation,

210 improvement or operation of residential housing,
211 nonresidential projects or land development: *Provided*, That
212 no such grant or other financial assistance shall be provided
213 except upon a finding by the housing development fund that
214 such assistance and the manner in which it will be provided
215 will preserve and promote residential housing in this state or
216 the interests of this state in maintaining or increasing
217 employment or the tax base;

218 (24) To provide project assistance services for residential
219 housing, nonresidential projects and land development,
220 including, but not limited to, management, training and social
221 and other services;

222 (25) To promote research and development in scientific
223 methods of constructing low cost land development,
224 residential housing or nonresidential projects of high
225 durability including grants, loans or equity contributions for
226 research and development purposes: *Provided*, That no such
227 grant or other financial assistance shall be provided except
228 upon a finding by the housing development fund that such
229 assistance and the manner in which it will be provided will
230 preserve and promote residential housing in this state or the
231 interests of this state in maintaining and increasing
232 employment and the tax base;

233 (26) With the proceeds from the issuance of notes or
234 bonds of the housing development fund, including, but not
235 limited to, mortgage finance bonds, or with other funds
236 available to the housing development fund for such purpose,
237 to participate in the making of or to make loans to
238 mortgagees approved by the housing development fund and
239 take such collateral security therefor as is approved by the
240 housing development fund and to invest in, purchase,
241 acquire, sell or participate in the sale of, or take assignments
242 of, notes and mortgages, evidencing loans for the
243 construction, rehabilitation, improvement, purchase or

244 refinancing of land development, residential housing or
245 nonresidential projects in this state: *Provided*, That the
246 housing development fund shall obtain such written
247 assurances as shall be satisfactory to it that the proceeds of
248 such loans, investments or purchases will be used, as nearly
249 as practicable, for the making of or investment in long-term
250 federally insured mortgage loans or federally insured
251 construction loans, uninsured mortgage loans or uninsured
252 construction loans, for land development, residential housing
253 or nonresidential projects or that other moneys in an amount
254 approximately equal to such proceeds shall be committed and
255 used for such purpose;

256 (27) To make or participate in the making of uninsured
257 construction loans for land development, residential housing
258 or nonresidential projects. Such loans shall be made only
259 upon determination by the housing development fund that
260 construction loans are not otherwise available, wholly or in
261 part, from private lenders upon reasonably equivalent terms
262 and conditions;

263 (28) To make or participate in the making of long-term
264 uninsured mortgage loans for land development, residential
265 housing or nonresidential projects. Such loans shall be made
266 only upon determination by the housing development fund
267 that long-term mortgage loans are not otherwise available,
268 wholly or in part, from private lenders upon reasonably
269 equivalent terms and conditions;

270 (29) To obtain options to acquire real property, or any
271 interest therein, in its own name, by purchase, or lease or
272 otherwise, which is found by the housing development fund
273 to be suitable, or potentially suitable, as a site, or as part of a
274 site, for land development or the construction of residential
275 housing or nonresidential projects; to hold such real property
276 or to acquire by purchase or otherwise and to transfer by sale
277 or otherwise any ownership or equity interests in any other

legal entity which holds such real property; to finance the performance of land development, residential housing or nonresidential projects on or in connection with any such real property or to perform land development, residential housing or nonresidential projects on or in connection with any such real property; to own, operate and sponsor or participate in the sponsorship of land development, residential housing or nonresidential projects; or to sell, transfer and convey, lease or otherwise dispose of such real property, or lots, tracts or parcels of such real property, for such prices, upon such terms, conditions and limitations, and at such time or times as the housing development fund shall determine;

(30) To make loans, with or without interest, but with such security for repayment as the housing development fund determines reasonably necessary and practicable from the land development fund, if created, established, organized and operated in accordance with the provisions of section twenty-a of this article, to sponsors of land development, to defray development costs and other costs of land development;

