ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 2014
First Extraordinary Session, 2014
Second Extraordinary Session, 2014

Volume II
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*Speaker* – Timothy R. Miley, Bridgeport  
*Clerk* – Gregory M. Gray, Charleston  
*Sergeant-at-Arms* – George McClaskie, Charleston  
*Doorkeeper* – Tom Hively, Chesapeake

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<td>75&lt;sup&gt;a&lt;/sup&gt; - 81&lt;sup&gt;a&lt;/sup&gt;</td>
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<td>Stephen Skinner (D)</td>
<td>Shepherdstown</td>
<td>Attorney</td>
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[XIX]
MEMBERS OF THE SENATE

REGULAR AND EXTRAORDINARY SESSIONS, 2014

OFFICERS
President – Jeffrey V. Kessler, Glen Dale
Clerk – Joseph M. Minard, Clarksburg
Sergeant-at-Arms – Howard L. Wellman, Bluefield
Doorkeeper – Tony Gallo, Charleston

<table>
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<tr>
<td>First</td>
<td>Robert J. Fitzsimmons (D)</td>
<td>Wheeling</td>
<td>Attorney</td>
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<td>Jack Yost (D)</td>
<td>Wellsburg</td>
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<td>(House 76th - 78°); 79° - 81°</td>
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<td>New Martinsburg</td>
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<td>Jeffrey V. Kessler (D)</td>
<td>Glen Dale</td>
<td>Attorney</td>
<td>Appt. 11/1997, 73°, 74° - 81°</td>
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<td>Donna J. Boley (R)</td>
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<td>Mayor, City of Vienna</td>
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<td>Mitch B. Carmichael (R)</td>
<td>Ripley</td>
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<td>Physician</td>
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MEMBERS OF THE SENATE - Continued

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<tr>
<td>Sixteenth</td>
<td>Herb Snyder (D)</td>
<td>Shenandoah Junction</td>
<td>Director, Environmental Chemistry</td>
<td>73rd - 76th; 79th - 81st</td>
</tr>
<tr>
<td></td>
<td>John R. Unger II (D)</td>
<td>Martinsburg</td>
<td>Businessman/ Economic Development</td>
<td>74th - 81st</td>
</tr>
<tr>
<td>Seventeenth</td>
<td>Brooks F. McCabe, Jr. (D)</td>
<td>Charleston</td>
<td>Real Estate Developer</td>
<td>74th - 81st</td>
</tr>
<tr>
<td></td>
<td>Corey Palumbo (D)</td>
<td>Charleston</td>
<td>Attorney</td>
<td>(House 76th- 78th); 79th - 81st</td>
</tr>
</tbody>
</table>
HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES

Regular Session, 2014

STANDING

AGRICULTURE AND NATURAL RESOURCES

Walker (Chair of Agriculture), Manypenny (Vice Chair of Agriculture), Pino (Chair of Natural Resources), R. Phillips (Vice Chair of Natural Resources), Campbell, Diserio, Guthrie, M. Poling, Sponaugle, Swartzmiller, Tomblin, Wells, Williams, A. Evans (Minority Chair of Agriculture), Romine (Minority Vice Chair of Agriculture), Hamilton (Minority Chair of Natural Resources), Ireland (Minority Vice Chair of Natural Resources), Ambler, Anderson, Border, Canterbury, Ellem, Miller and Overington.

BANKING AND INSURANCE

Moore (Chair of Banking), Campbell (Vice Chair of Banking), Guthrie (Chair of Insurance), Hartman (Vice Chair of Insurance), Barrett, Hunt, Iaquinta, Kinsey, Morgan, Perry, R. Phillips, Reynolds, Tomblin, Azinger (Minority Chair of Banking), E. Nelson (Minority Vice Chair of Banking), Ashley (Minority Chair of Insurance), Walters (Minority Vice Chair of Insurance), Andes, Frich, McCuskey, O’Neal, Pasdon, Shott and Westfall.

EDUCATION

M. Poling (Chair), Perry (Vice Chair), Barill, Barrett, Campbell, Fragale, Lawrence, Moye, Pethtel, Tomblin, Walker, Williams, Young, Pasdon (Minority Chair), Sumner (Minority Vice Chair), Ambler, Butler, Cooper, Espinosa, D. Evans, Hamrick, Raines, Rowan and Westfall.

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HOUSE OF DELEGATES COMMITTEES

ENERGY

Craig (Chair), Caputo (Vice Chair), Barker, Diserio, Eldridge, Fragale, Kinsey, Longstreth, Marcum, L. Phillips, R. Phillips, D. Poling, Skaff, Walker, Andes (Minority Chair), Shott (Minority Vice Chair), Anderson, Arvon, Butler, Cadle, Frich, Ireland, McCuskey, R. Smith and Sumner.

FINANCE

Boggs (Chair), Reynolds (Vice Chair), Craig, Guthrie, Iaquinta, Marshall, Moye, Perdue, Pethtel, L. Phillips, R. Phillips, D. Poling, Skaff, Williams, Anderson (Minority Chair), E. Nelson (Minority Vice Chair), Andes, Ashley, Canterbury, Cowles, A. Evans, Gearheart, Miller, Storch and Walters.

GOVERNMENT ORGANIZATION

Morgan (Chair), Stephens (Vice Chair), Barker, Caputo, Diserio, Eldridge, Hartman, Jones, Kinsey, Paxton, P. Smith, Staggers, Swartzmiller, Howell (Minority Chair), Border (Minority Vice Chair), Arvon, Azinger, Cadle, Faircloth, Ferns, Folk, Kump, J. Nelson, Romine and R. Smith.

HEALTH AND HUMAN RESOURCES

Perdue (Chair), Fleischauer (Vice Chair), Barker, Campbeli, Diserio, Eldridge, Guthrie, Kinsey, Lawrence, Marshall, Moore, Poore, Staggers, Ellington (Minority Chair), Householder (Minority Vice Chair), Arvon, Border, Cowles, Faircloth, Lane, Miller, Pasdon, Rowan and Sobonya.
HOUSE OF DELEGATES COMMITTEES

INDUSTRY AND LABOR

D. Poling (Chair), Diserio (Vice Chair), Caputo, Ferro, Guthrie, Longstreth, Lynch, Marshall, Moore, Poore, Skinner, Walker, Young, Sobonya (Minority Chair), Overington (Minority Vice Chair), Andes, Azinger, Faircloth, Folk, Householder, Howell, Kump, J. Nelson, Romine and Storch.

JUDICIARY

Manchin (Chair), Hunt (Vice Chair), Ferro, Fleischauer, Longstreth, Lynch, Manyupenny, Marcum, Moore, Piao, Poore, Skinner, Sponaugle, Wells, Ellem (Minority Chair), Lane (Minority Vice Chair), Frich, Hamilton, Householder, Ireland, McCuskey, O’Neal, Overington, Shott and Sobonya.

PENSIONS AND RETIREMENT

Pethtel (Chair), Jones (Vice Chair), Craig, Lynch, Canterbury (Minority Chair), Kump (Minority Vice Chair) and Ellem.

POLITICAL SUBDIVISIONS

Lawrence (Chair), Fragale (Vice Chair), Barill, Fleischauer, Hartman, Hunt, Jones, Marcum, Morgan, Moye, Perry, Sponaugle, Williams, Sumner (Minority Chair), Cowles (Minority Vice Chair), Cooper, Ellington, Espinosa, Ferns, Gearheart, Hamilton, Hamrick, Lane, McCuskey and Pasdon.

ROADS AND TRANSPORTATION

Staggers (Chair), L. Phillips (Vice Chair), Barker, Barill, Longstreth, Lynch, Marcum, Moye, D. Poling, P. Smith, Stephens, Walker, Wells, Young, Cowles (Minority Chair), Gearheart (Minority Vice Chair), Ambler, Arvon, Butler, Cadle, Espinosa, D. Evans, Hamrick, Howell and Shott.

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HOUSE OF DELEGATES COMMITTEES

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SENIOR CITIZEN ISSUES

Williams (Chair), Moye (Vice Chair), Campbell, Ferro, Manypenny, Marshall, Moore, Perdue, Perry, Pethtel, Pino, Stephens, Young, Rowan (Minority Chair), O’Neal (Minority Vice Chair), Armstead, Ashley, Border, Ellem, Faircloth, Ferns, Householder, Raines, Sobonya and Westfall.

SMALL BUSINESS, ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

Skaff (Chair), Barrett (Co-Vice Chair), Hartman (Co-Vice Chair), Fleischauer, Manchin, Manypenny, Morgan, L. Phillips, Pino, Reynolds, Skinner, Sponaugle, White, Williams, Miller (Minority Chair), Ellington (Minority Vice Chair), Ashley, Azinger, A. Evans, Hamilton, E. Nelson, Raines, Storch, Walters and Westfall.

VETERANS’ AFFAIRS AND HOMELAND SECURITY

Iaquinta (Chair of Veterans’ Affairs), Longstreth (Vice Chair of Veterans’ Affairs), Paxton (Chair of Homeland Security), Eldridge (Vice Chair of Homeland Security), Barill, Ferro, Fleischauer, Jones, Lawrence, Pethtel, P. Smith, Staggers, Stephens, Azinger (Minority Chair of Veterans’ Affairs), Rowan (Minority Vice Chair Veterans’ Affairs), Ashley (Minority Chair of Homeland Security), Storch (Minority Vice Chair of Homeland Security), Armstead, Cadle, Cooper, D. Evans, Folk, Howell, E. Nelson and J. Nelson.

ENROLLED BILLS

Wells (Chair), Barill (Vice Chair), Ferro and Overington.

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COMMITTEES OF THE SENATE
Regular Session, 2014

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Miller (Chair), Williams (Vice Chair), Beach, Cann, Cookman, D. Hall, Laird, Tucker, Carmichael, Nohe and Sypolt.

BANKING AND INSURANCE

Tucker (Chair), Fitzsimmons (Vice Chair), Chafin, Facemire, Green, D. Hall, Jenkins, McCabe, Palumbo, Prezioso, M. Hall, Nohe and Walters.

CONFIRMATIONS

Green (Chair), Facemire (Vice Chair), Chafin, Miller, Plymale, Snyder, Yost, Cole and Sypolt.

ECONOMIC DEVELOPMENT

Williams (Chair), Cann (Vice Chair), Beach, Cookman, Kirkendoll, McCabe, Prezioso, Snyder, Stollings, Wells, Barnes, Blair, Sypolt and Walters.

EDUCATION

Plymale (Chair), Wells (Vice Chair), Beach, Chafin, Edgell, D. Hall, Laird, Stollings, Tucker, Unger, Barnes, Boley, Carmichael and Cole.

ENERGY, INDUSTRY AND MINING

Facemire (Chair), Kirkendoll (Vice Chair), Beach, Cann, Green, Jenkins, Plymale, Snyder, Stollings, Yost, Barnes, Nohe and Sypolt.

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GOVERNMENT ORGANIZATION

Snyder (Chair), Miller (Vice Chair), Cann, Cookman, Fitzsimmons, Green, Jenkins, Kirkendoll, Williams, Yost, Blair, Boley, Cole and Sypolt.

HEALTH AND HUMAN RESOURCES

Stollings (Chair), Jenkins (Vice Chair), Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Tucker, Yost, Boley, M. Hall and Walters.

INTERSTATE COOPERATION

Kirkendoll (Chair), Cookman (Vice Chair), D. Hall, Palumbo, Wells, Blair and Nohe.

JUDICIARY

Palumbo (Chair), Tucker (Vice Chair), Beach, Cann, Cookman, Fitzsimmons, D. Hall, Jenkins, Kirkendoll, Miller, Snyder, Unger, Williams, Carmichael, Cole, Nohe and Walters.

LABOR

Yost (Chair), D. Hall (Vice Chair), Chafin, Facemire, Fitzsimmons, McCabe, Miller, Wells, Barnes, Blair and Walters.

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SENATE COMMITTEES

MILITARY

Wells (Chair), Yost (Vice Chair), Edgell, Fitzsimmons, Jenkins, Laird, Tucker, Boley and Carmichael.

NATURAL RESOURCES

Laird (Chair), Edgell (Vice Chair), Beach, Cookman, Facemire, Green, McCabe, Prezioso, Snyder, Williams, M. Hall, Nohe and Walters.

PENSIONS

Jenkins (Chair), McCabe (Vice Chair), Cann, Chafin, Edgell, Carmichael and M. Hall.

RULES

Kessler (Chair), Edgell, Palumbo, Plymale, Prezioso, Snyder, Stollings, Unger, Barnes, Boley and M. Hall.

TRANSPORTATION AND INFRASTRUCTURE

Beach (Chair), Kirkendoll (Vice Chair), Facemire, Fitzsimmons, McCabe, Plymale, Williams, Barnes and Cole.

[XXVIII]
CHAPTER 104

(Com. Sub. for H. B. 4392 - By Delegates Morgan, Diserio, Jones, D. Poling and Barker)

[Passed March 6, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-16-1, §21-16-2, §21-16-3, §21-16-4, §21-16-5, §21-16-6, §21-16-7, §21-16-8, §21-16-9 and §21-16-10; to amend and reenact §29-3-12b of said code; and to amend and reenact sections §29-3D-1, §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-5, §29-3D-6, §29-3D-7 and §29-3D-8 of said code, all relating to regulating persons who perform work on heating, ventilating and cooling systems and dampers; defining terms; requiring persons who perform work on heating, ventilating and cooling systems to be licensed by the Commissioner of Labor; requiring persons who perform work on dampers to be licensed by the State Fire Marshal; providing for exemptions from licensure; providing a scope of practice for heating, ventilating and cooling technicians and technicians-in-training; authorizing the commissioner to promulgate legislative rules; authorizing the State Fire Marshal to promulgate legislative rules; authorizing enforcement procedures; authorizing interagency agreements; authorizing the issuance, renewal, denial, suspension and revocation of licenses; authorizing fines for violation of articles; providing for criminal penalties; providing that no political subdivision of the state may mandate additional licensing requirements; and authorizing and providing for the disposition of fees.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §21-16-1, §21-16-2, §21-16-3,
§21-16-1. Declaration of purpose.

The provisions of this article are intended to protect the health, safety and welfare of the public as well as public and private property by assuring the competence of those who perform work on a heating, ventilating and cooling system through licensure by the Commissioner of Labor.

§21-16-2. Definitions.

As used in this article and the legislative rules promulgated pursuant to this article:

(a) "Perform work on a heating, ventilating and cooling system" means to install, maintain, alter, remodel or repair one or more components of a heating, ventilating and cooling system.

(b) "Heating, ventilating and cooling system" means equipment to heat, cool or ventilate residential or commercial structures, comprised of one or more of the following components:

(1) "Heating system" means a system in which heat is transmitted by radiation, conduction or convection, or a combination of any of these methods, to the air, surrounding surfaces, or both, and includes a forced air system that uses air
being moved by mechanical means to transmit heat, but does not include a fireplace or woodburning stove not incorporated into or used as a primary heating system;

(2) "Ventilating system" means the natural or mechanical process of supplying air to, or removing air from, any space whether the air is conditioned or not conditioned, at a rate of airflow of more than two hundred fifty cubic feet per minute; and

(3) "Cooling system" means a system in which heat is removed from air, surrounding surfaces, or both, and includes an air-conditioning system.

(c) "HVAC Technician" means a person licensed to install, test, maintain and repair heating, ventilating and cooling systems.

d) "HVAC Technician in Training" means a person with interest in and an aptitude for performing installation, maintenance and repair work to a heating, ventilating and cooling system as defined in this article, but who alone is not capable or authorized to perform heating, ventilating and cooling system work unless directly supervised by a HVAC technician.

(e) "License" means a valid and current license issued by the Commissioner of Labor in accordance with the provisions of this article.

(f) "Routine maintenance" means work performed on a routine schedule that includes cleaning and/or replacing filters, greasing or lubricating motor bearings, adjusting and/or replacing belts, checking system temperature, checking gas temperature, adjusting gas pressure as required, and checking voltage and amperage draw on heating, ventilating and cooling systems.
(g) "Single family dwelling" means a building which is occupied as, or designed or intended for occupancy as, a single residence for one or more persons.

§21-16-3. License required; exemptions.

(a) On and after January 1, 2016, a person performing or offering to perform work on a heating, ventilating and cooling system in this state shall have a license issued by the Commissioner of Labor, in accordance with the provisions of this article and the legislative rules promulgated pursuant hereto.

(b) A person licensed under this article shall carry a copy of the license on any job in which heating, ventilating and cooling work is being performed.

(c) This article does not apply to:

1. A person who personally performs work on a heating, ventilating and cooling system in a single family dwelling owned by that person or by a member of that person's immediate family;

2. A person who performs work on a heating, ventilating and cooling system at a manufacturing plant or other industrial establishment as an employee of the person, firm or corporation operating the plant or establishment;

3. A person who performs only electrical or plumbing work on a heating, ventilating and cooling system, so long as the work is within the scope of practice which the person is otherwise licensed or authorized to perform; or

4. A person who performs routine maintenance as a direct employee of the person, firm or corporation that owns or operates the facility where the heating, ventilating or cooling system equipment is located.
§21-16-4. Scope of practice.

(a) A HVAC technician in training is authorized to assist in providing heating, ventilating and cooling work only under the direction and control of a HVAC technician.

(b) A HVAC technician is authorized to provide heating, ventilating and cooling work without supervision.

(c) Persons licensed under this article are subject to the applicable provisions of the Contractor Licensing Act in article eleven of this chapter in the performance of work authorized by this article.

§21-16-5. Rule-making authority.

The Commissioner of Labor 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 and procedures for issuing and renewing licenses, applications, examinations and qualifications;

(2) Provisions for the granting of licenses, without examination, to applicants who present satisfactory evidence no later than July 1, 2016, of having at least two thousand hours of experience and/or training working on heating, ventilating and cooling systems and at least six thousand hours of experience and/or training in heating, ventilating and cooling or relating work, to include other sheet metal industry tasks: Provided, That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination;

(3) Reciprocity provisions;
§21-16-6. Enforcement; interagency agreements authorized.

(a) The Commissioner of Labor and his or her Deputy Commissioner or any compliance officer of the Division of Labor as authorized by the Commissioner of Labor may enforce the provisions of this article and may, at reasonable hours, enter any building or premises where heating, ventilating and cooling work is performed and issue cease and desist orders for noncompliance.

(b) The Commissioner of Labor may enter into an interagency agreement with the State Fire Marshal for the mutual purpose of enforcing the provisions of this article and the provisions of article three-e, chapter twenty-nine of this code.

§21-16-7. Denial, suspension and revocation of license.

(a) The Commissioner of Labor may deny a license to any applicant who fails to comply with the provisions of this article or the rules established by the Commissioner of Labor or who lacks the necessary qualifications.

(b) The Commissioner of Labor may, upon complaint or upon his or her own inquiry, and after notice to the licensee, suspend or revoke a licensee’s license if:
(1) The license was granted upon an application or documents supporting the application which materially misstated the terms of the applicant's qualifications or experience;

(2) The licensee subscribed or vouched for a material misstatement in his or her application for licensure;

(3) The licensee incompetently or unsafely performs heating, ventilating and cooling work; or

(4) The licensee violated any statute of this state, any legislative rule or any ordinance of any municipality or county of this state which protects the consumer or public against unfair, unsafe, unlawful or improper business practices.

§21-16-8. Penalties.

(a) On and after January 1, 2016, a person performing or offering to perform, or an employer authorizing a person not exempt by the provisions of section three of this article, to perform, heating, ventilating and cooling work without a license issued by the Commissioner of Labor, is subject to a cease and desist order.

(b) A person continuing to perform, or an employer continuing to authorize a person not exempt by the provisions of section three of this article, to perform, heating, ventilating and cooling work after the issuance of a cease and desist order is guilty of a misdemeanor and, upon conviction thereof, is subject to the following penalties:

(1) For the first offense, a fine of not less than $200 nor more than $1,000;

(2) For the second offense, a fine of not less than $500 nor more than $2,000;
(3) For the third and subsequent offenses, a fine of not less than $1,000 nor more than $5,000, and confinement in jail for not more than one year.

(c) Each day after official notice is given, a person continues to perform, or an employer continues to authorize a person to perform, and which is not exempt by the provisions of section three of this article, heating, ventilating and cooling work, is a separate offense and punishable accordingly.

(d)(1) The Commissioner of Labor may institute proceedings in the circuit court of Kanawha County or of the county where the alleged violation of the provisions of this article occurred or are occurring to enjoin any violation of any provision of this article.

(2) A circuit court may by injunction compel compliance with this article, with the lawful orders of the Commissioner of Labor and with any final decision of the Commissioner of Labor.

(3) The Commissioner of Labor shall be represented in all such proceedings by the Attorney General or his or her assistants.

(e) Any person adversely affected by an action of the Commissioner of Labor may appeal the action pursuant to chapter twenty-nine-a of this code.

§21-16-9. Inapplicability of local ordinances.

On and after January 1, 2016, a political subdivision of this state may not require, as a condition precedent to the performance of work on heating, ventilating and cooling in the political subdivision, a person who holds a valid and current license issued under this article, to have any other license or other evidence of competence beyond those required by the
Commissioner of Labor to perform work on heating, ventilating and cooling systems.

§21-16-10. Disposition of fees.

All fees paid pursuant to this article, shall be paid to the Commissioner of Labor and deposited in "West Virginia Contractor Licensing Board Fund" for the use of the Commissioner of Labor in a manner consistent with section seventeen, article eleven, chapter twenty-one of this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-12b. Fees.

(a) The State Fire Marshal may establish fees in accordance with the following:

(1) For blasting. — Any person storing, selling or using explosives shall first obtain a permit from the State Fire Marshal. The permit shall be valid for one year. The State Fire Marshal may charge a fee for the permit.

(2) For inspections of schools or day-care facilities. — The State Fire Marshal may charge a fee of up to $25.00 per annual inspection for inspection of schools or day-care facilities: Provided, That only one such fee may be charged per year for any building in which a school and a day-care facility are colocated: Provided, however, That any school or day-care facility may not be charged for an inspection more than one time per twelve-month period.

(3) For inspections of hospitals or nursing homes. — The State Fire Marshal may charge an inspection fee of up to $100.00 per annual inspection of hospitals or nursing homes: Provided,
That any hospital or nursing home may not be charged for an inspection more than one time per twelve-month period.

(4) For inspections of personal care homes or board and care facilities. — The State Fire Marshal may charge an inspection fee of up to $50.00 per annual inspection for inspections of personal care homes or board and care facilities: Provided, That any personal care home or board and care facility may not be charged for an inspection more than one time per twelve-month period.

(5) For inspections of residential occupancies. — The State Fire Marshal may charge an inspection fee of up to $100.00 for each inspection of a residential occupancy. For purposes of this subdivision, “residential occupancies” are those buildings in which sleeping accommodations are provided for normal residential purposes.

(6) For inspections of mercantile occupancies. — The State Fire Marshal may charge an inspection fee of up to $100.00 for inspections of mercantile occupancies: Provided, That if the inspection is in response to a complaint made by a member of the public, the State Fire Marshal shall obtain from the complainant an advance inspection fee of $25.00. This fee shall be returned to the complainant if, after the State Fire Marshal has made the inspection, he or she finds that the complaint was accurate and justified, and he or she shall thereafter collect an inspection fee of up to $100.00 from the mercantile occupancy. If, after the inspection has been performed, it appears to the State Fire Marshal that the complaint was not accurate or justified, the State Fire Marshal shall keep the $25.00 advance inspection fee obtained from the complainant and may not collect any fees from the mercantile occupant. For purposes of this section, “mercantile occupancy” includes stores, markets and other rooms, buildings or structures for the display and sale of merchandise.
(7) For business occupancies. — The State Fire Marshal may charge an inspection fee of up to $100.00 for inspections of business occupancies: Provided, That the provisions in subdivision (6) of this section shall apply regarding complaints by members of the public. For purposes of this section, “business occupancies” are those buildings used for the transaction of business, other than mercantile occupancies, for the keeping of accounts and records and similar purposes.

(8) For inspections of assembly occupancies. — The State Fire Marshal may charge an inspection fee not more than one time per twelve-month period for the inspection of assembly occupancies. The inspection fee shall be assessed as follows: For Class C assembly facilities, an inspection fee not to exceed $50.00; for Class B assembly facilities, an inspection fee not to exceed $75.00; and for Class A facilities, an inspection fee not to exceed $100.00.

For purposes of this subdivision, an “assembly occupancy” includes, but is not limited to, all buildings or portions of buildings used for gathering together fifty or more persons for such purposes as deliberation, worship, entertainment, eating, drinking, amusement or awaiting transportation. For purposes of this section, a “Class C assembly facility” is one that accommodates fifty to three hundred persons; a “Class B facility” is one which accommodates more than three hundred persons but less than one thousand persons; and a “Class A facility” is one which accommodates more than one thousand persons.

(b) The State Fire Marshal may collect fees for the fire safety review of plans and specifications for new and existing construction. Fees shall be paid by the party or parties receiving the review.
(1) Structural barriers and fire safety plans review. — The fee is $1.00 for each $1,000.00 of construction cost up to the first $1 million. Thereafter, the fee is eighty cents for each $1,000.00 of construction cost.

(2) Sprinkler system review. — The fee charged for the review of an individual sprinkler system is as follows: Number of heads: One to two hundred — $85.00; two hundred one to three hundred — $100.00; three hundred one to seven hundred fifty — $120.00; over seven hundred fifty — $120.00 plus ten cents per head over seven hundred fifty.

(3) Fire alarm systems review. — The fee charged for the review of a fire alarm system is $50.00 for each ten thousand square feet of space with a $50.00 minimum charge.

(4) Range hood extinguishment system review. — The fee is $25.00 per individual system reviewed.

(5) Carpet specifications. — The fee for carpet review and approval is $20.00 per installation.

(c) All fees authorized and collected pursuant to this article, article three-b, article three-c and article three-d of this chapter shall be paid to the State Fire Commission and thereafter deposited into the special account in the State Treasury known as the “Fire Marshal Fees Fund”. Expenditures from the fund shall be for the purposes set forth in this article and articles three-b, three-c and three-d of this chapter 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 fulfillment of the provisions of article two, chapter five-a of this code. Any balance remaining in the special account at the end of any fiscal year shall be reappropriated to the next fiscal year.
(d) If the owner or occupant of any occupancy arranges a time and place for an inspection with the State Fire Marshal and is not ready for the occupancy to be inspected at the appointed time and place, the owner or occupant thereof shall be charged the inspection fee provided in this section unless at least forty-eight hours prior to the scheduled inspection the owner or occupant requests the State Fire Marshal to reschedule the inspection. In the event a second inspection is required by the State Fire Marshal as a result of the owner or occupant failing to be ready for the inspection when the State Fire Marshal arrives, the State Fire Marshal shall charge the owner or occupant of the occupancy the inspection fees set forth above for each inspection trip required.

(e) The fees provided for in this section shall remain in effect until such time as the Legislature has approved rules promulgated by the State Fire Marshal, in accordance with the provisions of article three, chapter twenty-nine-a of this code, establishing a schedule of fees for services.

ARTICLE 3D. SUPERVISION OF FIRE PROTECTION WORK.

§29-3D-1. Declaration of purpose.

The provisions of this article are intended to protect the health, safety and welfare of the public as well as public and private property by assuring the competence of those who perform fire protection work and damper work through licensure by the State Fire Marshal.

§29-3D-2. Definitions.

As used in this article and the legislative rules promulgated pursuant to this article:

(a) “Combination Fire/Smoke Damper” means a device that meets both fire damper and smoke damper requirements.
(b) "Damper" means a fire damper, smoke damper or combination fire/smoke damper.

(c) "Damper work" means to install, test, maintain or repair a damper.

(d) "Engineered Suppression Systems Installer" means a person certified by a manufacturer to install, alter, extend, maintain, layout or repair an agent suppression system.

(e) "Engineered Suppression Systems Technician" means a person certified by a manufacturer to maintain or repair an agent suppression system.

(f) "Fire damper" means a device installed in an air distribution system, designed to close automatically upon detection of heat, to interrupt migratory airflow and to restrict the passage of flame. Fire dampers are classified for use in either static systems or for dynamic systems, where the dampers are rated for closure under airflow.

(g) "Fire protection damper technician" means a person certified to install, test, maintain or repair a damper.

(h) "Fire protection damper technician in training" means a person with interest in and an aptitude for performing installation, maintenance or repair work to a damper as defined in this article, but who alone is not capable or authorized to perform damper work unless directly supervised by a Fire Protection Damper Technician.

(i) "Fire protection layout technician" is an individual who has achieved National Institute for Certification in Engineering Technologies (NICET) Level III or higher certification, and who has the knowledge, experience and skills necessary to layout fire protection systems based on engineering design documents.
(j) "Fire protection system" means any fire protection suppression device or system designed, installed and maintained in accordance with the applicable National Fire Protection Association (NFPA) codes and standards, but does not include public or private mobile fire vehicles.

(k) "Fire protection work" means the installation, alteration, extension, maintenance, or testing of all piping, materials and equipment inside a building, including the use of shop drawings prepared by a fire protection layout technician, in connection with the discharge of water, other special fluids, chemicals or gases and backflow preventers for fire protection for the express purpose of extinguishing or controlling fire.

(l) "Journeyman sprinkler fitter" means a person qualified by at least ten thousand hours of work experience installing, adjusting, repairing and dismantling fire protection systems and who is competent to instruct and supervise the fire protection work of a sprinkler fitter in training.

(m) "License" means a valid and current license issued by the State Fire Marshal in accordance with the provisions of this article.

(n) "Portable Fire Extinguisher Technician" means a person certified in accordance with NFPA 10 to install, maintain, repair and certify portable fire extinguishers as defined by NFPA 10.

(o) "Preengineered Suppression Systems Installer" means a person certified by a manufacturer to install, alter, extend, maintain, layout or repair an agent suppression system.

(p) "Preengineered Suppression Systems Technician" means a person certified to maintain or repair an agent suppression system.

(q) "Single family dwelling" means a building which is occupied as, or designed or intended for occupancy as, a single residence for one or more persons.
(r) "Smoke Damper" means a device within an operating (dynamic) air distribution system to control the movement of smoke.

(s) "Sprinkler fitter in training" means a person with interest in and an aptitude for performing fire protection work but who alone is not capable of performing such work, and who has fewer than ten thousand hours of experience installing, adjusting, repairing and dismantling fire protection systems.

§29-3D-3. License required; exemptions.

1 (a) On and after January 1, 2009, a person performing or offering to perform fire protection work in this state shall have a license issued by the State Fire Marshal, in accordance with the provisions of this article.

(b) On and after January 1, 2016, a person performing or offering to perform damper work in this state shall have a license issued by the State Fire Marshal, in accordance with the provisions of this article and the legislative rules promulgated pursuant hereto: Provided, That a person may not be licensed to perform damper work in this state without first being licensed as a HVAC technician pursuant to the provisions of article sixteen, chapter twenty-one of this code.

(c) A person licensed under this article must carry a copy of the license on any job in which fire protection work is being performed.

(d) This article does not apply to:

    (1) A person who personally performs fire protection work or damper work on a single family dwelling owned or leased, and occupied by that person;
20 (2) A person who performs fire protection work or damper
21 work at any manufacturing plant or other industrial
22 establishment as an employee of the person, firm or corporation
23 operating the plant or establishment;
24
25 (3) A person who, while employed by a public utility or its
26 affiliate, performs fire protection work in connection with the
27 furnishing of public utility service.
28
29 (4) A person who performs fire protection work while
30 engaging in the business of installing, altering or repairing water
31 distribution or drainage lines outside the foundation walls of a
32 building, public or private sewage treatment or water treatment
33 systems including all associated structures or buildings, sewers
34 or underground utility services;
35
36 (5) A person who performs fire protection work while
37 engaged in the installation, extension, dismantling, adjustment,
38 repair or alteration of a heating ventilation and air conditioning
39 (HVAC) system, air-veyor system, air exhaust system or air
40 handling system; or
41
42 (6) A person who performs fire protection work at a coal
43 mine that is being actively mined or where coal is being
44 processed.

§29-3D-4. Rule-making authority.
1 The State Fire Marshal shall propose rules for legislative
2 approval, in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code, for the implementation and
4 enforcement of the provisions of this article, which shall
5 provide:
6
7 (1) Standards and procedures for issuing and renewing
8 licenses, including classifications of licenses as defined in this
9 article, applications, examinations and qualifications: Provided,
That the rules shall require a person to be licensed as a HVAC technician or HVAC technician in training pursuant to article sixteen, chapter twenty-one of this code and the rules promulgated pursuant thereto, before being granted a license to perform damper work pursuant to this article;

(2) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform fire protection work at the level of the classifications defined in this article and who apply for licensure on or before July 1, 2009: Provided, That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination;

(3) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform damper work at the level of the classifications defined in this article and who apply for licensure on or before July 1, 2016: Provided, That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination;

(4) Reciprocity provisions;

(5) Procedures for investigating complaints and revoking or suspending licenses, including appeal procedures;

(6) Fees for testing, issuance and renewal of licenses, and other costs necessary to administer the provisions of this article;

(7) Enforcement procedures; and

(8) Any other rules necessary to effectuate the purposes of this article.
§29-3D-5. Enforcement.

1 (a) The State Fire Marshal and his or her deputy fire
2 marshal, assistant fire marshal or assistant fire marshal-in-
3 training, is authorized to enforce the provisions of this article,
4 and may, at reasonable hours, enter any building or premises
5 where fire protection work or damper work is performed and
6 issue citations for noncompliance.

7 (b) The State Fire Marshal may enter into an interagency
8 agreement with the Commissioner of Labor for the mutual
9 purpose of enforcing this article and article sixteen, chapter
10 twenty-one of this code.

§29-3D-6. Denial, suspension and revocation of license.

1 (a) The State Fire Marshal may deny a license to any
2 applicant who fails to comply with the rules established by the
3 State Fire Marshal, or who lacks the necessary qualifications.

4 (b) The State Fire Marshal may, upon complaint or upon his
5 or her own inquiry, and after notice to the licensee, suspend or
6 revoke a licensee’s license if:

7 (1) The license was granted upon an application or
8 documents supporting the application which materially misstated
9 the terms of the applicant’s qualifications or experience;

10 (2) The licensee subscribed or vouched for a material
11 misstatement in his or her application for licensure;

12 (3) The licensee incompetently or unsafely performs
13 plumbing, fire protection work or damper work; or

14 (4) The licensee violated any statute of this state, any
15 legislative rule or any ordinance of any municipality or county
16 of this state which protects the consumer or public against unfair,
17 unsafe, unlawful or improper business practices.
§29-3D-7. Penalties.

(a) On and after January 1, 2009, a person performing or offering to perform fire protection work without a license issued by the State Fire Marshal, is subject to a citation.

(b) On and after January 1, 2016, a person performing or offering to perform, or an employer authorizing a person not exempt by the provisions of section three of this article, to perform, damper work without a license issued by the State Fire Marshal, is subject to a citation.

(c) Any person continuing to engage in fire protection work or damper work after the issuance of a citation is guilty of a misdemeanor and, upon conviction thereof, is subject to the following penalties:

(1) For the first offense, a fine of not less than $200 nor more than $1,000;

(2) For the second offense, a fine of not less than $500 nor more than $2,000, or confinement in jail for not more than six months, or both;

(3) For the third and subsequent offenses, a fine of not less than $1,000 nor more than $5,000, and confinement in jail for not less than thirty days nor more than one year.

(d) Each day after a citation is given that a person continues to perform, or an employer continues to authorize a person to perform, fire protection work or damper work, which is not exempt by the provisions of section three of this article, is a separate offense and punishable accordingly.

(e)(1) The State Fire Marshal may institute proceedings in the circuit court of Kanawha County or the county where the alleged violation of the provisions of this article occurred or are
now occurring to enjoin any violation of any provision of this article.

(2) A circuit court by injunction may compel compliance with the provisions of this article, with the lawful orders of the State Fire Marshal and with any final decision of the State Fire Marshal.

(3) The State Fire Marshal shall be represented in all such proceedings by the Attorney General or his or her assistants.

(f) Any person adversely affected by an action of the State Fire Marshal may appeal the action pursuant to the provisions of chapter twenty-nine-a of this code.

§29-3D-8. Inapplicability of local ordinances.

(a) On and after January 1, 2009, a political subdivision of this state may not require, as a condition precedent to the performance of fire protection work in the political subdivision, a person who holds a valid and current license to perform fire protection work issued under the provisions of this article, to have any other license or other evidence of competence as a fire protection worker.

(b) On and after January 1, 2016, a political subdivision of this state may not require, as a condition precedent to the performance of damper work in the political subdivision, a person who holds a valid and current license to perform damper work issued under this article to have any other license or other evidence of competence beyond those required by the State Fire Marshal and the Commissioner of Labor to perform damper work.
AN ACT to amend and reenact §22-16-11 and §22-16-12 of the Code of West Virginia, 1931, as amended, relating to authorizing the expenditures of moneys from the Closure Cost Assistance Fund to facilitate the closure of the Elkins-Randolph County Landfill and the Webster County Landfill; authorizing expenditures of moneys from the Closure Cost Assistance Fund to complete post closure maintenance and monitoring; and limiting liability of state and Wayne County economic development authority if permit is transferred.

Be it enacted by the Legislature of West Virginia:

That §22-16-11 and §22-16-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.


(a) The secretary shall provide an application and application procedure for all permittees of solid waste landfills desiring to receive closure assistance under this article.

(b) The secretary shall, within a reasonable time after receipt of a complete application, notify the applicant of the acceptance
or rejection of the application. If the application is rejected the notice shall contain the reasons for the rejection.

§22-16-12. Solid Waste Facility Closure Cost Assistance Fund; closure extension; reporting requirements.

(a) The "Closure Cost Assistance Fund" continues as a special revenue account in the State Treasury. The fund operates as a special fund in which all deposits and payments do not expire to the General Revenue Fund, but remain in the account and are available for expenditure in the succeeding fiscal year. Separate subaccounts may be established within the special account for the purpose of identification of various revenue resources and payment of specific obligations.

(b) Interest earned on any money in the fund shall be deposited to the credit of the fund.

(c) The fund consists of the following:

(1) Moneys collected and deposited in the State Treasury which are specifically designated by Acts of the Legislature for inclusion in the fund, including moneys collected and deposited into the fund pursuant to section four of this article;

(2) Contributions, grants and gifts from any source, both public and private, which may be used by the secretary for any project or projects;

(3) Amounts repaid by permitees pursuant to section eighteen, article fifteen of this chapter; and

(4) All interest earned on investments made by the state from moneys deposited in this fund.

(d) The Solid Waste Management Board, upon written approval of the secretary, has the authority to pledge all or part
of the revenues paid into the Closure Cost Assistance Fund as needed to meet the requirements of any revenue bond issue or issues of the Solid Waste Management Board authorized by this article, including the payment of principal of, interest and redemption premium, if any, on the revenue bonds and the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on the revenue bond issue or issues where other moneys pledged may be insufficient. Any pledge of moneys in the Closure Cost Assistance Fund for revenue bonds 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. Expenditures from the fund, other than for the retirement of revenue bonds, may only be made in accordance with this article.

(e) The amounts deposited in the fund may be expended only on the cost of projects as provided in sections three and fifteen of this article, as provided in subsection (f) of this section and for payment of bonds and notes issued pursuant to section five of this article. No more than two percent of the annual deposits to such the fund may be used for administrative purposes.

(f) Notwithstanding any provision of this article, upon request of the Solid Waste Management Board, and with the approval of the projects by the Secretary of the Department of Environmental Protection, the secretary may pledge and place into escrow accounts up to an aggregate of $2,000,000 of the fund to satisfy two years debt service requirement that permittees of publicly-owned landfills and transfer stations are required to meet in order to obtain loans. Pledges shall be made on a project-by-project basis, may not exceed $500,000 for a project and are made available after loan commitments are received. The secretary may pledge funds for a loan only when the following conditions are met:
(1) The proceeds of the loan are used only to perform construction of a transfer station or a composite liner system that is required to meet title forty-seven, series thirty-eight, solid waste management rules;

(2) The permittee dedicates all yearly debt service revenue, as determined by the Public Service Commission, to meet the repayment schedule of the loan, before it uses available revenue for any other purpose; and

(3) That any funds pledged may only be paid to the lender if the permittee is in default on the loan.

(g) Notwithstanding any provision of this code to the contrary, the Elkins-Randolph County Landfill, located in Randolph County, and the Webster County Landfill, located in Webster County, are eligible for funds from the Solid Waste Facility Closure Cost Assistance Fund necessary to complete their closure upon the filing of appropriate application. Upon the filing of an appropriate application, the Department of Environmental Protection shall work with the applicant to ensure the application meets the department's requirements.

(h) The Department of Environmental Protection is required to file, by January 1 of each year, an annual report with the Joint Committee on Government and Finance providing details on the manner in which the landfill closure assistance funds were expended for the prior fiscal year.

(i) The Prichard Landfill in Wayne County is eligible for funds from the Closure Cost Assistance Fund necessary to complete post closure maintenance and monitoring upon the filing of an appropriate application. In the event of a permit transfer, neither the State nor the Wayne County economic development authority or entity may assume any liability from the private landfill other than post closure maintenance and monitoring costs.
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 rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the Department of Administration to promulgate a legislative rule relating to state-owned vehicles; and authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Public Employees Retirement System.

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. Department of Administration.

1 The legislative rule filed in the State Register on July 25, 2013, authorized under the authority of section forty-eight,
article three, chapter five-a of this code, relating to the Department of Administration (state owned vehicles, 148 CSR 3), is authorized.


The legislative rule filed in the State Register on July 25, 2013, 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 August 30, 2013, relating to the Consolidated Public Retirement Board (Public Employees Retirement System, 162 CSR5), is authorized with the following amendment:

On page three, subsection 8.1, line seventeen, following the word “System”, by inserting a colon and the following: “And provided further, That beginning July 1, 2014, each participating public employer shall contribute fourteen percent (14%) of each compensation payment of all its employees who are members of the Public Employees Retirement System.”.

CHAPTER 107

(Com. Sub. for S. B. 133 - By Senator Snyder)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on April 1, 2014.]

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 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; 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 horizontal well development; 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 for the prevention of significant deterioration of air quality; 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 the control of air pollution from the combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources which cause or contribute to nonattainment areas; 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 emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection
to promulgate a legislative rule relating to state certification of activities requiring federal licenses and permits; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to voluntary remediation and redevelopment.

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 May 6, 2013, authorized under the authority of section six, article six-a, chapter twenty-two of this code, approved for promulgation by the Legislature on April 12, 2013, relating to the Department of Environmental Protection (horizontal well development, 35 CSR 8), is authorized with the following amendment:

On pages ten and eleven, by striking out all of subdivision 5.7.a. and inserting in lieu thereof a new subdivision 5.7.a. to read as follows:

5.7.a. All applications for well work permits shall be accompanied by a well site safety plan to address proper safety measures to be employed for the protection of persons on the well site, as well as the general public in the area surrounding the well site. Each plan shall be specific to the well site described in the permit application and include the surrounding area. The plan shall encompass all aspects of the operation, including the actual well work for which the permit is sought, the anticipated MSDS for the chemical components added to the hydraulic
19 fracturing fluid, and completion, production, and work-over activities. It shall be made available on the well site during all phases of the operation and provide an emergency point of contact and twenty-four (24)-hour contact information for the well operator. At least seven (7) days before commencement of well work or site preparation work that involves any disturbance of the land, the well operator shall provide a copy of the well site safety plan to the local emergency planning committee (LEPC) for the emergency planning district in which the well work will occur or to the county office of emergency services. The operator shall also provide one copy of the Well Site Safety Plan to the surface owner, any water purveyor and any surface owner subject to notice and water testing as provided in section 15 of this rule: Provided, That in the event the Well Site Safety Plan previously provided to a surface owner, water purveyor or surface owner, is later amended, in whole or in part, the operator shall provide a copy of the amendments to the surface owner, water purveyor or surface owner. The operator should work closely with the local first responders to familiarize them with potential incidents that are related to oil and gas development, so that the local first responders have the information they need to provide the support necessary for the operator to implement the well site safety plan. The well site safety plan shall include, at a minimum, the information contained in subdivisions 5.7.b. through 5.7.h.

(b) The legislative rule filed in the State Register on July 22, 2013, 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.

(c) The legislative rule filed in the State Register on July 22, 2013, 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 September 4, 2013, relating to the Department of Environmental Protection (permits for construction and major modification of major stationary sources for the prevention of significant deterioration of air quality, 45 CSR 14), is authorized.

(d) The legislative rule filed in the State Register on July 22, 2013, 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.

(e) The legislative rule filed in the State Register on July 22, 2013, 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 combustion of solid waste, 45 CSR 18), is authorized.

(f) The legislative rule filed in the State Register on July 22, 2013, 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 which cause or contribute to nonattainment areas, 45 CSR 19), is authorized.

(g) The legislative rule filed in the State Register on July 22, 2013, 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.

(h) The legislative rule filed in the State Register on July 22, 2013, 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.
(i) The legislative rule filed in the State Register on July 26, 2013, 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 November 27, 2013, relating to the Department of Environmental Protection (requirements governing water quality standards, 47 CSR 2), is authorized with the following amendment:

On page thirty-seven, parameter 8.1, by striking out the words "For water with pH <6.5 or >9.0";

And,

On page thirty-seven, by striking out all of parameters 8.1.1 and 8.1.2.

(j) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section seven, 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 December 18, 2013, relating to the Department of Environmental Protection (state certification of activities requiring federal licenses and permits, 47 CSR 5A), is authorized.

(k) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section three, article twenty-two, 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 17, 2013, relating to the Department of Environmental Protection (voluntary remediation and redevelopment, 60 CSR 3), is authorized, with the following amendment:
On page two, subsection 2.22., line twenty-one, following the words "refers to a", by striking the "A"; and

On page three, subsection 2.35., line twenty-six, by striking the words "Section 3 of Article 22"; and

On page nine, paragraph 4.3.d.6., line thirty-five, by striking the character "2" at the beginning of the line; and

On page nine, paragraph 4.3.d.6., line forty-five, following the words "greater than", by striking the character "2"; and

On page ten, subdivision 5.1.d., line three, following the words "W.Va. Code §22-22", by inserting a hyphen and the words '1, et seq.'; and

On page fourteen, subdivision 5.3.k., line four, following the words "and practical knowledge" by striking the semi-colon; and

On page fifteen, subdivision 5.5.e., line three, by striking the word "thirty" at the beginning of the line; and

On page nineteen, subparagraph 7.4.b.21.A., line twenty, by renumbering the subparagraph as 7.4.b.1.A.; and

On page nineteen, subparagraph 7.4.b.31.B., line twenty-four, by renumbering the subparagraph as 7.4.b.1.B.; and

On page nineteen, subparagraph 7.4.b.1.C., line twenty-nine, by renumbering the subparagraph as 7.4.b.1.C.; and

On page nineteen, paragraph 7.4.b.52., line thirty-three, by renumbering the paragraph as 7.4.b.2.; and

On page nineteen, subparagraph 7.4.b.62.A., line thirty-eight, by renumbering the subparagraph as 7.4.b.2.A.; and

On page twenty, subparagraph 7.4.b.72.B, line one, by renumbering the subparagraph as 7.4.b.2.B.; and
AN ACT to amend and reenact article 4, chapter 64 of the Code of
West Virginia, 1931, as amended, relating generally to the
promulgation of administrative rules by the Department of
Education and the Arts; legislative mandate or authorization for the
promulgation of certain legislative rules by various executive and
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; and authorizing the Division of Rehabilitation Services to promulgate a legislative rule relating to the Ron Yost Personal Assistance Services Board.

Be it enacted by the Legislature of West Virginia:

That article 4, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. AUTHORIZATION FOR THE DEPARTMENT OF EDUCATION AND THE ARTS TO PROMULGATE LEGISLATIVE RULES.

§64-4-1. Division of Rehabilitation Services.

The legislative rule filed in the State Register on July 19, 2013, authorized under the authority of section six, article ten-l, chapter eighteen of this code, modified by the Division of Rehabilitation Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 5, 2013, relating to the Division of Rehabilitation Services (Ron Yost Personal Assistance Services Act Board, 198 CSR 1), is authorized.

CHAPTER 109

(Com. Sub. for S. B. 155 - By Senator Snyder)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on April 1, 2014.]

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 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 Health and Human Resources to promulgate a legislative rule relating to medication administration by unlicensed personnel; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to child care centers’ licensing; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to clinical laboratory technician and technologist licensure and certification; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to AIDS-related medical testing and confidentiality; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the Cancer Registry; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the Medical Examiner’s rule for post-mortem inquiries; authorizing the Health Care Authority to promulgate a legislative rule relating to the West Virginia Health Information Network; authorizing the Bureau for Child Support Enforcement to promulgate a legislative rule relating to the bureau; repealing the Bureau for Child Support Enforcement’s legislative rule relating to obtaining support from federal and state tax refunds; repealing the Bureau for Child Support Enforcement’s legislative rule relating to interstate income withholding; authorizing the Bureau for Child Support Enforcement to promulgate a legislative rule relating to support enforcement activities undertaken by the bureau; and authorizing
the Bureau for Child Support Enforcement to promulgate a legislative rule relating to the distribution of support payments.

*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:

§64-5-1. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on July 29, 2013, authorized under the authority of section eleven, article five-o, 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 8, 2013, relating to the Department of Health and Human Resources (medication administration by unlicensed personnel, 64 CSR 60), is authorized with the following amendment:

On page four, paragraph 2.13.a.4 after the word “appliances” by changing the semicolon to a period striking out the word “and”.

(b) The legislative rule filed in the State Register on July 29, 2013, 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 December 3, 2013, relating to the Department of Health and Human Resources (child care centers’ licensing, 78 CSR 1), is authorized, with the following amendment:

On page nine, subdivision 4.2.b, by removing the word “thirty”, the left parenthesis, the number “30” and the right parenthesis, and inserting in lieu thereof, the word “ninety”, the left parenthesis, the number “90” and the right parenthesis;
On page forty, subparagraph 13.3.a.3, line two, after the word, "served" by striking out the semi-colon and the following underlined words "provided that the center shall not use tables with built-in multiple bucket-type seats after June 30, 2015";

On page forty, by striking subdivision 13.3.b in its entirety, and in lieu thereof, inserting a new subdivision 13.3.b to read as follows:

"13.3.b. Jumpers, and infant walkers are prohibited."

On page forty, after subdivision 13.3.b, by inserting a new subdivision 13.3.c to read as follows:

"13.3.c. Play pens and play yards, if used, must be manufactured after February 28, 2013, properly disinfected after each use and not used for multiple children at the same time."

On page forty-three, subparagraph 13.4.i.5, line three, after the word "worn" by striking out the comma, and the following words, "but the use of a blanket is prohibited in the crib" and by un-striking and restoring the following words, "or a thin blanket used for a covering. If a blanket is used, it shall be tucked around the mattress of the crib and only cover the child high as his or her chest";

And,

On page forty-eight, by striking out in its entirety subdivision 14.3.d and inserting in lieu thereof a new subdivision 14.3.d to read as follows:

"14.3.d. Restrictive equipment. Infant equipment that restricts movement such as swings, play pens, play yards, stationary activity centers (exersaucers), infant seats, etc., if used, shall only be used for short periods of time not to exceed fifteen (15) minutes in a four (4) hour period.".

(a) The legislative rule filed in the State Register on July 24, 2013, 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 5, 2013, relating to the Department of Health and Human Resources (clinical laboratory technician and technologist licensure and certification, 64 CSR 57), is authorized.

(b) The legislative rule filed in the State Register on July 25, 2013, 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 December 9, 2013, relating to the Department of Health and Human Resources (AIDS-related medical testing and confidentiality, 64 CSR 64), is authorized with the following amendments:

On page two, subdivision 4.1.e, by inserting the following after the period, "The cost of the test not be passed through to the patient by a public health department."

On page six, paragraph 4.3.b.1., by striking out the words "an oral" and inserting in lieu thereof the word "a";

On page six, by striking out all of subparagraph 4.3.b.1.A. and inserting in lieu thereof the following:

4.3.b.1.A. The court shall require the defendant or juvenile respondent to submit to the testing not later than forty-eight hours after the issuance of the order described in paragraph 4.3.b.1 of this subsection, unless good cause for delay is shown upon a request for a hearing: Provided, That no such delay shall
cause the HIV-related testing to be administered later than forty-eight hours after the filing of any indictment or information regarding an adult defendant or the filing of a petition regarding a juvenile respondent.

4.3.b.1.B. The prosecuting attorney may, upon the request of the victim or the victim's parent or legal guardian, and with notice to the defendant or juvenile respondent, apply to the court for an order directing that an appropriate human immunodeficiency virus (HIV) test or other STD test be performed on a defendant charged with or a juvenile subject to a petition involving the offenses of prostitution, sexual abuse, sexual assault or incest.

On page six, by striking out all of part 4.3.b.1.A.1.;

On page six, by striking out all of paragraph 4.3.b.2.;

And renumbering the remaining paragraphs;

On page six, by striking out all of paragraph 4.3.b.6. and inserting in lieu thereof the following:

4.3.b.5. The costs of testing may be charged to the defendant or juvenile respondent, or to that person's medical insurance provider, unless determined unable to pay by the court having jurisdiction over the matter. If the defendant or juvenile is unable to pay, the cost of laboratory testing for HIV testing may be borne by the bureau or the local health department.

4.3.b.5.A. The commissioner designates and authorizes all health care providers operating in regional jails, correctional or juvenile facilities to administer HIV tests, either by taking blood or oral specimens, and transmitting those specimens to the Office of Laboratory Services in accordance with instructions set forth at: http://www.wvdhhr.org/labservices/labe/HIV/index.cfm.
4.3.b.5.B. Laboratory testing done on specimens sent to the Office of Laboratory Services by health care providers for regional jails, correctional or juvenile facilities shall be performed at no cost to the jails, facilities or health care providers."

And,

On page seven, by striking out all of subdivision 4.3.d. and inserting in lieu thereof a new subdivision, designated subdivision 4.3.d., to read as follows:

4.3.d. A person convicted or a juvenile adjudicated of the offenses described in this subsection may be required to undergo HIV-related testing and counseling immediately upon conviction or adjudication: Provided, That if the person convicted or adjudicated has been tested in accordance with the provisions of subdivision 4.3.b. of this subsection, that person need not be retested.

(c) The legislative rule filed in the State Register on July 24, 2013, authorized under the authority of section two-a, article five-a, 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 October 7, 2013, relating to the Department of Health and Human Resources (Cancer Registry, 64 CSR 68), is authorized.

(d) The legislative rule filed in the State Register on July 24, 2013, authorized under the authority of section three, article twelve, chapter sixty-one 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 5, 2013, relating to the Department of Health and Human Resources (Medical
Examiner rule for postmortem inquiries, 64 CSR 84), is authorized.

§64-5-3. Health Care Authority.

The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section seven, article twenty-nine-g, chapter sixteen of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 4, 2013, relating to the Health Care Authority (West Virginia Health Information Network, 65 CSR 28), is authorized.


(a) The legislative rule filed in the State Register on July 29, 2013, authorized under the authority of section one hundred five, article eighteen, chapter forty-eight of this code, modified by the Bureau for Child Support Enforcement to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 18, 2013, relating to the Bureau for Child Support Enforcement (the Bureau for Child Support Enforcement, 97 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 29, 2013, authorized under the authority of section one hundred five, article eighteen, chapter forty-eight of this code, relating to the Bureau for Child Support Enforcement (obtaining support from federal and state tax refunds, 97 CSR 3), is repealed.

(c) The legislative rule filed in the State Register on July 29, 2013, authorized under the authority of section one hundred five, article eighteen, chapter forty-eight of this code, relating to the Bureau for Child Support Enforcement (interstate income withholding, 97 CSR 4), is repealed.
(d) The legislative rule filed in the State Register on July 29, 2013, authorized under the authority of section one hundred five, article eighteen, chapter forty-eight of this code, modified by the Bureau for Child Support Enforcement to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 18, 2013, relating to the Bureau for Child Support Enforcement (support enforcement activities undertaken by the Bureau for Child Support Enforcement, 97 CSR 6), is authorized.

(e) The legislative rule filed in the State Register on July 29, 2013, authorized under the authority of section one hundred five, article eighteen, chapter forty-eight of this code, modified by the Bureau for Child Support Enforcement to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 18, 2013, relating to the Bureau for Child Support Enforcement (distribution of support payments, 97 CSR 7), is authorized.

CHAPTER 110

(Com. Sub. for H. B. 4067 - By Delegates Poore, Marcum, Fleischauer, Frich, and Eldridge)

[Passed March 5, 2014; in effect from passage.]
[Approved by the Governor on March 21, 2014.]

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 Fire Marshal to promulgate a legislative rule relating to
certification of electrical inspectors; authorizing the Fire
Commission to promulgate a legislative rule relating to the State
Fire Code; authorizing the Fire Commission to promulgate a
legislative rule relating to certification of home inspectors;
authorizing the Regional Jail and Correctional Facility Authority
to promulgate a legislative rule relating to criteria and procedures
for determination of projected cost per day for inmates
incarcerated in regional jails operated by the Authority; and
authorizing the Governor's Committee on Crime, Delinquency and
Correction to promulgate a legislative rule relating to law
enforcement training and certification standards.

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 DEPARTMENT OF
MILITARY AFFAIRS AND PUBLIC
SAFETY TO PROMULGATE LEGISLATIVE
RULES.

§64-6-1. State Fire Marshal.

1 The legislative rule filed in the State Register on July 25,
2 2013, authorized under the authority of section four, article
3 three-c, chapter twenty-nine of this code, modified by the State
Fire Marshal to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 3, 2013, relating to the State Fire Marshal (certification of electrical inspectors, 103 CSR 1), is authorized.

§64-6-2. Fire Commission.

(a) The legislative rule filed in the State Register on June 19, 2013, 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 3, 2013, relating to the Fire Commission (State Fire Code, 87 CSR 1), is authorized, with the following amendment:

On page 1, subparagraph 2.1.a.1.A., in the first sentence, after the words “is subject to this” by striking out the word “section” and inserting in lieu thereof the word “paragraph”;

On page 1, subparagraph 2.1.a.1.A., in the third sentence, after the words “exempted from the provisions of this” by striking out the word “section” and inserting in lieu thereof the word “paragraph”;

On page 2, subparagraph 2.1.a.1.C., in the first sentence, after the words “as defined in” by striking out the word “subsections” and inserting in lieu thereof the word “subparagraphs”;

On page 2, subparagraph 2.1.a.1.E., in the first sentence, after the words “in accordance with” by striking out the word “Subsection” and inserting in lieu thereof the word “subparagraph”;

On page 2, subparagraph 2.1.a.1.F., in the first sentence, after the words “as defined in” by striking out the word “subsections” and inserting in lieu thereof the word “subparagraphs”;
On page 2, subparagraph 2.1.a.1.G., in the first sentence, after the words “in accordance with” by striking out the word “subsection” and inserting in lieu thereof the word “subparagraph”;

On page 3, subparagraph 2.1.a.1.H., after the words “as defined in” by striking out the word “Subsections” and inserting in lieu thereof the word “subparagraphs”;

On page 3, paragraph 2.2.a.1., by striking out said paragraph 2.2.a.1. and inserting in lieu thereof a new paragraph 2.2.a.1 to read as follows:

“All residential occupancies, except one or two family dwellings, shall prominently display signage stating whether the building contains an approved automatic sprinkler and whether the windows are capable of being opened or broken in an emergency.”;

On page 5, subsection (5) under Notes to Table 2.2.a., after the words “40 feet in height as measured per” by striking out the word “Section” and inserting in lieu thereof the word “subparagraph”;

On page 7, subparagraph 2.2.d.3.E., after the words “from the requirements of this” by striking out the word “subsection” and inserting in lieu thereof the word “paragraph”;

On page 10, paragraph 2.2.i.5., after the words “comply with the residential requirements of” by striking out the words “subsection 11.6 of this section” and inserting in lieu thereof the words “subdivision 2.2.j. of this subsection”;

On page 11, subparagraph 2.2.n.2.A., in the second sentence, after the word “This” by striking out the word “division” and inserting in lieu thereof the word “subparagraph”;

On page 12, part 2.2.n.2.I.1., after the words “meet the requirements of” by striking out the words “Subsections 11.1 and
58 11.6” and inserting in lieu thereof the words “paragraph 2.2.d.1.
59 and subdivision 2.2.j.”;

60 On page 12, subparagraph 2.2.n.2.N., after the words “meet
61 the requirements of” by striking out the words “section 7 of this
62 Rule of Residential Occupancies” and inserting in lieu thereof
63 the words “subdivision 2.2.c. of this rule”;

64 On page 13, subparagraph 2.2.o.2.A., at the end of the third
65 sentence, after the words “pyrotechnics display as provided in
66 this” by striking out the word “section” and inserting in lieu
67 thereof the word “subdivision”;

68 On page 13, subparagraph 2.2.o.2.A., in the fourth sentence,
69 after the words “paid by the provisions of this” by striking out
70 the word “section” and inserting in lieu thereof the word
71 “subdivision”;

72 On page 13, subparagraph 2.2.o.2.A., in the last sentence,
73 after the words “permit granted under this” by striking out the
74 word “subsection” and inserting in lieu thereof the word
75 “subdivision”;

76 On page 14, paragraph 2.2.p.1., after the words “For the
77 purposes of this” by striking out the word “subsection” and
78 inserting in lieu thereof the word “subdivision”;

79 On page 17, subparagraph 2.2.q.6.D., after the words
80 “dwelling or building listed in” by striking out the word
81 “subsection” and inserting in lieu thereof the word
82 “subparagraph”;

83 On page 17, subparagraph 2.2.q.6.E., in the first sentence,
84 after the words “dwelling or building listed in” by striking out
85 the word “subsection” and inserting in lieu thereof the word
86 “subparagraph” and after the words “ground vibration and
87 airblast limits listed in” by striking out the word “subsection”
88 and inserting in lieu thereof the word “subparagraph”;
On page 18, subparagraph 2.2.q.6.F., in the first sentence, after the words “For structures not listed in” by striking out the word “subsection” and inserting in lieu thereof the word “subparagraph” and in the second sentence, after the words “dwelling or building listed in” by striking out the word “subsection” and inserting in lieu thereof the word “subparagraph”;

On page 20, subparagraph 2.2.w.2.E., by striking out the subparagraph designation “2.2.w.2.E.” and inserting in lieu thereof the subparagraph designation “2.2.u.2.E.”;

On page 21, subparagraph 2.2.u.2.O., in the proviso, after the words “for the purposes of this” by striking out the word “subsection” and inserting in lieu thereof the word “subparagraph”;

On page 21, subparagraph 2.2.u.2.T., after the words “if required by” by striking out the word “subsection” and inserting in lieu thereof the word “subparagraph”;

On page 22, section 5, at the end of the section, after the words “an appeal to the State Fire Commission as outlined in” by striking out the words “section 13” and inserting in lieu thereof the words “section 17”;

And,

On page 26, section 16, by striking out said section 16 in its entirety and inserting in lieu thereof the words “The owner or occupant of a new building, or a building that has had 50% or more of the space renovated or reconstructed, shall obtain a certificate of occupancy before the building is occupied or used for its intended purpose.”.

(b) The legislative rule filed in the State Register on June 19, 2013, 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 3, 2013, relating to the Fire Commission (certification of home inspectors, 87 CSR 5), is authorized, with the following amendment:

On page 13, subsection 18.5, after the words “in compliance with West Virginia Code” by striking out the word “§ 29-3-16(a)” and inserting in lieu thereof the word “§29-3-16a(a)”.

§64-6-3. Regional Jail and Correctional Facility Authority.

The legislative rule filed in the state register on July 26, 2013, authorized under the authority of section ten, article twenty, chapter thirty-one of this code, modified by the Regional Jail and Correctional Facility Authority to meet the objections of the legislative rule-making review committee and refiled in the state register on October 30, 2013, relating to the Regional Jail and Correctional Facility Authority (criteria and procedures for determination of projected cost per day for inmates incarcerated in regional jails operated by the Authority, 94 CSR 7), is authorized with the following amendment:

On pages one and two, section two, by striking out all of subsections 2.3 and 2.4 and inserting in lieu thereof two new subsections, designated subsections 2.3 and 2.4, to read as follows:

2.3. The projected expenditure schedule will be divided by the previous fiscal year’s billed average daily inmate population to yield the preliminary projected cost per inmate day. The West Virginia Regional Jail and Correctional Facility Board, established under W. Va. Code §31-20-3, shall evaluate the preliminary projected cost per inmate day to determine if reductions can be implemented based on other revenues, cash
reserves, and cost efficiency efforts. The Board may reduce the preliminary projected cost per inmate day based on adopting a fiscally sound annual operating budget.

2.4. The Board’s approved cost per inmate day shall then become effective as of July 1st of the next fiscal year’s budget following the October projection.

§64-6-4. Governor’s Committee on Crime, Delinquency and Correction.

The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section three, article twenty-nine, chapter thirty of this code, modified by the Governor’s Committee on Crime, Delinquency and Correction to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 10, 2013, relating to the Governor’s Committee on Crime, Delinquency and Correction (law enforcement training and certification standards, 149 CSR 2), is authorized.

CHAPTER 111

(Com. Sub. for S. B. 167 - By Senator Snyder)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2014.]

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 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 State Tax Department to promulgate a legislative rule relating to the municipal sales and service and use tax administration; authorizing the State Tax Department to promulgate a legislative rule relating to the special reclamation tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to the withholding or denial of personal income tax refunds from taxpayers who owe municipal or magistrate court costs; authorizing the Insurance Commissioner to promulgate a legislative rule relating to utilization review and benefit determination; authorizing the Insurance Commissioner to promulgate a legislative rule relating to a health plan insurer internal grievance procedure; authorizing the Insurance Commissioner to promulgate a legislative rule relating to external review of adverse health insurance determinations; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to private club licensing; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to farm wineries; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to the sale of wine; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing and operations procedures; and authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing.

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 REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. State Tax Department.

(a) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section eleven-c, 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 26, 2013, relating to the State Tax Department (municipal sales and service and use tax administration, 110 CSR 28), is authorized.

(b) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section eleven, article three, chapter twenty-two 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 26, 2013, relating to the State Tax Department (special reclamation tax credit, 110 CSR 29), is authorized.

(c) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section two-c, article three, chapter fifty 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 26, 2013, relating to the State Tax Department (withholding or denial of personal income tax refunds from taxpayers who owe municipal or magistrate court costs, 110 CSR 40), is authorized.

§64-7-2. Insurance Commissioner.

(a) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section four, article
sixteen-h, 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 November 1, 2013, relating to the Insurance
Commissioner (utilization review and benefit determination, 114
csr 95), is authorized with the following amendments:

On page one, subsection 1.1., after the words “and benefit
determinations” by inserting a comma;

On page one, subsection 2.1., by striking out the word
“healthcare” and inserting in lieu thereof the words “health
care”; 

On page two, subsection 2.6., after the word “specialty” by
striking out the word “as” and inserting in lieu thereof the word
“that”;

On page three, subsection 2.15., by striking out the word
“no” and inserting in lieu thereof the word “not”;

On page three, subsection 2.16., by striking out the words
“except as otherwise specifically exempted in this definition”
and inserting in lieu thereof the words “but excluding the
excepted benefits defined in 42 U.S.C. § 300gg-91 and as
otherwise specifically excepted in this rule”;

On page five, subsection 2.17., by striking out the word
“state” and inserting in lieu thereof the words “West Virginia”; 

On page five, subsection 2.24., by striking out the word “in”
and inserting in lieu thereof the word “an”;

On page six, subsection 2.28., by striking out the word “that”
and inserting in lieu thereof the words “the one”;

On page six, subdivision 2.30.a., by striking out the words
“the covered person’s life, health or ability to regain maximum
function or in the opinion of an attending health care professional with knowledge of the covered person’s medical condition, would subject the covered person to severe pain that cannot be adequately managed without the health care service or treatment that is the subject of the request;” and inserting in lieu thereof the words “the life or health of the covered person or the ability of the covered person to regain maximum function; or”;

On page six, after subdivision 2.30.a., by inserting a new subdivision, designated subdivision 2.30.b., to read as follows:

2.30.b. In the opinion of an attending health care professional with knowledge of the covered person’s medical condition, would subject the covered person to severe pain that cannot be adequately managed without the health care service or treatment that is the subject of the request;

And by relettering the remaining subdivisions;

On page six, subdivision 2.30.b., by striking out “2.30.a” and inserting in lieu thereof “2.30.d”;

On page eight, subsection 6.1., by striking out the words “an entity” and inserting in lieu thereof the words “a person”;

On page eight, subsection 6.1., after the word “Commissioner” by inserting the words “or by statute or legislative rule”;

On page nine, after paragraph 6.3.a.4., by inserting a new paragraph, designated paragraph 6.3.a.5., to read as follows:

6.3.a.5. For purposes of calculating the time period for refiling the benefit request or claim, the time period shall begin to run upon the covered person’s receipt of the notice of opportunity to resubmit;
On page ten, subdivision 7.1.b., by striking out the words "a determination is required to be made under subsections 7.2 and 7.4" and inserting in lieu thereof the words "prospective and retrospective review determinations are required to be made";

On page eleven, paragraph 7.1.e.1., after the word "number" by inserting the word "of";

On page twelve, subdivision 7.2.b., by striking out the words "health carrier" and inserting in lieu thereof the word "issuer";

On page fourteen, subdivision 7.3.c., by striking out the comma and the word "and";

On page fifteen, subdivision 8.1.a., by striking out the words "health carrier" and inserting in lieu thereof the word "issuer";

On page fifteen, after subdivision 8.1.b., by inserting a new paragraph, designated paragraph 8.1.b.1., to read as follows:

8.1.b.1. If the covered person has failed to provide sufficient information for the issuer to determine whether, or to what extent, the benefits requested are covered benefits or payable under the issuer's health benefit plan, the issuer shall notify the covered person as soon as possible, but in no event later than twenty-four (24) hours after receipt of the request, either orally or, if requested by the covered person, in writing of this failure and state what specific information is needed. The issuer shall provide the covered person a reasonable period of time to submit the necessary information, taking into account the circumstances, but in no event less than forty-eight (48) hours after notifying the covered person or the covered person's authorized representative of the failure to submit sufficient information.;

And by renumbering the remaining paragraphs;

On page seventeen, subparagraph 8.2.a.9.A., by striking out "8.2.a.8" and inserting in lieu thereof "8.2.a.7";
On page seventeen, subparagraph 8.2.a.9.B., by striking out “subparagraph 8.2.a.9.A” and inserting in lieu thereof “paragraph 8.2.a.8”;

On page nineteen, subdivision 9.3.d., after the words “providers, paragraph” by striking out “9.3.c.3” and inserting in lieu thereof “9.3.c.1”;

On page nineteen, subdivision 9.3.d., after the words “amount in paragraph” by striking out “9.3.c.3” and inserting in lieu thereof “9.3.c.1”;

And,

On page nineteen, paragraph 9.3.d.2., after the word “benefits” by adding a period.

(b) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section four, article sixteen-h, 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 November 1, 2013, relating to the Insurance Commissioner (health plan insurer internal grievance procedure, 114 CSR 96), is authorized with the following amendments:

On page one, section two, by striking out the heading “§114-96-1. Definitions.” and inserting in lieu thereof the heading “§114-96-2. Definitions.”;

On page one, subsection 2.1., by striking out the word “healthcare” and inserting in lieu thereof the words “health care”;

On page one, subsection 2.1., after the word “terminated” by adding a period;
On page two, subdivision 2.3.a., by striking out the word “external” and inserting in lieu thereof the word “internal”;  

On page two, subdivision 2.3.c., after the word “professional” by adding a semicolon;  

On page two, subsection 2.6., by striking out the word “as” and inserting in lieu thereof the word “that”;  

On page three, subsection 2.15., by striking out the word “no” and inserting in lieu thereof the word “not”;  

On page four, subsection 2.18., by striking out the words “except as otherwise specifically exempted in this definition” and inserting in lieu thereof the words “but excluding the excepted benefits defined in 42 U.S.C. § 300gg-91 and as otherwise specifically excepted in this rule”;  

On page five, subsection 2.19., by striking out the word “state” and inserting in lieu thereof the words “West Virginia”;  

On page six, subsection 2.26., by striking out the word “in” and inserting in lieu thereof the word “an”;  

On page seven, subsection 2.30., by striking out the word “that” and inserting in lieu thereof the words “the one”;  

On page seven, subdivision 2.32.c., by striking out “2.35.b” and inserting in lieu thereof “2.32.d”;  

On page nine, subsection 4.2., by striking out the words “subdivision a of”;  

On page ten, subdivision 5.4.a., after “5.4.a.” by striking out the period;  

On page eleven, after subdivision 5.6.c., by inserting a new subdivision, designated subdivision 5.6.d., to read as follows:
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145 5.6.d. The issuer shall make the provisions of subsection 5.4
146 known to the covered person within three working days after the
147 date of receipt of the grievance.;

148 On page thirteen, subdivision 5.8.g., by striking out the word
149 "upholds" and inserting in lieu thereof the word "denies";

150 On page thirteen, paragraph 5.8.g.4., after the word "either"
151 by inserting the word "the";

152 On page thirteen, paragraph 5.8.g.5., after the word
153 "circumstances" by inserting a comma;

154 On page thirteen, paragraph 5.8.g.5., by striking out the word
155 "provide" and inserting in lieu thereof the word "provided";

156 On page thirteen, subparagraph 5.8.g.6.A., by striking out
157 "5.4.g.4" and inserting in lieu thereof "5.8.g.4";

158 On page thirteen, subparagraph 5.8.g.6.B., by striking out
159 "5.4.g.5" and inserting in lieu thereof "5.8.g.5";

160 On page thirteen, by striking out paragraph 5.8.h.1. in its
161 entirety;

162 On page fourteen, by striking out paragraph 5.8.h.2. in its
163 entirety;

164 And by renumbering the remaining paragraphs;

165 On page fourteen, paragraph 5.8.h.3., by striking out "if the
166 covered person decides not to file for an additional voluntary
167 review of the first level review decision involving an adverse
168 determination";

169 On page fourteen, paragraph 5.9.a.3., after the words
170 "notices" by striking out the comma;
On page fifteen, subdivision 6.4.b., after "6.4.b." by striking out the period;

On page sixteen, subdivision 6.5.d., after the semicolon by adding the word "and";

On page sixteen, by striking out subdivision 6.5.e. in its entirety;

And by relettering the remaining subdivision;

On page sixteen, by striking out paragraphs 6.5.e.1 and 6.5.e.2 in their entirety;

On page sixteen, subsection 7.2., by striking out "5.1" and inserting in lieu thereof "7.1";

On page eighteen, subparagraph 7.8.a.7.A., after the words "as well as" by inserting the word "a";

On page eighteen, subparagraph 7.8.a.7.A., after the word "reaching" by inserting the word "the";

On page nineteen, subparagraph 7.8.a.7.E., after the word "circumstances" by inserting a comma;

On page nineteen, part 7.8.a.7.F.3., after the word "et" by striking out the period;

On page nineteen, part 7.8.a.7.F.6., after the word "claim" by inserting a comma;

And,

On page twenty, after subparagraph 7.8.b.1.B., by inserting a new subparagraph, designated subparagraph 7.8.b.1.C., to read as follows:
7.8.b.1.C. Include in the English versions of all notices a statement prominently displayed in any applicable non-English language clearly indicating how to access the language services provided by the carrier.

(c) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section four, article sixteen-h, 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 November 1, 2013, relating to the Insurance Commissioner (external review of adverse health insurance determinations, 114 CSR 97), is authorized with the following amendments:

On page one, subsection 2.1., after the word “terminated” by adding period;

On page two, subdivision 2.3.c., after the word “professional” by adding a semicolon;

On page two, subdivision 2.4.c., by striking out “2.4a and 2.4b” and inserting in lieu thereof “2.4.a and 2.4.b”;

On page two, subdivision 2.4.d., by striking out “2.4a, 2.4b and 2.4c” and inserting in lieu thereof “2.4.a, 2.4.b and 2.4.c”;

On page three, subsection 2.7., after the word “Commissioner” by adding a period;

On page three, subsection 2.12., after the words “Emergency medical condition” by striking out the single quotation mark and inserting in lieu thereof a double quotation mark;

On page four, subsection 2.17., by striking out the words “except as otherwise specifically exempted in this definition” and inserting in lieu thereof the words “but excluding the
excepted benefits defined in 42 U.S.C. § 300gg-91 and as otherwise specifically excepted in this rule”;

On page eight, subsection 3.1., by striking out the words “A written” and inserting in lieu thereof the words “An issuer shall notify the covered person in writing of the covered person’s right to request an external review. Such a written”;

On page eight, subdivision 3.1.c., by striking out the words “subsection 15.1” and inserting in lieu thereof the words “section 14”;

On page nine, paragraph 3.1.e.1., before the words “would seriously” by striking out the comma;

On page nine, paragraph 3.1.f.1., after the word “life” by striking out the comma and inserting in lieu thereof the words “or health or”;

On page ten, subsection 5.3., by striking out the words “expedited review of a grievance involving an adverse determination” and inserting in lieu thereof the words “expedited internal review of a grievance involving an adverse determination pursuant to W. Va. Code of St. R. §114-96”;

On page ten, subdivision 5.3.a., after the word “Code” by inserting the word “of”;

On page eleven, subsection 6.2., after the word “consideration” by striking out the word “on” and inserting in lieu thereof the word “of”;

On page twelve, subdivision 6.5.a, by striking out the words “two business days” and inserting in lieu thereof the words “one business day”;

On page thirteen, subdivision 6.6.d., by striking out the word “internal” and inserting in lieu thereof the word “independent”;
On page thirteen, subsection 6.8., after the words “receipt of the request for an external review” by inserting the words “and no later than one business day after making the decision”;

On page seventeen, subdivision 8.5.b., after “8.5.b.” by striking out the period;

On page seventeen, subdivision 8.5.c., by striking out “8.8” and inserting in lieu thereof “8.9”;

On page eighteen, subsection 8.6., after “IRO” by striking out the comma;

On page eighteen, subdivision 8.6.a., by striking out the word “dely” and inserting in lieu thereof the word “delay”;

On page nineteen, paragraph 8.9.a.2., after the words “services or treatments” by inserting the words “would not be substantially increased over those of available standard health care services or treatments”;

On page twenty, subdivision 8.11.b., by striking out “8.12.d” and inserting in lieu thereof “8.11.d”;

On page twenty-one, subdivision 8.11.c., after “8.11.c”, by inserting a period;

On page twenty-one, subdivision 8.11.d., after “8.11.d”, by inserting a period;

On page twenty-one, paragraph 8.11.d.1., after “8.11.d.1”, by inserting a period;

On page twenty-one, paragraph 8.11.d.2., after “8.11.d.2”, by inserting a period;

On page twenty-one, paragraph 8.11.d.3., after “8.11.d.3”, by inserting a period;
On page twenty-one, paragraph 8.11.d.3., by striking the words "pursuant to subdivision 8.11.a";

On page twenty-two, subsection 8.12., by striking out the word "amount" and inserting in lieu thereof the word "among";

On page twenty-three, subdivision 9.2.f., after the word "parties" by striking out the comma;

On page twenty-three, paragraph 9.2.f.1., after "IRO" by striking out the comma and the words "except that a party that unreasonably refuses to stipulate to limit the record may be taxed by the court for the additional costs involved";

On page twenty-four, subsection 10.2, by striking out the word "as" and inserting in lieu thereof a comma;

On page twenty-five, subdivision 10.4.c., by striking out subdivision 10.4.c. in its entirety;

On page twenty-seven, paragraph 11.4.a.2., after the word "review" by inserting a comma and the words "any known close relative of the covered person,";

On page twenty-seven, after paragraph 11.4.a.3., by inserting two new paragraphs, designated paragraph, 11.4.a.4. and 11.4.a.5., to read as follows:

11.4.a.4. Any administrator, fiduciary, employee or sponsor of an employee welfare benefit plan as defined in 29 U.S.C. 1002(1), if any, under which the covered person’s request for external review arises;

11.4.a.5. A trade association of group health plans or issuers, or a trade association of health care providers;

And by renumbering the remaining paragraphs;
On page twenty-seven, subdivision 11.4.b., by striking out all of subdivision 11.4.b. and inserting in lieu thereof a new subdivision, designated subdivision 11.4.b., to read as follows:

11.4.b. In determining whether an IRO or a clinical reviewer of the IRO has a material professional, familial or financial conflict of interest for purposes of subdivision 11.4.a, the Commissioner may disregard the mere appearance of a conflict of interest.;

On page twenty-eight, section twelve, by striking out section twelve in its entirety;

And by renumbering the remaining sections;

On page twenty-eight, subsection 13.1., by striking out “13.1.a” and inserting in lieu thereof “12.1.a”

On page twenty-nine, paragraph 13.2.b.2., by striking out “paragraph 13.2.b.2” and inserting in lieu thereof “paragraph 12.2.b.1”;

On page thirty, subsection 15.2, by striking out “15.1” and inserting in lieu thereof “14.1”;

On page thirty, subsection 15.3, by striking out “15.2” and inserting in lieu thereof “14.2”;

And,

On page thirty, after subsection 15.3, by adding a new section, designated section fifteen, to read as follows:

§114-97-15. Penalties. Any issuer failing to comply with the requirements of this rule is subject to the penalties prescribed in W. Va. Code §33-3-11.
§64-7-3. Alcohol Beverage Control Commission.

(a) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section ten, article seven, chapter sixty 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 October 31, 2013, relating to the Alcohol Beverage Commission (private club licensing, 175 CSR 2), is authorized.

(b) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section sixteen, article two, chapter sixty 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 October 31, 2013, relating to the Alcohol Beverage Commission (farm wineries, 175 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section twenty-three, article eight, chapter sixty 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 October 31, 2013, relating to the Alcohol Beverage Commission (sale of wine, 175 CSR 4), is authorized.

(d) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section twenty-two, 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 October 31, 2013, relating to the Alcohol Beverage Commission (nonintoxicating beer licensing and operations procedures, 176 CSR 1), is authorized.
§64-7-4. Racing Commission.

1 The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section six, article twenty-three, chapter nineteen of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 31, 2013, relating to the Racing Commission (thoroughbred racing, 178 CSR 1), is authorized with the following amendment:

9 On page fifteen, subsection 8.5.b., line twenty-two, following the words “stewards shall have authority to” by striking the word “charge”, and inserting in lieu thereof “issue a ruling citing”; and

13 On page eighteen, subsection 9.2., line six, following the words “health certificates”, by striking the word “Coggins” and inserting in lieu thereof “current negative Coggins test for equine infectious anemia (EIA)”.

CHAPTER 112

(Com. Sub. for S. B. 165 - By Senator Snyder)

[Passed March 7, 2014; in effect from passage.]
[Approved by the Governor on March 20, 2014.]

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 with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing the Office of Administrative Hearings to promulgate a legislative rule relating to appeal procedures; 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. Office of Administrative Hearings.

The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section four-a, article five-c, chapter seventeen-c of this code, modified by the Office of Administrative Hearings to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 19, 2013, relating to the Office of Administrative Hearings (appeal procedures, 105 CSR 1), is authorized.

§64-8-2. Commissioner of the Division of Highways.

The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section seven, article eighteen, chapter twenty-two of this code, relating to the Commissioner of the Division of Highways (transportation of hazardous wastes upon the roads and highways, 157 CSR 7), is authorized.
CHAPTER 113

(Com. Sub. for H. B. 4039 - By Delegates Poore, Marcum, Eldridge, Fleischauer and Frich)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 26, 2014.]

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 Municipal Pensions Oversight Board to promulgate a legislative rule relating to policemen’s and firemen’s pensions disability calculation; authorizing the Real Estate Commission to promulgate a legislative rule relating to requirements in licensing real estate brokers, associate brokers and salespersons and the conduct of a brokerage business; authorizing the Real Estate Commission to promulgate a legislative rule relating to a schedule of fees; authorizing the State Election Commission to promulgate a legislative rule relating to the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program; authorizing the Real Estate Appraiser Licensing and
Certification Board to promulgate a legislative rule relating to requirements for licensure and certification; authorizing the Real Estate Appraiser Licensing and Certification Board to promulgate a legislative rule relating to renewal of licensure or certification; authorizing the Massage Therapy Licensure Board to promulgate a legislative rule relating to a schedule of fees; repealing the Treasurer’s Office legislative rule relating to procedure for deposit of funds in the Treasurer’s Office by state agencies; authorizing the Treasurer’s Office to promulgate a legislative rule relating to the procedure for deposit of monies with the office by state agencies; authorizing the Treasurer’s Office to promulgate a legislative rule relating to the selection of state depositories for disbursement accounts through competitive bidding; authorizing the Treasurer’s Office to promulgate a legislative rule relating to the selection of state depositories for receipt accounts; repealing the Treasurer’s Office legislative rule relating to rules for the reporting of debt capacity; authorizing the Treasurer’s Office to promulgate a legislative rule relating to reporting debt; authorizing the Treasurer’s Office to promulgate a legislative rule relating to procedures for fees in collections by charge, credit or debit card or by electronic payment; authorizing the Treasurer’s Office to promulgate a legislative rule relating to providing services to political subdivisions; authorizing the Bureau of Senior Services to promulgate a legislative rule relating to the In-home Care Worker Registry; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to a schedule of charges for inspection services: fruit; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to auctioneers; authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry; authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to the licensure of speech-pathology and audiology; authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to speech-language pathology and audiology assistants; authorizing
the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to disciplinary and complaint procedures for speech-language pathology and audiology; authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to a code of ethics; authorizing the Board of Chiropractic Examiners to promulgate a legislative rule relating to the regulation of chiropractic practice; authorizing the Board of Chiropractic Examiners to promulgate a legislative rule relating to fees pertaining to the practice of chiropractic; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the Board; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to fees established by the Board; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the formation and approval of dental corporations and dental practice ownership; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to dental advertising; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to practitioner requirements for accessing the West Virginia controlled substances monitoring program database; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to continuing education requirements; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to administration of anesthesia by dentists; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the expanded duties of dental hygienists and dental assistants; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to mobile dental facilities and portable dental units; authorizing the State Board of Examiners for Licensed Practical Nurses to promulgate a legislative rule relating to policies regulating licensure of the licensed practical nurse; authorizing the State Board of Examiners for Licensed Practical Nurses to promulgate
a legislative rule relating to fees for services rendered by the Board
and supplemental renewal fee for the Center for Nursing; authorizing the State Board of Examiners for Licensed Practical Nurses to promulgate a legislative rule relating to continuing competence; authorizing the Board of Pharmacy to promulgate a legislative rule relating to continuing education for licensure of pharmacists; authorizing the Board of Pharmacy to promulgate a legislative rule relating to controlled substances monitoring; authorizing the Board of Sanitarians to promulgate a legislative rule relating to the practice of public health sanitation; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to the examination and licensing of professional surveyors in West Virginia; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the registration of veterinary technicians; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to certified animal euthanasia technicians; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to a schedule of fees; and authorizing the Infrastructure and Jobs Development Council to promulgate a legislative rule relating to the Council.