(31) To exercise all of the rights, powers and authorities of a public housing authority as set forth and provided in article fifteen, chapter sixteen of this code, in any area or areas of the state which the housing development fund shall determine by resolution to be necessary or appropriate;

(32) To provide assistance to urban renewal projects in accordance with the provisions of section twenty-eight, article eighteen, chapter sixteen of this code and in so doing to exercise all of the rights, powers and authorities granted in this article or in said article, in and for any communities of the state which the housing development fund shall determine by resolution to be necessary or appropriate;

(33) To make or participate in the making of loans for the purpose of rehabilitating or improving existing residential

311 and temporary housing or nonresidential projects, or to
312 owners of existing residential or temporary housing for
313 occupancy by eligible persons and families for the purpose of
314 rehabilitating or improving such residential or temporary
315 housing or nonresidential projects and, in connection
316 therewith, to refinance existing loans involving the same
317 property. Such loans shall be made only upon determination
318 by the housing development fund that rehabilitation or
319 improvement loans are not otherwise available, wholly or in
320 part, from private lenders upon reasonably equivalent terms
321 and conditions;

322 (34) Whenever the housing development fund deems it
323 necessary in order to exercise any of its powers set forth in
324 subdivision (29) of this section, and upon being unable to
325 agree with the owner or owners of real property or interest
326 therein sought to be acquired by the fund upon a price for
327 acquisition of private property not being used or operated by
328 the owner in the production of agricultural products, to
329 exercise the powers of eminent domain in the acquisition of
330 such real property or interest therein in the manner provided
331 under chapter fifty-four of this code, and the purposes set
332 forth in said subdivision are hereby declared to be public
333 purposes for which private property may be taken. For the
334 purposes of this section, the determination of "use or
335 operation by the owner in the production of agricultural
336 products" means that the principal use of such real estate is
337 for the production of food and fiber by agricultural
338 production other than forestry, and the fund shall not initiate
339 or exercise any powers of eminent domain without first
340 receiving an opinion in writing from both the governor and
341 the commissioner of agriculture of this state that at the time
342 the fund had first attempted to acquire such real estate or
343 interest therein, such real estate or interest therein was not in
344 fact being used or operated by the owner in the production of
345 agricultural products;

346 (35) To acquire, by purchase or otherwise, and to hold,
347 transfer, sell, assign, pool or syndicate, or participate in the
348 syndication of, any loans, notes, mortgages, securities or debt
349 instruments collateralized by mortgages or interests in
350 mortgages or other instruments evidencing loans or equity
351 interests in or for the construction, rehabilitation,
352 improvement, renovation, purchase or refinancing of land
353 development, residential housing and nonresidential projects
354 in this state; and

355 (36) To form one or more nonprofit corporations, whose
356 board of directors shall be the same as the board of directors
357 of the housing development fund, which shall be authorized
358 and empowered to carry out any or all of the corporate
359 powers or purposes of the housing development fund,
360 including, without limitation, acquiring limited or general
361 partnership interests and other forms of equity ownership.

362 (37) To receive and compile data into an electronic
363 database and make available the raw mortgage foreclosure
364 data that is required to be reported to county clerks by
365 trustees pursuant to the provisions of section eight-a, article
366 one, chapter thirty-eight of this code, including all data that
367 has been received by the banking commissioner pursuant to
368 subsection (a) of section four-c, article two, chapter thirty-
369 one-a of this code, as of the effective date of the effective
370 date of the amendments made to said section during the
371 regular session of the 2010 legislature. This information
372 shall be periodically forwarded by county clerks to the
373 housing development fund, in accordance with the provisions
374 of section four-a, article thirteen, chapter forty-four of this
375 code.

CHAPTER 31A. BANKS AND BANKING

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4c. County Clerk to file reports of trustees regarding sales of residential real property pursuant to deeds of trust and forward to the banking commissioner; transfer of powers and duties relating to reports of trustees to the West Virginia Housing Development Fund.