Be it enacted by the Legislature of West Virginia:

That article 9, 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. Municipal Pensions Oversight Board.

1 The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section eighteen-a, article twenty-two, chapter eight of this code, modified by the Municipal Pensions Oversight Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in

(a) The legislative rule filed in the State Register on July 25, 2013, authorized under the authority of section eight, article forty, chapter thirty of this code, modified by the Real Estate Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 3, 2013, relating to the Real Estate Commission (requirements in licensing real estate brokers, associate brokers and salespersons and the conduct of brokerage business, 174 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on June 24, 2013, authorized under the authority of section eight, article forty, chapter thirty of this code, modified by the Real Estate Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 12, 2013 relating to the Real Estate Commission (schedule of fees, 174 CSR 2), is authorized.


The legislative rule filed in the State Register on July 11, 2013, authorized under the authority of section fourteen, article twelve, chapter three of this code, modified by the State Election Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 6, 2013, relating to the State Election Commission (West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program, 146 CSR 5), is authorized.

§ 64-9-4. Real Estate Appraiser Licensing and Certification Board.

(a) The legislative rule filed in the State Register on February 4, 2014, 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 (requirements for licensure and certification, 190 CSR 2), is authorized with the following amendment:

On page thirty-two, by striking out the words “10.2.p. One roster: thirty-five dollars ($35); Roster subscription fee;;” and inserting in lieu thereof the following:

10.2.q. One roster: thirty-five dollars ($35); 10.2.r. Roster subscription fee: fifty dollars ($50);

And by relettering the remaining subdivisions.

On page 43, subdivision 11.8.b, line one, by striking out the words and date “Effective January 1, 2015” and on line four after after the words “certification number” and the period, by striking out the words and date “Effective January 1, 2015”.

(b) The legislative rule filed in the State Register on July 26, 2013, 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 December 23, 2013, relating to the Real Estate Appraiser Licensing and Certification Board (renewal of licensure or certification, 190 CSR 3), is authorized, with the following amendments:

On page 1, subsection 1.3, after the words “Filing Date. —” by striking out the word “April”;

On page 1, subsection 1.4, after the words “Effective Date. —” by striking out the word “April”;

On page 1, subsection 2.3, after the words “each 60” by striking out the words “minute segment of instruction” and
inserting in lieu thereof the words “minutes actual classroom instruction”; 

On page 1, underlined subsection 2.7, after the words “W. Va. Code” by striking the words “§30-38 et seq.” and inserting in lieu thereof the words “§30-38-1 et seq.” and after the words “Requirements for Licensure and Certification” by striking out the reference “190CSR2, subdivision 11.2” and inserting in lieu thereof the reference “190CSR2, subsection 11”; 

On page 2, section 3.2, by underlining the words “License renewals are due 30 days prior to September 30” and after the words “delinquent license fee” by inserting the words “pursuant to 190 CSR 2”; 

On page 2, subsection 4.1, after the words “classroom hours” by inserting the words “or classroom hours of distance education” and after the words “renewal term” by inserting the words: Provided, That with the exception of the 7-hour USPAP course, no credit shall be awarded for completion of a continuing education course on the same topic more than once every three (3) years”; 

On page 2, paragraph 4.1.b.2, after the word “Arbitration” by underlining the comma and space; 

On page 3, subsection 4.2, by removing the underlining of “4.2” and by striking out the words “Beginning in 2015” and inserting in lieu thereof the words “Effective January 1, 2015”; 

On page 3, after subsection 4.4, by inserting a new subsection “4.5. The board may grant credit for up to seven (7) hours of a licensee’s continuing education requirement to teachers of appraisal courses which the board has approved and for which the board grants credit.” and by renumbering the following subsection;
And,

On page 4, subsection 5.4, by striking out the words “subdivisions 5.1.g., 6.1.h., or 6.1.i.”.

§64-9-5. Massage Therapy Licensure Board.

The legislative rule filed in the State Register on July 23, 2013, authorized under the authority of section seven, article thirty-six, chapter thirty of this code, relating to the Massage Therapy Licensure Board (schedule of fees, 194 CSR 4), is authorized.

§64-9-6. Treasurer’s Office.

(a) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section two, article two, chapter twelve of this code, relating to the Treasurer’s Office (procedure for deposit of funds in the Treasurer’s Office by state agencies, 112 CSR 1), is repealed.

(b) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section two, article two, chapter twelve of this code, modified by the Treasurer’s Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 12, 2013, relating to the Treasurer’s Office (procedure for deposit of monies with the Office by state agencies, 112 CSR 4), is authorized.

(c) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section two, article one, chapter twelve of this code, modified by the Treasurer’s Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 12, 2013, relating to the Treasurer’s Office (selection of state depositories for disbursement accounts through competitive bidding, 112 CSR 6), is authorized.
(d) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section two, article one, chapter twelve of this code, modified by the Treasurer’s Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 12, 2013, relating to the Treasurer’s Office (selection of state depositories for receipt accounts, 112 CSR 7), is authorized.

(e) The legislative rule filed in the Office of the Secretary of State and made effective May 7, 1998, authorized under the authority of section four, article six-b, chapter twelve of this code, relating to the Treasurer’s Office (rules for the reporting of debt capacity, 112 CSR 9), and pursuant to the proposal to repeal the same filed in the Office of the Secretary of State on July 26, 2013, is repealed.

(f) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section seven, article six-a, chapter twelve of this code, modified by the Treasurer’s Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 13, 2013, relating to the Treasurer’s Office (reporting debt, 112 CSR 10), is authorized, with the following amendments:

On page two, following subsection 2.2, beginning on line seven, by inserting a new subsection 2.3 to read as follows:

“2.3. “Division” means the Division of Debt Management in the office of the State Treasurer.”, and by redesignating the remaining subsections accordingly;

And,

On page six, subsection 7.1, line twenty-eight, following the word “June” and the number “30” by inserting the words “of the next preceding fiscal year”.
(g) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section six, article three-a, chapter thirteen of this code, modified by the Treasurer’s Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 15, 2013, relating to the Treasurer’s Office (procedures for fees in collections by charge, credit or debit card or by electronic payment, 112 CSR 12), is authorized, with the following amendment:

On page four, subsection 5.5, beginning on line nineteen, following the words “timely or”, by striking out the words “if the spending unit has not been authorized to collect convenience fees”.

(h) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section six, article three-a, chapter twelve of this code, modified by the Treasurer’s Office to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 12, 2013, relating to the Treasurer’s Office (providing services to political subdivisions, 112 CSR 13), is authorized, with the following amendments:

On page two, subsection 2.5, line two, following the words “the unpaid balance”, by striking out the words the remainder of the sentence;

On page three, subsection 2.16, line one, by striking out the words “spending unit or”;

And,

On page three, subsection 2.23, by striking out the subsection in its entirety and re-designating the remaining subsection accordingly.

The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section fifteen, article five-p, chapter sixteen of this code, relating to the Bureau of Senior Services (In-home Care Worker Registry, 76 CSR 2), is authorized with the following amendment:

On page three, section 7, by striking out all of subsection 7.3.;


(a) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section five, article two, 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 30, 2013, relating to the Commissioner of Agriculture (schedule of charges for inspection services: fruit, 61 CSR 8B), is authorized.

(b) The legislative rule filed in the State Register on July 24, 2013, authorized under the authority of section five, article two-c, 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 October 2, 2013, relating to the Commissioner of Agriculture (auctioneers, 61 CSR 11B), is authorized.

(c) The legislative rule filed in the State Register on July 23, 2013, authorized under the authority of section three, article two-b, chapter nineteen of this code, relating to the Commissioner of Agriculture (inspection of meat and poultry, 61 CSR 16), is authorized with the following amendment:


9.1 A poultry producer who otherwise meets the requirements of the exemption for poultry producers that
slaughter or process 20,000 or fewer birds per calendar year
under the federal Poultry Products Inspection Act, 21 U. S. C.
464(c) (3), may not keep a poultry flock of more than 3,000 birds
at any one time.

§64-9-9. Board of Examiners for Speech-Language Pathology and
Audiology.

(a) The legislative rule filed in the State Register on July 25,
2013, authorized under the authority of section seven, 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 December 18,
2013, relating to the Board of Examiners for Speech-Language
Pathology and Audiology (licensure of speech-pathology and
audiology, 29 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 25,
2013, authorized under the authority of section seven, 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 November 26,
2013, relating to the Board of Examiners for Speech-Language
Pathology and Audiology (speech-language pathology and
audiology assistants, 29 CSR 2), is authorized, with the
following amendment:

On page 1, subsection 2.3, at the beginning of the subsection,
by striking out the words “Indirect/General supervision:
Indirect/General” and inserting in lieu thereof the words
“Indirect supervision: Indirect”;

On page 1, after subsection 2.6, by adding a new subsection
2.7, to read as follows:
"2.7. Medically fragile patient/client: A medically fragile patient/client means a patient/client who has any condition that interferes with the airway, breathing, and/or circulatory system."

And by renumbering the remaining subsections accordingly;

On page 2, subsection 4.1, subdivision (f), at the beginning of subsection (f), by restoring the stricken first sentence;

On page 3, subsection 4.1, subdivision (h), by striking out said subdivision (h) and inserting a new subdivision (h) to read as follows:

"(h) Provide 20% direct supervision and 10% indirect supervision for the first ninety (90) days, and thereafter ensure that he or she has direct contact with each patient/client at least once for every two weeks of treatment provided: Provided, That supervisors shall provide 100% direct supervision of an assistant who is providing treatment to a medically fragile patient/client."

On page 3, subsection 4.1, subdivision (o), after the words "ethical responsibility" by striking out the words "patient/client services provided or omitted"; and

On page 3, subsection 4.1, subdivision (u), by striking out subdivision (u) in its entirety and inserting in lieu thereof a new subdivision (u) to read as follows:

"(u) Accurately document all direct and indirect supervisory activities on forms prescribed by the board, and submit the same annually upon application for renewal of registration".

(c) The legislative rule filed in the State Register on July 25, 2013, authorized under the authority of section seven, 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
55 Committee and refiled in the State Register on November 26, 2013, relating to the Board of Examiners for Speech-Language Pathology and Audiology (disciplinary and complaint procedures for speech-language pathology and audiology, 29 CSR 4), is authorized.

(d) The legislative rule filed in the State Register on July 25, 2013, authorized under the authority of section seven, article thirty-two, chapter thirty of this code, relating to the Board of Examiners for Speech-Language Pathology and Audiology (code of ethics, 29 CSR 5), is authorized.


1 (a) The legislative rule filed in the State Register on July 25, 2013, authorized under the authority of section five, article sixteen, chapter thirty of this code, modified by the Board of Chiropractic Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 12, 2013, relating to the Board of Chiropractic Examiners (regulation of chiropractic practice, 4 CSR 1), is authorized, with the following amendment:

On page 4, subsection 6.4, after the words “is prohibited” by striking out the words “as outlined in W. Va. Code § 30-16-20”.

(b) The legislative rule filed in the State Register on July 25, 2013, authorized under the authority of section five, article sixteen, chapter thirty of this code, relating to the Board of Chiropractic Examiners (fees pertaining to the practice of chiropractic, 4 CSR 6), is authorized.


1 (a) The legislative rule filed in the State Register on July 22, 2013, authorized under the authority of section six, article four, chapter thirty of this code, relating to the Board of Dental
Examiners (rule for the West Virginia Board of Dental Examiners, 5 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on July 22, 2013, authorized under the authority of section one thousand three hundred four, article thirteen, chapter thirty-one-b of this code, relating to the Board of Dental Examiners (formation and approval of professional limited liability companies, 5 CSR 2), is authorized.

(c) The legislative rule filed in the State Register on July 24, 2013, authorized under the authority of section six, article four, chapter thirty of this code, modified by the Board of Dental Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 22, 2013, relating to the Board of Dental Examiners (fees established by the Board, 5 CSR 3), is authorized, with the following amendment:

On page 1, subsection 2.4, by striking out said subsection 2.4 in its entirety and re-designating the remaining subsections accordingly.

(d) The legislative rule filed in the State Register on July 22, 2013, authorized under the authority of section six, article four, chapter thirty of this code, relating to the Board of Dental Examiners (formation and approval of dental corporations; and dental practice ownership, 5 CSR 6), is authorized.

(e) The legislative rule filed in the State Register on July 22, 2013, authorized under the authority of section six, article four, thirty of this code, relating to the Board of Dental Examiners (dental advertising, 5 CSR 8), is authorized.

(f) The legislative rule filed in the State Register on July 22, 2013, authorized under the authority of section five-a, article nine, chapter sixty-a of this code, modified by the Board of
Dental Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 31, 2013, relating to the Board of Dental Examiners (practitioner requirements for accessing the West Virginia controlled substances monitoring program database, 5 CSR 10), is authorized.

(g) The legislative rule filed in the State Register on July 24, 2013, authorized under the authority of section six, article four, chapter thirty of this code, relating to the Board of Dental Examiners (continuing education requirements, 5 CSR 11), is authorized.

(h) The legislative rule filed in the State Register on July 24, 2013, authorized under the authority of section six, article four, chapter thirty of this code, relating to the Board of Dental Examiners (administration of anesthesia by dentists, 5 CSR 12), is authorized.

(i) The legislative rule filed in the State Register on July 22, 2013, authorized under the authority of section six, article four, chapter thirty of this code, relating to the Board of Dental Examiners (expanded duties of dental hygienists and dental assistants, 5 CSR 13), is authorized.

(j) The legislative rule filed in the State Register on July 24, 2013, authorized under the authority of section six, article four, chapter thirty of this code, modified by the Board of Dental Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 22, 2013, relating to the Board of Dental Examiners (mobile dental facilities and portable dental units, 5 CSR 14), is authorized, with the following amendments:

On page 1, subsection 2.2, after the words “American Dental Association” by striking out the words “beginning not later than one year of age”;
On page 1, subsection 2.4, after the words “to employ” by inserting the words “or contract with”;

On page 2, subsection 4.4, subdivision (a), after the words “telephone number of each” by striking out the words “dentist or dental hygienist” and inserting in lieu thereof the words “dentist, dental hygienist or operator”;

On page 3, subsection 4.4, subdivision (g), after the words “statement that the applicant” by striking out the word “posses” and inserting in lieu thereof the word “possesses”; and

On page 7, subsection 8.3, after the words “written report for the” by striking out the word “proceeding” and inserting in lieu thereof the word “preceding”.


(a) The legislative rule filed in the State Register on April 29, 2013, authorized under the authority of section six, 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 1, 2013, relating to the State Board of Examiners for Licensed Practical Nurses (policies regulating licensure of the licensed practical nurse, 10 CSR 2), is authorized, with the following amendment:

On page 1, subdivision 2.1.c., after the citation “10 CSR 1” by striking out the words “or a board approved program from another US jurisdiction” and inserting in lieu thereof the words “program approved by a board that licenses Licensed Practical Nurses in another state or US territory.”.

(b) The legislative rule filed in the State Register on April 29, 2013, authorized under the authority of section seven, article seven-a, chapter thirty of this code, modified by the State Board of Examiners for Licensed Practical Nurses to meet the
objects of the Legislative Rule-Making Review Committee and refiled in the State Register on July 26, 2013, relating to the State Board of Examiners for Licensed Practical Nurses (fees for services rendered by the Board and supplemental renewal fee for the Center for Nursing, 10 CSR 4), is authorized.

(c) The legislative rule filed in the State Register on April 29, 2013, 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 September 4, 2013, relating to the State Board of Examiners for Licensed Practical Nurses (continuing competence, 10 CSR 6), is authorized.


(a) The legislative rule filed in the State Register on October 18, 2013, authorized under the authority of section seven, article five, chapter thirty of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2013, relating to the Board of Pharmacy (continuing education for licensure of pharmacists, 15 CSR 3), is authorized, with the following amendment:

On page 2, subsection 2.9, after the words “National Association of Boards of Pharmacy” by adding the words “(NABP) and”.

(b) The legislative rule filed in the State Register on October 18, 2013, authorized under the authority of section six, article nine, chapter sixty-a of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2013, relating to the Board of Pharmacy (controlled substances monitoring, 15 CSR 8), is authorized.

The legislative rule filed in the State Register on July 24, 2013, authorized under the authority of section six, article seventeen, chapter thirty of this code, relating to the Board of Sanitarians (practice of public health sanitation, 20 CSR 4), is authorized.


The legislative rule filed in the State Register on July 23, 2013, authorized under the authority of section six, article thirteen-a, chapter thirty of this code, relating to the Board of Professional Surveyors (examination and licensing of professional surveyors in West Virginia, 23 CSR 1), is authorized.

§64-9-16. Board of Veterinary Medicine.

(a) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section six, article ten, chapter thirty of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 5, 2013, relating to the Board of Veterinary Medicine (registration of veterinary technicians, 26 CSR 3), is authorized.

(b) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section six, article ten, chapter thirty of this code, relating to the Board of Veterinary Medicine (certified animal euthanasia technicians, 26 CSR 5), is authorized.

(c) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section six, article ten, chapter thirty of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on
18 November 5, 2013, relating to the Board of Veterinary Medicine
19 (schedule of fees, 26 CSR 6), is authorized.

§64-9-17. Infrastructure and Jobs Development Council.

1 The legislative rule filed in the State Register on July 9,
2 2013, authorized under the authority of section four, article
3 fifteen-a, chapter thirty-one of this code, modified by the
4 Infrastructure and Jobs Development Council to meet the
5 objections of the Legislative Rule-Making Review Committee
6 and refiled in the State Register on July 29, 2013, relating to the
7 Infrastructure and Jobs Development Council (Infrastructure and
8 Jobs Development Council, 167 CSR 1), is authorized.

CHAPTER 114

(Com. Sub. for S. B. 140 - By Senator Snyder)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 26, 2014.]

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
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 with various
modifications presented to and recommended by the Legislative
Rule-Making Review Committee and as amended by the Legislature; authorizing the Office of Miners’ Health, Safety and Training to promulgate a legislative rule relating to assessing health and safety violation penalties; authorizing the Office of Miners’ Health, Safety and Training to promulgate a legislative rule relating to the program for the sharing of information between employers; authorizing the Office of Miners’ Health, Safety and Training to promulgate a legislative rule relating to substance abuse screening, standards and procedure; authorizing the Division of Labor to promulgate a legislative rule relating to the Wage Payment and Collection Act; authorizing the Division of Labor to promulgate a legislative rule relating to employer wage bonds; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special motorboating; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to the electronic registration of wildlife.

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 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.


1 (a) The legislative rule filed in the State Register on March 26, 2013, authorized under the authority of section six, article one, chapter twenty-two-a of this code, relating to the Office of Miners’ Health, Safety and Training (assessing health and safety violation penalties, 56 CSR 12), is authorized.

6 (b) The legislative rule filed in the State Register on July 26, 2013, authorized under the authority of section four, article one, chapter twenty-two-a of this code, relating to the Office of
Miners’ Health, Safety and Training (program for the sharing of information between employers, 56 CSR 18), is authorized.

(c) The legislative rule filed in the State Register on March 26, 2013, authorized under the authority of section fourteen, article six, chapter twenty-two-a of this code, modified by the Office of Miners’ Health, Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 20, 2013, relating to the Office of Miners’ Health, Safety and Training (substance abuse screening, standards and procedure, 56 CSR 19), is authorized with the following amendments:

On page two, after subsection 3.7, by inserting a new subsection, designated subsection 3.8, to read as follows:

3.8. Duly licensed, mental health professional. The term “duly licensed, mental health professional” means a psychiatrist, psychologist, professional counselor or substance abuse counselor in the United States who is licensed by, and in good standing with, the licensing authority of the jurisdiction in which the person practices.

And by renumbering the remaining subsections;

On page four, subsection 3.17, by striking out the word “accidents” and inserting in lieu thereof the word “accident”;

On page six, by striking out all of subsection 4.7 and inserting in lieu thereof a new subsection, designated subsection 4.7, to read as follows:

4.7. Any applicant, who is adversely affected by a decision of the Director following a hearing on an application for safety-sensitive certification, may petition for judicial review of the Director’s decision in the Circuit Court of Kanawha County or
In the circuit court of the county in which the applicant resides, pursuant to the provisions of W. Va. Code § 29A-5-4.;

On page six, subsection 4.8, by striking out the word "shall" and inserting in lieu thereof the word "may";

On page six, subsection 5.2, by striking out subsection 5.2 in its entirety and inserting in lieu thereof, a new subsection 5.2 to read as follows: 'Every employer's program shall at a minimum comply with all state mine laws relevant to substance abuse screening, standards and procedures.';

On page seven, subdivision 5.3.5, by striking out the word "Phencyclidine" and inserting in lieu thereof the word "Phencyclidine";

On page eight, subsection 5.5, by striking out "5.5" and inserting in lieu thereof "5.6";

And by renumbering the remaining subsections;

On page nine, subsection 5.11, by striking out the subsection in its entirety, and inserting in lieu thereof a new subsection 5.11., as follows:

"5.11 Every employer shall notify the director, on a form prescribed by the director, within seven (7) days of any of the following:

5.11.a A positive drug or alcohol test of a certified person, whether it be a pre-employment test, random test, reasonable suspicion test, or post-accident test;

5.11.b. The refusal of a certified person to submit a sample;

5.11.c. A certified person possessing a substituted sample or an adulterated sample; or
5.11.d. A certified person submitting a substituted sample or an adulterated sample."

On page nine, after subdivision 5.11.d. by inserting two new subsections designated 5.12. and 5.13., to read as follows:

"5.12. When the employer submits the completed notification form prescribed by the director, the employer shall also submit a copy of the laboratory test results showing the substances tested for and the results of the test.

5.13. A notice pursuant to subdivision 5.11., shall result in the immediate temporary suspension of all certificates held by the certified person who failed the screening, pending a hearing before the board of appeals, except in the case of a certified person who is subject to a collective bargaining agreement, in which case the notification pursuant subsection 5.11., shall not result in the immediate temporary suspension of any certificate held by the certified person who is subject to a collective bargaining agreement unless and until the arbitration is concluded and the discharge is upheld, and no certificate held by a certified person who is subject to a collective bargaining agreement shall be suspended or revoked unless the discharge is upheld in arbitration."

And by renumbering the remaining subsections;

On page eleven, subdivision 6.1.2, by striking out the words "Notify the Board of Appeals" and inserting in lieu thereof the words "Notify the Director";

On page eleven, subsection 6.2, by striking out the words "notify the Board of Appeals" and inserting in lieu thereof the words "notify the Director";

On page fourteen, subsection 8.1, by striking out the words "is found, by a preponderance of the evidence, to have: failed"
and inserting in lieu thereof the words "has entered into a
treatment plan agreement as specified in subsection 9.1 of this
rule or who is found, by a preponderance of the evidence, to
have failed";

On page fourteen, by striking out all of subsection 8.2 and
inserting in lieu thereof three new subsections, designated
subsections 8.2, 8.3 and 8.4, to read as follows:

8.2. Any person requesting a hearing who intends to
challenge the sample collection methods, the laboratory test
results, the medical review officer's verification of the
laboratory test result or the chemical test of breath, shall notify
the Director of his or her intent. The person shall submit the
notification in writing, either in person or by mail to the
Director, at least fourteen (14) days prior to the hearing date. The
notification shall specify, in detail, the challenge the person
intends to make.

8.3. If the person requesting the hearing submits notification
in writing to the Director that he/she intends to challenge the
laboratory test results of the medical review officer's verification
of the laboratory test result, that person shall have the split
test sample tested, at his/her expense, at a SAMSHA-certified
laboratory and those results verified by a medical review officer.
The split sample results and the results of the split sample
verification by a medical review officer shall be provided to the
Director and the original medical review officer. No other form
of evidence shall be admissible to challenge the laboratory test
result of the medical review officer's verification of the
laboratory test result.

8.4. If a person fails to comply with the notification
requirements of this section, then the sample collection methods,
the laboratory test results, the medical review officer's
verification of the laboratory test result, or the chemical test of
breath shall be admissible as though the person and the Director had stipulated to their admissibility.

And by renumbering the remaining subsections:

On page fifteen, subdivision 9.1.1, by striking out the words "treatment at a facility licensed by the State of West Virginia in substance abuse" and inserting in lieu thereof the words "treatment, counseling and after-care under the supervision of a duly licensed, mental health professional";

On page fifteen, subdivision 9.1.2, by striking out the words "treatment at a facility licensed by the State of West Virginia in substance abuse" and inserting in lieu thereof the words "treatment, counseling and after-care under the supervision of a duly licensed, mental health professional";

On page fifteen, subdivision 9.1.3, by striking out the words "treatment at a facility licensed by the State of West Virginia in substance abuse" and inserting in lieu thereof the words "treatment, counseling and after-care under the supervision of a duly licensed, mental health professional";

And,

On page sixteen, after subdivision 9.1.4, by adding the following:

"9.1.5. An admission by the individual that he or she has failed or refused a drug and alcohol test for the first time and that a second failure or refusal shall result in the permanent revocation of all mining certifications issued to him or her. 9.2. The Director shall review all Treatment Agreements and shall not approve any Agreement that does not comply with this rule.

9.3. The Director shall insure an individual has satisfied all conditions for reinstatement before reinstating any certificate."
§64-10-2. Division of Labor.

(a) The legislative rule filed in the State Register on July 23, 2013, authorized under the authority of section thirteen, article five, chapter twenty-one of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 5, 2013, relating to the Division of Labor (Wage Payment and Collection Act, 42 CSR 5), is authorized with the following amendments:

On page three, after subsection 4.2., by inserting a new subsection, designated subsection 4.3., to read as follows:

4.3. An employer shall keep posted in a place accessible to all employees an abstract of the West Virginia Wage Payment and Collection law prepared and provided by the Commissioner.;

On page four, by striking out all of subsection 7.2. and inserting in lieu thereof a new subsection, designated subsection 7.2., to read as follows:

7.2. The scheduled payday for a railroad company shall occur within the time periods specified by West Virginia Code §21-5-2. The scheduled payday for every employer other than a railroad company shall occur at least once every 2 weeks, unless otherwise authorized by special agreement as provided in section eight of this rule.;

On page five, after subsection 8.2., by inserting a new subsection, designated subsection 8.3. to read as follows:

8.3. The Commissioner shall notify all employees identified by the employer and provide each employee with an opportunity to respond to the petition.

And by renumbering the remaining subsections;
On page five, subsection 8.4, by striking out the words “After the hearing,” and inserting in lieu thereof the words “Following the submission of the petition, the responses of the affected employees, and the holding of the hearing, if any,”; And,

On page seven, subsection 10.6, by striking out the words “established by” and inserting in lieu thereof the words “specified in the written demand of”.

(b) The legislative rule filed in the State Register on July 23, 2013, authorized under the authority of section thirteen, article five, chapter twenty-one of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 5, 2013, relating to the Division of Labor (employer wage bonds, 42 CSR 33), is authorized.

§64-10-3. Division of Natural Resources.

(a) The legislative rule filed in the State Register on July 25, 2013, authorized under the authority of section twenty-three, article seven, chapter twenty of this code, relating to the Division of Natural Resources (special motorboating, 58 CSR 27), is authorized.

(b) The legislative rule filed in the State Register on July 25, 2013, authorized under the authority of section four, article two, 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 October 8, 2013, relating to the Division of Natural Resources (electronic registration of wildlife, 58 CSR 72), is authorized.
AN ACT to amend and reenact §38-2-21 and §38-2-34 of the Code of West Virginia, 1931, as amended, all relating to creating an affirmative defense to an action to enforce a lien.

Be it enacted by the Legislature of West Virginia:

That §38-2-21 and §38-2-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. MECHANICS' LIENS.

§38-2-21. Effect of payment by owner to contractor or subcontractor.

1 (a) No payment by the owner to any contractor or subcontractor of any part or all of the contract price for the erection and construction of any a building, structure or improvement appurtenant to a building, structure or improvement or for any part or section of a work may affect, impair or limit the lien of the subcontractor, laborer, or materialman or furnisher of machinery or other necessary material or equipment, as provided in this article, except as otherwise provided in this article.

(b) Notwithstanding any provisions of this code to the contrary, it is an affirmative defense, or an affirmative partial defense, as the case may be, in any action to enforce a lien
pursuant to this article that the owner is not indebted to the contractor or is indebted to the contractor for less than the amount of the lien sought to be perfected, when:

(1) The property is an existing single-family dwelling;

(2) The property is a residence constructed by the owner or under a contract entered into by the owner prior to its occupancy as the owner's primary residence; or

(3) The property is a single-family, owner-occupied dwelling, including a residence constructed and sold for occupancy as a primary residence. This subdivision does not apply to a developer or builder of multiple residences except for the residence that is occupied as the primary residence of the developer or builder.

§38-2-34. Time within which suit to enforce lien may be brought; right of other lienors to intervene.

(a) Unless an action to enforce any lien authorized by this article is commenced in a circuit court within six months after the person desiring to avail himself or herself of the court has filed his or her notice in the clerk's office, as provided in this article, the lien shall be discharged; but an action commenced by any person having a lien shall, for the purpose of preserving the same, inure to the benefit of all other persons having a lien under this article on the same property, and persons may intervene in the action for the purpose of enforcing their liens.

(b) Notwithstanding any provisions of this code to the contrary, it is an affirmative defense, or an affirmative partial defense, as the case may be, in any action to enforce a lien pursuant to this article that the owner is not indebted to the contractor or is indebted to the contractor for less than the amount of the lien sought to be perfected, when:

(1) The property is an existing single-family dwelling;
(2) The property is a residence constructed by the owner or under a contract entered into by the owner prior to its occupancy as his or her primary residence; or

(3) The property is a single-family, owner-occupied dwelling, including a residence constructed and sold for occupancy as a primary residence. This subdivision does not apply to a developer or builder of multiple residences except for the residence that is occupied as the primary residence of the developer or builder.

(c) As used in subsection (b):

(1) ‘Dwelling’ or ‘residence’ means any building or structure intended for habitation, in whole or part, and includes, but is not limited to, any house, apartment, mobile home, house trailer, modular home, factory-built home and any adjacent outbuildings.

(2) ‘Outbuilding’ means any building or structure which adjoins, is part of, belongs to, or is used in connection with a dwelling, and shall include, but not be limited to, any garage, shop, shed, barn or stable.

CHAPTER 116

(H. B. 4421 - By Delegates White, Skaff, Boggs, Barrett, Craig, A. Evans, Manchin, Reynolds, Storch, Swartzmiller and Marcum)  
[By Request of the Lottery Commission]

[Passed March 4, 2014; in effect ninety days from passage.]  
[Approved by the Governor on March 28, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-30, relating to
payment of lottery prizes; and permitting additional forms of payments consistent with current banking practices.

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 §29-22-30, to read as follows:

ARTICLE 22. STATE LOTTERY ACT.


1 Notwithstanding any provision of this article or any rule to the contrary, the lottery shall pay a prize to a claimant by check, electronic funds transfer or any other method of payment acceptable to the Federal Reserve System.

CHAPTER 117

(Com. Sub. for H. B. 4217 - By Delegates Perdue, Fleischauer, Campbell, Ellington, Morgan and Stephens)

[Passed March 8, 2014; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §9-5-22 and §9-5-23, all relating to Medicaid; requiring the Bureau of Medical Services to submit an annual report to the Legislature; requiring certain information to be included in the report; requiring website publication of certain information.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §9-5-22 and §9-5-23, all to read as follows:
ARTICLE 5. MISCELLANEOUS PROVISIONS.


(a) Beginning January 1, 2016, and annually thereafter, the Bureau for Medical Services shall submit an annual report by May of that year to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Health and Human Resources Accountability that includes, but is not limited to, the following information for all managed care organizations:

1. The name and geographic service area of each managed care organization that has contracted with the bureau.

2. The total number of health care providers in each managed care organization broken down by provider type and specialty and by each geographic service area.

3. The monthly average and total of the number of members enrolled in each organization broken down by eligibility group.

4. The percentage of clean claims paid each provider type within thirty calendar days and the average number of days to pay all claims for each managed care organization.

5. The number of claims denied or pended by each managed care organization.

6. The number and dollar value of all claims paid to non-network providers by claim type for each managed care organization.

7. The number of members choosing the managed care organization and the number of members auto-enrolled into each managed care organization, broken down by managed care organization.
(8) The amount of the average per member per month payment and total payments paid to each managed care organization.

(9) A comparison of nationally recognized health outcomes measures as required by the contracts the managed care organizations have with the bureau.

(10) A copy of the member and provider satisfaction survey report for each managed care organization.

(11) A copy of the annual audited financial statements for each managed care organization.

(12) A brief factual narrative of any sanctions levied by the department against a managed care network.

(13) The number of members, broken down by each managed care organization, filing a grievance or appeal and the total number and percentage of grievances or appeals that reversed or otherwise resolved a decision in favor of the member.

(14) The number of members receiving unduplicated outpatient emergency services and urgent care services, broken down by managed care organization.

(15) The number of total inpatient Medicaid days broken down by managed care organization and aggregated by facility type.

(16) The following information concerning pharmacy benefits broken down by each managed care organization and by month:

(A) Total number of prescription claims;
(B) Total number of prescription claims denied;

(C) Average adjudication time for prescription claims;

(D) Total number of prescription claims adjudicated within thirty days;

(E) Total number of prescription claims adjudicated within ninety days;

(F) Total number of prescription claims adjudicated after thirty days; and

(G) Total number of prescription claims adjudicated after ninety days.

(17) The total number of authorizations by service.

(18) Any other metric or measure which the Bureau of Medical Services deems appropriate for inclusion in the report.

(19) For those managed care plans that are accredited by a national accreditation organization they shall report their most recent annual quality ranking for their Medicaid plans offered in West Virginia.

(20) The medical loss ratio and the administrative cost of each managed care organization and the amount of money refunded to the state if the contract contains a medical loss ratio.

(b) The report required in subsection (a) of this section shall also include information regarding fee-for-service providers that is comparable to that required in subsection (a) of this section for managed care organizations: Provided, That any report regarding Medicaid fee for service should be designed to determine the medical and pharmacy costs for those benefits similar to ones
provided by the managed care organizations and the data shall be reflective of the population served.

(c) The report required in subsection (a) of this section shall also include for each of the five most recent fiscal years, annual cost information for both managed care organizations and fee-for-service providers of the Medicaid program expressed in terms of:

(1) Aggregate dollars expended by both managed care organizations and fee-for-service providers of the Medicaid programs per fiscal years; and

(2) Annual rate of cost inflation from prior fiscal year for both managed care organizations and fee-for-service providers of the Medicaid program.

§9-5-23. Bureau of Medical Services information.

(a) The Bureau of Medical Services shall publish all informational bulletins, health plan advisories, and guidance published by the department concerning the Medicaid program on the department’s website.

(b) The bureau shall publish all Medicaid state plan amendments and any formal correspondence within seventy-two hours of receipt of the correspondence submission to the Centers for Medicare and Medicaid Services.

(c) The bureau shall publish all formal responses by the Centers for Medicare and Medicaid Services regarding any state plan amendment on the department’s website within seventy-two hours of receipt of the correspondence.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §27-1A-12, relating to creating an independent informal dispute resolution process available to behavioral health providers licensed by the Department of Health and Human Resources for orders or citations of deficient practice; and providing that the independent informal dispute resolution process does not affect the ability of a licensee to seek administrative and judicial review of an order or citation of deficient practice.

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 §27-1A-12, to read as follows:

ARTICLE 1A. DEPARTMENT OF HEALTH.

§27-1A-12. Independent Informal Dispute Resolution.

1 (a) A behavioral health provider licensed by the Department of Health and Human Resources adversely affected by an order or citation of a deficient practice issued pursuant to this article or pursuant to federal law may request to use the independent informal dispute resolution process established by this section.

2 A licensee may contest a cited deficiency as contrary to rule,
regulation or law or unwarranted by the facts, or any combination thereof.

(b) The independent informal dispute resolution process is not a formal evidentiary proceeding and utilization of the independent informal dispute resolution process does not waive the right of the licensee to request a formal hearing with the secretary.

(c) The independent informal dispute resolution process shall consist of the following:

(1) The secretary shall transmit to the licensee a statement of deficiencies attributed to the licensee and request that the licensee submit a plan of correction addressing the cited deficiencies no later than ten working days following the last day of the survey or inspection, or no later than ten working days following the last day of a complaint investigation. Notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal.

(2) When the licensee returns its plan of correction to the secretary, the licensee may request, in writing, to participate in the independent informal dispute resolution process to protest or refute all or part of the cited deficiencies within ten working days. The secretary may not release the final report until all dispute processes are resolved.

(3) The Secretary of the West Virginia Department of Health and Human Resources (hereinafter "secretary") shall approve and establish a panel of at least three independent review providers: Provided, That in lieu of establishing a panel, the secretary may use an existing panel of approved independent review providers. The secretary shall contract with the independent review providers to conduct the independent informal dispute resolution processes. Each independent review
provider shall be accredited by the Utilization Review Accreditation Commission. When a licensee requests an independent informal dispute resolution process, the secretary shall choose one independent review provider from the approved panel to conduct the process.

(4) The secretary shall refer the request to an independent review provider from the panel of certified independent review providers approved by the department within five working days of receipt of the written request for the independent informal dispute resolution process made by a licensee. The secretary shall vary the selection of the independent review providers on a rotating basis. The secretary shall acknowledge in writing to the licensee that the request for independent review has been received and forwarded to the independent review provider. The notice shall include the name and professional address of the independent review provider.

(5) The independent review provider shall hold an independent informal dispute resolution conference, unless additional time is requested by either the licensee, the Department of Health and Human Resources or the independent review provider and approved by the secretary, within ten working days of receipt of the written request for the independent informal dispute resolution process made by a licensee. The licensee or the Department of Health and Human Resources may submit additional information before the independent informal dispute resolution conference.

(6) Neither the secretary nor the licensee may be accompanied by counsel during the independent informal dispute resolution conference. The manner in which the independent informal dispute resolution conference is held is at the discretion of the licensee, but is limited to:

(A) A review of written information submitted by the licensee;
(7) If the independent review provider determines the need for additional information, clarification or discussion at the conclusion of the independent informal dispute resolution conference, the secretary and the licensee shall present the requested information.

(8) The independent review provider shall make a determination within ten working days of receipt of any additional information as provided in subdivision (7) of this section or the conclusion of the independent informal dispute resolution conference, based upon the facts and findings presented, and shall transmit a written decision containing the rationale for its determination to the secretary.

(9) If the secretary disagrees with the determination, the secretary may reject the determination made by the independent review provider and shall issue an order setting forth the rationale for the reversal of the independent review provider's decision to the licensee within ten working days of receiving the independent review provider's determination.

(10) If the secretary accepts the determination, the secretary shall issue an order affirming the independent review provider's determination within ten working days of receiving the independent review provider's determination.

(11) If the independent review provider determines that the original statement of deficiencies should be changed as a result of the independent informal dispute resolution process and the secretary accepts the determination, the secretary shall transmit a revised statement of deficiencies to the licensee within ten working days of the independent review provider's determination.
(12) The licensee shall submit a revised plan to correct any remaining deficiencies to the secretary within ten working days of receipt of the secretary’s order and the revised statement of deficiencies.

(d) Under the following circumstances, the licensee is responsible for certain costs of the independent informal dispute resolution review, which shall be remitted to the secretary within sixty days of the informal conference order:

(1) If the licensee requests a face-to-face conference, the licensee shall pay any costs incurred by the independent review provider that exceed the cost of a telephonic conference, regardless of which party ultimately prevails;

(2) If the independent review provider’s decision supports the entirety of the originally written contested deficiency or adverse action taken by the secretary, the licensee shall reimburse the secretary for the cost charged by the independent review provider; or

(3) If the independent review provider’s decision supports some of the originally written contested deficiencies, but not all of them, the licensee shall reimburse the secretary for the cost charged by the independent review provider on a pro-rata basis as determined by the secretary.

(e) Establishment of the independent informal dispute resolution process does not preclude licensees from utilizing other informal dispute resolution processes provided by statute or rule in lieu of the independent informal dispute resolution process.

(f) Administrative and judicial review of a decision rendered through the independent informal dispute resolution process may be made in accordance with article five, chapter twenty-nine-a of this code.
(g) Any decision issued by the secretary as a result of the independent informal dispute resolution process shall be made effective from the date of issuance.

(h) The pendency of administrative or judicial review does not prevent the secretary or a licensee from obtaining injunctive relief as provided by statute or rule.

CHAPTER 119

(Com. Sub. for S. B. 315 - By Senator Wells)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 20, 2014.]

AN ACT to amend and reenact §15-1J-3 and §15-1J-4 of the Code of West Virginia, 1931, as amended, all relating to authorizing the West Virginia Military Authority to administer national security, homeland security and other military-related or military-sponsored programs; redefining "employee"; expanding with whom the authority may contract to include any state, territory or the District of Columbia; and authorizing the authority to accept and use funds from the federal government, any state and other specified entities for the purposes of national security, homeland security and other military-related or military-sponsored programs.

Be it enacted by the Legislature of West Virginia:

That §15-1J-3 and §15-1J-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 1J. WEST VIRGINIA MILITARY AUTHORITY ACT.


As used in this article, unless the content clearly indicates otherwise:

(a) "Authority" means the West Virginia Military Authority.

(b) "BRIM" means the West Virginia Board of Risk and Insurance Management.

(c) "Guard" means West Virginia National Guard, including its army and air components.

(d) "Employee" means any person who, within the at-will employment relationship, is hired to perform duties related to national security, homeland security and other military-related or -sponsored programs.

(e) "PEIA" means Public Employees Insurance Act.

(f) "PERS" means Public Employees Retirement System.

§15-1J-4. Establishment and general powers of the authority.

(a) The West Virginia Military Authority is hereby established to administer national security, homeland security and other military-related or -sponsored programs. (b) The authority will be administered by the Adjutant General and the Adjutant General’s department.

(c) Funds provided by the federal government and any state funds authorized by appropriation of the Legislature used as a required match to secure federal funding for programs administered by the authority pursuant to this section shall be administered by the Adjutant General subject to the provisions of article eleven, chapter four of this code.
(d) Except as otherwise prohibited by statute, the authority, as a governmental instrumentality exercising public powers of the state, shall have and may exercise all powers necessary or appropriate to carry out the purpose of this article, including the authority to:

1. Execute cooperative agreements between the guard and the federal and/or state governments;

2. Contract on behalf of the guard with the federal government, its instrumentalities and agencies, any state, territory or the District of Columbia and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations and individuals;

3. Use funds administered by the authority pursuant to subsection (c) of this section for the maintenance, construction or reconstruction of capital repair and replacement items as necessary and approved by the authority;

4. Accept and use funds from the federal government, its instrumentalities and agencies, any state, territory or the District of Columbia and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations and individuals for the purposes of national security, homeland security and other military-related or -sponsored programs;

5. Procure insurance with state funds through BRIM covering property and other assets of the authority in amounts and from insurers that BRIM determines necessary;

6. Hire employees at an appropriate salary equivalent to a competitive wage rate;

7. Enroll employees in PERS, PEIA and workers' compensation and unemployment programs, or their equivalents:
Provided, That the authority, through the receipt of federal and/or state funds, pays the required employer contributions;

(8) Cooperate with economic development agencies in efforts to promote the expansion of industrial, commercial and manufacturing in the state;

(9) Develop a human resources division that will administer and manage its employees and receive state matching funds as necessary to ensure maximum federal funds are secured;

(10) Due to the at-will employment relationship with the authority, its employees may not avail themselves of the state grievance procedure as set forth in article six-a, chapter twenty-nine of this code; and

(11) Have the ability to secure all other bonding, insurance or other liability protections necessary for its employees to fulfill their duties and responsibilities.

CHAPTER 120

(Com. Sub. for H. B. 4480 - By Delegates Craig and Skaff)
[By Request of the Department of Environmental Protection]

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §22-2-4 of the Code of West Virginia, 1931, as amended, relating to the Acid Mine Drainage and Abatement Fund; investment of funds; retention of earnings; and requiring restoration of interest earnings previously defaulted into the state’s general revenue account.
Be it enacted by the Legislature of West Virginia:

That §22-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-2-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.

(a) All abandoned land reclamation funds available under Title IV of the federal Surface Mining Control and Reclamation Act of 1977, as amended, private donations received, any state appropriated or transferred funds, or funds received from the sale of land by the secretary under this article shall be deposited with the Treasurer of the State of West Virginia to the credit of the Abandoned Land Reclamation Fund heretofore created, and expended pursuant to the requirements of this article.

(b) Moneys in the fund may be used by the secretary for the following:

1 Reclamation and restoration of land and water resources adversely affected by past coal surface-mining operations, including, but not limited to, reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas and abandoned coal processing waste areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal surface-mining operations to prevent erosion and sedimentation; prevention, abatement, treatment and control of water pollution created by coal mine drainage, including restoration of stream beds and construction and operation of water treatment plants; prevention, abatement and control of burning coal processing waste areas and burning coal in situ; prevention, abatement and control of coal mine subsidence; and payment of administrative expenses and all
other necessary expenses incurred to accomplish the purpose of this article: Provided, That all expenditures from this fund shall reflect the following priorities in the order stated:

(A) The protection of public health, safety, general welfare and property from extreme danger of adverse effects of past surface-mining practices;

(B) The protection of public health, safety and general welfare from adverse effects of past coal surface-mining practices;

(C) The restoration of land and water resources and environment previously degraded by adverse effects of past coal surface-mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources and agricultural productivity;

(D) Research and demonstration projects relating to the development of surface-mining reclamation and water quality control program methods and techniques;

(E) The protection, repair, replacement, construction or enhancement of public facilities such as utilities, roads, recreation and conservation facilities adversely affected by past coal surface-mining practices; and

(F) The development of publicly owned land adversely affected by past coal surface-mining practices, including land acquired as provided in this article for recreation and historic purposes, conservation and reclamation purposes and open space benefits.

(2) (A) The secretary may expend up to thirty percent of the funds allocated to the state in any year through the grants made available under paragraphs (1) and (5), subsection (g) of Section
402 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, for the purpose of protecting, repairing, replacing, constructing or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal surface-mining practices.

(B) If the adverse effects on water supplies referred to in this subdivision occurred both prior to and after August 3, 1977, subsection (c) of this section does not prohibit the state from using funds for the purposes of this subdivision if the secretary determines that the adverse effects occurred predominantly prior to August 3, 1977.

(3) The secretary may receive and retain up to ten percent of the total of the grants made annually to the state under paragraphs (1) and (5), subsection (g) of Section 402 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, if the amounts are deposited to the credit of either:

(A) The special account in the State Treasury designated the "Reclamation and Restoration Fund" is hereby continued. Moneys in the fund may be expended by the secretary to achieve the priorities stated in subdivision (1) of this subsection after September 30, 1995, and for associated administrative and personnel expenses; or

(B) The special account in the State Treasury designated the "Acid Mine Drainage Abatement and Treatment Fund" is hereby continued. Moneys in the fund may be expended by the secretary to implement, in consultation with the United States soil conservation service, acid mine drainage abatement and treatment plans approved by the secretary of the United States Department of Interior and for associated administrative and personnel expenses. The plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units
affected by coal surface-mining practices. The moneys accrued in this fund, any earnings thereon, and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section of the code. Any interest accrued on any moneys deposited into the Acid Mine Drainage Abatement and Treatment Fund which previously defaulted from that account into general revenue shall be credited back to the fund on or before July 1, 2014.

(c) Except as provided for in this subsection, lands and water eligible for reclamation or drainage abatement expenditures under this article are those which were mined for coal or which were affected by the mining, wastebanks, coal processing or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility: Provided, That moneys from the funds made available by the Secretary of the United States Department of Interior pursuant to paragraphs (1) and (5), subsection (g), Section 402 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, may be expended for the reclamation or drainage abatement of a site that: (1) The surface-mining operation occurred during the period beginning on August 4, 1977, and ending on or before January 21, 1981, and that any funds for reclamation or abatement which are available pursuant to a bond or other financial guarantee or from any other source, and not sufficient to provide for adequate reclamation or abatement of the site; or (2) the surface-mining operation occurred during the period beginning on August 4, 1977, and ending on or before November 5, 1990, and that the surety of the surface-mining operation became insolvent during that period, and as of November 5, 1990, funds immediately available from proceeding relating to the insolvency or from any financial guarantees or other sources are not sufficient to provide for adequate reclamation of the site: Provided, however, That the
secretary, with the concurrence of the secretary of the United States Department of Interior, makes either of the above-stated findings, and that the site is eligible, or more urgent than the reclamation priorities set forth in paragraphs (A) and (B), subdivision (1), subsection (b) of this section.

(d) One purpose of this article is to provide additional and cumulative remedies to abate the pollution of the waters of the state, and nothing contained in this article abridges or alters rights of action or remedies now or hereafter existing, nor do any provisions in this article or any act done by virtue of this article estop the state, municipalities, public health officers or persons as riparian owners or otherwise in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing or to recover damages.

(e) Where the Governor certifies that the above objectives of the fund have been achieved and there is a need for construction of specific public facilities in communities impacted by coal development, and other sources of federal funds are inadequate and the secretary of the United States Department of Interior concurs, then the secretary may expend money from the fund for the construction.

CHAPTER 121

(Com. Sub. for S. B. 623 - By Senators Palumbo, Tucker and Snyder)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §22A-1A-1 of the Code of West Virginia, 1931, as amended, relating to Office of Miners’ Health,
Safety and Training administration and substance abuse; and requiring employers to notify the director of a positive drug or alcohol test, refusing to submit a sample, possessing a substituted sample, submitting a substituted sample, possessing an adulterated sample or submitting an adulterated sample.

Be it enacted by the Legislature of West Virginia:

That §22A-1A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; SUBSTANCE ABUSE.

§22A-1A-1. Substance abuse screening; minimum requirements; standards and procedures for screening.

(a) Every employer of certified persons, as defined in section two, article one of this chapter, shall implement a substance abuse screening policy and program that shall, at a minimum, include:

(1) A preemployment, ten-panel urine test for the following and any other substances as set out in rules adopted by the Office of Miners' Health, Safety and Training:

(A) Amphetamines;

(B) Cannabinoids/THC;

(C) Cocaine;

(D) Opiates;

(E) Phencyclidine (PCP);

(F) Benzodiazepines;
(G) Propoxyphene;
(H) Methadone;
(I) Barbiturates; and
(J) Synthetic narcotics.

Split samples shall be collected by providers who are certified as complying with standards and procedures set out in the United States Department of Transportation’s rule, 49 C. F. R. Part 40, which may be amended from time to time by legislative rule of the Office of Miners’ Health, Safety and Training. Collected samples shall be tested by laboratories certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) for collection and testing. Notwithstanding the provisions of this subdivision, the mine operator may implement a more stringent substance abuse screening policy and program;

(2) A random substance abuse testing program covering the substances referenced in subdivision (1) of this subsection. “Random testing” means that each person subject to testing has a statistically equal chance of being selected for testing at random and at unscheduled times. The selection of persons for random testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with the persons’ Social Security numbers, payroll identification numbers or other comparable identifying numbers; and

(3) Review of the substance abuse screening program with all persons required to be tested at the time of employment, upon a change in the program and annually thereafter.

(b) For purposes of this subsection, preemployment testing shall be required upon hiring by a new employer, rehiring by a
former employer following a termination of the employer/employee relationship or transferring to a West Virginia mine from an employer’s out-of-state mine to the extent that any substance abuse test required by the employer in the other jurisdiction does not comply with the minimum standards for substance abuse testing required by this article. Furthermore, the provisions of this section apply to all employers that employ certified persons who work in mines, regardless of whether that employer is an operator, contractor, subcontractor or otherwise.

(c) (1) Every employer shall notify the director, on a form prescribed by the director, within seven (7) days of any of the following:

(A) A positive drug or alcohol test of a certified person, whether it be a preemployment test, random test, reasonable suspicion test or post-accident test;

(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an adulterated sample; or

(D) A certified person submitting a substituted sample or an adulterated sample.

(2) With respect to any certified person subject to a collective bargaining agreement, the employer shall notify the director, on a form prescribed by the director, within seven (7) days of any of the following: Provided, That notification pursuant to this subdivision shall not result in the immediate temporary suspension, suspension or revocation of any certificate held by a certified person who is subject to a collective bargaining agreement unless and until the arbitration is concluded and the discharge is upheld:

(A) A positive drug or alcohol test of a certified person, whether it be a preemployment test, random test, reasonable suspicion test or post-accident test;
(B) The refusal of a certified person to submit a sample;

(C) A certified person possessing a substituted sample or an adulterated sample; or

(D) A certified person submitting a substituted sample or an adulterated sample.

(3) When the employer submits the completed notification form prescribed by the director, the employer shall also submit a copy of the laboratory test results showing the substances tested for and the results of the test.

(4) Notice shall result in the immediate temporary suspension of all certificates held by the certified person who failed the screening, pending a hearing before the board of appeals pursuant to section two of this article: Provided, That notification pursuant to this subsection shall not result in the immediate temporary suspension of any certificate held by a certified person who is subject to a collective bargaining agreement unless and until the arbitration is concluded and the discharge is upheld, and no certificate held by a certified person who is subject to a collective bargaining agreement shall be suspended or revoked unless the discharge is upheld in arbitration: Provided, however, That if the certified person terminates his or her employment or voluntarily removes himself or herself from the grievance or arbitration procedure, the certified person may be immediately, temporarily decertified pursuant to this article.

(d) Suspension or revocation of a certified person's certificate as a miner or other miner specialty in another jurisdiction by the applicable regulatory or licensing authority for substance abuse-related matters shall result in the director immediately and temporarily suspending the certified person's West Virginia certificate until such time as the certified person's certification is reinstated in the other jurisdiction.
(e) The provisions of this article shall not be construed to preclude an employer from developing or maintaining a drug and alcohol abuse policy, testing program or substance abuse program that exceeds the minimum requirements set forth in this section. The provisions of this article shall also not be construed to require an employer to alter, amend, revise or otherwise change, in any respect, a previously established substance abuse screening policy and program that meets or exceeds the minimum requirements set forth in this section. The provisions of this article shall require an employer to subject its employees who as part of their employment are regularly present at a mine and who are employed in a safety-sensitive position to preemployment and random substance abuse tests: Provided, That each employer shall retain the discretion to establish the parameters of its substance abuse screening policy and program so long as it meets the minimum requirements of this article. For purposes of this section, a “safety-sensitive position” means an employment position where the employee’s job responsibilities include duties and activities that involve the personal safety of the employee or others working at a mine.

CHAPTER 122

(Com. Sub. for S. B. 603 - By Senators Kirkendoll, Stollings, Miller, Facemire, Cann, Edgell, Green, D. Hall, McCabe, Unger, Kessler (Mr. President), Plymale and Jenkins)

[Passed March 6, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §22A-2-43 of the Code of West Virginia, 1931, as amended, relating to testing for the presence of methane in underground mines; requiring automatic de-
energization or shut down of equipment when a machine-mounted methane monitor indicates a methane concentration of one and five-tenths percent; and removing the requirement that the Board of Coal Mine Health and Safety promulgate a legislative rule defining the term "sustained period".

Be it enacted by the Legislature of West Virginia:

That §22A-2-43 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. UNDERGROUND MINES.

§22A-2-43. Actions to detect and respond to excess methane.

The following actions are required to detect and respond to excess methane. Subsections (a) through (f) of this section pertain to methane testing with hand-held devices:

(a) Hand-held testing required. — In any mine, no electrical equipment or permissible diesel-powered equipment may be brought in by the last open crosscut until a qualified person tests for methane. If one percent or more methane is present, the equipment may not be taken into the area until the methane concentration is reduced to less than one percent. Thereafter, subsequent methane examinations shall be made at least every twenty minutes while any electrical or diesel-powered equipment is present and energized.

(b) Location of tests. — Tests for methane concentrations under this section shall be made at least twelve inches from the roof, face, ribs and floor.

(c) Working places and intake air courses. —

(1) When one percent or more methane is present in a working place or an intake air course, including an air course in
which a belt conveyor is located or in an area where mechanized mining equipment is being installed or removed:

(A) Except intrinsically safe atmospheric monitoring systems (AMS), electrically powered equipment in the affected area shall be de-energized and other mechanized equipment shall be shut off.

(B) Changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane to less than one percent.

(C) No other work shall be permitted in the affected area until the methane concentration is less than one percent.

(2) When one and five-tenths percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located or in an area where mechanized mining equipment is being installed or removed:

(A) Except for the mine foreman, assistant mine foreman or individuals authorized by the mine foreman or assistant mine foreman, all individuals shall be withdrawn from the affected area. If a federal or state mine inspector is present in the area of the mine where one and five-tenths percent or more of methane is detected, the federal or state mine inspector and the miners’ representative, if any, may remain in the area with the mine foreman, assistant mine foreman or other individuals authorized by the mine foreman or assistant mine foreman.

(B) Except for intrinsically safe AMS, electrically powered equipment in the affected area shall be disconnected at the power source.

(d) Return air split.—

(1) When one percent or more methane is present in a return air split between the last working place on a working section and
where that split of air meets another split of air or the location at which the split is used to ventilate seals or worked-out areas, changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane in the return air to less than one percent.

(2) When one and five-tenths percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air or the location where the split is used to ventilate seals or worked-out areas, except for the mine foreman, assistant mine foreman or individuals authorized by the mine or assistant mine foreman, all individuals shall be withdrawn from the affected area. If a federal or state mine inspector is present in the area of the mine where one and five-tenths percent or more of methane is detected, the federal or state mine inspector and the miners’ representative, if any, may remain in the area with the mine foreman, assistant mine foreman or other individuals authorized by the mine foreman or assistant mine foreman.

(3) Other than intrinsically safe AMS, equipment in the affected area shall be de-energized, electric power shall be disconnected at the power source and other mechanized equipment shall be shut off.

(4) No other work shall be permitted in the affected area until the methane concentration in the return air is less than one percent.

(e) Return air split alternative. —

(1) The provisions of this paragraph may apply if:

(A) The quantity of air in the split ventilating the active workings is at least twenty-seven thousand cubic feet per minute in the last open crosscut or the quantity specified in the approved ventilation plan, whichever is greater.
(B) The methane content of the air in the split is continuously monitored during mining operations by an AMS that gives a visual and audible signal on the working section when the methane in the return air reaches one and five-tenths percent and the methane content is monitored as specified in the approved ventilation plan.

(C) Rock dust is continuously applied with a mechanical duster to the return air course during coal production at a location in the air course immediately outby the most inby monitoring point.

(2) When one and five-tenths percent or more methane is present in a return air split between a point in the return opposite the section loading point and where that split of air meets another split of air or where the split of air is used to ventilate seals or worked-out areas:

(A) Changes or adjustments shall be made at once to the ventilation system to reduce the concentration of methane in the return air below one and five-tenths percent.

(B) Except for the mine foreman, assistant mine foreman or individuals authorized by the mine foreman or assistant mine foreman, all individuals shall be withdrawn from the affected area. If a federal or state mine inspector is present in the area of the mine where one and five-tenths percent or more of methane is detected, the federal or state mine inspector and the miners' representative, if any, may remain in the area with the mine foreman, assistant mine foreman or other individuals authorized by the mine foreman or assistant mine foreman.

(C) Except for intrinsically safe AMS, equipment in the affected area shall be de-energized, electric power shall be disconnected at the power source and other mechanized equipment shall be shut off.
111 (D) No other work shall be permitted in the affected area until the methane concentration in the return air is less than one and five-tenths percent.

114 (f) **Bleeders and other return air courses.** —

115 The concentration of methane in a bleeder split of air immediately before the air in the split joins another split of air, or in a return air course other than as described in subsections (d) and (e) of this section, shall not exceed two percent.

119 (g) **Machine-mounted methane monitors.** —

120 (1) Approved methane monitors shall be installed and maintained on all face cutting machines, continuous miners, longwall face equipment and other mechanized equipment used to extract coal or load coal within the working place.

124 (2) The sensing device for methane monitors on longwall shearing machines shall be installed at the return air end of the longwall face. An additional sensing device also shall be installed on the longwall shearing machine, downwind and as close to the cutting head as practicable. An alternative location or locations for the sensing device required on the longwall shearing machine may be approved in the ventilation plan.

131 (3) The sensing devices of methane monitors shall be installed as close to the working face as practicable.

133 (4) Methane monitors shall be maintained in permissible and proper operating condition and shall be calibrated with a known air-methane mixture at least once every fifteen days and a record of the calibration shall be recorded with ink or indelible pencil by the person performing the calibration in a book prescribed by the director and maintained on the surface. Calibration records shall be retained for inspection for at least one year from the date of the test. To assure that methane monitors are properly
MAINTAINED AND CALIBRATED, THE OPERATOR SHALL USE PERSONS PROPERLY TRAINED IN THE MAINTENANCE, CALIBRATION AND PERMISSIBILITY OF METHANE MONITORS TO CALIBRATE AND MAINTAIN THE DEVICES.

(h) **Automatic de-energization of electrical equipment or shut down of diesel equipment.**

When the methane concentration at any machine-mounted methane monitor reaches one percent, the monitor shall give a warning signal. The warning signal device of the methane monitor shall be visible to a person operating the equipment on which the monitor is mounted. The methane monitor shall automatically de-energize electric equipment or shut down diesel-powered equipment on which it is mounted when:

1. The methane concentration at any machine-mounted methane monitor reaches one and five-tenths percent; or
2. The monitor is not operating properly.

The machine may not again be started in that place until the methane concentration measured by the methane monitor is less than one percent.

**CHAPTER 123**

(Com. Sub. for H. B. 2954 - By Delegates Caputo, Tomblin and R. Phillips)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 26, 2014.]

AN ACT to amend and reenact §22A-11-2 of the Code of West Virginia, 1931, as amended, relating to requiring that members of
the Mine Safety Technology Task Force, except ex officio members are paid the same compensation and expense reimbursement as members of the Legislature are paid for each day or portion thereof engaged in the discharge of their interim duties.

Be it enacted by the Legislature of West Virginia:

That §22A-11-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. MINE SAFETY TECHNOLOGY.


1 (a) The Mine Safety Technology Task Force is continued, and commencing July 1, 2010, is a separate independent task force within the Department of Commerce.

(b) The task force shall consist of seven voting members and two ex officio, nonvoting members who are appointed as specified in this section:

1 (1) The Governor shall appoint, by and with the advice and consent of the Senate, three members to represent the viewpoint of operators in this state. When these members are to be appointed, the Governor shall request from the major trade association representing operators in this state a list of three nominees for each position on the task force. All nominees shall be persons with special experience and competence in coal mine health and safety. There shall be submitted with the list, a summary of the qualifications of each nominee. 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 task force. The highest ranking official within the major employee organization representing coal miners within this state shall submit a list of three nominees for each position on the board. The nominees shall have a background in coal mine health and safety.

(3) The Governor shall appoint, by and with the advice and consent of the Senate, one certified mine safety professional from the College of Engineering and Mineral Resources at West Virginia University;

(4) The Health and Safety Administrator, pursuant to section six, article six of this chapter, shall serve as a member 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 an 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, except ex officio members, of the task force shall be paid the same compensation, and each member of the task force shall be paid the same 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.

CHAPTER 124

(Com. Sub. for H. B. 4283 - By Delegates Barrett, Barill, Barker, Diserio, Lawrence, Manypenny, Marcum, D. Poling, Reynolds, Sponaugle and Young)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2014.]

AN ACT to amend and reenact §21-5C-1, §21-5C-2 and §21-5C-4 of the Code of West Virginia, 1931, as amended, all relating to
minimum wage; providing definition for employer; establishing minimum wage amounts; establishing credit amount to employers for employees customarily receiving gratuities and certain other benefits.

Be it enacted by the Legislature of West Virginia:

That §21-5C-1, §21-5C-2 and §21-5C-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted all to read as follows:

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-1. Definitions.

As used in this article:

(a) “Commissioner” means the commissioner of labor or his or her duly authorized representatives.

(b) “Wage and hour director” means the wage and hour director appointed by the commissioner of labor as chief of the wage and hour division.

(c) “Wage” means compensation due an employee by reason of his or her employment.

(d) “Employ” means to hire or permit to work.

(e) “Employer” includes the State of West Virginia, its agencies, departments and all its political subdivisions, any individual, partnership, association, public or private corporation, or any person or group of persons acting directly or indirectly in the interest of any employer in relation to an employee; and who employs during any calendar week six or more employees as herein defined in any one separate, distinct and permanent location or business establishment.
(f) "Employee" includes any individual employed by an employer but shall not include: (1) Any individual employed by the United States; (2) any individual engaged in the activities of an educational, charitable, religious, fraternal or nonprofit organization where the employer-employee relationship does not in fact exist, or where the services rendered to such organizations are on a voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pinboys and pin chasers in bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an individual in the employ of his or her parent, son, daughter or spouse; (6) any individual employed in a bona fide professional, executive or administrative capacity; (7) any person whose employment is for the purpose of on-the-job training; (8) any person having a physical or mental handicap so severe as to prevent his or her employment or employment training in any training or employment facility other than a nonprofit sheltered workshop; (9) any individual employed in a boys or girls summer camp; (10) any person sixty-two years of age or over who receives old-age or survivors benefits from the social security administration; (11) any individual employed in agriculture as the word agriculture is defined in the Fair Labor Standards Act of 1938, as amended; (12) any individual employed as a fire fighter by the state or agency thereof; (13) ushers in theaters; (14) any individual employed on a part-time basis who is a student in any recognized school or college; (15) any individual employed by a local or interurban motorbus carrier; (16) so far as the maximum hours and overtime compensation provisions of this article are concerned, any salesman, parts man or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; (17) any employee with respect to whom the United States Department of Transportation has statutory authority to establish qualifications and maximum hours of service; (18) any
(g) "Workweek" means a regularly recurring period of one hundred sixty-eight hours in the form of seven consecutive twenty-four hour periods, need not coincide with the calendar week, and may begin any day of the calendar week and any hour of the day.

(h) "Hours worked", in determining for the purposes of sections two and three of this article, the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday, time spent in walking, riding or traveling to and from the actual place of performance of the principal activity or activities which such employee is employed to perform and activities which are preliminary to or postliminary to said principal activity or activities, subject to such exceptions as the commissioner may by rules and regulations define.


(a) Minimum wage:

(1) After June 30, 2006, every employer shall pay to each of his or her employees wages at a rate not less than $5.85 per hour.
(2) After June 30, 2007, every employer shall pay to each of his or her employees wages at a rate not less than $6.55 per hour.

(3) After June 30, 2008, every employer shall pay to each of his or her employees wages at a rate not less than $7.25 per hour.

(4) After January 1, 2015, every employer shall pay to each of his or her employees wages at a rate not less than $8.00 per hour.

(5) After January 1, 2016, every employer shall pay to each of his or her employees wages at a rate not less than $8.75 per hour.

(6) When the federal minimum hourly wage as prescribed by 29 U.S.C. §206(a)(1) is equal to or greater than the wage rate prescribed in the applicable provision of this subsection, every employer shall pay to each of his or her employees wages at a rate of not less than the federal minimum hourly wage as prescribed by 29 U.S.C. §206(a)(1). The minimum wage rates required under this subparagraph shall be thereafter adjusted in accordance with adjustments made in the federal minimum hourly rate. The adoption of the federal minimum wage provided by this subdivision includes only the federal minimum hourly rate prescribed in 29 U.S.C. §206(a)(1) and does not include other wage rates, or conditions, exclusions, or exceptions to the federal minimum hourly wage rate. In addition, adoption of the federal minimum hourly wage rate does not extend or modify the scope or coverage of the minimum wage rate required under this subdivision.

(b) Training wage:

(1) Notwithstanding the provisions set forth in subsection (a) of this section to the contrary, an employer may pay an employee first hired after January 1, 2015, a subminimum training wage not less than $6.40 per hour.
(2) An employer may not pay the subminimum training wage set forth in subdivision (1) of this subsection to any individual:

(i) Who has attained or attains while an employee of the employer, the age of twenty years; or

(ii) For a cumulative period of not more than ninety days per employee: Provided, That if any business has not been in operation for more than ninety days at the time the employer hired the employee, the employer may pay the employee the subminimum training wage set forth in subdivision (1) of this subsection for an additional period not to exceed ninety days.

(3) When the federal subminimum training wage as prescribed by 29 U.S.C. §206(g)(1) is equal to or greater than the wage rate prescribed in subdivision (1) of this subsection, every employer shall pay to each of his or her employees wages at a rate of not less than the federal minimum hourly wage as prescribed by 29 U.S.C. §206(g)(1). The minimum wage rates required under this subparagraph shall be thereafter adjusted in accordance with adjustments made in the federal minimum hourly rate. The adoption of the federal minimum wage provided by this subdivision includes only the federal minimum hourly rate prescribed in 29 U.S.C. §206(g)(1) and does not include other wage rates, or conditions, exclusions, or exceptions to the federal minimum hourly wage rate. In addition, adoption of the federal minimum hourly wage rate does not extend or modify the scope or coverage of the minimum wage rate required under this subdivision.

(c) Notwithstanding any provision or definition to the contrary, the wages established pursuant to this section are applicable to all individuals employed by the State of West Virginia, its agencies, and departments, regardless if the employee or employer are subject to any federal act relating to minimum wage: Provided, That at no time may the minimum
§21-5C-4. Credits.

In determining whether an employer is paying an employee wages and overtime compensation as provided in sections two and three of this article, there shall be provided in accordance with the regulations which shall be promulgated by the commissioner a credit to the employer of seventy percent of the hourly rate of the amount paid an employee customarily receiving gratuities, and a reasonable credit for board and lodging furnished to an employee. The commissioner shall promulgate regulations relating to maximum allowances to employers for room and board furnished to employees: Provided, That the employer shall be required to furnish to the commissioner upon request, documentary evidence that the employee is receiving at least seventy percent of the minimum wage in gratuities or is receiving room and lodging in accordance with the rules and regulations promulgated by the commissioner.
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; and that §17A-6-1 be amended and reenacted, all to read as follows:

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

(dd) "Transporter" means every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling or distributing plant to dealers or sales agents of a manufacturer.
(ee) "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered hereunder at a place of business in this state which is actually occupied either continuously or at regular periods by the manufacturer where his or her books and records are kept and a large share of his or her business is transacted.

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

(gg) "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 may 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.

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

(ii) "All-terrain vehicle" (ATV) means any motor vehicle designed for off-highway use and designed to travel on not less than three low-pressure or nonhighway tires, is fifty inches or less in width and intended by the manufacturer to be used by a single operator or is specifically designed by the manufacturer with seating for each passenger. "All-terrain vehicle" and "ATV" does not include mini trucks, golf carts, riding lawn mowers or tractors.

(jj) "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.
"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.

"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.

"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.

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

"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.

"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 rearview 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 or nonhighway tires designed for off-highway use and is greater than fifty inches in width. "Utility terrain vehicle" does not include mini trucks, golf carts, riding lawn mowers or tractors.

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.

(2) "Used 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 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.

(3) "House trailer dealer" means every person (other than agents and employees, if any, while acting within the scope of
(4) “Trailer 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 trailers.

(5) “Motorcycle 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 motorcycles.

(6) “Used parts 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 any used appliance, accessory, member, portion or other part of any vehicle.

(7) “Wrecker/dismantler/rebuilder” 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 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 one thousand two 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 9:30 a.m. and 8:30 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 one
thousand two 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 9:30 a.m. and 8:30 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
187 and repair facilities and space at the place of business in order
188 for the place of business to be an established place of business as
189 herein defined: Provided further, That the requirement of
190 exclusive use is met even though: (A) House trailers, trailers or
191 motorcycles are sold or are to be sold thereat, if, subject to the
192 provisions of section five of this article, a separate license
193 certificate is obtained for each type of vehicle business, which
194 license certificate remains unexpired, unsuspended and
195 unrevoked; (B) farm machinery is sold thereat; (C) accessory,
196 gasoline and oil, or storage departments are maintained thereat,
197 if the departments are operated for the purpose of furthering and
198 assisting in the licensed business or businesses; and (D) the
199 established place of business has an attached single residential
200 rental unit with an outside separate entrance and occupied by a
201 person or persons with no financial or operational interest in the
202 dealership where the established place of business has space
203 under roof for the display of at least three motor vehicles and
204 facilities and space therewith for the concurrent servicing and
205 repair of at least two motor vehicles and otherwise meets the
206 requirements set forth herein.

207 (20) "Established place of business", in the case of a house
208 trailer dealer, trailer dealer, recreational vehicle dealer,
209 motorcycle dealer, used parts dealer and wrecker or dismantler,
210 means a permanent location, not a temporary stand or other
211 temporary quarters, owned or leased by the licensee or applicant
212 and actually occupied or to be occupied by the licensee, as the
213 case may be, which is easily accessible to the public, which
214 conforms to all applicable laws of this state and the ordinances
215 of the municipality in which it is located, if any, which displays
216 thereon at least one permanent sign, clearly visible from the
217 principal public street or highway nearest the location and
218 clearly stating the business which is or shall be conducted
219 thereat, and which has adequate facilities to keep, maintain and
220 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 or nonhighway tires, is fifty inches or less in width and intended by the manufacturer to be used by a single operator or is specifically designed by the manufacturer with seating for each passenger. “All-terrain vehicle” and “ATV” does not include mini trucks, golf carts, riding lawn mowers or tractors.
(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 or nonhighway tires designed for off-highway use and is greater than fifty inches in width. “Utility terrain vehicle” does not include mini trucks, golf carts, riding lawn mowers or tractors.

(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 126

(Com. Sub. for S. B. 434 - By Senator Beach)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §17C-5A-3a of the Code of West Virginia, 1931, as amended, relating to the establishment of and participation in the Motor Vehicle Alcohol Test and Lock Program; allowing the deferral of the revocation period for certain driving under the influence offenses through participation in the program; waiving the revocation period for certain driving under the influence offenses upon successful completion of the program for a period including the applicable minimum period for the use of the ignition interlock device plus an additional period equal to the applicable minimum revocation period; providing that
acceptance into the program constitutes a waiver of the administrative hearing and that the Office of Administrative Hearings shall conduct no hearing on a matter on which a person is actively participating in the program; and making technical and descriptive corrections.

Be it enacted by the Legislature of West Virginia:

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

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

§17C-5A-3a. Establishment of and participation in the Motor Vehicle Alcohol Test and Lock Program.

(a) (1) The Division of Motor Vehicles shall control and regulate a Motor Vehicle Alcohol Test and Lock Program for persons whose licenses have been revoked pursuant to this article or the provisions of article five of this chapter or have been convicted under section two, article five of this chapter, or who are serving a term of a conditional probation pursuant to section two-b, article five of this chapter.

(2) The program shall include the establishment of a user’s fee for persons participating in the program which shall be paid in advance and deposited into the Driver’s Rehabilitation Fund: Provided, That on and after July 1, 2007, any unexpended balance remaining in the Driver’s Rehabilitation Fund shall be transferred to the Motor Vehicle Fees Fund created under the provisions of section twenty-one, article two, chapter seventeen-
15 a of this code and all further fees collected shall be deposited in
that fund.

17 (3) (A) Except where specified otherwise, the use of the term
18 "program" in this section refers to the Motor Vehicle Alcohol
19 Test and Lock Program.

20 (B) The Commissioner of the Division of Motor Vehicles
21 shall propose legislative rules for promulgation in accordance
22 with the provisions of chapter twenty-nine-a of this code for the
23 purpose of implementing the provisions of this section. The rules
24 shall also prescribe those requirements which, in addition to the
25 requirements specified by this section for eligibility to
26 participate in the program, the commissioner determines must be
27 met to obtain the commissioner's approval to operate a motor
28 vehicle equipped with a motor vehicle alcohol test and lock
29 system.

30 (C) Nothing in this section may be construed to prohibit day
31 report or community correction programs authorized pursuant to
32 article eleven-c, chapter sixty-two of this code, or a home
33 incarceration program authorized pursuant to article eleven-b,
34 chapter sixty-two of this code, from being a provider of motor
35 vehicle alcohol test and lock systems for eligible participants as
36 authorized by this section.

37 (4) For purposes of this section, a "motor vehicle alcohol test
38 and lock system" means a mechanical or computerized system
39 which, in the opinion of the commissioner, prevents the
40 operation of a motor vehicle when, through the system's
41 assessment of the blood alcohol content of the person operating
42 or attempting to operate the vehicle, the person is determined to
43 be under the influence of alcohol.

44 (5) The fee for installation and removal of ignition interlock
45 devices shall be waived for persons determined to be indigent by
46 the Department of Health and Human Resources pursuant to
section three, article five-a, chapter seventeen-c of this code. The commissioner shall establish by legislative rule, proposed pursuant to article three, chapter twenty-nine-a of this code, procedures to be followed with regard to persons determined by the Department of Health and Human Resources to be indigent. The rule shall include, but is not limited to, promulgation of application forms; establishment of procedures for the review of applications; and the establishment of a mechanism for the payment of installations for eligible offenders.

(6) On or before January 15 of each year, the Commissioner of the Division of Motor Vehicles shall report to the Legislature on:

(A) The total number of offenders participating in the program during the prior year;

(B) The total number of indigent offenders participating in the program during the prior year;

(C) The terms of any contracts with the providers of ignition interlock devices; and

(D) The total cost of the program to the state during the prior year.

(b) (1) Any person whose license is revoked for the first time pursuant to this article or the provisions of article five of this chapter is eligible to participate in the program when the person’s minimum revocation period as specified by subsection (c) of this section has expired and the person is enrolled in or has successfully completed the safety and treatment program or presents proof to the commissioner within sixty days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program: Provided, That anyone whose license is revoked for the first time for driving with a blood alcohol concentration of fifteen hundredths of one
percent or more, by weight, must participate in the program
when the person's minimum revocation period as specified by
subsection (c) of this section has expired and the person is
enrolled in or has successfully completed the safety and
treatment program or presents proof to the commissioner within
sixty days of receiving approval to participate by the
commissioner that he or she is enrolled in a safety and treatment
program.

(2) Any person whose license has been suspended for
driving a motor vehicle while under the age of twenty-one years
with an alcohol concentration in his or her blood of two
hundredths of one percent or more, by weight, but less than eight
hundredths of one percent, by weight, is eligible to participate in
the program after thirty days have elapsed from the date of the
initial suspension, during which time the suspension was actually
in effect: Provided, That in the case of a person under the age of
eighteen, the person is eligible to participate in the program after
thirty days have elapsed from the date of the initial suspension,
during which time the suspension was actually in effect or after
the person's eighteenth birthday, whichever is later. Before the
commissioner approves a person to operate a motor vehicle
equipped with a motor vehicle alcohol test and lock system, the
person must agree to comply with the following conditions:

(A) If not already enrolled, the person shall enroll in and
complete the educational program provided in subsection (d),
section three of this article at the earliest time that placement in
the educational program is available, unless good cause is
demonstrated to the commissioner as to why placement should
be postponed;

(B) The person shall pay all costs of the educational
program, any administrative costs and all costs assessed for any
suspension hearing.
(3) Notwithstanding the provisions of this section to the contrary, a person eligible to participate in the program under this subsection may not operate a motor vehicle unless approved to do so by the commissioner.

(c) A person who participates in the program under subdivision (1), subsection (b) of this section is subject to a minimum revocation period and minimum period for the use of the ignition interlock device as follows:

(1) For a person whose license has been revoked for a first offense for six months for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of eight hundredths of one percent, by weight, but less than fifteen hundredths, by weight, the minimum period of revocation for participation in the test and lock program is fifteen days and the minimum period for the use of the ignition interlock device is one hundred twenty-five days;

(2) For a person whose license has been revoked for a first offense for refusing a secondary chemical test, the minimum period of revocation for participation in the test and lock program is forty-five days and the minimum period for the use of the ignition interlock device is one year;

(3) For a person whose license has been revoked for a first offense for driving with a blood alcohol concentration of fifteen hundredths of one percent or more, by weight, the minimum period of revocation for participation in the test and lock program is forty-five days and the minimum period for the use of the ignition interlock device is two hundred seventy days;

(4) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of eight hundredths
of one percent or more, by weight, or did drive a motor vehicle
while under the age of twenty-one years with an alcohol
concentration in his or her blood of two hundredths of one
percent or more, by weight, but less than eight hundredths of one
percent, by weight, and while driving does any act forbidden by
law or fails to perform any duty imposed by law, which act or
failure proximately causes the death of any person within one
year next following the act or failure, and commits the act or
failure in reckless disregard of the safety of others and when the
influence of alcohol, controlled substances or drugs is shown to
be a contributing cause to the death, the minimum period of
revocation before the person is eligible for participation in the
test and lock program is twelve months and the minimum period
for the use of the ignition interlock device is two years;

(5) For a person whose license has been revoked for a first
offense for driving under the influence of alcohol, or a
combination of alcohol and any controlled substance or other
drug, or with a blood alcohol concentration of eight hundredths
of one percent or more, by weight, and while driving does any
act forbidden by law or fails to perform any duty imposed by law
in the driving of the vehicle, which act or failure proximately
causes the death of any person within one year next following
the act or failure, the minimum period of revocation is six
months and the minimum period for the use of the ignition
interlock device is two years;

(6) For a person whose license has been revoked for a first
offense for driving under the influence of alcohol, or a
combination of alcohol and any controlled substance or other
drug, or with a blood alcohol concentration of eight hundredths
of one percent or more, by weight, and while driving does any
act forbidden by law or fails to perform any duty imposed by law
in the driving of the vehicle, which act or failure proximately
causes bodily injury to any person other than himself or herself,
the minimum period of revocation for participation in the
(7) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of eight hundredths of one percent or more, by weight, and while driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, the minimum period of revocation for participation in the program is two months and the minimum period for the use of the ignition interlock device is ten months.

(d) Notwithstanding any provision of the code to the contrary, a person shall participate in the program if the person is convicted under section two, article five of this chapter or the person's license is revoked under section two of this article or section seven, article five of this chapter and the person was previously either convicted or his or her license was revoked under any provision cited in this subsection within the past ten years. The minimum revocation period for a person required to participate in the program under this subsection is one year and the minimum period for the use of the ignition interlock device is two years, except that the minimum revocation period for a person required to participate because of a violation for driving while under the age of twenty-one with a blood alcohol concentration of two hundredths of one percent, or more, by weight, but less than eight hundredths of one percent, or more, by weight, is two months and the minimum period of participation is one year. The division shall add an additional two months to the minimum period for the use of the ignition interlock device if the offense was committed while a minor was in the vehicle. The division shall add an additional six months to the minimum period for the use of the ignition interlock device if a person other than the driver received injuries. The division
shall add an additional two years to the minimum period for the 
use of the ignition interlock device if a person other than the 
driver is injured and the injuries result in that person’s death. 
The division shall add one year to the minimum period for the 
use of the ignition interlock device for each additional previous 
conviction or revocation within the past ten years. Any person 
required to participate under this subsection must have an 
ignition interlock device installed on every vehicle he or she 
owns or operates.

(e)(1) If a person applies for and is accepted into the Motor 
Vehicle Alcohol Test and Lock Program prior to the effective 
date of the revocation, the commissioner shall defer the 
revocation period of such person under the provisions of this 
section. Such deferral shall continue throughout the applicable 
minimum period for the use of the ignition interlock device plus 
an additional period equal to the applicable minimum revocation 
period. If a person successfully completes all terms of the Motor 
Vehicle Alcohol Test and Lock Program for a period equal to the 
minimum period for the use of the ignition interlock device 
pursuant to subsection (c) of this section, plus any applicable 
minimum revocation period, the commissioner shall waive the 
revocation period.

(2) The application and acceptance of a person into the 
Motor Vehicle Alcohol Test and Lock Program pursuant to this 
subdivision (1) constitutes an automatic waiver of their right to 
an administrative hearing. The Office of Administrative 
Hearings may not conduct a hearing on a matter which is the 
basis for a person actively participating in the Motor Vehicle 
Alcohol Test and Lock Program.

(f) Notwithstanding any other provision in this code, a 
person whose license is revoked for driving under the influence 
of drugs is not eligible to participate in the Motor Vehicle 
Alcohol Test and Lock Program.
(g) An applicant for the test and lock program may not have been convicted of any violation of section three, article four, chapter seventeen-b of this code for driving while the applicant’s driver’s license was suspended or revoked within the six-month period preceding the date of application for admission to the test and lock program unless such is necessary for employment purposes.

(h) Upon permitting an eligible person to participate in the program, the commissioner shall issue to the person, and the person is required to exhibit on demand, a driver’s license which shall reflect that the person is restricted to the operation of a motor vehicle which is equipped with an approved motor vehicle alcohol test and lock system.

(i) The commissioner may extend the minimum period of revocation and the minimum period of participation in the program for a person who violates the terms and conditions of participation in the program as found in this section, or legislative rule, or any agreement or contract between the participant and the division or program service provider. If the commissioner finds that any person participating in the program pursuant to section two-b, article five of this chapter must be removed therefrom for violation(s) of the terms and conditions thereof, he or she shall notify the person, the court that imposed the term of participation in the program and the prosecuting attorney in the county wherein the order imposing participation in the program was entered.