1 (a) In addition to the jurisdiction, powers, and duties set
2 out in section four of this article, the banking commissioner
3 is vested with the jurisdiction, powers and duties to receive
4 and compile the data into an electronic database and make
5 available the raw data that is required to be reported by
6 trustees to county clerks pursuant to section eight-a, article
7 one, chapter thirty-eight of the Code of West Virginia. The
8 commissioner has the power to promulgate rules in
9 accordance with this section and the provisions of article
10 three, chapter twenty-nine-a of this code in order to carry out
11 the requirements of this section. The commissioner is
12 authorized to expend funds for this purpose.

13 (b) On and after July 1, 2010, the jurisdiction, powers and
14 duties vested in the banking commissioner in subsection (a)
15 of this section are hereby transferred and imposed upon the
16 West Virginia Housing Development Fund established in
17 article eighteen, chapter thirty-one of this code and all data
18 that has been received and compiled by the banking
19 commissioner pursuant to subsection (a) of this section shall
20 be transferred to the West Virginia Housing Development
21 Fund.

CHAPTER 38. LIENS

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-8a. Reports by Trustee to County Clerk; additional information to be filed with report of sale.

(a) This section applies to deeds of trust if the property conveyed therein includes real property that is occupied, or is intended to be occupied as a residence by the grantor at time the deed of trust is executed and delivered.

(b) Beginning July 1, 2009, when a report of the sale of the property sold pursuant to a deed of trust is placed of record by the trustee with the clerk of the county commission as provided in section eight of this article, the trustee shall include the following information on a disclosure form submitted with and made a part of the report of sale:

(1) Name or names of the grantor of the deed of trust;

(2) Street address, city, state and zip code of real property subject to the trust;

(3) Original trustee name;

(4) Substitute trustee name, if any, and date of appointment;

(5) The address, telephone number and electronic contact information for the trustee making the sale;

(6) Date, time and place advertised for sale;

(7) Name of original secured lender;

(8) Current holder of deed of trust, and the current holder's address;

(9) Original principal amount of the secured debt;

(10) Original interest rate;

(11) Whether the loan was adjustable and if so current rate;

(12) Total secured indebtedness at time of sale;

(13) The number of months the loan is delinquent at time of notice of sale; and

(14) The date, time and place of sale;

(15) The name of the purchaser;

(16) The appraised value at the time of loan, if available;

(17) The net amount applied to the secured loan;

(18) The date the report of sale is recorded; and

(19) Any other information the West Virginia Housing Development Fund may require.

(c) The West Virginia Housing Development Fund established in article eighteen, chapter thirty-one of this code shall publish a form setting out the information required by subsection (b) and instructions as to how this information is to be filed with the report of sale.

(d) Notwithstanding any other provision of this code, nothing in this section shall be deemed to create a responsibility by the West Virginia Housing Development Fund to provide any report other than a compilation into an electronic data base of the data that is required to be submitted pursuant to subsection (b) of this section and the compiled raw data submitted from each county clerk. The West Virginia Housing Development Fund is not required to verify and is not responsible for the veracity of the accuracy of the data submitted.

52 (e) Failure to comply with this the provisions of this
53 section shall not affect the validity of the sale or the title to
54 the property sold by the trustee.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 13. POWERS AND DUTIES OF CLERKS OF COUNTY COURTS IN COUNTIES HAVING SEPARATE TRIBUNAL FOR POLICE AND FISCAL PURPOSES.

§44-13-4a. Reporting of foreclosure statistics.

1 Beginning with the third quarter of 2010, the clerk of
2 each county commission shall file quarterly with the West
3 Virginia Housing Development Fund established in article
4 eighteen, chapter thirty-one of this code the disclosure forms
5 of deed of trust foreclosure sales that were recorded in that
6 county for the preceding calendar year quarter. Up until that
7 time, through the second quarter of 2010, such quarterly
8 reports shall be filed with the Division of Banking. The
9 reports shall be filed within fifteen days of the last day of
10 September, December, March and June of each year. The
11 reports shall be filed in electronic format, where possible.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-10. Fees to be charged by clerk of county commission.