(j) A person whose license has been suspended for a first offense of driving while under the age of twenty-one with a blood alcohol concentration of two hundredths of one percent, or more, by weight, but less than eight hundredths of one percent, or more, by weight, who has completed the educational program and who has not violated the terms required by the commissioner of the person’s participation in the program is entitled to the
reinstatement of his or her driver’s license six months from the
date the person is permitted to operate a motor vehicle by the
commissioner. When a license has been reinstated pursuant to
this subsection, the records ordering the suspension, records of
any administrative hearing, records of any blood alcohol test
results and all other records pertaining to the suspension shall be
expunged by operation of law: Provided, That a person is
entitled to expungement under the provisions of this subsection
only once. The expungement shall be accomplished by
physically marking the records to show that the records have
been expunged and by securely sealing and filing the records.
Expungement has the legal effect as if the suspension never
occurred. The records may not be disclosed or made available
for inspection and in response to a request for record
information, the commissioner shall reply that no information is
available. Information from the file may be used by the
commissioner for research and statistical purposes so long as the
use of the information does not divulge the identity of the
person.

(k) In addition to any other penalty imposed by this code,
any person who operates a motor vehicle not equipped with an
approved motor vehicle alcohol test and lock system during that
person’s participation in the Motor Vehicle Alcohol Test and
Lock Program is guilty of a misdemeanor and, upon conviction
thereof, shall be confined in jail for a period not less than one
month nor more than six months and fined not less than $100 nor
more than $500. Any person who attempts to bypass the alcohol
test and lock system is guilty of a misdemeanor and, upon
conviction thereof, shall be confined in jail not more than six
months and fined not less than $100 nor more than $1,000:
Provided, That notwithstanding any provision of this code to the
contrary, a person enrolled and participating in the test and lock
program may operate a motor vehicle solely at his or her job site
if the operation is a condition of his or her employment. For the
purpose of this section, “job site” does not include any street or
311 highway open to the use of the public for purposes of vehicular traffic.

CHAPTER 127

(H. B. 2477 - By Delegates Overington, Barill and Perdue)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2014.]

AN ACT to amend and reenact §17C-15-23 of the Code of West Virginia, 1931, as amended, relating to permitting certain auxiliary lighting on motorcycles.

Be it enacted by the Legislature of West Virginia:

That §17C-15-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-23. Lighting equipment on motorcycles, motor-driven cycles and mopeds.

1 The head lamp or head lamps upon every motorcycle, motor-driven cycle and moped may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

5 (1) Every head lamp or head lamps shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred feet when the motorcycle, motor-driven cycle or moped is operated at any speed less than twenty-five miles per hour and at a distance of not less than two hundred feet when it is operated at a speed of twenty-five or more miles per hour.
(2) If the motorcycle, motor-driven cycle or moped is equipped with a multiple-beam type head lamp or head lamps the upper beam shall meet the minimum requirements set forth above and not exceed the limitations set forth in section twenty (a) of this article and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in section twenty (b) of this article.

(3) If the motorcycle, motor-driven cycle or moped is equipped with a single-beam lamp or lamps, the lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet ahead, shall project higher than the level of the center of the lamp from which it comes.

(4) (A) Subject to paragraph (B) of this subdivision, a motorcycle may be equipped with, and an operator of a motorcycle may use, the following auxiliary lighting:

(i) Amber and white illumination;

(ii) Standard bulb running lights; or

(iii) Light-emitting diode pods and strips.

(B) Lighting under this subdivision shall be:

(i) Nonblinking;

(ii) Nonflashing;

(iii) Nonoscillating; and

(iv) Directed toward the engine and the drive train of the motorcycle to prevent interference with the driver’s operation of the vehicle.
CHAPTER 128

(Com. Sub. for S. B. 427 - By Senator Beach)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §17D-2A-2, §17D-2A-5 and §17D-2A-7 of the Code of West Virginia, 1931, as amended, all relating to requiring a certificate of insurance to be in effect during the entire term of the vehicle registration period; permitting a discretionary electronic acknowledgment exception; clarifying that certain security provisions do not apply to commercial vehicles insured under commercial auto coverage; removing the requirement that insurance companies must notify the Division of Motor Vehicles when a policyholder’s vehicle insurance has been canceled; removing an outdated reporting requirement; clarifying and increasing the penalties for vehicle owners who do not have the required security in effect; replacing the driver’s license suspension penalty of a person who knowingly operates a vehicle without the required security with a provision stating that a person who is not the vehicle owner and who is convicted of operating a motor vehicle that does not have the required security shall have the conviction placed on the driver’s license record; directing that fees collected for reinstatement of a driver’s license be deposited in the Motor Vehicle Fees Fund; and prohibiting the Division of Motor Vehicles from taking action against a person cited for driving without insurance if the citation is received by the division more than one year from the date of the offense.

Be it enacted by the Legislature of West Virginia:

That §17D-2A-2, §17D-2A-5 and §17D-2A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-2. Scope of article.

This article applies to the operation of all motor vehicles required to be registered or operated on the roads and highways to have the security in effect, as provided in section three, article two-a of this chapter, with the exception of motor vehicles owned by the state, any of its political subdivisions or by the federal government.

For the purposes of this article, “commercial auto coverage” is defined as any coverage provided to an insured, regardless of number of vehicles or entity covered, under a commercial coverage form and rated from a commercial manual approved by the Department of Insurance. This article does not apply to commercial vehicles insured under commercial auto coverage; however, insurers of such vehicles may participate on a voluntary basis.


No policy of motor vehicle liability insurance issued or delivered for issuance in this state shall be contracted for a period of less than ninety days: Provided, That the Insurance Commissioner may establish exceptions thereto by rules proposed for legislative approval pursuant to chapter twenty-nine-a of this code.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

(a) Any owner of a motor vehicle, subject to this article, who fails to have the required security in effect at the time such vehicle is registered or being operated upon the roads or highways shall have his or her driver’s license suspended by the Commissioner of the Division of Motor Vehicles and shall have his or her motor vehicle registration revoked as follows:
(1) For the first offense, the commissioner shall suspend the
driver's license for thirty days and until such time as he or she
presents current proof of insurance on all currently registered
vehicles: Provided, That if an owner complies with this
subdivision, and pays a penalty fee of $200 before the effective
date, the driver's license suspension of thirty days may not be
imposed and the vehicle registration revocation may not be
imposed and no reinstatement fees are required. Any fees
collected under the provisions of this subsection shall be
deposited in the Motor Vehicle Fees Fund established in
accordance with section twenty-one, article two, chapter
seventeen-a of this code.

(2) For the second or subsequent offense within five years,
the commissioner shall suspend the owner's driver's license for
a period of ninety days and shall revoke the owner's vehicle
registration until he or she presents to the Division of Motor
Vehicles the proof of security required by this article.

(3) If the motor vehicle is titled and registered in more than
one name, the commissioner shall suspend the driver's license of
only one of the owners.

(b) Any person who is not the vehicle owner and is
convicted of operating a motor vehicle upon the roads or
highways of this state which does not have the security required
by this article shall have the conviction placed on his or her
driver's license record.

(c) The division may not suspend or revoke a driver's license
under this article for any citation of driving without insurance
that is received by the division from a court that is more than one
year from the date of the offense.

(d) The commissioner may withdraw a suspension of a
driver's license or revocation of a motor vehicle registration and
refund any penalty or reinstatement fees at any time provided
that the commissioner is satisfied that there was not a violation
of the provisions of required security related to operation of a
motor vehicle upon the roads or highways of this state by such
person. The commissioner may request additional information as
needed in order to make such determination.

(e) A person may not have his or her driver’s license
suspended or motor vehicle registration revoked under this
section unless he or she and any lienholder noted on the
certificate of title are first given written notice of such
suspension or revocation sent by certified mail, at least thirty
days prior to the effective date of such suspension or revocation,
and upon that person’s written request, he or she shall be
afforded an opportunity for a hearing thereupon as well as a stay
of the commissioner’s order of suspension or revocation and an
opportunity for judicial review of such hearing. The request for
a hearing shall be made within ten days from the date of receipt
of the notice of driver’s license suspension or motor vehicle
registration revocation. The scope of the hearing is limited to
questions of identity or whether or not there was insurance in
effect at the time of the event causing the commissioner’s action.
Upon affirmation of the commissioner’s order, the period of
suspension, revocation or other penalty commences to run.

(f) A suspended driver’s license is reinstated following the
period of suspension upon compliance with the conditions set
forth in this article and a revoked motor vehicle registration is
reissued only upon lawful compliance with this article.

(g) Revocation of a motor vehicle registration pursuant to
this section does not affect the perfection or priority of a lien or
security interest attaching to the motor vehicle that is noted on
the certificate of title to the motor vehicle.

(h) Any owner or driver of a motor vehicle determined by an
electronic insurance verification program to be uninsured shall
be assessed the same criminal and administrative sanctions prescribed in this chapter subject to the following:

(1) Any person who is assessed a penalty prescribed by this section has the same procedural due process provided by this chapter or by rules promulgated by the division to show that there was not a violation and provide for the exoneration of any penalties or records; and

(2) The commissioner may accept a binder, an identification card or a declaration page from a policy as evidence of insurance pending electronic verification to stay a pending administrative sanction.

CHAPTER 129

(Com. Sub. for S. B. 317 - By Senators Unger, Nohe, Kessler (Mr. President), D. Hall, Stollings, Tucker, Cann, Fitzsimmons, Kirkendoll, Miller, Laird, Williams, Yost, Beach, Edgell, Plymale, Prezioso and Snyder)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 25, 2014.]

AN ACT to amend and reenact §8-1-5a of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-12-5 and §8-12-5a of said code, all relating to municipal firearm laws; removing firearm provisions from the Municipal Home Rule Pilot Program; prohibiting ordinances from being enacted under the Municipal Home Rule Pilot Program that are in conflict with certain other state law; clarifying municipal authority to arrest, convict and punish individuals for certain firearms offenses authorized by code and federal law; removing the grandfather clause excepting certain municipal ordinances limiting the purchase, possession, transfer,
ownership, carrying, transporting, selling or storing of guns or ammunition from the general provision prohibiting such ordinances; defining terms; clarifying municipalities’ authority to regulate possession and carrying of firearms; permitting municipalities to enact and enforce certain ordinances relating to limiting possession of firearms in municipal buildings and on municipal property; permitting persons to store firearms in vehicles on public property under certain circumstances; creating absolute defenses to a violation of municipal firearm ordinances; requiring posting of certain signs; specifying that private redress for violations may be brought under chapter fifty-three of this code and may include reasonable attorneys fees and costs; excluding municipalities from the use of section fourteen, article seven, chapter sixty-one of this code; and clarifying that municipalities cannot prohibit the otherwise lawful carrying of firearms on municipal streets and sidewalks except when a street or sidewalk is temporarily closed to traffic for purposes of municipally authorized events of limited duration.

Be it enacted by the Legislature of West Virginia:

That §8-1-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8-12-5 and §8-12-5a of said code be amended and reenacted, all to read as follows:

ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

§8-1-5a. Municipal Home Rule Pilot Program.

1 (a) Legislative findings. — The Legislature finds and declares that:

3 (1) The initial Municipal Home Rule Pilot Program brought innovative results, including novel municipal ideas that became municipal ordinances which later resulted in new statewide statutes;
(2) The initial Municipal Home Rule Pilot Program also brought novel municipal ideas that resulted in court challenges against some of the participating municipalities;

(3) The Municipal Home Rule Board was an essential part of the initial Municipal Home Rule Pilot Program, but it lacked some needed powers and duties;

(4) Municipalities still face challenges delivering services required by federal and state law or demanded by their constituents;

(5) Municipalities are sometimes restrained by state statutes, policies and rules that challenge their ability to carry out their duties and responsibilities in a cost-effective, efficient and timely manner;

(6) Continuing the Municipal Home Rule Pilot Program is in the public interest; and

(7) Increasing the powers and duties of the Municipal Home Rule Board will enhance the Municipal Home Rule Pilot Program.

(b) Continuance of pilot program. — The Municipal Home Rule Pilot Program is continued until July 1, 2019. The ordinances enacted by the four participating municipalities pursuant to the initial Municipal Home Rule Pilot Program are hereby authorized and may remain in effect until the ordinances are repealed, but are null and void if amended and such amendment is not approved by the Municipal Home Rule Board: Provided, That any ordinance enacting a municipal occupation tax is hereby null and void.

(c) Authorizing participation. —
(1) Commencing July 1, 2013, twenty Class I, Class II, Class III and/or Class IV municipalities that are current in payment of all state fees may participate in the Municipal Home Rule Pilot Program pursuant to the provisions of this section.

(2) The four municipalities participating in the pilot program on July 1, 2012, are hereby authorized to continue in the pilot program and may amend current written plans and/or submit new written plans in accordance with the provisions of this section.

(3) If any of the four municipalities participating in the pilot program on July 1, 2012, do not want to participate in the pilot program, then on or before June 1, 2014, the municipality must submit a written letter to the board indicating the municipality’s intent not to participate and the board may choose another municipality to fill the vacancy: Provided, That if a municipality chooses not to participate further in the pilot program, its ordinances enacted pursuant to the Municipal Home Rule Pilot Program are hereby authorized and may remain in effect until the ordinances are repealed, but are null and void if amended: Provided, however, That any ordinance enacting a municipal occupation tax is null and void.

(d) Municipal Home Rule Board. — The Municipal Home Rule Board is hereby continued. The board members serving on the board on July 1, 2012, may continue to serve, except that the Chair of the Senate Committee on Government Organization and the Chair of the House Committee on Government Organization shall be ex officio nonvoting members. Effective July 1, 2013, the Municipal Home Rule Board shall consist of the following five voting members:

(1) The Governor, or a designee, who shall serve as chair;

(2) The Executive Director of the West Virginia Development Office or a designee;
(3) One member representing the Business and Industry Council, appointed by the Governor with the advice and consent of the Senate;

(4) One member representing the largest labor organization in the state, appointed by the Governor with the advice and consent of the Senate; and

(5) One member representing the West Virginia Chapter of the American Institute of Certified Planners, appointed by the Governor with the advice and consent of the Senate.

(e) Board's powers and duties. — The Municipal Home Rule Board has the following powers and duties:

(1) Review, evaluate, make recommendations and approve or reject, by a majority vote of the board, each aspect of the written plan submitted by a municipality;

(2) By a majority vote of the board, select, based on the municipality’s written plan, new Class I, Class II, Class III and/or Class IV municipalities to participate in the Municipal Home Rule Pilot Program;

(3) Review, evaluate, make recommendations and approve or reject, by a majority vote of the board, the amendments to the written plans submitted by municipalities;

(4) Approve or reject, by a majority vote of the board, each ordinance submitted by a participating municipality pursuant to its written plan or its amendments to the written plan;

(5) Consult with any agency affected by the written plans or the amendments to the written plans; and

(6) Perform any other powers or duties necessary to effectuate the provisions of this section.
(f) Written plan. — On or before June 1, 2014, a Class I, Class II, Class III or Class IV municipality desiring to participate in the Municipal Home Rule Pilot Program shall submit a written plan to the board stating in detail the following:

1. The specific laws, acts, resolutions, policies, rules or regulations which prevent the municipality from carrying out its duties in the most cost-efficient, effective and timely manner;

2. The problems created by the laws, acts, resolutions, policies, rules or regulations;

3. The proposed solutions to the problems, including all proposed changes to ordinances, acts, resolutions, rules and regulations: Provided, That the specific municipal ordinance instituting the solution does not have to be included in the written plan; and

4. A written opinion, by an attorney licensed to practice in West Virginia, stating that the proposed written plan does not violate the provisions of this section.

(g) Public hearing on written plan. — Prior to submitting its written plan to the board, the municipality shall:

1. Hold a public hearing on the written plan;

2. Provide notice at least thirty days prior to the public hearing by a Class II legal advertisement;

3. Make a copy of the written plan available for public inspection at least thirty days prior to the public hearing; and

4. After the public hearing, adopt an ordinance authorizing the municipality to submit a written plan to the Municipal Home Rule Board after the proposed ordinance has been read two times.
Selection of municipalities. — On or after June 1, 2014, by a majority vote, the Municipal Home Rule Board may select from the municipalities that submitted written plans and were approved by the board by majority vote, new Class I, Class II, Class III and/or Class IV municipalities to participate in the Municipal Home Rule Pilot Program.

Ordinance, act, resolution, rule or regulation. — After being selected to participate in the Municipal Home Rule Pilot Program and prior to enacting an ordinance, act, resolution, rule or regulation based on the written plan, the municipality shall:

1. Hold a public hearing on the proposed ordinance, act, resolution, rule or regulation;
2. Provide notice at least thirty days prior to the public hearing by a Class II legal advertisement;
3. Make a copy of the proposed ordinance, act, resolution, rule or regulation available for public inspection at least thirty days prior to the public hearing;
4. After the public hearing, submit the comments, either in audio or written form, to the Municipal Home Rule Board;
5. Obtain approval, from the Municipal Home Rule Board by a majority vote, for the proposed ordinance, act, resolution, rule or regulation; and
6. After obtaining approval from the Municipal Home Rule Board, read the proposed ordinance, act, resolution, rule or regulation at least two times.

Powers and duties of municipalities. — The municipalities participating in the Municipal Home Rule Pilot Program have the authority to pass an ordinance, act, resolution,
rule or regulation, under the provisions of this section, that is not contrary to:

(1) Environmental law;
(2) Bidding on government construction and other contracts;
(3) The Freedom of Information Act;
(4) The Open Governmental Proceedings Act;
(5) Wages for construction of public improvements;
(6) The provisions of this section;
(7) The provisions of section five-a, article twelve of this chapter; and
(8) The municipality’s written plan.

(k) Prohibited acts. — The municipalities participating in the Municipal Home Rule Pilot Program do not have the authority to pass an ordinance, act, resolution, rule or regulation, under the provisions of this section, pertaining to:

(1) The Constitution of the United States or West Virginia;
(2) Federal law or crimes and punishment;
(3) Chapters sixty-a, sixty-one and sixty-two of this code or state crimes and punishment;
(4) Pensions or retirement plans;
(5) Annexation;
(6) Taxation: Provided, That a participating municipality may enact a municipal sales tax up to one percent if it reduces or
elapses its municipal business and occupation tax: *Provided, however,* That if a municipality subsequently reinstates or raises the municipal business and occupation tax it previously reduced or eliminated under the Municipal Home Rule Pilot Program, it shall eliminate the municipal sales tax enacted under the Municipal Home Rule Pilot Program: *Provided further,* That any municipality that imposes a municipal sales tax pursuant to this section shall use the services of the Tax Commissioner to administer, enforce and collect the tax in the same manner as the state consumers sales and service tax and use tax under the provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of this code and all applicable provisions of the streamlined sales and use tax agreement: *And provided further,* That such tax will not apply to the sale of motor fuel or motor vehicles;

(7) Tax increment financing;

(8) Extraction of natural resources;

(9) Persons or property outside the boundaries of the municipality: *Provided,* That this prohibition under the Municipal Home Rule Pilot Program does not affect a municipality’s powers outside its boundary lines under other sections of this chapter, other chapters of this code or court decisions;

(10) Marriage and divorce laws; and

(11) An occupation tax, fee or assessment payable by a nonresident of a municipality.

 Amarment to written plans. — A municipality selected to participate in the Municipal Home Rule Pilot Program may amend its written plan at any time.
(m) Reporting requirements. — Commencing December 1, 2015, and each year thereafter, each participating municipality shall give a progress report to the Municipal Home Rule Board and commencing January 1, 2016, and each year thereafter, the Municipal Home Rule Board shall give a summary report of all the participating municipalities to the Joint Committee on Government and Finance.

(n) Performance Evaluation and Review Division review. — Before January 1, 2019, the Performance Evaluation and Review Division of the Legislative Auditor's office shall conduct a performance review on the pilot program and the participating municipalities. The review shall include the following:

1. An evaluation of the effectiveness of expanded home rule on the participating municipalities;

2. A recommendation as to whether the expanded home rule should be continued, reduced, expanded or terminated;

3. A recommendation as to whether any legislation is necessary; and

4. Any other issues considered relevant.

(o) Termination of the pilot program. — The Municipal Home Rule Pilot Program terminates on July 1, 2019. No ordinance, act, resolution, rule or regulation may be enacted by a participating municipality after July 1, 2019, pursuant to the provisions of this section. An ordinance, act, resolution, rule or regulation enacted by a participating municipality under the provisions of this section during the period of the Municipal Home Rule Pilot Program shall continue in full force and effect until repealed, but is null and void if it is amended and such amendment is not approved by the Municipal Home Rule Board.
ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5. General powers of every municipality and the governing body thereof.

In addition to the powers and authority granted by: (i) The Constitution of this state; (ii) other provisions of this chapter; (iii) other general law; and (iv) any charter, and to the extent not inconsistent or in conflict with any of the foregoing except special legislative charters, every municipality and the governing body thereof shall have plenary power and authority therein by ordinance or resolution, as the case may require, and by appropriate action based thereon:

(1) To lay off, establish, construct, open, alter, curb, recurb, pave or repave and keep in good repair, or vacate, discontinue and close, streets, avenues, roads, alleys, ways, sidewalks, drains and gutters, for the use of the public, and to improve and light the same, and have them kept free from obstructions on or over them which have not been authorized pursuant to the succeeding provisions of this subdivision; and, subject to such terms and conditions as the governing body shall prescribe, to permit, without in any way limiting the power and authority granted by the provisions of article sixteen of this chapter, any person to construct and maintain a passageway, building or other structure overhanging or crossing the airspace above a public street, avenue, road, alley, way, sidewalk or crosswalk, but before any permission for any person to construct and maintain a passageway, building or other structure overhanging or crossing any airspace is granted, a public hearing thereon shall be held by the governing body after publication of a notice of the date, time,
place and purpose of the public hearing has been published 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 municipality: Provided, That any permit so granted shall automatically cease and terminate in the event of abandonment and nonuse thereof for the purposes intended for a period of ninety days, and all rights therein or thereto shall revert to the municipality for its use and benefit;

(2) To provide for the opening and excavation of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality and regulate the conditions under which any such opening may be made;

(3) To prevent by proper penalties the throwing, depositing or permitting to remain on any street, avenue, road, alley, way, sidewalk, square or other public place any glass, scrap iron, nails, tacks, wire, other litter or any offensive matter or anything likely to injure the feet of individuals or animals or the tires of vehicles;

(4) To regulate the use of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and public places belonging to the municipality, including the naming or renaming thereof, and to consult with local postal authorities, the Division of Highways and the directors of county emergency communications centers to assure uniform, nonduplicative addressing on a permanent basis;

(5) To regulate the width of streets, avenues and roads, and, subject to the provisions of article eighteen of this chapter, to order the sidewalks, footways and crosswalks to be paved, repaved, curbed or recurbed and kept in good order, free and clean, by the owners or occupants thereof or of the real property next adjacent thereto;
(6) To establish, construct, alter, operate and maintain, or discontinue, bridges, tunnels and ferries and approaches thereto;

(7) To provide for the construction and maintenance of water drains, the drainage of swamps or marshlands and drainage systems;

(8) To provide for the construction, maintenance and covering over of watercourses;

(9) To control and administer the waterfront and waterways of the municipality and to acquire, establish, construct, operate and maintain and regulate flood control works, wharves and public landings, warehouses and all adjuncts and facilities for navigation and commerce and the utilization of the waterfront and waterways and adjacent property;

(10) To prohibit the accumulation and require the disposal of garbage, refuse, debris, wastes, ashes, trash and other similar accumulations whether on private or public property: Provided, That, in the event the municipality annexes an area which has been receiving solid waste collection services from a certificated solid waste motor carrier, the municipality and the solid waste motor carrier may negotiate an agreement for continuation of the private solid waste motor carrier services for a period of time, not to exceed three years, during which time the certificated solid waste motor carrier may continue to provide exclusive solid waste collection services in the annexed territory;

(11) To construct, establish, acquire, equip, maintain and operate incinerator plants and equipment and all other facilities for the efficient removal and destruction of garbage, refuse, wastes, ashes, trash and other similar matters;

(12) To regulate or prohibit the purchase or sale of articles intended for human use or consumption which are unfit for use
or consumption, or which may be contaminated or otherwise unsanitary;

(13) To prevent injury or annoyance to the public or individuals from anything dangerous, offensive or unwholesome;

(14) To regulate the keeping of gunpowder and other combustibles;

(15) To make regulations guarding against danger or damage by fire;

(16) To arrest, convict and punish any individual for carrying about his or her person any revolver or other pistol, dirk, bowie knife, razor, slingshot, billy, metallic or other false knuckles or any other dangerous or other deadly weapon of like kind or character: Provided, That with respect to any firearm a municipality may only arrest, convict and punish someone if they are in violation of an ordinance authorized by subsection five-a of this article, a state law proscribing certain conduct with a firearm or applicable federal law;

(17) To arrest, convict and punish any person for importing, printing, publishing, selling or distributing any pornographic publications;

(18) To arrest, convict and punish any person for keeping a house of ill fame, or for letting to another person any house or other building for the purpose of being used or kept as a house of ill fame, or for knowingly permitting any house owned by him or her or under his or her control to be kept or used as a house of ill fame, or for loafing, boarding or loitering in a house of ill fame, or frequenting same;

(19) To prevent and suppress conduct and practices which are immoral, disorderly, lewd, obscene and indecent;
(20) To prevent the illegal sale of intoxicating liquors, drinks, mixtures and preparations;

(21) To arrest, convict and punish any individual for driving or operating a motor vehicle while intoxicated or under the influence of liquor, drugs or narcotics;

(22) To arrest, convict and punish any person for gambling or keeping any gaming tables, commonly called “A, B, C,” or “E, O,” table or faro bank or keno table, or table of like kind, under any denomination, whether the gaming table be played with cards, dice or otherwise, or any person who shall be a partner or concerned in interest, in keeping or exhibiting the table or bank, or keeping or maintaining any gaming house or place, or betting or gambling for money or anything of value;

(23) To provide for the elimination of hazards to public health and safety and to abate or cause to be abated anything which in the opinion of a majority of the governing body is a public nuisance;

(24) To license, or for good cause to refuse to license in a particular case, or in its discretion to prohibit in all cases, the operation of pool and billiard rooms and the maintaining for hire of pool and billiard tables notwithstanding the general law as to state licenses for any such business and the provisions of section four, article thirteen of this chapter; and when the municipality, in the exercise of its discretion, refuses to grant a license to operate a pool or billiard room, mandamus may not lie to compel the municipality to grant the license unless it shall clearly appear that the refusal of the municipality to grant a license is discriminatory or arbitrary; and in the event that the municipality determines to license any business, the municipality has plenary power and authority and it shall be the duty of its governing body to make and enforce reasonable ordinances regulating the licensing and operation of the businesses;
(25) To protect places of divine worship and to preserve peace and order in and about the premises where held;

(26) To regulate or prohibit the keeping of animals or fowls and to provide for the impounding, sale or destruction of animals or fowls kept contrary to law or found running at large;

(27) To arrest, convict and punish any person for cruelly, unnecessarily or needlessly beating, torturing, mutilating, killing, or overloading or overdriving or willfully depriving of necessary sustenance any domestic animal;

(28) To provide for the regular building of houses or other structures, for the making of division fences by the owners of adjacent premises and for the drainage of lots by proper drains and ditches;

(29) To provide for the protection and conservation of shade or ornamental trees, whether on public or private property, and for the removal of trees or limbs of trees in a dangerous condition;

(30) To prohibit with or without zoning the location of occupied house trailers or mobile homes in certain residential areas;

(31) To regulate the location and placing of signs, billboards, posters and similar advertising;

(32) To erect, establish, construct, acquire, improve, maintain and operate a gas system, a waterworks system, an electric system or sewer system and sewage treatment and disposal system, or any combination of the foregoing (subject to all of the pertinent provisions of articles nineteen and twenty of this chapter and particularly to the limitations or qualifications on the right of eminent domain set forth in articles nineteen and twenty), within or without the corporate limits of the
municipality, except that the municipality may not erect any
system partly without the corporate limits of the municipality to
serve persons already obtaining service from an existing system
of the character proposed and where the system is by the
municipality erected, or has heretofore been so erected, partly
within and partly without the corporate limits of the
municipality, the municipality has the right to lay and collect
charges for service rendered to those served within and those
served without the corporate limits of the municipality and to
prevent injury to the system or the pollution of the water thereof
and its maintenance in a healthful condition for public use within
the corporate limits of the municipality;

(33) To acquire watersheds, water and riparian rights, plant
sites, rights-of-way and any and all other property and
appurtenances necessary, appropriate, useful, convenient or
incidental to any system, waterworks or sewage treatment and
disposal works, as aforesaid, subject to all of the pertinent
provisions of articles nineteen and twenty of this chapter;

(34) To establish, construct, acquire, maintain and operate
and regulate markets and prescribe the time of holding the same;

(35) To regulate and provide for the weighing of articles sold
or for sale;

(36) To establish, construct, acquire, maintain and operate
public buildings, municipal buildings or city halls, auditoriums,
arenas, jails, juvenile detention centers or homes, motor vehicle
parking lots or any other public works;

(37) To establish, construct, acquire, provide, equip,
maintain and operate recreational parks, playgrounds and other
recreational facilities for public use and in this connection also
to proceed in accordance with the provisions of article two,
chapter ten of this code;
(38) To establish, construct, acquire, maintain and operate a public library or museum or both for public use;

(39) To provide for the appointment and financial support of a library board in accordance with the provisions of article one, chapter ten of this code;

(40) To establish and maintain a public health unit in accordance with the provisions of section two, article two, chapter sixteen of this code, which unit shall exercise its powers and perform its duties subject to the supervision and control of the West Virginia Board of Health and State Bureau for Public Health;

(41) To establish, construct, acquire, maintain and operate hospitals, sanitarians and dispensaries;

(42) To acquire, by purchase, condemnation or otherwise, land within or near the corporate limits of the municipality for providing and maintaining proper places for the burial of the dead and to maintain and operate the same and regulate interments therein upon terms and conditions as to price and otherwise as may be determined by the governing body and, in order to carry into effect the authority, the governing body may acquire any cemetery or cemeteries already established;

(43) To exercise general police jurisdiction over any territory without the corporate limits owned by the municipality or over which it has a right-of-way;

(44) To protect and promote the public morals, safety, health, welfare and good order;

(45) To adopt rules for the transaction of business and the government and regulation of its governing body;

(46) Except as otherwise provided, to require and take bonds from any officers, when considered necessary, payable to the
municipality, in its corporate name, with such sureties and in a
penalty as the governing body may see fit, conditioned upon the
faithful discharge of their duties;

(47) To require and take from the employees and contractors
such bonds in a penalty, with such sureties and with such
conditions, as the governing body may see fit;

(48) To investigate and inquire into all matters of concern to
the municipality or its inhabitants;

(49) To establish, construct, require, maintain and operate
such instrumentalities, other than free public schools, for the
instruction, enlightenment, improvement, entertainment,
recreation and welfare of the municipality’s inhabitants as the
governing body may consider necessary or appropriate for the
public interest;

(50) To create, maintain and operate a system for the
enumeration, identification and registration, or either, of the
inhabitants of the municipality and visitors thereto, or the classes
thereof as may be considered advisable;

(51) To require owners, residents or occupants of
factory-built homes situated in a factory-built rental home
community with at least ten factory-built homes, to visibly post
the specific numeric portion of the address of each factory-built
home on the immediate premises of the factory-built home of
sufficient size to be visible from the adjoining street: Provided,
That in the event no numeric or other specific designation of an
address exists for a factory-built home subject to the
authorization granted by this subdivision, the municipality has
the authority to provide a numeric or other specific designation
of an address for the factory-built home and require that it be
posted in accordance with the authority otherwise granted by this
section.
(52) To appropriate and expend not exceeding twenty-five cents per capita per annum for advertising the municipality and the entertainment of visitors;

(53) To conduct programs to improve community relations and public relations generally and to expend municipal revenue for such purposes;

(54) To reimburse applicants for employment by the municipality for travel and other reasonable and necessary expenses actually incurred by the applicants in traveling to and from the municipality to be interviewed;

(55) To provide revenue for the municipality and appropriate the same to its expenses;

(56) To create and maintain an employee benefits fund which may not exceed one tenth of one percent of the annual payroll budget for general employee benefits and which is set up for the purpose of stimulating and encouraging employees to develop and implement cost-saving ideas and programs and to expend moneys from the fund for these purposes;

(57) To enter into reciprocal agreements with governmental subdivisions or agencies of any state sharing a common border for the protection of people and property from fire and for emergency medical services and for the reciprocal use of equipment and personnel for these purposes;

(58) To provide penalties for the offenses and violations of law mentioned in this section, subject to the provisions of section one, article eleven of this chapter, and such penalties may not exceed any penalties provided in this chapter and chapter sixty-one of this code for like offenses and violations; and

(59) To participate in a purchasing card program for local governments authorized and administered by the State Auditor as an alternative payment method.
§8-12-5a. Limitations upon municipalities’ power to restrict the purchase, possession, transfer, ownership, carrying, transport, sale and storage of certain weapons and ammunition.

(a) Except as provided by the provisions of this section and the provisions of section five of this article, neither a municipality nor the governing body of any municipality may, by ordinance or otherwise, limit the right of any person to purchase, possess, transfer, own, carry, transport, sell or store any revolver, pistol, rifle or shotgun or any ammunition or ammunition components to be used therewith nor to so regulate the keeping of gunpowder so as to directly or indirectly prohibit the ownership of the ammunition in any manner inconsistent with or in conflict with state law.

(b) For the purposes of this section:

(1) “Municipally owned or operated building” means any building that is used for the business of the municipality, such as a courthouse, city hall, convention center, administrative building or other similar municipal building used for a municipal purpose permitted by state law: Provided, That “municipally owned or operated building” does not include a building owned by a municipality that is leased to a private entity where the municipality primarily serves as a property owner receiving rental payments.

(2) “Municipally owned recreation facility” means any municipal swimming pool, recreation center, sports facility, facility housing an after-school program or other similar facility where children are regularly present.

(c)(1) A municipality may enact and enforce an ordinance or ordinances that prohibit or regulate the carrying or possessing of a firearm in municipally owned or operated buildings.
(2) A municipality may enact and enforce an ordinance or ordinances that prohibit a person from carrying or possessing a firearm openly or that is not lawfully concealed in a municipally owned recreation facility: Provided, That a municipality may not prohibit a person with a valid concealed handgun permit from carrying an otherwise lawfully possessed firearm into a municipally owned recreation facility and securely storing the firearm out of view and access to others during their time at the municipally owned recreation facility.

(3) A person may keep an otherwise lawfully possessed firearm in a motor vehicle in municipal public parking facilities if the vehicle is locked and the firearm is out of view.

(4) A municipality may not prohibit or regulate the carrying or possessing of a firearm on municipally owned or operated property other than municipally owned or operated buildings and municipally owned recreation facilities pursuant to subdivisions (1) and (2) of this section: Provided, That a municipality may prohibit persons who do not have a valid concealed handgun license from carrying or possessing a firearm on municipally owned or operated property.

(d) It shall be an absolute defense to an action for an alleged violation of an ordinance authorized by this section prohibiting or regulating the possession of a firearm that the person: (1) Upon being requested to do so, left the premises with the firearm or temporarily relinquished the firearm in response to being informed that his or her possession of the firearm was contrary to municipal ordinance; and (2) but for the municipal ordinance the person was lawfully in possession of the firearm.

(e) Any municipality that enacts an ordinance regulating or prohibiting the carrying or possessing of a firearm pursuant to subsection (c) of this section shall prominently post a clear statement at each entrance to all applicable municipally owned
or operated buildings or municipally owned recreation facilities setting forth the terms of the regulation or prohibition.

(f) Redress for an alleged violation of this section may be sought through the provisions of chapter fifty-three of this code, which may include the awarding of reasonable attorneys fees and costs.

(g) Upon the effective date of this section, section fourteen, article seven, chapter sixty-one of this code is inapplicable to municipalities. For the purposes of that section, municipalities may not be considered a person charged with the care, custody and control of real property.

(h) This section does not:

(1) Impair the authority of any municipality, or the governing body thereof, to enact any ordinance or resolution respecting the power to arrest, convict and punish any individual under the provisions of subdivision (16), section five of this article or from enforcing any such ordinance or resolution;

(2) Authorize municipalities to restrict the carrying or possessing of firearms, which are otherwise lawfully possessed, on public streets and sidewalks of the municipality: Provided, That whenever pedestrian or vehicular traffic is prohibited in an area of a municipality for the purpose of a temporary event of limited duration, not to exceed fourteen days, which is authorized by a municipality, a municipality may prohibit persons who do not have a valid concealed handgun license from possessing a firearm in the area where the event is held; or

(3) Limit the authority of a municipality to restrict the commercial use of real estate in designated areas through planning or zoning ordinances.
CHAPTER 130

(S. B. 547 - By Senators Palumbo, Beach and Nohe)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §8-5-7 of the Code of West Virginia, 1931, as amended, relating to increasing or decreasing the number of municipal wards or election districts and council members.

Be it enacted by the Legislature of West Virginia:

That §8-5-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-7. Certain officers; wards or election districts; residency and other requirements.

1    (a) Unless otherwise provided in the charter of a municipality, there shall be elected a mayor, a recorder and council members, who together shall form the governing body of the municipality.

5    (b) When a municipality has not been divided into wards or election districts, there shall be at least five council members, but when the municipality has been divided into wards or
election districts, the governing body may, by ordinance, determine the number of council members to be elected from each ward or election district. When it is considered necessary, the governing body may, by ordinance, increase or decrease the number of wards or election districts and change the boundaries thereof, the wards or election districts to be made as nearly equal as may be, in population, and when the municipality is divided into wards or election districts, or there is an increase or decrease in the number of wards or election districts as aforesaid, the governing body may increase or decrease the number of council members and, in the case of an increase in the number of council members, direct an election to be held at the next regular municipal election in the additional ward or wards or election district or districts so that each ward or election district may have its full number of council members residing therein and may have equal representation on the governing body. When a municipality has been divided into wards or election districts, the governing body may, by ordinance, also provide for the election of council members at large in addition to the council members to be elected from each ward or election district. The provisions of this subsection are applicable to any municipality except to the extent otherwise provided in the charter of the municipality.

(c) Unless otherwise provided by charter provision or ordinance, the mayor, recorder and council members must be residents of the municipality and must be qualified voters entitled to vote for members of its governing body. A city manager in a manager form of government need only be a resident of the city at the time of his or her appointment.
AN ACT to amend and reenact §8-12-16, §8-12-16a and §8-12-16c of the Code of West Virginia, 1931, as amended, all relating to the registration, maintenance and regulation of dwellings unfit for human habitation and vacant buildings and properties by municipal governments; defining terms; clarifying the parties responsible for compliance with municipal ordinances regarding these dwellings, buildings and properties; and authorizing municipalities to enact maintenance of vacant buildings and properties ordinances.

Be it enacted by the Legislature of West Virginia:

That §8-12-16, §8-12-16a and §8-12-16c of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-16. Ordinances regulating the repair, closing, demolition, etc., of dwellings or buildings unfit for human habitation; procedures.

1 (a) Plenary power and authority are hereby conferred upon every municipality to adopt ordinances regulating the repair,
alteration or improvement, or the vacating and closing or
removal or demolition, or any combination thereof, of any
dwellings or other buildings unfit for human habitation due to
dilapidation, defects increasing the hazard of fire, accidents or
other calamities, lack of ventilation, light or sanitary facilities or
any other conditions prevailing in any dwelling or building,
whether used for human habitation or not, which would cause
such dwellings or other buildings to be unsafe, unsanitary,
dangerous or detrimental to the public safety or welfare.

(b) The governing body in formally adopting the ordinances
shall designate the enforcement agency, which shall consist of
the mayor, the municipal engineer or building inspector and one
member at large, to be selected by and to serve at the will and
pleasure of the mayor. The ranking health officer and fire chief
shall serve as ex officio members of the enforcement agency.

(c) Any ordinance adopted pursuant to the provisions of this
section must provide fair and equitable rules of procedure and
any other standards deemed necessary to guide the enforcement
agency, or its agents, in the investigation of dwelling or building
conditions, and in conducting hearings: Provided, That any
entrance upon premises for the purpose of making examinations
is made in a manner as to cause the least possible inconvenience
to the persons in possession.

(d) The governing body of every municipality has plenary
power and authority to adopt an ordinance requiring the owner
or owners of any dwelling or building under determination of the
State Fire Marshal, as provided in section twelve, article three,
chapter twenty-nine of this code, or under order of the
enforcement agency of the municipality, to pay for the costs of
repairing, altering or improving, or of vacating and closing,
removing or demolishing any dwelling or building.

(e) Every municipality:
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(1) May file a lien against the real property in question for an amount that reflects all costs incurred by the municipality for repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling or building; and

(2) May institute a civil action in a court of competent jurisdiction against the landowner or other responsible party for all costs incurred by the municipality with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action.

(f) Not less than ten days prior to instituting a civil action as provided in this section, the governing body of the municipality shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the governing body’s intention to institute such action.

(g) The notice shall be sent to the most recent address of the landowner of record in the office of the assessor of the county where the subject property is located. If, for any reason, such certified mail is returned without evidence of proper receipt thereof, then in such event, the governing body shall cause a Class III-0 legal advertisement to be published in a newspaper of general circulation in the county wherein the subject property is located and post notice on the front door or other conspicuous location on the subject property.

(h) If any landowner desires to contest any demand brought forth pursuant to this section, the landowner may seek relief in a court of competent jurisdiction.

(i) For purposes of this section, “owner” or “landowner” means a person who individually or jointly with others:

(1) Has legal title to the property, with or without actual possession of the property;
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65 (2) Has charge, care or control of the property as owner or
66 agent of the owner;

67 (3) Is an executor, administrator, trustee or guardian of the
68 estate of the owner;

69 (4) Is the agent of the owner for the purpose of managing,
70 controlling or collecting rents; or

71 (5) Is entitled to control or direct the management or
72 disposition of the property.

73 (j) All orders issued by the enforcement agency shall be
74 served in accordance with the law of this state concerning the
75 service of process in civil actions, and be posted in a
76 conspicuous place on the premises affected by the complaint or
77 order: Provided, That no ordinance may be adopted without
78 providing for the right to apply to the circuit court for a
79 temporary injunction restraining the enforcement agency
80 pending final disposition of the cause.

81 (k) In the event such application is made, a hearing thereon
82 shall be had within twenty days, or as soon thereafter as possible,
83 and the court shall enter such final order or decree as the law and
84 justice may require.

§8-12-16a. Registration of uninhabitable property.

1 (a) The governing body of a municipality may, by ordinance,
2 establish a property registration for any real property improved
3 by a structure that is uninhabitable and violates the applicable
4 building code adopted by the municipality. An owner of real
5 property subject to the registration shall be assessed a fee as
6 provided by the ordinance.

7 (b) The mayor of the municipality shall appoint a code
8 enforcement officer to investigate and determine whether real
property violates provisions of the applicable building code of the municipality.

(c) After inspecting the property, if the officer determines the property is uninhabitable and violates the applicable building code, then:

(1) The officer shall post a written notice on the property which shall include:

(A) An explanation of the violation(s);
(B) A description of the registration;
(C) The date the fee will be assessed;
(D) An explanation of how to be removed from the registration;
(E) An explanation of the appeals process; and
(F) A statement that if the fee is not paid, then the property is subject to forfeiture; and

(2) Within five business days of the inspection and the posting of the property, the officer shall, by certified mail, send a copy of the notice that was posted to the owner(s) of the property at the last known address according to the county property tax records.