1 For the purpose of this section, the word "page" is
2 defined as being a paper or electronic writing of not more
3 than legal size, 8 1/2" x 14".

The clerk of the county commission shall charge and collect the following fees:

(a) When a writing is admitted to record, for receiving proof of acknowledgment thereof, entering an order in connection therewith, endorsing clerk's certificate of recordation thereon and indexing in a proper index, where the writing is a:

(1) Deed of conveyance (with or without a plat), trust deed, fixture filing or security agreement concerning real estate lease, $15.

(2) Trustee's report of sale for any property for which additional information and filing requirements are required by section eight-a, article one, chapter thirty-eight of this code, $40: *Provided,* That $20 of each recording fee received pursuant to this subdivision shall be deposited into the county's General Revenue Fund and $20 of each of the aforesaid recording fees shall be paid quarterly by the clerk of the county commission to the West Virginia Housing Development Fund established in article eighteen, chapter thirty-one of this code.

(3) Financing, continuation, termination or other statement or writing permitted to be filed under chapter forty-six of this code, $10.

(4) Plat or map (with no deed of conveyance), $10.

(5) Service discharge record, no charge.

(6) Any document or writing other than those referenced in subdivisions (1), (2), (3), (4) and (5) of this subsection, $10.

(7) If any document or writing contains more than five pages, for each additional page, $1.

For any of the documents admitted to record pursuant to this subsection, if the clerk of the county commission has the technology available to receive these documents in electronic form or other media, the clerk shall set a reasonable fee to record these writings not to exceed the cost for filing paper documents.

(8) Of the fees collected pursuant to subdivision (1), subsection (a) of this section, $10 shall be deposited in the county general fund in accordance with section twenty-eight of this article and $1 shall be deposited in the county general fund and dedicated to the operation of the county clerk's office. Four dollars of the fees collected pursuant to subdivision (1), subsection (a) of this section and $5 of the fees collected pursuant to subdivision (6), subsection (a) of this section shall be paid by the county clerk into the state Treasury and deposited in equal amounts for deposit into the Farmland Protection Fund created in article twelve, chapter eight-a of this code for the benefit of the West Virginia Agricultural Land Protection Authority and into the Outdoor Heritage Conservation Fund created in article two-g, chapter five-b of this code: *Provided,* That the funds deposited in the state Treasury pursuant to this subdivision may only be used for costs, excluding personnel costs, associated with purpose of land conservation, as defined in subsection (f), section seven, article two-g, chapter five-b of this code.

(b) For administering any oath other than oaths by officers and employees of the state, political subdivisions of the state or a public or quasi-public entity of the state or a political subdivision of the state, taken in his or her official capacity, $5.

(c) For issuance of marriage license and other duties pertaining to the marriage license (including preparation of the application, administrating the oath, registering and recording the license, mailing acknowledgment of minister's return to one

of the licensees and notification to a licensee after sixty days of the nonreceipt of the minister's return), $35.

(1) One dollar of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the state Treasury as a state registration fee in the same manner that license taxes are paid into the Treasury under article twelve, chapter eleven of this code;

(2) Fifteen dollars of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the state Treasury for the Family Protection Shelter Support Act in the same manner that license taxes are paid into the Treasury under article twelve, chapter eleven of this code;

(3) Ten dollars of the marriage license fee received pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(d) (1) For a copy of any writing or document, if it is not otherwise provided for, $1.50.

(2) If the copy of the writing or document contains more than two pages, for each additional page, $1.

(3) For annexing the seal of the commission or clerk to any paper, $1.

(4) For a certified copy of a birth certificate, death certificate or marriage license, $5.

(e) For copies of any record in electronic form or a medium other than paper, a reasonable fee set by the clerk of the county commission not to exceed the costs associated with document search and duplication.