(d) Within forty-five days of receipt of the notification by the owner(s), the property owner may:

(1) Make and complete any repairs to the property that violate the applicable building code; or

(2) Provide written information to the officer showing that repairs are forthcoming in a reasonable period of time.

(e) For purposes of this section, "owner" or "property owner" means a person who individually or jointly with others:
37 (1) Has legal title to the property, with or without actual
38 possession of the property;
39
(2) Has charge, care or control of the property as owner or
40 agent of the owner;
41
(3) Is an executor, administrator, trustee or guardian of the
42 estate of the owner;
43
(4) Is the agent of the owner for the purpose of managing,
44 controlling or collecting rents; or
45
(5) Is entitled to control or direct the management or
46 disposition of the property.
47
(f) After the repairs are made, the owner may request a
48 reinspection of the property to ensure compliance with the
49 applicable building code. If the officer finds the violations are
50 fixed, the owner is not subject to the registration and no fee will
51 be incurred.
52
(g) The officer may reinspect the property at any time to
53 determine where in the process the repairs fall.
54
(h) Within ninety days of receipt of the notification by the
55 owner(s), the property owner has the right to appeal the decision
56 of the officer to the enforcement agency, created in section
57 sixteen, article twelve of this chapter.
58
(i) If an appeal is not filed within ninety days, the property
59 is registered and the fee is assessed to the owner(s) on the date
60 specified in the notice. The notice of the fee shall be recorded in
61 the office of the clerk of the county commission of the county
62 where the property is located and if different, in the office of the
63 clerk of the county commission of the county where the property
64 is assessed for real property taxes.
(j) If the enforcement agency affirms the registration and assessment of the registration fee, the property owner has the right to appeal the decision of the enforcement agency to the circuit court within thirty days of the decision. If the decision is not appealed in a timely manner to the circuit court, then the property is registered and the fee is assessed on the date specified in the notice. The notice of the fee shall be recorded in the office of the clerk of the county commission of the county where the property is located and if different, in the office of the clerk of the county commission of the county where the property is assessed for real property taxes.

(k) A fee assessed under this section shall be recorded in the same manner as a lien is recorded in the office of the clerk of the county commission of the county.

(l) If the fee is paid, then the municipality shall record a release of the fee in the office of the clerk of the county commission of the county where the property is located and if different, in the office of the clerk of the county commission of the county where the property is assessed for real property taxes.

(m) If an owner fails to pay the fee, then the officer shall annually post the written notice on the property and send the written notice to the owner(s) by certified mail.

(n) If a registration fee remains delinquent for two years from the date it was placed on record in the clerk of the county commission in which the property is located and assessed, the municipality may take action to receive the subject property by means of forfeiture. Should the municipality take the steps necessary to receive the subject property, the municipality then becomes the owner of record and takes the property subject to all liens and real and personal property taxes.
§8-12-16c. Registration of vacant buildings; registration fees; procedures for administration and enforcement.

(a) The governing body of a municipality shall have plenary power and authority to establish by ordinance a vacant building and property registration and maintenance program.

(b) For purposes of this section:

(1) "Owner" or "property owner" means a person who individually or jointly with others:

(A) Has legal title to the property, with or without actual possession of the property;

(B) Has charge, care or control of the property as owner or agent of the owner;

(C) Is an executor, administrator, trustee or guardian of the estate of the owner;

(D) Is the agent of the owner for the purpose of managing, controlling or collecting rents; or

(E) Is entitled to control or direct the management or disposition of the property.

(2) "Vacant building" means a building or other structure that is unoccupied, or unsecured and occupied by one or more unauthorized persons for an amount of time as determined by the ordinance. A new building under construction or a building that by definition is exempted by ordinance of the municipality, is not deemed a vacant building. The governing body of a municipality, on a case-by-case basis, upon request by the property owner, shall exempt a vacant building from registration upon a finding for good cause shown that the person will be unable to occupy the building for a determinable period of time.
(3) "Vacant property" means a property on which no building is erected and no routine activity occurs.

(c) An owner of real property subject to registration and maintenance requirements may be charged a fee or fees as provided by ordinance. The ordinance shall provide administrative procedures for the administration and enforcement of registration and payment and collection of registration fees.

(d) The ordinance may require that when the owner of the vacant building or property resides outside of the state that the owner provide the name and address of a person who resides within the state who is authorized to accept service of process and notices of fees due under this section on behalf of the owner and who is designated as a responsible, local party or agent for the purposes of notification in the event of an emergency affecting the public health, safety or welfare.

(e) The ordinance may authorize the municipality to institute a civil action against the property owner and/or file a lien on real property for unpaid and delinquent vacant building registration fees. Before any lien is filed, the municipality shall give notice to the property owner or owner's agent, by certified mail, return receipt requested, that the municipality will file the lien unless the delinquent fees are paid by a date stated in the notice, which must be no less than thirty days from the date the notice is received by the owner or the owner's agent, which shall be the date of delivery shown on the signed certified mail return receipt card. The ordinance may provide for alternative means of service when service cannot be obtained by certified mail.

(f) The ordinance may require that the owner maintain the vacant building or property to a standard deemed reasonable by the governing body. The ordinance may include authority for the
municipality, following notice to the owner, to act to bring the
vacant building or property into compliance with the standard,
or otherwise eliminate the public nuisance caused by any
noncompliance conditions: Provided, That nothing in this section
is to be interpreted to impose a duty, obligation or requirement
that a municipality must undertake such repairs, demolition or
maintenance measures which remain as obligations and
responsibilities of the owner. Cost of the repairs, demolition and
maintenance and related legal and administrative costs incurred
by the municipality are to be paid by the owner. Collection of
these costs may be enforced in civil proceedings against the
owner.

(g) The ordinance shall permit a property owner to challenge
any determination made pursuant to the ordinance. The
administrative procedures adopted pursuant to the ordinance
shall include the right to appeal to the circuit court of the county
in which the property is located.

(h) The governing body of a municipality shall deposit the
fee into a separate account, which shall be used to:

(1) Improve public safety efforts, especially for police and
fire personnel, who most often contend with the dangerous
situations manifested in vacant properties;

(2) Monitor and administer this section; and

(3) Repair, close or demolish a vacant structure as authorized
by section sixteen of this article.
CHAPTER 132

(S. B. 485 - By Senators Kirkendoll, Beach, D. Hall, Miller, Snyder, Barnes, Stollings and Plymale)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §22-13-7 of the Code of West Virginia, 1931, as amended, relating to permitting requirements under the Natural Streams Preservation Act; and exempting the Division of Highways under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §22-13-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. NATURAL STREAMS PRESERVATION ACT.

§22-13-7. When permits required; when permits not to be issued.

(a) It is unlawful for any person, until the department’s permit has been granted, to modify any protected stream or any part of the stream. A permit may not be issued unless the work proposed to be done under the permit:

1. Will not materially alter or affect the free-flowing characteristics of a substantial part of a protected stream or streams;

2. Is necessary to prevent an undue hardship; and

3. Meets with the approval of the secretary.
(b) The Department of Transportation’s Division of Highways is not required to obtain a permit under this section when it is repairing or replacing damaged bridges and that repair or replacement requires the construction of temporary flow diversions in the stream that will not permanently materially alter or affect the free-flowing characteristics of a substantial part of the steam, so long as boat passage remains available during the entire period of bridge repair or replacement.
thereto a new article, designated §39-4-1, §39-4-2, §39-4-3, §39-4-4, §39-4-5, §39-4-6, §39-4-7, §39-4-8, §39-4-9, §39-4-10, §39-4-11, §39-4-12, §39-4-13, §39-4-14, §39-4-15, §39-4-16, §39-4-17, §39-4-18, §39-4-19, §39-4-20, §39-4-21, §39-4-22, §39-4-23, §39-4-24, §39-4-25, §39-4-26, §39-4-27, §39-4-28, §39-4-29, §39-4-30, §39-4-31, §39-4-32, §39-4-33, §39-4-34, §39-4-35 and §39-4-36; to amend and reenact §57-4-2 of said code; to amend and reenact §57-5-9 of said code; and to amend and reenact §59-1-2 of said code, all relating to the Revised Uniform Law on Notarial Acts; establishing the effective date of the article; establishing an operative date of enactment and the effect on existing law; establishing the authority to perform notarial acts; establishing requirements for certain notarial acts; requiring a personal appearance and the identification of an individual; authorizing the right to refuse to perform a notarial act; establishing instructions for obtaining a signature if an individual is unable to sign; setting forth who may perform a notarial act in this state; establishing notarial reciprocity with other states, any federally recognized Indian tribe, the federal government, and foreign states; requiring a certificate for a notarial act; authorizing short form certificates; requiring an official stamp and the maintenance and disposition of a stamping device; authorizing notaries public the option of selecting a technology for use in notarial acts on electronic records; establishing minimum qualifications and authorizing the commissioning of notaries public; providing grounds to deny, refuse to renew, revoke, suspend, or condition commissions of notaries public; requiring Secretary of State to maintain a database of notaries public; prohibiting certain acts; authorizing the validity of notarial acts; authorizing the Secretary of State to promulgate rules; authorizing the continuation of a commission in effect on the effective date of the act; providing that any notarial act performed before the effective date of the act is not invalidated by the act; providing for the uniformity of the application and construction of the act; clarifying the relationship to the Electronic Signatures in Global
and National Commerce Act; establishing maximum fees that may be charged by a notary public; commissioning notaries public for state and local government; establishing civil liability and criminal penalties; authorizing injunctive relief; authorizing the Secretary of State to investigate complaints; requiring the Secretary of State to maintain certain records; establishing an application fee; providing for the disposition of fees; repealing statutes regulating notaries public and commissioners including the Uniform Notary Act; repealing the Uniform Recognition of Acknowledgments Act; and removing obsolete references.

Be it enacted by the Legislature of West Virginia:

That §29-4-3, §29-4-4, §29-4-5, §29-4-6, §29-4-7, §29-4-8, §29-4-12, §29-4-13, §29-4-14, §29-4-15 and §29-4-16 of the Code of West Virginia, 1931, as amended, be repealed; that §29C-1-101, §29C-1-102, §29C-1-103, §29C-1-104, §29C-1-105, §29C-1-106, §29C-1-107, §29C-2-201, §29C-2-202, §29C-2-203, §29C-2-204, §29C-2-205, §29C-2-206, §29C-2-207, §29C-2-208, §29C-2-301, §29C-3-101, §29C-3-102, §29C-4-101, §29C-4-102, §29C-4-103, §29C-4-104, §29C-4-201, §29C-4-202, §29C-4-203, §29C-4-301, §29C-4-401, §29C-4-402, §29C-4-403, §29C-4-404, §29C-4-405, §29C-5-101, §29C-5-102, §29C-5-103, §29C-5-104, §29C-6-101, §29C-6-102, §29C-6-103, §29C-6-201, §29C-6-202, §29C-6-203, §29C-6-204, §29C-7-101, §29C-7-201, §29C-7-202, §29C-8-101 and §29C-9-101 of said code be repealed; that §39-1A-1, §39-1A-2, §39-1A-3, §39-1A-4, §39-1A-5, §39-1A-6, §39-1A-7, §39-1A-8 and §39-1A-9 of said code be repealed; that §39-1-4 and §39-1-5 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §39-4-1, §39-4-2, §39-4-3, §39-4-4, §39-4-5, §39-4-6, §39-4-7, §39-4-8, §39-4-9, §39-4-10, §39-4-11, §39-4-12, §39-4-13, §39-4-14, §39-4-15, §39-4-16, §39-4-17, §39-4-18, §39-4-19, §39-4-20, §39-4-21, §39-4-22, §39-4-23, §39-4-24, §39-4-25, §39-4-26, §39-4-27, §39-4-28, §39-4-29, §39-4-30, §39-4-31, §39-4-32, §39-4-33, §39-4-34, §39-4-35 and §39-4-36; that §57-4-2 of said code be amended and reenacted; that
§57-5-9 of said code be amended and reenacted and that §59-1-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 39. RECORDS AND PAPERS.

ARTICLE 1. AUTHENTICATION AND RECORD OF WRITINGS.

§39-1-4. Form of certificate of acknowledgment.

1 The certificate of acknowledgment mentioned in the preceding section may be in form or effect as follows:

3 State (territory or district) of ................. , county of ................., to wit:

5 I, .........., recorder of said municipality; or I, .........., a notary public of said county; or I, .........., a clerk of the ................. court of said county; (or other officer or person authorized to take acknowledgments by section three of this article, as the case may be), do certify that .................,

 whose name (or names) is (or are) signed to the writing above (or hereto annexed) bearing date on the .......... day of .......... , 20 ......... , has (or have) this day acknowledged the same before me, in my said .................

14 Given under my hand this ...... day of .......... , 20 ......

§39-1-5. Acknowledgment by husband and wife.

1 When a husband and wife have signed a writing purporting to sell or convey real estate, the wife may acknowledge the same together with, or separately from her husband. Either the husband or the wife may sign and acknowledge the writing before the other has signed or acknowledged it. If both acknowledge the writing at the same time, the certificate of the acknowledgments may be in form or effect as follows:
State (territory or district) of ........ county of ........, to wit:

I, ........, a notary public of the said county of ........; or I, ........, clerk of the ........ court or county of ........; (or other officer or person authorized to take acknowledgments by section three of this article, as the case may be),* do certify ........ and ........, his or her wife whose names are signed to the writing above (or hereto annexed) bearing date the ..... day of .........., 20....., have this day acknowledged the same before me in my said ..........

Given under my hand this ........ day of .........., 20......

If the husband or wife acknowledge a deed or other writing separately from the other, the certificate of acknowledgment after the star in the foregoing form shall be in form or effect as follows: do certify that ........, the wife of ..........., (or the husband of ..........., as the case may be), whose name is signed to the writing above (or hereto annexed) bearing date the .......... day of .........., 20 ......, has this day acknowledged the same before me in my said ..........

Given under my hand this .......... day of .........., 20 ......

ARTICLE 4. REVISED UNIFORM LAW ON NOTARIAL ACTS.

§39-4-1. Short title.

This article may be cited as the Revised Uniform Law on Notarial Acts.

§39-4-2. Definitions.

In this article:

(1) “Acknowledgment” means a declaration by an individual before a notarial officer that the individual has signed a record
for the purpose stated in the record and, if the record is signed in
a representative capacity, that the individual signed the record
with proper authority and signed it as the act of the individual or
entity identified in the record.

(2) "Electronic" means relating to technology having
electrical, digital, magnetic, wireless, optical, electromagnetic or
similar capabilities.

(3) "Electronic signature" means an electronic symbol,
sound or process attached to or logically associated with a record
and executed or adopted by an individual with the intent to sign
the record.

(4) "In a representative capacity" means acting as:

(A) An authorized officer, agent, partner, trustee or other
representative for a person other than an individual;

(B) A public officer, personal representative, guardian or
other representative, in the capacity stated in a record;

(C) An agent or attorney-in-fact for a principal; or

(D) An authorized representative of another in any other
capacity.

(5) "Notarial act" means an act, whether performed with
respect to a tangible or electronic record, that a notarial officer
may perform under the law of this state. The term includes
taking an acknowledgment, administering an oath or affirmation,
taking a verification on oath or affirmation, witnessing or
attesting a signature, certifying or attesting a copy, and noting a
protest of a negotiable instrument.

(6) "Notarial officer" means a notary public or other
individual authorized to perform a notarial act.
(7) "Notary public" means an individual commissioned to perform a notarial act by the West Virginia Secretary of State.

(8) "Official stamp" means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.

(9) "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound or process.

(12) "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.

(13) "Stamping device" means:

(A) A physical device capable of affixing to or embossing on a tangible record an official stamp; or

(B) An electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.
(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(15) "Verification on oath or affirmation" means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

§39-4-3. Applicability; operative date of enactment; effect on existing law.

(a) This article applies to a notarial act performed on or after July 1, 2014.

(b) The repeal of chapter twenty-nine-c of this code and the repeal of articles four, chapter twenty-nine and one-a, chapter thirty-nine of this code and the amendment and reenactment of section two, article one, chapter fifty-nine of this code, pursuant to the provisions of Enrolled House Bill No. 4012, as enacted by the Legislature during the regular session, 2014, are operative on June 30, 2014. The prior enactments of chapter twenty-nine-c; articles four, chapter twenty-nine and one-a, chapter thirty-nine; and section two, article one, chapter fifty-nine of this code, whether amended and reenacted or repealed by the passage of Enrolled House Bill No. 4012, have full force and effect until the provisions of Enrolled House Bill No. 4012, are operative on June 30, 2014, unless after the effective date of Enrolled House Bill No. 4012, and prior to the operative date of June 30, 2014, the provisions of Enrolled House Bill No. 4012, are otherwise repealed or amended and reenacted.

§39-4-4. Authority to perform notarial act.

(a) A notarial officer may perform a notarial act authorized by this article or by law of this state other than this article.
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(b) A notarial officer may not perform a notarial act with respect to a record to which the officer or the officer's spouse is a party, or in which either of them has a direct beneficial interest, financial or otherwise. A notarial act performed in violation of this subsection is voidable.

§39-4-5. Requirements for certain notarial acts.

(a) A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

(b) A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.

(c) A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed.

(d) A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true and accurate transcription or reproduction of the record or item.

(e) A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in subsection (b), section five hundred five, article three, chapter forty-six of this code.
§39-4-6. Personal appearance required.

If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer. An individual making the statement or executing the signature does not appear personally if the appearance is by video or audio technology, even if the video is synchronous.

§39-4-7. Identification of individual.

(a) A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(b) A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:

(1) By means of:

(A) A passport, driver's license or government issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act; or

(B) Another form of government identification issued to an individual, which is current or expired not more than three years before performance of the notarial act, contains the signature or a photograph of the individual and is satisfactory to the officer; or

(2) By a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, driver's license or government issued nondriver
§39-4-8. Authority to refuse to perform notarial act.

(a) A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:

(1) The individual executing the record is competent or has the capacity to execute the record; or

(2) The individual’s signature is knowingly and voluntarily made.

(b) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by law other than this article.

§39-4-9. Signature if individual is unable to sign.

If an individual is physically unable to sign a record, the individual may direct another individual other than the notarial officer to sign the individual’s name on the record. The notarial officer shall insert “Signature affixed by (name of other individual) at the direction of (name of individual)” or words of similar import.

§39-4-10. Notarial act in this state.

(a) A notarial act may be performed in this state by:

(1) A notary public of this state;

(2) A judge, clerk or deputy clerk of a court of this state; or

(3) Any other individual authorized to perform the specific act by the law of this state.
(b) The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subdivision (1) or (2), subsection (a) of this section, conclusively establish the authority of the officer to perform the notarial act.

§39-4-11. Notarial act in another state.

(a) A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by:

(1) A notary public of that state;

(2) A judge, clerk or deputy clerk of a court of that state; or

(3) Any other individual authorized by the law of that state to perform the notarial act.

(b) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subdivision (1) or (2), subsection (a) of this section, conclusively establish the authority of the officer to perform the notarial act.

§39-4-12. Notarial act under authority of federally recognized Indian tribe.

(a) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same
effect as if performed by a notarial officer of this state, if the act performed in the jurisdiction of the tribe is performed by:

(1) A notary public of the tribe;

(2) A judge, clerk or deputy clerk of a court of the tribe; or

(3) Any other individual authorized by the law of the tribe to perform the notarial act.

(b) The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subdivision (1) or (2), subsection (a) of this section, conclusively establish the authority of the officer to perform the notarial act.


(a) A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed under federal law is performed by:

(1) A judge, clerk or deputy clerk of a court;

(2) An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;

(3) An individual designated a notarizing officer by the United States Department of State for performing notarial acts overseas; or

(4) Any other individual authorized by federal law to perform the notarial act.
14 (b) The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.

18 (c) The signature and title of an officer described in subdivision (1), (2) or (3), subsection (a) of this section, conclusively establish the authority of the officer to perform the notarial act.

§39-4-14. Foreign notarial act.

1 (a) In this section, “foreign state” means a government other than the United States, a state or a federally recognized Indian tribe.

4 (b) If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notarial officer of this state.

7 (c) If the title of office and indication of authority to perform notarial acts in a foreign state appears in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

10 (d) The signature and official stamp of an individual holding an office described in subsection (c) of this section are prima facie evidence that the signature is genuine and the individual holds the designated title.

14 (e) An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the Convention conclusively establishes that the
signature of the notarial officer is genuine and that the officer holds the indicated office.

(f) A consular authentication issued by an individual designated by the United States Department of State as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.


(a) A notarial act must be evidenced by a certificate. The certificate must:

1. Be executed contemporaneously with the performance of the notarial act;

2. Be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file with the Secretary of State;

3. Identify the jurisdiction in which the notarial act is performed;

4. Contain the title of office of the notarial officer; and

5. If the notarial officer is a notary public, indicate the date of expiration, if any, of the officer’s commission.

(b) If a notarial act regarding a tangible record is performed by a notary public, an official stamp must be affixed to the certificate. If a notarial act is performed regarding a tangible record by a notarial officer other than a notary public and the certificate contains the information specified in subdivisions (2), (3) and (4), subsection (a) of this section, an official stamp may
be affixed to the certificate. If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in said subdivisions, an official stamp may be attached to or logically associated with the certificate.

(c) A certificate of a notarial act is sufficient if it meets the requirements of subsections (a) and (b) and:

1. Is in a short form set forth in section sixteen of this article;
2. Is in a form otherwise permitted by the law of this state;
3. Is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or
4. Sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in sections five, six and seven of this article or law of this state other than this article.

(d) By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in sections four, five and six of this article.

(e) A notarial officer may not affix the officer’s signature to, or logically associate it with, a certificate until the notarial act has been performed.

(f) If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to or logically associated with, the electronic record. If the Secretary of State has established standards pursuant to section twenty-five of this article, for
attaching, affixing, or logically associating the certificate, the process must conform to the standards.

§39-4-16. Short form certificates.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by subsections (a) and (b), section fifteen of this article:

1 (1) For an acknowledgment in an individual capacity:

6 State of ....................... 

7 County of .................... 

8 This record was acknowledged before me on ............ [Date] by ........................................ [Name(s) of individual(s)]

10 ..........................................................

11 Signature of notarial officer

12 Stamp

13 ..........................................................

14 Title of office

15 My commission expires: .........................

16 (2) For an acknowledgment in a representative capacity:

17 State of ......................... 

18 County of ....................... 

19 This record was acknowledged before me on ............ [Date] by ....................................................... [Name(s) of individual(s)] as
21 [Type of authority, such as officer or trustee]
22 of [Name of party on behalf of whom record was executed].
24 ....................................................
25 Signature of notarial officer
26 Stamp
27 ....................................................
28 Title of office
29 My commission expires: ................................
30 (3) For a verification on oath or affirmation:
31 State of ..............................
32 County of ..............................
33 Signed and sworn to (or affirmed) before me on .......... (Date)
34 by .................................................... [Name(s) of individual(s) making statement]
37 Signature of notarial officer
38 Stamp
39 ....................................................
40 Title of office
41 My commission expires: .............................
42 (4) For witnessing or attesting a signature:
43 State of ..............................
Signed or attested before me on [Date] by [Name(s) of individual(s) making statement]...

Signature of notarial officer

Stamp

Title of office

My commission expires: ...
§39-4-17. Official stamp.

The official stamp of a notary public must:

1. Include the notary public's name, address, jurisdiction, commission expiration date and other information required by the Secretary of State; and

2. Be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

§39-4-18. Stamping device.

(a) A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. On resignation from, or the revocation or expiration of, the notary public's commission, or on the expiration of the date set forth in the stamping device, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing or securing it against use in a manner that renders it unusable.

(b) If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall notify promptly the Secretary of State on discovering that the device is lost or stolen.


(a) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic
records. A person may not require a notary public to perform a
notarial act with respect to an electronic record with a
technology that the notary public has not selected.

(b) Before a notary public performs the notary public’s
initial notarial act with respect to an electronic record, a notary
public shall notify the Secretary of State that the notary public
will be performing notarial acts with respect to electronic
records and identify the technology the notary public intends to
use. If the Secretary of State has established standards for
approval of technology pursuant to section twenty-five of this
article, the technology must conform to the standards. If the
technology conforms to the standards, the Secretary of State
shall approve the use of the technology.

§39-4-20. Commission as notary public; qualifications; no
immunity or benefit; disposition of fees.

(a) An individual qualified under subsection (b) of this
section may apply to the Secretary of State for a commission as
a notary public. The applicant shall comply with and provide the
information required by rules promulgated by the Secretary of
State and pay any application fee.

(b) An applicant for a commission as a notary public must:

(1) Be at least eighteen years of age;

(2) Be a citizen or permanent legal resident of the United
States;

(3) Be a resident of or have a place of employment or
practice in this state;

(4) Be able to read and write English;

(5) Have a high school diploma or its equivalent; and
(6) Not be disqualified to receive a commission under section twenty-three of this article.

(c) Before issuance of a commission as a notary public, an applicant for the commission shall execute an oath of office and submit it to the Secretary of State.

(d) Before issuance of a commission as a notary public, the applicant for a commission shall submit to the Secretary of State an assurance in the form of: (1) A surety bond or its functional equivalent in the amount of $1,000; or (2) certification that the applicant is covered under a: (A) Professional liability insurance policy; (B) an errors and omission insurance policy; (C) a commercial general liability insurance policy; or (D) their equivalent, in the amount of $1,000. The assurance must be issued by a surety or other entity licensed or authorized to do business in this state. The assurance must cover acts performed during the term of the notary public’s commission and must be in the form prescribed by the Secretary of State. If a notary public violates law with respect to notaries public in this state, the surety or issuing entity is liable under the assurance. The notary public shall give thirty days’ notice to the Secretary of State before canceling any assurance or loss of insurance coverage. The surety or issuing entity shall notify the Secretary of State not later than thirty days after making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the Secretary of State.

(e) On compliance with this section, the Secretary of State shall issue a commission as a notary public to an applicant for a term of five years.

(f) A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this state on public officials or employees.
§39-4-21. Grounds to deny, refuse to renew, revoke, suspend, or condition commission of notary public.

(a) The Secretary of State may deny, refuse to renew, revoke, suspend or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:

1. (1) Failure to comply with this article;

2. (2) A fraudulent, dishonest or deceitful misstatement or omission in the application for a commission as a notary public submitted to the Secretary of State;

3. (3) A conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty or deceit;

4. (4) A finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty or deceit;

5. (5) Failure by the notary public to discharge any duty required of a notary public, whether by this article, rules promulgated by the Secretary of State, or any federal or state law;

6. (6) Use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right or privilege that the notary does not have;

7. (7) Violation by the notary public of a rule of the Secretary of State regarding a notary public;

8. (8) Denial, refusal to renew, revocation, suspension or conditioning of a notary public commission in another state;
(9) Failure of the notary public to maintain an assurance as provided in subsection (d), section twenty of this article;

(10) Charging more than the maximum fees specified in section thirty of this article; and

(11) Failure to notify the Secretary of State of an address or name change pursuant to subsection (b), section twenty-two of this article.

(b) If the Secretary of State denies, refuses to renew, revokes, suspends or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with article five, chapter twenty-nine-a of this code.

(c) The authority of the Secretary of State to deny, refuse to renew, suspend, revoke or impose conditions on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.

§39-4-22. Database of notaries public.

(a) The Secretary of State shall maintain an electronic database of notaries public:

(1) Through which a person may verify the authority of a notary public to perform notarial acts; and

(2) Which indicates whether a notary public has notified the Secretary of State that the notary public will be performing notarial acts on electronic records.

(b) Not later than thirty days after a notary public either:

(1) Changes the address of his or her business or residence; or
(2) Changes his or her name, the notary public shall notify the Secretary of State of the address or name change.

§39-4-23. Prohibited acts.

(a) A commission as a notary public does not authorize an individual to:

(1) Assist persons in drafting legal records, give legal advice or otherwise practice law;

(2) Act as an immigration consultant or an expert on immigration matters;

(3) Represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship or related matters; or

(4) Receive compensation for performing any of the activities listed in this subsection.

(b) A notary public may not engage in false or deceptive advertising.

(c) A notary public, other than an attorney licensed to practice law in this state, may not use the term “notario” or “notario publico”.

(d) A notary public, other than an attorney licensed to practice law in this state, may not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice, or otherwise practice law. If a notary public who is not an attorney licensed to practice law in this state in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media and the internet, the notary public shall include the following statement, or an alternate statement
authorized or required by the Secretary of State, in the advertisement or representation, prominently and in each language used in the advertisement or representation: "I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities". If the form of advertisement or representation is not broadcast media, print media or the internet and does not permit inclusion of the statement required by this subsection because of size, it must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(e) Except as otherwise allowed by law, a notary public may not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public.


Except as otherwise provided in subsection (b), section four of this article, the failure of a notarial officer to perform a duty or meet a requirement specified in this article does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this article does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this state other than this article or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

§39-4-25. Rules.

The Secretary of State may promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this
Rules promulgated regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The rules may:

- Prescribe the manner of performing notarial acts regarding tangible and electronic records;
- Include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;
- Include provisions to ensure integrity in the creation, transmittal, storage or authentication of electronic records or signatures;
- Prescribe the process of granting, renewing, conditioning, denying, suspending or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public;
- Include provisions to prevent fraud or mistake in the performance of notarial acts;
- Establish the process for approving and accepting surety bonds and other forms of assurance under subsection (d), section twenty of this article; and
- Establish fees, with legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. Fees collected by the Secretary of State pursuant to section two, article one, chapter fifty-nine of this code 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 by the provisions of article four, chapter thirty-nine of this code.

(b) In promulgating, amending or repealing rules about notarial acts with respect to electronic records, the Secretary of State shall consider, so far as is consistent with this article:

(1) The most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State;

(2) Standards, practices and customs of other jurisdictions that substantially enact this article; and

(3) The views of governmental officials and entities and other interested persons.

§39-4-26. Notary public commission and commissioner appointment in effect.

(a) A commission as a notary public in effect on June 30, 2014, continues until its date of expiration. A notary public who applies for a commission as a notary public on or after July 1, 2014, is subject to and shall comply with this article. A notary public, in performing notarial acts on or after July 1, 2014, shall comply with this article.

(b) An appointment as commissioner under the repealed provisions of article four, chapter twenty-nine of this code, in effect on June 30, 2014, continues until its date of expiration. A commissioner, in performing notarial acts on or after July 1, 2014, shall comply with this article: Provided, That a person holding a commission pursuant to the provisions of article four, chapter twenty-nine of this code, on June 30, 2014, is not
required to obtain or use a stamp required by section seventeen of this article, prior to the expiration of that commission.

§39-4-27. Savings clause.

1 This article does not affect the validity or effect of a notarial act performed before July 1, 2014.


1 In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§39-4-29. Relation to Electronic Signatures in Global and National Commerce Act.

1 This article modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U. S. C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U. S. C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U. S. C. Section 7003(b).

§39-4-30. Maximum fees.

1 (a) The maximum fee in this state for notarization of each signature and the proper recordation thereof in the journal of notarial acts is $5.00 for each signature notarized.

4 (b) The maximum fee in this state for certification of a facsimile of a document, retaining a facsimile in the notary’s file, and the proper recordation thereof in the journal of notarial acts is $5.00 for each eight and one-half by eleven inch page retained in the notary’s file.

9 (c) The maximum fee in this state is $5.00 for any other notarial act performed.

(a) State and local government employees may be commissioned as government notaries public to act for and in behalf of their respective state and local government offices.

(b) A state or local government employee commissioned under this section shall meet the requirements for qualification and appointment prescribed in this article except that the head of the state or local government office where the applicant is employed, or his or her designee, shall execute a certificate that the application is made for the purposes of the office and in the public interest and submit it to the Secretary of State together with the application for appointment as a notary public.

(c) The costs of application and all notary supplies for a commissioned state or local government employee shall be paid from funds available to the office in which he or she is employed.

(d) All fees received for notarial services by a government notary public appointed for and in behalf of a state or local government office shall be remitted by him or her to the state or local government office in which he or she is employed.

(e) A government notary public must comply with all provisions of this article in the performance of notarial acts.

(f) A government notary public may acknowledge any document required to be acknowledged by a notary public: Provided, That a government notary public may not operate privately.

§39-4-32. Liability of notary and of an employer of notary.

(a) A notary public is liable to the persons involved for all damages proximately caused by the notary’s official misconduct.
(b) The employer of a notary public is also liable to the persons involved for all damages proximately caused by the notary’s official misconduct, if:

(1) The notary public was acting within the scope of his or her employment at the time he or she engaged in the official misconduct; and

(2) The employer consented to the notary public’s official misconduct.

(c) It is not essential to a recovery of damages that a notary’s official misconduct be the only proximate cause of the damages.

(d) For the purposes of this section, the term “official misconduct” means any act or conduct that:

(1) May result in the denial, refusal to renew, revocation, suspension or condition commission of a notary public pursuant to section twenty-one of this article; or

(2) Is prohibited by section twenty-three of this article.

§39-4-33. Criminal penalties.

(a) A notary public who knowingly and willfully commits any official misconduct is guilty of a misdemeanor and, upon conviction, shall be fined not more than $5,000 or confined in jail not more than one year, or both fined and confined.

(b) A notary public who recklessly or negligently commits any official misconduct is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000.

(c) Any person who acts as, or otherwise willfully impersonates, a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a
misdemeanor and, upon conviction, shall be fined not more than $5,000 or confined in jail not more than one year, or both fined and confined.

(d) Any person who unlawfully possesses a notary’s official seal or any papers or copies relating to notarial acts, is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000.

(e) For the purposes of this section, the term “official misconduct” means any act or conduct that:

(1) May result in the denial, refusal to renew, revocation, suspension or condition commission of a notary public pursuant to section twenty-one of this article; or

(2) Is prohibited by section twenty-three of this article.

§39-4-34. Action for injunction; unauthorized practice of law.

Upon his or her own information or upon complaint of any person, the Attorney General, or his or her designee, may maintain an action for injunctive relief in circuit court against any notary public who renders, offers to render or holds himself or herself out as rendering any service constituting the unauthorized practice of the law. Any organized bar association in this state may intervene in the action, at any stage of the proceeding, for good cause shown. The action may also be maintained by an organized bar association in this state or by the Secretary of State.

§39-4-35. Administrative complaints and investigations.

(a) In addition to the powers and duties contained in this article, the Secretary of State may:

(1) Investigate, upon complaint or on his or her own initiative, any alleged violations or irregularities of this article.
(2) 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) Involve the aid of any circuit court in the execution of its subpoena power.

(4) Report any alleged violations of this article to the appropriate prosecuting attorney having jurisdiction, which prosecuting attorney shall present to the grand jury the alleged violations, together with all evidence relating thereto, no later than the next term of court after receiving the report.

(b) The Attorney General shall, when requested, provide legal and investigative assistance to the Secretary of State.

§39-4-36. Secretary of State record retention.

(a) The provisions of subsection (c), section three, article two, chapter five of this code notwithstanding, the Secretary of State may destroy original records of appointment under this article after expiration of the term of a notary public: Provided, That the Secretary of State maintains an electronic copy of the appointment for a minimum of ten years after the expiration of the term of the notary public.

(b) The Secretary of State may destroy any original journals of notarial acts in his or her possession: Provided, That an electronic copy is maintained in accordance with the retention rules of the Department of Administration.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 4. DEPOSITIONS AND PERPETUATION OF TESTIMONY.

§57-4-2. Taking and certification of depositions — Out-of state and in foreign countries.
On affidavit that a witness resides out of this state, or is out of it in the service thereof, or of the United States, or is out of this state and for justifiable reasons will probably be out of this state until after the trial of the case in which his or her testimony is needed, his or her deposition may be taken by or before any justice, notary public or other officer authorized to take depositions in the state wherein the witness may be, or, if the deposition is to be taken in a foreign country, by or before such commissioner or commissioners as may be agreed upon by the parties or appointed by the court, or, if there be none such, by or before any American minister, plenipotentiary, charge d’affaires, consul general, consul, vice consul, consular agent, vice deputy consular agent, commercial agent or vice commercial agent, appointed by the government of the United States, or by or before the mayor or other chief magistrate of any city, town or corporation in the country or any notary public therein. Any person or persons taking the deposition may administer an oath to the witness and take and certify the deposition with his or her official seal annexed, and if he or she have none, the genuineness of his or her signature shall be authenticated by some officer of the same state or country, under his or her official seal.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-9. Administration of oaths or taking of affidavits; authentication of affidavit made in another state or country; oaths and affidavits of persons in military service.

Any judge of this state may administer any oath that is or may be lawful for any person to take, including oaths of office, and also may swear any person to an affidavit, and administer an oath to any person in any proceeding.

Any oath or affidavit required by law, which is not of such a nature that it must be made otherwise or elsewhere may, unless
otherwise provided, be administered by, or made before, a county commissioner, notary public, or by the clerk of any court, or, in case of a survey directed by a court in a case therein pending, by or before the surveyor directed to execute said order of survey.

An affidavit may also be made before any officer of another state or country authorized by its laws to administer an oath, and shall be deemed duly authenticated if it be subscribed by the officer, with his or her official seal annexed, and if he or she have none, the genuineness of his or her signature, and his or her authority to administer an oath, shall be authenticated by some officer of the same state or country under his or her official seal.

Any oath or affidavit required of a person in the military service of the United States (including the Women’s Army Corps, Women’s Appointed Volunteers for Emergency Service, Army Nurse Corps, Spars, Women’s Reserve or similar women’s auxiliary unit officially connected with the military service of the United States), may be administered by or made before any commissioned officer of any branch of the military service of the United States, or any auxiliary unit officially connected with the military service. Such oath may be taken or affidavit made at any place either within or outside the United States of America, or any territory, possession or dependency thereof. The jurat to the oath and certificate to the affidavit need not state the place where the same is taken and shall require no seal to be affixed thereto. The certificate of the officer before whom the oath is taken or affidavit is made must state his or her rank, branch of military service, and identification number, and the certificate may be substantially in form and effect as follows:

IN THE MILITARY SERVICE OF THE UNITED STATES:

I, ................., being duly sworn on oath (affirmation), do swear (affirm) that I am a member of the military service of the
United States (or of .........., an auxiliary to the military forces of the United States); that ***, etc.

Taken, subscribed and sworn to before me, .........., a commissioned officer in the .......... service of the United States, by .........., a member of the military service of the United States (or of .........., an auxiliary to the military forces of the United States), this the .......... day of .........., 20.....

(Signature of officer)

(Rank) (Identification Number)

Any oath or affidavit heretofore taken or made by any person in the military service in substantial compliance with this section shall be valid.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by Secretary of State.

(a) Except as may be otherwise provided in this code, the Secretary of State shall charge for services rendered in his or her office the following fees to be paid by the person to whom the service is rendered at the time it is done:

(1) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the formation, amendment, change of name, registration of trade name, merger,
consolidation, conversion, renewal, dissolution, termination, cancellation, withdrawal revocation and reinstatement of business entities organized within the state, as follows:

(A) Articles of incorporation of for-profit corporation ............................................ $50.00

(B) Articles of incorporation of nonprofit corporation ............................................. 25.00

(C) Articles of organization of limited liability company ........................................ 100.00

(D) Agreement of a general partnership. .............. 50.00

(E) Certificate of a limited partnership.............. 100.00

(F) Agreement of a voluntary association............. 50.00

(G) Articles of organization of a business trust..... 50.00

(H) Amendment or correction of articles of incorporation, including change of name or increase of capital stock, in addition to any applicable license tax. ......................... 25.00

(I) Amendment or correction, including change of name, of articles of organization of business trust, limited liability partnership, limited liability company or professional limited liability company or of certificate of limited partnership or agreement of voluntary association............. 25.00

(J) Amendment and restatement of articles of incorporation, certificate of limited partnership, agreement of voluntary association or articles of organization of limited liability partnership, limited liability company or professional limited liability company or business trust. ................. 25.00
(K) Registration of trade name, otherwise designated as a true name, fictitious name or D.B.A. (doing business as) name for any domestic business entity as permitted by law... 25.00

(L) Articles of merger of two corporations, limited partnerships, limited liability partnerships, limited liability companies or professional limited liability companies, voluntary associations or business trusts. 25.00

(M) Plus for each additional party to the merger in excess of two. 15.00

(N) Statement of conversion, when permitted, from one business entity into another business entity, in addition to the cost of filing the appropriate documents to organize the surviving entity. 25.00

(O) Articles of dissolution of a corporation, voluntary association or business trust, or statement of dissolution of a general partnership. 25.00

(P) Revocation of voluntary dissolution of a corporation, voluntary association or business trust. 15.00

(Q) Articles of termination of a limited liability company, cancellation of a limited partnership or statement of withdrawal of limited liability partnership. 25.00

(R) Reinstatement of a limited liability company or professional limited liability company after administrative dissolution. 25.00

(2) For filing, recording, indexing, preserving a record of and issuing a certificate relating to the registration, amendment, change of name, merger, consolidation, conversion, renewal, withdrawal or termination within this state of business entities organized in other states or countries, as follows:
(A) Certificate of authority of for-profit corporation ........................................... $100.00

(B) Certificate of authority of nonprofit corporation ............................................. 50.00

(C) Certificate of authority of foreign limited liability companies........................ 150.00

(D) Certificate of exemption from certificate of authority ..................................... 25.00

(E) Registration of a general partnership. ........ 50.00

(F) Registration of a limited partnership........... 150.00

(G) Registration of a limited liability partnership for two-year term....................... 500.00

(H) Registration of a voluntary association........ 50.00

(I) Registration of a trust or business trust........ 50.00

(J) Amendment or correction of certificate of authority of a foreign corporation, including change of name or increase of capital stock, in addition to any applicable license tax. 25.00

(K) Amendment or correction of certificate of limited partnership, limited liability partnership, limited liability company or professional limited liability company, voluntary association or business trust........ 25.00

(L) Registration of trade name, otherwise designated as a true name, fictitious name or D.B.A. (doing business as) name for any foreign business entity as permitted by law. .... 25.00

(M) Amendment and restatement of certificate of authority or of registration of a corporation, limited partnership, limited
liability partnership, limited liability company or professional
limited liability company, voluntary association or business trust

.................................................. 25.00

(N) Articles of merger of two corporations, limited
partnerships, limited liability partnerships, limited liability
companies or professional limited liability companies, voluntary
associations or business trusts. ......................... 25.00

(O) Plus for each additional party to the merger in excess
of two. .................................................. 5.00

(P) Statement of conversion, when permitted, from one
business entity into another business entity, in addition to the
cost of filing the appropriate articles or certificate to organize the
surviving entity. ....................................... 25.00

(Q) Certificate of withdrawal or cancellation of a
corporation, limited partnership, limited liability partnership,
limited liability company, voluntary association or business trust
.................................................. 25.00

Notwithstanding any other provision of this section to the
contrary, after June 30, 2008, the fees described in this
subdivision that are collected for the issuance of a certificate
relating to the initial registration of a corporation, limited
partnership, domestic limited liability company or foreign
limited liability company shall be deposited in the general
administrative fees account established by this section.

(3) For receiving, filing and recording a change of the
principal or designated office, change of the agent of process
and/or change of officers, directors, partners, members or
managers, as the case may be, of a corporation, limited
partnership, limited liability partnership, limited liability
company or other business entity as provided by law.. $15.00
(4) For receiving, filing and preserving a reservation of a name for each one hundred twenty days or for any other period in excess of seven days prescribed by law for a corporation, limited partnership, limited liability partnership or limited liability company. $15.00

(5) For issuing a certificate relating to a corporation or other business entity, as follows:

(A) Certificate of good standing of a domestic or foreign corporation. $10.00

(B) Certificate of existence of a domestic limited liability company, and certificate of authorization foreign limited liability company. 10.00

(C) Certificate of existence of any business entity, trademark or service mark registered with the Secretary of State. 10.00

(D) Certified copy of corporate charter or comparable organizing documents for other business entities. 15.00

(E) Plus, for each additional amendment, restatement or other additional document. 5.00

(F) Certificate of registration of the name of a foreign corporation, limited liability company, limited partnership or limited liability partnership. 25.00

(G) And for the annual renewal of the name registration. 10.00

(H) Any other certificate not specified in this subdivision. 10.00

(6) For issuing a certificate other than those relating to business entities, as provided in this subsection, as follows:
A Certificate or apostille relating to the authority of certain public officers, including the membership of boards and commissions. $10.00

(B) Plus, for each additional certificate pertaining to the same transaction. 5.00

(C) Any other certificate not specified in this subdivision. 10.00

(D) For acceptance, indexing and recordation of service of process any corporation, limited partnership, limited liability partnership, limited liability company, voluntary association, business trust, insurance company, person or other entity as permitted by law. 15.00

(E) For shipping and handling expenses for execution of service of process by certified mail upon any defendant within the United States, which fee is to be deposited to the special revenue account established in this section for the operation of the office of the Secretary of State. 5.00

(F) For shipping and handling expenses for execution of service of process upon any defendant outside the United States by registered mail, which fee is to be deposited to the special revenue account established in this section for the operation of the office of the Secretary of State. 15.00

(7) For a search of records of the office conducted by employees of or at the expense of the Secretary of State upon request, as follows:

(A) For any search of archival records maintained at sites other than the office of the Secretary of State no less than $10.00

(B) For searches of archival records maintained at sites other than the office of the Secretary of State which require more than
one hour, for each hour or fraction of an hour consumed in making a search. ......................... 10.00

(C) For any search of records maintained on site for the purpose of obtaining copies of documents or printouts of data ......................... 5.00

(D) For any search of records maintained in electronic format which requires special programming to be performed by the state information services agency or other vendor any actual cost, but not less than. ......................... 25.00

(E) The cost of the search is in addition to the cost of any copies or printouts prepared or any certificate issued pursuant to or based on the search.

(F) For recording any paper for which no specific fee is prescribed. ......................... 5.00

(G) For producing and providing photocopies or printouts of electronic data of specific records upon request, as follows:

(A) For a copy of any paper or printout of electronic data, if one sheet ......................... $1.00

(B) For each sheet after the first ......................... .50

(C) For sending the copies or lists by fax transmission ......................... 5.00

(D) For producing and providing photocopies of lists, reports, guidelines and other documents produced in multiple copies for general public use, a publication price to be established by the Secretary of State at a rate approximating 2.00 plus .10 per page and rounded to the nearest dollar.

(E) For electronic copies of records obtained in data format on disk, the cost of the record in the least expensive available
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204 printed format, plus, for each required disk, which shall be
205 provided by the Secretary of State.................... 5.00

206 (b) The Secretary of State may propose legislative rules for
207 promulgation for charges for on-line electronic access to
208 database information or other information maintained by the
209 Secretary of State.

210 (c) For any other work or service not enumerated in this
211 subsection, the fee prescribed elsewhere in this code or a rule
212 promulgated under the authority of this code.

213 (d) The records maintained by the Secretary of State are
214 prepared and indexed at the expense of the state and those
215 records shall not be obtained for commercial resale without the
216 written agreement of the state to a contract including
217 reimbursement to the state for each instance of resale.

218 (e) The Secretary of State may provide printed or electronic
219 information free of charge as he or she considers necessary and
220 efficient for the purpose of informing the general public or the
221 news media.

222 (f) There is hereby continued in the State Treasury a special
223 revenue account to be known as the “service fees and
224 collections” account. Expenditures from the account shall be
225 used for the operation of the office of the Secretary of State and
226 are not authorized from collections, but are to be made only in
227 accordance with appropriation by the Legislature and in
228 accordance with the provisions of article three, chapter twelve of
229 this code and upon the fulfillment of the provisions set forth in
230 article two, chapter five-a of this code. Notwithstanding any
231 other provision of this code to the contrary, except as provided
232 in subsection (h) of this section and section two-a of this article,
233 one half of all the fees and service charges established in the
234 following sections and for the following purposes shall be
deposited by the Secretary of State or other collecting agency to
that special revenue account and used for the operation of the
office of the Secretary of State:

(1) The annual attorney-in-fact fee for corporations and
limited partnerships established in section five, article twelve-c,
chapter eleven of this code;

(2) The fees received for the sale of the State Register, code
of state rules and other copies established by rule and authorized
by section seven, article two, chapter twenty-nine-a of this code;

(3) The registration fees, late fees and legal settlements
charged for registration and enforcement of the charitable
organizations and professional solicitations established in
sections five, nine and fifteen-b, article nineteen, chapter
twenty-nine of this code;

(4) The annual attorney-in-fact fee for limited liability
companies as designated in section one hundred eight, article
one, chapter thirty-one-b of this code and established in section
two hundred eleven, article two of said chapter: Provided, That
after June 30, 2008, the annual report fees designated in section
one hundred eight, article one, chapter thirty-one-b of this code
shall upon collection be deposited in the general administrative
fees account described in subsection (h) of this section;

(5) The filing fees and search and copying fees for uniform
commercial code transactions established by section five
hundred twenty-five, article nine, chapter forty-six of this code;

(6) The annual attorney-in-fact fee for licensed insurers
established in section twelve, article four, chapter thirty-three of
this code;

(7) The fees for the application and record maintenance of
all notaries public established by section twenty, article four,
chapter thirty-nine of this code.
(8) The fees for registering credit service organizations as established by section five, article six-c, chapter forty-six-a of this code;

(9) The fees for registering and renewing a West Virginia limited liability partnership as established by section one, article ten, chapter forty-seven-b of this code;

(10) The filing fees for the registration and renewal of trademarks and service marks established in section seventeen, article two, chapter forty-seven of this code;

(11) All fees for services, the sale of photocopies and data maintained at the expense of the Secretary of State as provided in this section; and

(12) All registration, license and other fees collected by the Secretary of State not specified in this section.

(g) Any balance in the service fees and collections account established by this section which exceeds five hundred thousand dollars as of June 30, 2003, and each year thereafter, shall be expired to the state fund, General Revenue Fund.

(h) Effective July 1, 2008, there is hereby created in the State Treasury a special revenue account to be known as the general administrative fees account. Expenditures from the account shall be used for the operation of the office of the Secretary of State 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 eleven-b of this code: Provided, That for the fiscal year ending June 30, 2009, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Any balance in the account at the end of each fiscal year shall not revert to the
General Revenue Fund but shall remain in the fund and be expended as provided by this subsection.

(2) After June 30, 2008, all the fees and service charges established in section two-a of this article for the following purposes shall be collected and deposited by the Secretary of State or other collecting agency in the general administrative fees account and used for the operation of the office of the Secretary of State:

(A) The annual report fees paid to the Secretary of State by corporations, limited partnerships, domestic limited liability companies and foreign limited liability companies;

(B) The fees for the issuance of a certificate relating to the initial registration of a corporation, limited partnership, domestic limited liability company or foreign limited liability company described in subdivision (2), subsection (a) of this section; and

(C) The fees for the purchase of date and updates related to the State’s Business Organizations Database described in section two-a of this article.

(i) There is continued in the office of the Secretary of State a noninterest-bearing, escrow account to be known as the “prepaid fees and services account”. This account shall be for the purpose of allowing customers of the Secretary of State to prepay for services, with payment to be held in escrow until services are rendered. Payments deposited in the account shall remain in the account until services are rendered by the Secretary of State and at that time the fees will be reallocated to the appropriate general or special revenue accounts. There shall be no fee charged by the Secretary of State to the customer for the use of this account and the customer may request the return of any moneys maintained in the account at any time without penalty. The assets of the prepaid fees and services account do
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5C-22, relating to requirements for agreements with nursing homes wherein a person waives their rights to trials by jury on claims arising from the nursing care of a nursing home resident; ensuring the court is not bound to find all or part of the contract enforceable, unenforceable, conscionable or unconscionable; and applying this section to all agreements entered into on or after January 1, 2015.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-5C-22, to read as follows:

ARTICLE 5C. NURSING HOMES.

§16-5C-22. Jury trial waiver to be a separate document.

(a) Every written agreement containing a waiver of a right to a trial by jury that is entered into between a nursing home and a person for the nursing care of a resident, must have as a separate and stand alone document any waiver of a right to a trial by jury.
(b) Nothing in this section may be construed to require a court of competent jurisdiction to determine that the entire agreement or any portion thereof is enforceable, unenforceable, conscionable or unconscionable.

c) This section applies to all agreements entered into on or after January 1, 2015.

CHAPTER 135

(Com. Sub. for H. B. 4284 - By Delegates Perdue, Fleischauer, Barrett, Caputo, Guthrie, Kinsey, Lawrence, Manchin, Skinner, Sponaugle and Young)

[Passed March 6, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-11B-1, §5-11B-2, §5-11B-3, §5-11B-4, §5-11B-5, §5-11B-6 and §5-11B-7, all relating to creating the Pregnant Workers’ Fairness Act; defining unlawful employment practices; establishing remedies and enforcement for discriminatory conduct; authorizing rule making by the West Virginia Human Rights Commission; establishing the relationship of the article to other laws; and requiring a report to the Joint Committee on Government and Finance.

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 §5-11B-1, §5-11B-2, §5-11B-3, §5-11B-4, §5-11B-5, §5-11B-6 and §5-11B-7, all to read as follows:
ARTICLE 11B. PREGNANT WORKERS' FAIRNESS ACT.

§5-11B-1. Short title.

This article may be cited as the Pregnant Workers' Fairness Act.

§5-11B-2. Nondiscrimination with regard to reasonable accommodations related to pregnancy.

It shall be an unlawful employment practice for a covered entity to:

1. Not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a job applicant or employee, following delivery by the applicant or employee of written documentation from the applicant's or employee's health care provider that specifies the applicant's or employee's limitations and suggesting what accommodations would address those limitations, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

2. Deny employment opportunities to a job applicant or employee, if such denial is based on the refusal of the covered entity to make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of an employee or applicant;

3. Require a job applicant or employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation that such applicant or employee chooses not to accept; or

4. Require an employee to take leave under any leave law or policy of the covered entity if another reasonable
accommodation can be provided to the known limitations related
to the pregnancy, childbirth, or related medical conditions of an
employee.

§5-11B-3. Remedies and enforcement.

1 (a) The powers, procedures, and remedies provided in article
eleven of this chapter to the Commission, the Attorney General,
or any person, alleging a violation of the West Virginia Human
Rights Act shall be the powers, procedures, and remedies this
article provides to the Commission, the Attorney General, or any
person, respectively, alleging an unlawful employment practice
in violation of this article against an employee or job applicant.

(b) No person shall discriminate against any individual
because such individual has opposed any act or practice made
unlawful by this article or because such individual made a
charge, testified, assisted, or participated in any manner in an
investigation, proceeding, or hearing under this article. The
remedies and procedures otherwise provided for under this
section shall be available to aggrieved individuals with respect
to violations of this subsection.

§5-11B-4. Rule making.

1 Not later than two years after the date of enactment of this
article, the Commission shall propose legislative rules in
accordance with article three, chapter twenty-nine-a of this code,
to carry out this article. Such rules shall identify some
reasonable accommodations addressing known limitations
related to pregnancy, childbirth, or related medical conditions
that shall be provided to a job applicant or employee affected by
such known limitations unless the covered entity can
demonstrate that doing so would impose an undue hardship.
§5-11B-5. Definitions.

1 As used in this article:

2 (1) "Attorney General" means the West Virginia Attorney General;

3 (2) "Commission" means the West Virginia Human Rights Commission;

4 (3) "Covered entity" has the meaning given the word employer in section three, article eleven of this chapter;

5 (4) "Person" has the meaning given the word in section three, article eleven of this chapter; and

6 (5) "Reasonable accommodation" and "undue hardship" have the meanings given those terms in section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111) and shall be construed as such terms have been construed under such Act and as set forth in the rules required by this article.

§5-11B-6. Relationship to other laws.

1 Nothing in this article shall be construed to invalidate or limit the remedies, rights, and procedures that provides greater or equal protection for workers affected by pregnancy, childbirth, or related medical conditions.

§5-11B-7. Reports.

1 The Commission shall annually on October 1 of each year report to the Joint Committee on Government and Finance on the number of complaints filed under this article during the previous year and their resolution.
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 Parole Board; eligibility for parole; clarifying the procedures for granting parole; and clarifying that a parole-eligible inmate is entitled to a timely parole hearing regardless of where he or she is housed.

Be it enacted by the Legislature of West Virginia:

That §62-12-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

1 (a) The Parole Board, 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 provided in this section, shall release any inmate on parole for terms and upon conditions provided by this article.

6 (b) Any inmate of a state correctional institution is eligible for parole if he or she:

8 (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) 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 offense where the victim was a minor child; and

(iv) Has successfully completed a rehabilitation treatment program created with the assistance of a standardized risk and needs assessment.

(C) Notwithstanding any provision of this code to the contrary, any inmate 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 inmate 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 paragraph 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. An inmate is not ineligible for parole under
the provisions of this paragraph 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 guilty by the court at the
time of trial upon a plea of guilty or nolo contendere; (ii) found
guilty 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 guilty by the court. if the matter was tried by
the court without a jury.

(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. The notice shall state with particularity
the grounds upon which the finding will be sought as fully as the
grounds are otherwise required to be stated in an indictment,
unless the grounds upon which the finding will be sought 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 those cases the prior provisions of this
section apply and are construed without reference to the amendments.

(v) 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.

(E) As used in this section, “felony crime of violence against the person” means felony offenses set forth in article two, three-e, eight-b or eight-d, chapter sixty-one of this code; and

(F) As used in this section, “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, chapter sixty-one of this code.

(G) 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.

(2) Is not in punitive segregation or administrative segregation as a result of disciplinary action;

(3) Has prepared and submitted to the Parole 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: Provided, That an inmate’s application for parole may be considered by the board without the prior submission of a home plan, but the inmate shall have a home plan approved by the board prior to his or her release on parole. The Commissioner of Corrections or his or her designee shall review and investigate the plan 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
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105 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 believes parole should be granted,
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

114 (4) Has satisfied the board that if released on parole he or
she will not constitute a danger to the community.

116 (c) Except in the case of an inmate serving a life sentence, a
person who has been previously twice convicted of a felony may
not 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. An inmate sentenced for life may not be paroled until
he or she has served ten years, and an inmate 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
an inmate 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.

127 (d) In the case of an inmate sentenced to a state correctional
institution regardless of the inmate's place of detention or
incarceration, the Parole Board, as soon as that inmate becomes
eligible, shall consider the advisability of his or her release on
parole.

132 (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 inmate 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 who is still eligible: \textit{Provided, That}
the board may reconsider and review parole eligibility any time
within three years following the denial of parole of an inmate
serving a life sentence with the possibility of parole.

(f) Any inmate in the custody of the commissioner for
service of a sentence who reaches parole eligibility is entitled to
a timely parole hearing without regard to the location in which
he or she is housed.

(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 under this
article 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) (1) 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 provide for, at a
minimum, screening and selecting inmates for rehabilitation
treatment and development, using standardized risk and needs
assessment and substance abuse assessment tools, and
prioritizing the use of residential substance abuse treatment
resources based on the results of the standardized risk and needs
assessment and a substance abuse assessment. The results of all
standardized risk and needs assessments and substance abuse
assessments are confidential.

(2) An inmate shall not be paroled under paragraph (B),
subdivision (1), subsection (b) of this section solely due to
having successfully completed a rehabilitation treatment plan,
but completion of all the requirements of a rehabilitation
treatment plan along with compliance with the requirements of subsection (b) of this section creates a rebuttable presumption that parole is appropriate. The presumption created by this subdivision may be rebutted by a Parole Board finding that, according to the standardized risk and needs assessment, 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 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 precludes consideration for parole for a period of one year or until the provisions of subsection (b) of this section are applicable.

(j) If an inmate is otherwise eligible for parole pursuant to subsection (b) of this section and has completed the rehabilitation treatment program required under subsection (g) of this section, the Parole Board may not require the inmate to participate in an additional program, but may determine that the inmate must complete an assigned task or tasks prior to actual release on parole. The board may grant parole contingently, effective upon successful completion of the assigned task or tasks, without the need for a further hearing.

(k) (1) The Division of Corrections shall supervise 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.

(2) The Division of Corrections shall provide supervision, treatment/recovery and support services for all persons released
When considering an inmate of a state correctional center for release on parole, the Parole Board panel considering the parole shall 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 any other reliable criminal information sources and written reports of the warden or superintendent of the state correctional institution 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 for the infractions;

(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 the state correctional institution; and

(D) On any physical, mental, psychological or psychiatric examinations of the inmate.
234 (2) The Parole 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 case, shall enter in its record 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 Parole Board panel may not waive the report required by this subsection. The report shall include a study and diagnosis of the inmate, 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 inmate during the study or diagnosis may be made available to any law-enforcement agency, or other party without that inmate'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 parolee. 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 Parole Board 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 Parole Board made pursuant to the provisions of this section: Provided, That an inmate may appear by video teleconference if the members of the Parole Board
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 must 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 Parole Board shall be kept on permanent file.

(n) The Parole Board and its designated agents are at all times to have access to inmates imprisoned in any state correctional institution 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 of the state.

(o) The Parole Board shall, if requested by the Governor, investigate and consider all applications for pardon, reprieve or commutation and shall make recommendation on the applications to the Governor.

(p) (1) Prior to making a recommendation for pardon, reprieve or commutation, the board shall notify the sentencing judge and prosecuting attorney at least ten days before the recommendation.

(2) Notwithstanding any other provision of law to the contrary, if the board grants a person parole, the board shall provide written notice to the prosecuting attorney and circuit judge of the county in which the inmate was prosecuted, that parole has been granted. The notice shall be sent by certified mail, return receipt requested, and include the anticipated date of
release and the person’s anticipated future residence. A written
statement of reasons for releasing the person, prepared pursuant
to subsection (b) of this section, shall be provided upon request.

(q) A parolee shall participate as a condition of parole in the
litter control program of the county to which he or she is
released to the extent directed by the Parole Board, unless the
board specifically finds that this alternative service would be
inappropriate.

CHAPTER 137

(Com. Sub. for H. B. 4188 -By Delegates Perdue,
Fleischauer, Diserio, Eldridge, Kinsey, Lawrence,
Marshall, Moore and Poore)

[Passed March 5, 2014; in effect from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to repeal §30-7B-8 and §30-7B-9 of the Code of West
Virginia, 1931, as amended; to amend said code by adding thereto
a new section, designated §18C-3-4; and to amend and reenact
§30-7B-1, §30-7B-2, §30-7B-3, §30-7B-4, §30-7B-5, §30-7B-6
and §30-7B-7 of said code, all relating to recruitment and retention
of nurses in the state; codifying Nursing Scholarship Program;
modifying program administration; specifying program criteria,
eligibility and awards; specifying recipient service or repayment
requirement; continuing the Center for Nursing Fund special
revenue account; modifying account administration, revenues and
expenditures; continuing the West Virginia Center for Nursing;
modifying center powers, duties and purpose; reorganizing the
center’s board of directors; modifying board membership, powers
and duties; authorizing board member expense reimbursement;
requiring cooperation among Higher Education Policy Commission, Center for Nursing and Board of Directors; defining terms; requiring legislative rule; authorizing emergency rule; requiring reports to the Legislative Oversight Commission on Health and Human Resources Accountability and the Legislative Oversight Commission on Education Accountability; deleting obsolete provisions; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §30-7B-8 and §30-7B-9 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §18C-3-4; and that §30-7B-1, §30-7B-2, §30-7B-3, §30-7B-4, §30-7B-5, §30-7B-6 and §30-7B-7 of said code be amended and reenacted, all to read as follows:

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN AND SCHOLARSHIP PROGRAMS.

§18C-3-4. Nursing Scholarship Program; Center for Nursing Fund; administration; scholarship awards; service requirements.

(a) There is continued in the State Treasury a special revenue account known as the “Center for Nursing Fund” to be administered by the commission to implement the provisions of this section and article seven-b, chapter thirty of this code. Any moneys in the account on the effective date of this section are transferred to the commission’s administrative authority. Balances remaining in the fund at the end of the fiscal year do not expire or revert to the general revenue. All costs associated with the administration of this section and article seven-b, chapter thirty of this code shall be paid from the Center for Nursing Fund under the direction of the Vice Chancellor for
Administration. Administrative costs are to be minimized and the maximum amount feasible is to be used to fund awards for students in nursing programs.

(b) The account is funded from the following sources:

(1) A supplemental licensure fee, not to exceed $10 per year, to be paid by all nurses licensed by the Board of Examiners for Registered Professional Nurses, pursuant to section eight-a, article seven, chapter thirty of this code, and the Board of Examiners for Licensed Practical Nurses, pursuant to section seven-a, article seven-a, chapter thirty of this code;

(2) Repayments, including interest as set by the Vice Chancellor for Administration, collected from recipients who fail to practice or teach in West Virginia under the terms of the scholarship agreement; and

(3) Any other funds from any source as may be added to the account.

(c) In consultation with the board of directors of the West Virginia Center for Nursing, established pursuant to article seven-b, chapter thirty of this code, the commission shall administer a scholarship, designated the "Nursing Scholarship Program", designed to benefit nurses who practice in hospitals and other health care institutions or teach in state nursing programs.

(1) Awards are available for students enrolled in accredited nursing programs in West Virginia. A recipient shall execute an agreement to fulfill a service requirement or repay the amount of any award received.

(2) Awards are made as follows, subject to the rule required by this section:
(A) An award for any student may not exceed the full cost of education for program completion;

(B) An award of up to $3,000 is available for a student in a licensed practical nurse education program. A recipient is required to practice nursing in West Virginia for one year following program completion;

(C) An award of up to $7,500 is available for a student who has completed one-half of a registered nurse education program. A recipient is required to teach or practice nursing in West Virginia for two years following program completion.

(D) An award of up to $15,000 is available to a student in a nursing education master’s degree program or a doctoral nursing program. A recipient is required to teach in West Virginia for two years following program completion.

(E) An award of up to $1,000 per year is available for a student obtaining a licensed practical nurse teaching certificate. A recipient is required to teach in West Virginia for one year per award received.

(d) An award recipient shall satisfy one of the following conditions:

(1) Fulfill the service requirement pursuant to this section and the legislative rule; or

(2) Repay the commission for the amount awarded, together with accrued interest as stipulated in the service agreement.

(e) The commission shall promulgate a rule for legislative approval pursuant to article three-a, chapter twenty-nine-a of this code to implement and administer this section. The Legislature finds that an emergency exists, and, therefore, the commission shall propose an emergency rule pursuant to article three-a,
chapter twenty-nine-a of this code by August 1, 2014. The rules shall provide for the following:

1. Eligibility and selection criteria for program participation;
2. Terms of a service agreement which a recipient shall execute as a condition of receiving an award;
3. Repayment provisions for a recipient who fails to fulfill the service requirement;
4. Forgiveness options for death or disability of a recipient;
5. An appeal process for students denied participation or ordered to repay awards; and
6. Additional provisions as necessary to implement this section.

(f) The commission shall report by December 1, 2014, and annually thereafter, to the Legislative Oversight Commission on Health and Human Resources Accountability and the Legislative Oversight Commission on Education Accountability on the number of award recipients and all other matters relevant to the provisions of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 7B. CENTER FOR NURSING.

§30-7B-1. Definitions.

As used in this article, the following words and phrases have the meanings ascribed to them:

(a) “Board” means the Board of Directors for the West Virginia Center for Nursing;
(b) "Center" means the West Virginia Center for Nursing;

(c) "Commission" means the West Virginia Higher Education Policy Commission; and

(d) "Center for Nursing Fund" means the special revenue account established in section four, article three, chapter eighteen-c of this code.

§30-7B-2. West Virginia Center for Nursing.

(a) The West Virginia Center for Nursing is continued for the purpose of addressing the issues of recruitment and retention of nurses in West Virginia.

(b) The commission shall satisfy the following requirements:

(1) Provide suitable office space for the center;

(2) Provide staff support for the center as necessary;

(3) Share statistics and other pertinent information with the center;

(4) Work cooperatively with the center to assist it in achieving its objectives; and

(5) Utilize moneys from the Center for Nursing Fund to perform its duties required by this article.

§30-7B-3. Center's powers and duties.

The center shall satisfy the following requirements:

(a) Establish a statewide strategic plan to address the nursing shortage in West Virginia;

(b) Collect, evaluate and disseminate data regarding nurse availability and shortage areas;
(c) Establish and maintain a website to disseminate information about the center and its mission, and educational opportunities and financial aid available in West Virginia;

(d) Evaluate capacity for expansion of nursing programs, including the availability of faculty, clinical laboratories, computers and software, library holdings and supplies;

(e) Consult with and advise the commission regarding the commission’s administration of the nursing scholarship program designed to benefit nurses who practice in hospitals and other health care institutions or teach in state nursing programs as provided in section four, article three, chapter eighteen-c of this code; and

(f) Perform other activities necessary or expedient to accomplish the purposes and implement the provisions of this article.

§30-7B-4. Board of directors.

(a) The center is governed by a board of directors consisting of the following members appointed by the Governor:

(1) Two representatives from the West Virginia Board of Examiners for Registered Professional Nurses, as follows:

(A) One representing a bachelor or higher degree program; and

(B) One representing an associate degree program;

(2) One representative from the West Virginia Board of Examiners for Licensed Practical Nurses;

(3) One representative from the West Virginia Nurses Association;
(4) One nurse representing a rural health care facility;
(5) One director of nursing;
(6) One health care administrator;
(7) One registered professional staff nurse engaged in direct patient care;
(8) One licensed practical nurse engaged in direct patient care;
(9) Two citizen members as required by section four-a, article one, chapter thirty of this code;
(10) Two ex officio, nonvoting members, as follows:
    (A) The Secretary of the Department of Health and Human Resources or his or her designee; and
    (B) A representative from WorkForce West Virginia.
(b) Members are appointed for four-year terms. A member may not serve more than two consecutive terms.
(c) The board shall elect annually from its voting members a president and a secretary as required by section three, article one, chapter thirty of this code. A majority of the appointed members constitutes a quorum.
(d) The Governor shall fill any vacancy within thirty days of occurrence.
(e) The members of the board who are in office on the effective date of this section, unless sooner removed, shall continue to serve until their successors have been appointed and qualified.
§30-7B-5. Powers and duties of the board of directors.

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

1. Determine policy for the operation of the center to accomplish the purposes of this article; and

2. Advise the commission on matters pertaining to the administration of the Nursing Scholarship Program pursuant to section four, article three, chapter eighteen-c of this code.

(b) The commission shall provide to the board administrative and professional staff support as needed from the Center for Nursing Fund.

§30-7B-6. Expense reimbursement.

(a) Members of the board serve without compensation, but may be reimbursed for actual and necessary expenses incurred for each day, or portion thereof, in which they are engaged in the discharge of official duties. Reimbursements are made in a manner consistent with guidelines of the travel management office of the commission.

(b) The commission shall provide reimbursement for members' expenses from the Center for Nursing Fund.

§30-7B-7. Reports.

The center shall report by December 1, 2014, and biennially thereafter, to the Legislative Oversight Commission on Health and Human Resources Accountability and the Legislative Oversight Commission on Education Accountability on its progress in developing a statewide strategic plan to address the nursing shortage in West Virginia and on any other issues the board considers relevant to the practice of nursing in this state. Additionally, the board shall provide drafts of any legislation needed to implement recommendations of the center’s strategic plan.
AN ACT to amend and reenact §30-1-7a of the Code of West Virginia, 1931, as amended, relating to continuing education relevant to mental health issues of veterans and their families; providing certain boards adopt continuing education courses relevant to mental health issues of veterans and their families as part their continuing education requirements for licensure or renewal; and requiring a minimum of two hours of continuing education relevant to mental health issues of veterans and their families for licensure renewal for certain professions.

Be it enacted by the Legislature of West Virginia:

That §30-1-7a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-7a. Continuing education.

1 (a) Each board referred to in this chapter shall establish continuing education requirements as a prerequisite to license renewal. Each board shall develop continuing education criteria
appropriate to its discipline, which shall include, but not be
limited to, course content, course approval, hours required and
reporting periods.

(b) Notwithstanding any other provision of this code or the
provision of any rule to the contrary, each person issued a
license to practice medicine and surgery or a license to practice
podiatry or licensed as a physician assistant by the West Virginia
Board of Medicine, each person issued a license to practice
dentistry by the West Virginia Board of Dental Examiners, each
person issued a license to practice optometry by the West
Virginia Board of Optometry, each person licensed as a
pharmacist by the West Virginia Board of Pharmacy, each
person licensed to practice registered professional nursing or
licensed as an advanced nurse practitioner by the West Virginia
Board of Examiners for Registered Professional Nurses, each
person licensed as a licensed practical nurse by the West
Virginia State Board of Examiners for Licensed Practical Nurses
and each person licensed to practice medicine and surgery as an
osteopathic physician and surgeon or licensed or certified as an
osteopathic physician assistant by the West Virginia Board of
Osteopathy shall complete drug diversion training and best
practice prescribing of controlled substances training, as the
trainings are established by his or her respective licensing board,
if that person prescribes, administers, or dispenses a controlled
substance, as that term is defined in section one hundred one,
article one, chapter sixty-a of this code.

(1) Notwithstanding any other provision of this code or the
provision of any rule to the contrary, the West Virginia Board of
Medicine, the West Virginia Board of Dental Examiners, the
West Virginia Board of Optometry, the West Virginia Board of
Pharmacy, the West Virginia Board of Examiners for Registered
Professional Nurses, the West Virginia State Board of Examiners
for Licensed Practical Nurses and the West Virginia Board of
Osteopathy shall establish continuing education requirements and criteria appropriate to their respective discipline on the subject of drug diversion training and best practice prescribing of controlled substances training for each person issued a license or certificate by their respective board who prescribes, administers or dispenses a controlled substance, as that term is defined in section one hundred one, article one, chapter sixty-a of this code, and shall develop a certification form pursuant to subdivision (b)(2) of this section.

(2) Each person who receives his or her initial license or certificate from any of the boards set forth in subsection (b) shall complete the continuing education requirements set forth in subsection (b) within one year of receiving his or her initial license from that board and each person licensed or certified by any of the boards set forth in subsection (b) who has held his or her license or certificate for longer than one year shall complete the continuing education requirements set forth in subsection (b) as a prerequisite to each license renewal: Provided, That a person subject to subsection (b) may waive the continuing education requirements for license renewal set forth in subsection (b) if he or she completes and submits to his or her licensing board a certification form developed by his or her licensing board attesting that he or she has not prescribed, administered, or dispensed a controlled substance, as that term is defined in section one hundred one, article one, chapter sixty-a of this code, during the entire applicable reporting period.

(c) Notwithstanding any other provision of this code or the provision of any rule to the contrary, each person licensed to practice registered professional nursing or licensed as an advanced nurse practitioner by the West Virginia Board of Examiners for Registered Professional Nurses, each person licensed as a licensed practical nurse by the West Virginia State Board of Examiners for Licensed Practical Nurses, each person
issued a license to practice midwifery as a nurse-midwife by the West Virginia Board of Examiners for Registered Professional Nurses, each person issued a license to practice chiropractic by the West Virginia Board of Chiropractic, each person licensed to practice psychology by the Board of Examiners of Psychologists, each person licensed to practice social work by the West Virginia Board of Social Work, and each person licensed to practice professional counseling by the West Virginia Board of Examiners in Counseling, shall complete two hours of continuing education for each reporting period on mental health conditions common to veterans and family members of veterans, as the continuing education is established or approved by his or her respective licensing board. The two hours shall be part of the total hours of continuing education required by each board and not two additional hours.

(1) Notwithstanding any other provision of this code or the provision of any rule to the contrary, on or before July 1, 2015, the boards referred to in this subsection shall establish continuing education requirements and criteria and approve continuing education coursework appropriate to their respective discipline on the subject of mental health conditions common to veterans and family members of veterans, in cooperation with the Secretary of the Department of Veterans Assistance. The continuing education shall include training on inquiring about whether the patients are veterans or family members of veterans, and screening for conditions such as post-traumatic stress disorder, risk of suicide, depression and grief, and prevention of suicide.

(2) On or after July 1, 2017, each person licensed by any of the boards set forth in this subsection shall complete the continuing education described herein as a prerequisite to his or her next license renewal.
CHAPTER 139

(Com. Sub. for H. B. 4245 - By Delegates Fleischauer, Young, Iaquinta, Barrett, Barker, Barill, Diserio, Perdue, Guthrie, Ellington and Miller)

[Passed March 7, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-20, relating to anticipated retirement dates of certain health care professionals; requiring certain health care related professional licensing boards to request that licensees provide their anticipated retirement dates; and requiring data on anticipated retirement dates to be included in the boards' annual reports.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-1-20, to read as follows:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-20. Certain boards to regulating health care professions to gather retirement information and include in annual reports.

1 (a) The health related professional licensing boards referred to in subsection (c) of this section shall request that their
licensees provide the boards with their anticipated retirement
dates, age, gender, percentage of time working direct services,
percentage of time working administration and county of
practice, in order to facilitate planning for future workforce
needs for health care professionals.

(b) The boards shall redact personal identifiers and include
only aggregate data in the annual reports required by the
provisions of section twelve of this article, beginning with the
annual report due on or before January 1, 2016.

(c) The provisions of this section apply to:

(1) The West Virginia Board of Medicine, established
pursuant to the provisions of article three of this chapter;

(2) The West Virginia Board of Examiners for Registered
Professional Nurses, established pursuant to the provisions of
article seven of this chapter;

(3) The West Virginia Board of Examiners for Licensed
Practical Nurses, established pursuant to the provisions of article
seven-a of this chapter;

(4) The West Virginia Board of Pharmacy, established
pursuant to the provisions of article five of this chapter;

(5) The West Virginia Board of Dentistry, established
pursuant to the provisions of article four of this chapter; and

(6) The West Virginia Board of Osteopathy, established
pursuant to the provisions of article fourteen of this chapter.
AN ACT to repeal §30-1-6a and §30-1-6b of the Code of West Virginia, 1931, as amended; and to further amend said code by adding thereto a new article, designated §30-1B-1, §30-1B-2, §30-1B-3, §30-1B-4, §30-1B-5, §30-1B-6, §30-1B-7, §30-1B-8 and §30-1B-9, all relating to professional licensing requirements for certain military members and their spouses; making legislative findings; requiring certain boards to consider military education, training and experience upon application for licensure, certification or registration; providing for licensure renewal during active duty and for six months thereafter for service members and their spouses without meeting requirements of continuing education in certain circumstances and without payment of fees; requiring licensees, certificate holders and registrants to submit waiver requests to the boards; providing for expedited temporary licenses for spouses of active duty service members in certain circumstances; providing for waiver of temporary license application fees in certain circumstances; providing boards with rule-making authority; requiring boards to collect certain data on applications for licensure; requiring boards to report data on waivers and temporary licenses in their annual reports; applicability; and providing for liberal construction of article.

Be it enacted by the Legislature of West Virginia:

That §30-1-6a and §30-1-6b of the Code of West Virginia, 1931, as amended, be repealed; and that said code be further amended by
ARTICLE 1B. PROVISIONS APPLICABLE TO MILITARY MEMBERS AND THEIR SPOUSES.

§30-1B-1. Legislative findings and declarations.

The Legislature finds that:

1. In recognition of the enormous sacrifices made by members of the Armed Forces of the United States of America and their families in voluntary service to this state and our nation, the citizens of West Virginia must endeavor to find new and innovative ways to improve the lives of military families and support their personal and professional growth;

2. Many current and former members of the United States Armed Forces have acquired extensive academic, professional and occupational training and experience in various professions and occupations while serving in the Armed Forces, comparable to or exceeding that required in this state to register for examination or qualify for licensure, certification or registration for similar or related occupations and professions;

3. Military families are ten times more likely to move from one state to another than their civilian counterparts, and 35% of military spouses work in professions that require state licenses, certifications or registrations;

4. Armed forces members who return to this state after being called to active duty service, and spouses accompanying armed forces members outside of this state or to this state for active duty, are frequently delayed in beginning employment as professionals because of issues with obtaining licenses, certifications or registrations upon arrival or return to West Virginia;
(5) The boards in this chapter have the particular expertise necessary to evaluate and determine the adequacy of military education, training and experience for licensure, certification or registration and to adopt procedures that ease the burden of transition for military families through waivers, temporary licensing, or otherwise, while ensuring competency of professionals and protecting the citizens of the state from harm.

§30-1B-2. Consideration of military education, training and experience for licensure or registration, generally.

Except as provided in section eight of this article, and notwithstanding any law to the contrary, all boards referred to in this chapter shall, upon presentation of satisfactory evidence by an applicant for licensure, certification or registration, consider the individual's education, training or experience as a member of the Armed Forces or Reserves of the United States, the National Guard of any state, or the military reserves of any state, as part of the evaluation process toward the qualifications to receive, or take examination for, that respective professional license, certification or registration.

§30-1B-3. Licensure, certification or registration of persons on military active duty outside this state; extension of licenses or registration; waiver of certain license, certification or registration requirements.

(a) During periods when the licensee, certificate holder or registrant is on active duty as a member of the Armed Forces of the United States and deployed outside of this state, and for six months after discharge from active duty, his or her license, certification or registration shall continue in good standing and shall be renewed, upon receipt of a waiver request pursuant to subsection (b) of this section:

(1) Without meeting continuing education requirements for the license, certification or registration when:
(A) Circumstances associated with the military duty prevent the obtaining of continuing education, or

(B) The licensee, certificate holder or registrant performs the profession or occupation as part of his or her military duties, as may be evidenced by annotation on Defense Department Form 214 (DD214), National Guard Bureau Form 22 (NGB22) or other official record; and

(2) Without payment of fees for the renewal of the license, certification or registration.

(b) The licensee, certificate holder or registrant shall submit a waiver request to the appropriate board, informing the board of circumstances which include, but are not limited to, being deployed outside of this state.

§30-1B-4. Licensure, certification or registration of spouses of persons on military active duty outside this state; extension of licenses or registration; waiver of certain license, certification or registration requirements.

(a) During periods when the licensee, certificate holder or registrant is accompanying his or her spouse who is on active duty as a member of the Armed Forces of the United States and deployed outside of this state, and for six months after his or her spouse is discharged from active duty, his or her license, certification or registration shall continue in good standing and shall be renewed, upon receipt of a waiver request pursuant to subsection (b) of this section:

(1) Without meeting continuing education requirements for the license, certification or registration when:

(A) Circumstances associated with accompanying his or her spouse who is on active duty prevent the obtaining of continuing education, or
§30-1B-5. Temporary licensure, certification or registration of spouses of persons on military active duty; waiver of certain license, certification or registration fees.

(a) Notwithstanding any law to the contrary, the spouse of a person who is on active duty as a member of the Armed Forces of the United States shall be issued a temporary license, certification or registration by a board referred to in this chapter within thirty days of submitting the following to the board:

(1) A completed application for temporary license, certification or registration, as developed by the board;

(2) The required application fee;

(3) Proof that the applicant is married to a member of the Armed Forces of the United States who is on active duty; and

(4) Proof that the applicant holds a valid license, certification or registration for the profession issued by another state, the District of Columbia, or a possession or territory of the United States, and whose license, certification or registration is not and has not been the subject of disciplinary action in that jurisdiction.
(b) Notwithstanding subsection (a), a board may require the applicant to submit to a criminal history records check, to be paid for by the applicant, and the board may deny a request for a temporary license, certification or registration if the criminal history records check provides reason to believe that the applicant does not meet the requirements of the board or presents a safety risk to the public.

(c) A temporary license expires six months after the date of issuance and is not renewable.

(d) An applicant under this section may submit an application for waiver of the temporary license application fee, and the board shall grant the waiver if the applicant has paid a fee for his or her previous license, certification, or registration in another state, the District of Columbia, or a possession or territory of the United States, within six months immediately prior to submitting an application for temporary license, certification or registration. The applicant shall provide proof of the date and amount of the previous payment.

§30-1B-6. Rule-making authority.

The Boards referred to in this chapter may 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. Proposed rules may:

(1) Establish criteria or requirements for military education, training and experience that qualify the applicant to take an examination for licensure, certification or registration or for a waiver of any examination requirement to be licensed, certified or registered; and

(2) Implement the provisions of this article while ensuring competency, protecting the citizens of this state from harm, and addressing issues specific to each profession.
§30-1B-7. Data collection.

(a) The boards referred to in this chapter shall require an applicant to state on the application form that he or she is an active duty member of the armed forces of the United States or is a spouse of an active duty member of the armed forces of the United States.

(b) The boards referred to in this chapter shall include the following information in their annual reports, as required in section seventeen, article one of this chapter:

(1) The number of licenses, certificates and/or registrations issued pursuant to this article;

(2) The amount of fees waived pursuant to this article;

(3) The number of persons who had continuing education requirements waived pursuant to this article; and

(4) The number of temporary licenses issued pursuant to this article.

§30-1B-8. Applicability.

The provisions of this article do not apply to the boards referred to in this chapter whose license, certification, or registration requirements are subject to the provisions of article twenty-four of this chapter.

§30-1B-9. Liberality of construction.

This article shall be liberally construed and applied to promote the public interest.
CHAPTER 141
(Com. Sub. for H. B. 4278 - By Delegates Perdue, Fleischauer, Morgan, Guthrie, Ellington, Staggers and Swartzmiller)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §30-3-15 of the Code of West Virginia, 1931, as amended, relating to medical and podiatry corporations; declaring certain unlawful acts; clarifying the certificate of authorization requirements for in-state and out-of-state medical and podiatry corporations; setting forth the shareholder requirements; setting notice certain requirements to the Secretary of State; clarifying renewal requirements for certificate of authorization; clarifying conditions under which the medical and podiatry corporations can practice; stating requirements for ceasing operation; ensuring the physician-patient and podiatrist-patient relationships are not changed; declaring certain evidence as admissible and prima facie evidence of the facts contained; creating a misdemeanor offense; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §30-3-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-15. Certificate of authorization requirements for medical and podiatry corporations.

1 (a) Unlawful acts. — It is unlawful for any corporation to practice or offer to practice medicine and surgery or podiatry in this state without a certificate of authorization issued by the
board designating the corporation as an authorized medical or podiatry corporation.

(b) Certificate of authorization for in-state medical or podiatry corporation. — One or more physicians licensed to practice medicine and surgery in this state under this article, or one or more physicians licensed under this article and one or more physicians licensed under article fourteen of this chapter, or one or more podiatrists licensed to practice podiatry in this state may receive a certificate of authorization from the board to be designated a medical or podiatry corporation by:

(1) Filing a written application with the board on a form prescribed by the board;

(2) Furnishing satisfactory proof to the board that each shareholder of the proposed medical or podiatry corporation is a licensed physician or podiatrist pursuant to this article or article fourteen of this chapter; and

(3) Submitting applicable fees which are not refundable.

(c) Certificate of authorization for out-of-state medical or podiatry corporation. — A medical or podiatry corporation formed outside of this state for the purpose of engaging in the practice of medicine and surgery or the practice of podiatry may receive a certificate of authorization from the board to be designated a foreign medical or podiatry corporation by:

(1) Filing a written application with the board on a form prescribed by the board;

(2) Furnishing satisfactory proof to the board that the medical or podiatry corporation has received a certificate of authorization or similar authorization from the appropriate authorities as a medical or podiatry corporation, or professional corporation in its state of incorporation and is currently in good standing with that authority;
(3) Furnishing satisfactory proof to the board that at least one shareholder of the proposed medical or podiatry corporation is a licensed physician or podiatrist pursuant to this article and is designated as the corporate representative for all communications with the board regarding the designation and continuing authorization of the corporation as a foreign medical or podiatry corporation;

(4) Furnishing satisfactory proof to the board that all of the medical or podiatry corporation’s shareholders are licensed physicians or podiatrists in one or more states and submitting a complete list of the shareholders, including each shareholder’s name, their state or states of licensure and their license number(s); and

(5) Submitting applicable fees which are not refundable.

(d) Notice of certificate of authorization to Secretary of State. — When the board issues a certificate of authorization to a medical or podiatry corporation, then the board shall notify the Secretary of State that a certificate of authorization has been issued. When the Secretary of State receives a notification from the board, he or she shall attach that certificate of authorization to the corporation application and, upon compliance by the corporation with the pertinent provisions of this code, shall notify the incorporators that the medical or podiatry corporation, through licensed physicians or licensed podiatrists, may engage in the practice of medicine and surgery or the practice of podiatry in West Virginia.

(e) Authorized practice of medical or podiatry corporation. — An authorized medical corporation may only practice medicine and surgery through individual physicians licensed to practice medicine and surgery in this state. An authorized podiatry corporation may only practice podiatry through individual podiatrists licensed to practice podiatry in this
Physicians or podiatrists may be employees rather than shareholders of a medical or podiatry corporation, and nothing herein requires a license for or other legal authorization of, any individual employed by a medical or podiatry corporation to perform services for which no license or other legal authorization is otherwise required.

(f) Renewal of certificate of authorization. — A medical or podiatry corporation holding a certificate of authorization shall register biennially, on or before the expiration date on its certificate of authorization, on a form prescribed by the board, and pay a biennial fee. If a medical or podiatry corporation does not timely renew its certificate of authorization, then its certificate of authorization automatically expires.

(g) Renewal for expired certificate of authorization. — A medical or podiatry corporation whose certificate of authorization has expired may reapply for a certificate of authorization by submitting a new application and application fee in conformity with subsection (b) or (c) of this section.

(h) Ceasing operation — In-state medical or podiatry corporation. — A medical or podiatry corporation formed in this state and holding a certificate of authorization shall cease to engage in the practice of medicine, surgery or podiatry when notified by the board that:

(1) One of its shareholders is no longer a duly licensed physician or podiatrist in this state; or

(2) The shares of the medical or podiatry corporation have been sold or transferred to a person who is not a licensed physician or podiatrist in this state. The personal representative of a deceased shareholder shall have a period, not to exceed twelve months from the date of the shareholder’s death, to transfer the shares. Nothing herein affects the existence of the
medical or podiatry corporation or its right to continue to operate
for all lawful purposes other than the practice of medicine and
surgery or the practice of podiatry.

(i) Ceasing operation — Out-of-state medical or podiatry
corporation. — A medical or podiatry corporation formed
outside of this state and holding a certificate of authorization
shall immediately cease to engage in the practice of medicine,
surgery or podiatry in this state if:

(1) The corporate shareholders no longer include at least one
shareholder who is licensed to practice as a physician or
podiatrist in this state;

(2) The corporation is notified that one of its shareholders is
no longer a licensed physician or podiatrist; or

(3) The shares of the medical or podiatry corporation have
been sold or transferred to a person who is not a licensed
physician or podiatrist. The personal representative of a deceased
shareholder shall have a period, not to exceed twelve months
from the date of the shareholder’s death, to transfer the shares.

In order to maintain its certificate of authorization to practice
medicine, surgery or podiatry during the twelve month period,
the medical or podiatry corporation shall, at all times, have at
least one shareholder who is a licensed physician or podiatrist in
this state. Nothing herein affects the existence of the medical or
podiatry corporation or its right to continue to operate for all
lawful purposes other than the practice of medicine, surgery or
podiatry.

(j) Notice to Secretary of State. — Within thirty days of the
expiration, revocation or suspension of a certificate of
authorization by the board, the board shall submit written notice
to the Secretary of State.
It is unlawful for any corporation to practice or offer to practice medicine and surgery or podiatry after its certificate of authorization has expired or been revoked, or if suspended, during the term of the suspension.

Nothing in this section is meant or intended to change in any way the rights, duties, privileges, responsibilities and liabilities incident to the physician-patient or podiatrist-patient relationship, nor is it meant or intended to change in any way the personal character of the physician-patient or podiatrist-patient relationship.

A certificate of authorization issued by the board to a corporation to practice medicine and surgery or podiatry in this state that has not expired, been revoked or suspended is admissible in evidence in all courts of this state and is prima facie evidence of the facts stated therein.

Any officer, shareholder or employee of a medical or podiatry corporation who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 per violation.

CHAPTER 142

(Com. Sub. for S. B. 425 - By Senators Stollings and Edgell)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2014.]

AN ACT to repeal §30-3-16 and §30-3-16a of the Code of West Virginia, 1931, as amended; to repeal §30-14A-1, §30-14A-2, §30-14A-3, §30-14A-4 and §30-14A-5 of said code; and to amend
said code by adding thereto a new article, designated §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-5, §30-3E-6, §30-3E-7, §30-3E-8, §30-3E-9, §30-3E-10, §30-3E-11, §30-3E-12, §30-3E-13, §30-3E-14, §30-3E-15, §30-3E-16, §30-3E-17, §30-3E-18 and §30-3E-19, all relating to physician assistants; defining terms; powers and duties of the Board of Medicine and the Board of Osteopathic Medicine; rule-making authority; licensing requirements; providing for a temporary license; license renewal requirements; expired licenses; termination of licenses; practice requirements; practice agreement requirements; supervision requirements; scope of practice; requiring identification be worn; special volunteer license requirements; summer camp or volunteer endorsement for in-state and out-of-state physician assistants; complaint process; health care facility reporting requirements; unlawful acts; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §30-3-16 and §30-3-16a of the Code of West Virginia, 1931, as amended, be repealed; that §30-14A-1, §30-14A-2, §30-14A-3, §30-14A-4 and §30-14A-5 of said code be repealed; and that said code be amended by adding thereto a new article, designated §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-5, §30-3E-6, §30-3E-7, §30-3E-8, §30-3E-9, §30-3E-10, §30-3E-11, §30-3E-12, §30-3E-13, §30-3E-14, §30-3E-15, §30-3E-16, §30-3E-17, §30-3E-18 and §30-3E-19, all to read as follows:

ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.

§30-3E-1. Definitions.

1 As used in this article:

2 (1) “Advance duties” means medical acts that require additional training beyond the basic education program training required for licensure as a physician assistant.
(2) “Alternate supervising physician” means one or more physicians licensed in this state and designated by the supervising physician to provide supervision of a physician assistant in accordance with an authorized practice agreement.

(3) “Approved program” means an educational program for physician assistants approved and accredited by the Accreditation Review Commission on Education for the Physician Assistant or its successor. Prior to 2001, approval and accreditation would have been by either the Committee on Allied Health Education and Accreditation or the Accreditation Review Commission on Education for the Physician Assistant.

(4) “Boards” means the West Virginia Board of Medicine and the West Virginia Board of Osteopathic Medicine.

(5) “Chronic condition” means a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication and does not generally disappear. These conditions include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures and obesity.

(6) “Endorsement” means a summer camp or volunteer endorsement authorized under this article.

(7) “Health care facility” means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic or physician’s office.

(8) “Hospital” means a facility licensed pursuant to article five-b, chapter sixteen of this code, and any acute-care facility operated by the state government that primarily provides inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick persons under the supervision of physicians and includes psychiatric hospitals.
(9) "License" means a license issued by either of the boards pursuant to the provisions of this article.

(10) "Licensee" means a person licensed pursuant to the provisions of this article.

(11) "Physician" means a doctor of allopathic or osteopathic medicine who is fully licensed pursuant to the provisions of either article three or article fourteen of this chapter to practice medicine and surgery in this state.

(12) "Physician assistant" means a person who meets the qualifications set forth in this article and is licensed pursuant to this article to practice medicine under supervision.

(13) "Practice Agreement" means a document that is executed between a supervising physician and a physician assistant pursuant to the provisions of this article, and is filed with and approved by the appropriate licensing board.

(14) "Supervising physician" means a doctor of medicine, osteopathy or podiatry fully licensed, by the appropriate board in this state, without restriction or limitation, who supervises physician assistants.

(15) "Supervision" means overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. Constant physical presence of the supervising physician is not required as long as the supervising physician and physician assistant are, or can be, easily in contact with one another by telecommunication. Supervision does not require the personal presence of the supervising physician at the place or places where services are rendered if the physician assistant’s normal place of employment is the same premises as the supervising physician.
§30-3E-2. **Powers and duties of the boards.**

1. In addition to the powers and duties set forth in this code for the boards, the boards shall:

2. (1) Establish the requirements for licenses and temporary licenses pursuant to this article;

3. (2) Establish the procedures for submitting, approving and rejecting applications for licenses and temporary licenses;

4. (3) 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;

5. (4) Compile and publish an annual report that includes a list of currently licensed physician assistants, their supervising physicians and their locations in the state; and

6. (5) Take all other actions necessary and proper to effectuate the purposes of this article.

§30-3E-3. **Rulemaking.**

1. (a) The boards 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:

2. (1) The extent to which physician assistants may practice in this state;

3. (2) The extent to which physician assistants may pronounce death;

4. (3) Requirements for licenses and temporary licenses;

5. (4) Requirements for practice agreements;
(5) Requirements for continuing education;

(6) Conduct of a licensee for which discipline may be imposed;

(7) The eligibility and extent to which a physician assistant may prescribe at the direction of his or her supervising physician, including the following:

(A) A list of drugs and pharmacologic categories, or both, the prescription of which may not be delegated to a physician assistant, including all drugs listed in Schedules I and II of the Uniform Controlled Substances Act, antineoplastic and chemotherapeutic agents, or both, used in the active treatment of current cancer, radiopharmaceuticals, general anesthetics, radiographic contrast materials and any other limitation or exclusions of specific drugs or categories of drugs as determined by the boards;

(B) Authority to include, in a practice agreement, the delegation of prescribing authority for up to a 72-hour supply of drugs listed under Schedule III of the Uniform Controlled Substances Act so long as the prescription is nonrefillable and an annual supply of any drug, with the exception of controlled substances, which is prescribed for the treatment of a chronic condition, other than chronic pain management, with the chronic condition being treated identified on the prescription; and

(C) A description of the education and training requirements for a physician assistant to be eligible to receive delegated prescriptive writing authority as part of a practice agreement;

(8) The authority a supervising physician may delegate for prescribing, dispensing and administering of controlled substances, prescription drugs or medical devices if the practice agreement includes:
(A) A notice of intent to delegate prescribing of controlled substances, prescription drugs or medical devices;

(B) An attestation that all prescribing activities of the physician assistant shall comply with applicable federal and state law governing the practice of physician assistants;

(C) An attestation that all medical charts or records shall contain a notation of any prescriptions written by a physician assistant;

(D) An attestation that all prescriptions shall include the physician assistant’s name and the supervising physician’s name, business address and business telephone number legibly written or printed; and

(E) An attestation that the physician assistant has successfully completed each of the requirements established by the appropriate board to be eligible to prescribe pursuant to a practice agreement accompanied by the production of any required documentation establishing eligibility;

(9) A fee schedule; and

(10) Any other rules necessary to effectuate the provisions of this article.

(b) The boards may propose emergency rules pursuant to article three, chapter twenty-nine-a of this code to ensure conformity with this article.

§30-3E-4. License to practice as a physician assistant.

(a) A person seeking licensure as a physician assistant shall apply to the Board of Medicine or to the Board of Osteopathic Medicine. The appropriate board shall issue a license to practice as a physician assistant under the supervision of that board’s licensed physicians or podiatrists.
(b) A license may be granted to a person who:

(1) Files a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board’s satisfaction that he or she:

(A) Obtained a baccalaureate or master’s degree from an accredited program of instruction for physician assistants;

(B) Prior to July 1, 1994, graduated from an approved program of instruction in primary health care or surgery; or

(C) Prior to July 1, 1983, was certified by the Board of Medicine as a physician assistant then classified as “Type B”;

(4) Has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;

(5) Has a current certification from the National Commission on Certification of Physician Assistants;

(6) Is mentally and physically able to engage safely in practice as a physician assistant;

(7) Has not had a physician assistant license, certification or registration in any jurisdiction suspended or revoked;

(8) Is not currently subject to any limitation, restriction, suspension, revocation or discipline concerning a physician assistant license, certification or registration in any jurisdiction: Provided, That if a board is made aware of any problems with a physician assistant license, certification or registration and agrees to issue a license, certification or registration notwithstanding the provisions of this subdivision or subdivision (7) of this subsection;
§30-3E-5. Temporary license.

(a) A temporary license may be issued by the boards to a person applying for a license under this article, if the person meets all of the qualifications for a license but is awaiting the next scheduled meeting of the board for action upon his or her application.

(b) The temporary license expires six months after issuance or after the board acts, whichever is earlier.

§30-3E-6. License renewal requirements.

(a) A licensee shall renew biennially, on a schedule established by the appropriate licensing board, by submitting:

(1) A complete renewal application;

(2) The renewal fee;

(3) Proof that he or she is currently certified and has been continuously certified during the preceding licensure period by the National Commission on Certification of Physician Assistants; and

(4) An attestation that all continuing education requirements for the reporting period have been met.

(b) If a licensee fails to timely renew his or her license, then the license automatically expires.
§30-3E-7. Expired license requirements.

(a) If a license automatically expires and reinstatement is sought within one year of the automatic expiration, then an applicant shall submit:

1. A complete reinstatement application;
2. The applicable fees;
3. Proof that he or she is currently certified and has been continuously certified during the preceding licensure period and expiration period by the National Commission on Certification of Physician Assistants; and
4. An attestation that all continuing education requirements have been met.

(b) If a license automatically expires and more than one year has passed since the automatic expiration, then an applicant shall apply for a new license.

§30-3E-8. Termination of license.

(a) A licensee who fails the recertification examination of the National Commission on Certification of Physician Assistants, and is no longer certified, shall immediately:

1. Notify his or her supervising physician;
2. Notify his or her licensing board in writing; and
3. Cease practicing.

(b) The license automatically terminates and the physician assistant is not eligible for reinstatement until he or she has obtained a passing score on the examination.
§30-3E-9. Practice requirements.

(a) A physician assistant may not practice independent of a supervising physician.

(b) Before a licensed physician assistant may practice and before a supervising physician may delegate medical acts to a physician assistant, the supervising physician and the physician assistant shall:

(1) File a practice agreement with the appropriate licensing board, including any designated alternate supervising physicians;

(2) Pay the applicable fees; and

(3) Receive written authorization from the appropriate licensing board to commence practicing as a physician assistant pursuant to the practice agreement.

(c) A physician applying to supervise a physician assistant shall affirm that:

(1) The medical services set forth in the practice agreement are consistent with the skills and training of the supervising physician and the physician assistant; and

(2) The activities delegated to a physician assistant are consistent with sound medical practice and will protect the health and safety of the patient.

(d) A supervising physician may enter into practice agreements with up to five full-time physician assistants at any one time. A physician is prohibited from being a supervising or alternate supervising physician to more than five physician assistants at any one time. However, a physician practicing medicine in an emergency department of a hospital or a physician who supervises a physician assistant who is employed
by or on behalf of a hospital may provide supervision for up to five physician assistants per shift if the physician has an authorized practice agreement in place with the supervised physician assistant or the physician has been properly authorized as an alternate supervising physician for each physician assistant.

§30-3E-10. Practice agreement requirements.

(a) A practice agreement shall include:

(1) A description of the qualifications of the supervising physician, the alternate supervising physicians, if applicable, and the physician assistant;

(2) A description of the settings in which the supervising physician assistant will practice;

(3) A description of the continuous physician supervision mechanisms that are reasonable and appropriate for the practice setting, and the experience and training of the physician assistant;

(4) A description of the medical acts that are to be delegated;

(5) An attestation by the supervising physician that the medical acts to be delegated are:

(A) Within the supervising physician’s scope of practice; and

(B) Appropriate to the physician assistant’s education, training and level of competence;

(6) A description of the medical care the physician assistant will provide in an emergency, including a definition of an emergency; and

(7) Any other information required by the boards.
(b) A licensing board may:

(1) Decline to authorize a physician assistant to commence practicing pursuant to a practice agreement, if the board determines that:

(A) The practice agreement is inadequate; or

(B) The physician assistant is unable to perform the proposed delegated duties safely; or

(2) Request additional information from the supervising physician and/or the physician assistant to evaluate the delegation of duties and advanced duties.

(c) A licensing board may authorize a practice agreement that includes advanced duties which are to be performed in a hospital or ambulatory surgical facility, if the practice agreement has a certification that:

(1) A physician, with credentials that have been reviewed by the hospital or ambulatory surgical facility as a condition of employment as an independent contractor or as a member of the medical staff, supervises the physician assistant;

(2) The physician assistant has credentials that have been reviewed by the hospital or ambulatory surgical facility as a condition of employment as an independent contractor or as a member of the medical staff; and

(3) Each advanced duty to be delegated to the physician assistant is reviewed and approved within a process approved by the governing body of the health care facility or ambulatory surgical facility before the physician assistant performs the advanced duties.
(d) If a licensing board declines to authorize a practice agreement or any proposed delegated act incorporated therein, the board shall provide the supervising physician and the physician assistant with written notice. A physician assistant who receives notice that the board has not authorized a practice agreement or a delegated act shall not practice under the agreement or perform the delegated act.

(e) If a practice agreement is terminated, then a physician assistant shall notify the appropriate licensing board in writing within ten days of the termination. Failure to provide timely notice of the termination constitutes unprofessional conduct and disciplinary proceedings may be instituted by the appropriate licensing board.


(a) A licensed physician or podiatrist may supervise a physician assistant:

(1) As a supervising physician in accordance with an authorized practice agreement; or

(2) As an alternate supervising physician who:

(A) Supervises in accordance with an authorized practice agreement;

(B) Has been designated an alternate supervising physician in the authorized practice agreement; and

(C) Only delegates those medical acts that have been authorized by the practice agreement and are within the scope of practice of both the primary supervising physician and the alternate supervising physician.

(b) A supervising physician is responsible at all times for the physician assistant under his or her supervision, including:
(1) The legal responsibility of the physician assistant;

(2) Observing, directing and evaluating the physician assistant's work records and practices; and

(3) Supervising the physician assistant in the care and treatment of a patient in a health care facility.

(c) A health care facility is only legally responsible for the actions or omissions of a physician assistant when the physician assistant is employed by or on behalf of the facility. Credentialed medical facility staff and attending physicians of a hospital who provide direction to or utilize physician assistants employed by or on behalf of the hospital are considered alternate supervising physicians.

§30-3E-12. Scope of practice.

(a) A license issued to a physician assistant by the appropriate state licensing board shall authorize the physician assistant to perform medical acts:

(1) Delegated to the physician assistant as part of an authorized practice agreement;

(2) Appropriate to the education, training and experience of the physician assistant;

(3) Customary to the practice of the supervising physician; and

(4) Consistent with the laws of this state and rules of the boards.

(b) This article does not authorize a physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental
§30-3E-13. Identification.

(a) While practicing, a physician assistant shall wear a name tag that identifies him or her as a physician assistant.

(b) A physician assistant shall keep his or her license and current practice agreement available for inspection at his or her primary place of practice.

§30-3E-14. Special volunteer physician assistant license.

(a) A special volunteer physician assistant license may be issued to a physician assistant who:

(1) Is retired or is retiring from the active practice of medicine; and

(2) Wishes to donate his or her expertise for the medical care and treatment of indigent and needy patients in the clinical setting of clinics organized, in whole or in part, for the delivery of health care services without charge.

(b) The special volunteer physician assistant license shall be issued by the appropriate licensing board:

(1) To a physician assistant licensed or otherwise eligible for licensure under this article;

(2) Without the payment of any fee; and

(3) The initial license shall be issued for the remainder of the licensing period.

(c) The special volunteer physician assistant license shall be renewed consistent with the appropriate licensing board’s other licensing requirements.
(d) The appropriate licensing board shall develop application forms for the special volunteer physician assistant license which shall contain the physician assistant’s acknowledgment that:

(1) The physician assistant’s practice under the special volunteer physician assistant license shall be exclusively devoted to providing medical care to needy and indigent persons in West Virginia;

(2) The physician assistant will not receive any payment or compensation, either direct or indirect, or have the expectation of any payment or compensation, for any medical services rendered under the special volunteer physician assistant license;

(3) The physician assistant shall supply any supporting documentation that the appropriate licensing board may reasonably require; and

(4) The physician assistant agrees to continue to participate in continuing education as required by the appropriate licensing board for the special volunteer physician assistant license.

(e) A physician assistant who renders medical service to indigent and needy patients of a clinic organized, in whole or in part, for the delivery of health care services without charge, under a special volunteer physician assistant license, without payment or compensation or the expectation or promise of payment or compensation, is immune from liability for any civil action arising out of any act or omission resulting from the rendering of the medical service at the clinic unless the act or omission was the result of the physician assistant’s gross negligence or willful misconduct. In order for the immunity under this subsection to apply, there shall be a written agreement between the physician assistant and the clinic pursuant to which the physician assistant shall provide voluntary uncompensated medical services under the control of the clinic to patients of the
50 clinic before the rendering of any services by the physician
51 assistant at the clinic. Any clinic entering into a written
52 agreement is required to maintain liability coverage of not less
53 than $1 million per occurrence.

54 (f) Notwithstanding the provisions of this section, a clinic
55 organized, in whole or in part, for the delivery of health care
56 services without charge is not relieved from imputed liability for
57 the negligent acts of a physician assistant rendering voluntary
58 medical services at or for the clinic under a special volunteer
59 physician assistant license.

60 (g) For purposes of this section, “otherwise eligible for
61 licensure” means the satisfaction of all the requirements for
62 licensure under this article, except the fee requirements.

63 (h) Nothing in this section may be construed as requiring the
64 appropriate licensing board to issue a special volunteer physician
65 assistant license to any physician assistant whose license is or
66 has been subject to any disciplinary action or to any physician
67 assistant who has surrendered a physician assistant license or
68 caused his or her license to lapse, expire and become invalid in
69 lieu of having a complaint initiated or other action taken against
70 his or her license, or who has elected to place a physician
71 assistant license in inactive status in lieu of having a complaint
72 initiated or other action taken against his or her license, or who
73 has been denied a physician assistant license.

74 (i) Any policy or contract of liability insurance providing
75 coverage for liability sold, issued or delivered in this state to any
76 physician assistant covered under the provisions of this article
77 shall be read so as to contain a provision or endorsement
78 whereby the company issuing the policy waives or agrees not to
79 assert as a defense on behalf of the policyholder or any
80 beneficiary thereof, to any claim covered by the terms of the
81 policy within the policy limits, the immunity from liability of the
§30-3E-15. Summer camp or volunteer endorsement — West Virginia licensee.

(a) The appropriate licensing board may grant a summer camp or volunteer endorsement to provide services at a children's summer camp or volunteer services for a public or community event to a physician assistant who:

(1) Is currently licensed by the appropriate licensing board;

(2) Has no current discipline, limitations or restrictions on his or her license;

(3) Has submitted a timely application; and

(4) Attest that:

(A) The organizers of the summer camp and public or community event have arranged for a supervising physician to be available as needed to the physician assistant;

(B) The physician assistant shall limit his or her scope of practice to medical acts which are within his or her education, training and experience; and

(C) The physician assistant will not prescribe any controlled substances or legend drugs as part of his or her practice at the summer camp or public or community event.

(b) A physician assistant may only receive one summer camp or volunteer endorsement annually. The endorsement is active for one specifically designated period annually, which period cannot exceed three weeks.
(c) A fee cannot be assessed for the endorsement if the physician assistant is volunteering his or her services without compensation or remuneration.

§30-3E-16. Summer camp or volunteer endorsement — Out-of-state licensee.

(a) The appropriate licensing board may grant a summer camp or volunteer endorsement to provide services at a children’s summer camp or volunteer services for a public or community event to a physician assistant licensed from another jurisdiction who:

(1) Is currently licensed in another jurisdiction and has a current certification from the National Commission on Certification of Physician Assistants;

(2) Has no current discipline, limitations or restrictions on his or her license;

(3) Has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;

(4) Has submitted a timely application;

(5) Has paid the applicable fees; and

(6) Attests that:

(A) The organizers of the summer camp and public or community event have arranged for a supervising physician to be available as needed to the physician assistant;

(B) The physician assistant shall limit his or her scope of practice to medical acts which are within his or her education, training and experience; and
(C) The physician assistant will not prescribe any controlled substances or legend drugs as part of his or her practice at the summer camp or public or community event; and

(7) Has fulfilled any other requirements specified by the appropriate board.

(b) A physician assistant may only receive one summer camp or volunteer endorsement annually. The endorsement is active for one specifically designated period annually, which period cannot exceed three weeks.

§30-3E-17. Complaint process.

(a) All hearings and procedures related to denial of a license, and all complaints, investigations, hearings and procedures a physician assistant licenses and the discipline accorded thereto, shall be in accordance with the processes and procedures set forth in articles three and/or fourteen of this chapter, depending on which board licenses the physician assistant.

(b) The boards may impose the same discipline, restrictions and/or limitations upon the license of a physician assistant as they are authorized to impose upon physicians and/or podiatrists.

(c) The boards shall direct to the appropriate licensing board a complaint against a physician assistant, a supervising physician and/or an alternate supervising physician.

(d) In the event that independent complaint processes are warranted by the boards with respect to the professional conduct of a physician assistant or a supervising and/or alternate supervising physician, the boards are authorized to work cooperatively and to disclose to one another information which may assist the recipient appropriate licensing board in its disciplinary process. The determination of what information, if any, to disclose shall be at the discretion of the disclosing board.
§30-3E-18. Health care facility reporting requirements.

(a) A health care facility shall report, in writing, to the appropriate licensing board within sixty days after the completion of the facility’s formal disciplinary procedure or after the commencement and conclusion of any resulting legal action against a licensee.

(b) The report shall include:

(1) The name of the physician assistant practicing in the facility whose privileges at the facility have been revoked, restricted, reduced or terminated for any cause including resignation;

(2) All pertinent information relating to the action; and

(3) The formal disciplinary action taken against the physician assistant by the facility relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse.

(c) A health care facility does not need to report temporary suspensions for failure to maintain records on a timely basis or for failure to attend staff or section meetings.

§30-3E-19. Unlawful act and penalty.

It is unlawful for any physician assistant to represent to any person that he or she is a physician, surgeon or podiatrist. A person who violates this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than two years, or be fined not more than $2,000, or both fined and imprisoned.
AN ACT to amend and reenact §30-4-6 and §30-4-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-4A-1 of said code, all relating to the Board of Dentistry; providing authority to promulgate legislative rules concerning agreements with organizations to create alcohol or chemical dependency treatments programs and to form dentist recovery networks; authorizing the board to defer disciplinary action with regard to an impaired licensee who voluntarily enters an approved treatment program; and providing for annual renewal of anesthesia permits.

Be it enacted by the Legislature of West Virginia:

That §30-4-6 and §30-4-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §30-4A-1 of said code be amended and reenacted, all to read as follows:

ARTICLE 4. WEST VIRGINIA DENTAL PRACTICE ACT.

§30-4-6. Rule-making authority.

(a) 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 and articles four-a and four-b of this chapter including:

(1) Standards and requirements for licenses, certifications and permits;
(2) Requirements for third parties to prepare and/or administer examinations and reexaminations;

(3) Educational and experience requirements;

(4) Continuing education requirements and approval of continuing education courses;

(5) Procedures for the issuance and renewal of licenses, certifications and permits;

(6) Establish a fee schedule;

(7) Regulate dental specialities;

(8) Delegate procedures to be performed by a dental hygienist;

(9) Delegate procedures to be performed by a dental assistant;

(10) Designate the services and procedures performed under direct supervision, general supervision in public health practice;

(11) Designate additional public health settings;

(12) Regulate the use of firm or trade names;

(13) Regulate dental corporations;

(14) Regulate mobile dental facilities;

(15) Regulate portable dental units;

(16) Regulate professional limited liability companies;

(17) Establish professional conduct requirements;

(18) Establish the procedures for denying, suspending, revoking, reinstating or limiting the practice of licensees, certifications and permittees;
(19) Standards and requirements for agreements with organizations to form professional recovery networks;

(20) Establish an alcohol and chemical dependency treatment program, including standards and requirements;

(21) Establish requirements for inactive or revoked licenses, certifications and permits;

(22) Regulate dental anesthesia, including:

(A) Fees;

(B) Evaluations;

(C) Equipment;

(D) Emergency drugs;

(E) Definitions;

(F) Qualified monitor requirements; and

(G) Education;

(23) Any other rules necessary to implement this article.

(b) All of the board’s rules in effect and not in conflict with these provisions shall remain in effect until they are amended or rescinded.

§30-4-19. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may initiate a complaint upon receipt of credible information and shall, upon the receipt of a written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under
this article or the legislative rules promulgated pursuant to this article.

(b) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee, certificate holder or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article.

(c) Upon a finding of probable cause to go forward with a complaint, the board shall provide a copy of the complaint to the licensee, certificate holder or permittee.

(d) Upon a finding that probable cause exists that the licensee, certificate holder or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for disciplinary action against the licensee, certificate holder or permittee. Any hearing shall be held in accordance with the provisions of this article and shall require a violation to be proven by a preponderance of the evidence.

(e) A member of the complaint committee or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend, restrict or revoke the license, certificate or permit of, or impose probationary conditions upon or take disciplinary action against, any licensee, certificate holder or permittee for any of the following reasons:
(1) Obtaining a board authorization by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or a misdemeanor crime of moral turpitude;

(3) Being guilty of unprofessional conduct which placed the public at risk, as defined by legislative rule of the board;

(4) Intentional violation of a lawful order or legislative rule of the board;

(5) Having had a board authorization revoked or suspended, other disciplinary action taken, or an application for a board authorization denied by the proper authorities of another jurisdiction;

(6) Aiding or abetting unlicensed practice;

(7) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public;

(8) Having an incapacity that prevents a licensee from engaging in the practice of dentistry or dental hygiene, with reasonable skill, competence and safety to the public;

(9) Committing fraud in connection with the practice of dentistry or dental hygiene;

(10) Failing to report to the board one’s surrender of a license or authorization to practice dentistry or dental hygiene in another jurisdiction while under disciplinary investigation by any of those authorities or bodies for conduct that would constitute grounds for action as defined in this section;

(11) Failing to report to the board any adverse judgment, settlement or award arising from a malpractice claim arising
related to conduct that would constitute grounds for action as defined in this section;

(12) Being guilty of unprofessional conduct as contained in the American Dental Association principles of ethics and code of professional conduct. The following acts are conclusively presumed to be unprofessional conduct:

(A) Being guilty of any fraud or deception;

(B) Committing a criminal operation or being convicted of a crime involving moral turpitude;

(C) Abusing alcohol or drugs;

(D) Violating any professional confidence or disclosing any professional secret;

(E) Being grossly immoral;

(F) Harassing, abusing, intimidating, insulting, degrading or humiliating a patient physically, verbally or through another form of communication;

(G) Obtaining any fee by fraud or misrepresentation;

(H) Employing directly or indirectly, or directing or permitting any suspended or unlicensed person so employed, to perform operations of any kind or to treat lesions of the human teeth or jaws or correct malimposed formations thereof;

(I) Practicing, or offering or undertaking to practice dentistry under any firm name or trade name not approved by the board;

(J) Having a professional connection or association with, or lending his or her name to another, for the illegal practice of dentistry, or professional connection or association with any person, firm or corporation holding himself or herself, themselves or itself out in any manner contrary to this article;
(K) Making use of any advertising relating to the use of any drug or medicine of unknown formula;

(L) Advertising to practice dentistry or perform any operation thereunder without causing pain;

(M) Advertising professional superiority or the performance of professional services in a superior manner;

(N) Advertising to guarantee any dental service;

(O) Advertising in any manner that is false or misleading in any material respect;

(P) Soliciting subscriptions from individuals within or without the state for, or advertising or offering to individuals within or without the state, a course or instruction or course materials in any phase, part or branch of dentistry or dental hygiene in any journal, newspaper, magazine or dental publication, or by means of radio, television or United States mail, or in or by any other means of contacting individuals: Provided, That the provisions of this paragraph may not be construed so as to prohibit:

(i) An individual dentist or dental hygienist from presenting articles pertaining to procedures or technique to state or national journals or accepted dental publications; or

(ii) Educational institutions approved by the board from offering courses or instruction or course materials to individual dentists and dental hygienists from within or without the state; or

(Q) Engaging in any action or conduct which would have warranted the denial of the license.

(13) Knowing or suspecting that a licensee is incapable of engaging in the practice of dentistry or dental hygiene, with
reasonable skill, competence and safety to the public, and failing to report any relevant information to the board;

(14) Using or disclosing protected health information in an unauthorized or unlawful manner;

(15) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of any licensing examination;

(16) Failing to furnish to the board or its representatives any information legally requested by the board or failing to cooperate with or engaging in any conduct which obstructs an investigation being conducted by the board;

(17) Announcing or otherwise holding himself or herself out to the public as a specialist or as being specially qualified in any particular branch of dentistry or as giving special attention to any branch of dentistry or as limiting his or her practice to any branch of dentistry without first complying with the requirements established by the board for the specialty and having been issued a certificate of qualification in the specialty by the board;

(18) Failing to report to the board within seventy-two hours of becoming aware thereof any life threatening occurrence, serious injury or death of a patient resulting from dental treatment or complications following a dental procedure;

(19) Failing to report to the board any driving under the influence and/or driving while intoxicated offense; or

(20) Violation of any of the terms or conditions of any order entered in any disciplinary action.

(h) For the purposes of subsection (g) of this section, effective July 1, 2013, disciplinary action may include:
(1) Reprimand;

(2) Probation;

(3) Restrictions;

(4) Suspension;

(5) Revocation;

(6) Administrative fine, not to exceed $1,000 per day per violation;

(7) Mandatory attendance at continuing education seminars or other training;

(8) Practicing under supervision or other restriction; or

(9) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time.

(i) In addition to any other sanction imposed, the board may require a licensee or permittee to pay the costs of the proceeding.

(j) The board may defer disciplinary action with regard to an impaired licensee who voluntarily signs an agreement, in a form satisfactory to the board, agreeing not to practice dental care and to enter an approved treatment and monitoring program in accordance with the board’s legislative rule: Provided, That this subsection does not apply to a licensee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to an offense relating to a controlled substance in any jurisdiction.

(k) A person authorized to practice under this article who reports or otherwise provides evidence of the negligence, impairment or incompetence of another member of this profession to the board or to any peer review organization is not liable to any person for making the report if the report is made without actual malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.
ARTICLE 4A. ADMINISTRATION OF ANESTHESIA BY DENTISTS.

§30-4A-1. Requirement for anesthesia permit; qualifications and requirements for qualified monitors.

(a) No dentist may induce central nervous system anesthesia without first having obtained an anesthesia permit for the level of anesthesia being induced.

(b) The applicant for an anesthesia permit shall pay the appropriate permit fees and renewal fees, submit a completed board-approved application and consent to an office evaluation.

(c) Permits shall be renewed annually by June 30.

(d) Permit holders shall report the names and qualifications of each qualified monitor providing services to that permit holder. A qualified monitor may not perform the functions and responsibilities specified in this article for any level of anesthesia, other than relative analgesia/minimal sedation, without certification by the board. Qualified monitors shall apply for certification and pay the appropriate application fees and renewal fees. Qualified monitors are required to renew annually by the June 30. To be certified as a qualified monitor, the applicant must meet the following minimum qualifications:

(1) Possess a current health care provider BLS/CPR certification;

(2) For monitoring, conscious sedation/moderate sedation or general anesthesia/deep conscious sedation procedures, successful completion of an AAOMS or AAPD anesthesia assistants certification program; and

(3) For monitoring a nitrous oxide unit, successful completion of a board-approved course in nitrous oxide monitoring.
(e) A dentist shall hold a class permit equivalent to or exceeding the anesthesia level being provided unless the provider of anesthesia is a physician anesthesiologist or another licensed dentist who holds a current anesthesia permit issued by the board.

CHAPTER 144

(Com. Sub. for S. B. 507 - By Senators Snyder and Plymale)

[Passed March 8, 2014; in effect July 1, 2014.]
[Approved by the Governor on April 1, 2014.]

AN ACT to amend and reenact §30-27-4 and §30-27-6 of the Code of West Virginia, 1931, as amended, all relating to the Board of Barbers and Cosmetologists; changing board membership; requiring the board to offer examinations in other languages if available and upon request; and removing outdated language.

Be it enacted by the Legislature of West Virginia:

That §30-27-4 and §30-27-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 27. BOARD OF BARBERS AND COSMETOLOGISTS.

§30-27-4. Board of Barbers and Cosmetologists.

(a) The West Virginia Board of Barbers and Cosmetologists is continued. The members of the board in office on July 1, 2014, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.
(b) The Governor, by and with the advice and consent of the Senate, shall appoint:

1. One licensed cosmetologist;
2. One licensed barber;
3. One licensed barber crossover or licensed barber permanent wavist;
4. One licensed aesthetician;
5. One licensed nail technician;
6. One representative from a privately owned beauty school licensed by the West Virginia Council for Community and Technical College Education; and
7. One citizen member.

(c) After the initial appointment term, the term shall be for five years. All appointments to the board shall be made by the Governor by and with the advice and consent of the Senate.

(d) Each licensed member of the board, at the time of his or her appointment, must have held a professional license in this state for a period of not less than three years immediately preceding the appointment.

(e) Each member of the board must be a resident of this state during the appointment term.

(f) A member may not serve more than two consecutive full terms. A member may continue to serve until a successor has been appointed and has qualified. A member serving on the board on June 30, 2014, may be reappointed in accordance with the provisions of this section.
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(g) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the vacancy.

(h) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(i) A member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked, is convicted of a felony under the laws of any jurisdiction or becomes a nonresident of this state.

(j) The board shall elect annually one of its members as chairperson who serves at the will of the board.

(k) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.

(l) A majority of the members of the board constitutes a quorum.

(m) The board shall hold at least two annual meetings. Other meetings may be held at the call of the chairperson or upon the written request of two members, at the time and place as designated in the call or request.

(n) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.


The board shall propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:
(1) Standards and requirements for licenses, permits, certificates and registrations;

(2) Procedures for examinations and reexaminations: Provided, That the board shall offer examinations in all languages other than English if available to the board and requested by the applicant;

(3) Requirements for third parties to prepare and/or administer examinations and reexaminations;

(4) Educational and experience requirements;

(5) The passing grade on the examinations;

(6) Standards for approval of courses and curriculum;

(7) Procedures for the issuance and renewal of licenses, permits, certificates and registrations;

(8) A fee schedule;

(9) Continuing education requirements for professional licensees and certificate holders;

(10) The procedures for denying, suspending, revoking, reinstating or limiting the practice of licensees, permittees, certificate holders and registrants;

(11) Designating the regions for investigators/inspectors;

(12) Criteria for the training of investigators/inspectors;

(13) Requirements for investigations and inspections;

(14) Requirements for inactive or revoked licenses, permits, certificates and registrations;
(15) Establishing the training program and requirements for instructors for schools licensed under this article;

(16) Establishing operating procedures for salons; and

(17) Any other rules necessary to effectuate the provisions of this article.

CHAPTER 145

(Com. Sub. for H. B. 3156 - By Delegates D. Poling, Caputo, Manypenny and Walker)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §6C-2-8, relating to recognizing certain communications between a public employee and an employee organization as confidential; preventing employee organizations and their agents from being compelled to disclose certain communications or information obtained from an employee while the employee organization or agent is acting in a representative capacity concerning an employee grievance; providing limitations and exceptions; ensuring the confidentiality does not extend outside the grievance process; and providing for resolution of conflicts with existing law.

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 §6C-2-8, to read as follows:
ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

§6C-2-8. Employee organizations may not be compelled to disclose certain communications; exceptions.

(a) Except as otherwise provided in this section, an employee organization or an agent of an employee organization may not be compelled to disclose any communication or information the employee organization or agent received or acquired in confidence from a public employee, while the employee organization or agent was acting in a representative capacity concerning a public employee grievance or an investigation of a potential public employee grievance, regardless of whether the public employee is a member of the employee organization: Provided, That the confidentiality established under this section does not apply to written communications between the employee and the employee organization.

(b) (1) The confidentiality established under this section applies only to the extent that the communication or information is germane to a grievance or potential grievance of the employee.

(2) The confidentiality established under this subsection continues after termination of:

(A) The employee’s employment; or

(B) The representative relationship of the employee organization or its agent with the public employee.

(3) The confidentiality established under this subsection protects the communication or information received or acquired by the employee organization or its agent, but does not protect the employee from being compelled to disclose, to the extent
provided by law, the facts underlying the communication or information.

(c) The protection for confidential communications provided by this section only extends to proceedings under the public employees grievance procedure. Nothing in this section may be construed to extend the confidentiality to circuit court proceedings or other proceedings outside of the public employees grievance procedure.

(d) An employee organization or its agent shall disclose to the employer as soon as possible a communication or information described in subsection (a) of this section to the extent the employee organization or its agent reasonably believes:

(1) It is necessary to prevent certain death or substantial bodily harm.

(2) It is necessary to prevent the employee from committing a crime, fraud or any act that is reasonably certain to result in substantial injury to the financial interests or property of another or to rectify or mitigate any such action after it has occurred;

(3) The communication or information constitutes an admission that the employee has committed a crime; or

(4) It is necessary to comply with a court order or other law.

(e) An employee organization or its agent may disclose a communication or information described in subsection (a) of this section in order to:

(1) Secure legal advice about the compliance of the employee organization or its agent with a court order or other law;
(2) Establish a claim or defense on behalf of the employee organization or its agent in a controversy between the employee and the employee organization or its agent;

(3) Establish a defense to a criminal charge or civil claim against the employee organization or its agent based on conduct in which the employee was involved; or

(4) Respond to allegations in any proceeding concerning the performance of professional duties by the employee organization or its agent on behalf of the employee.

(f) An employee organization or its agent may disclose a communication or information described in subsection (a) of this section, without regard to whether the disclosure is made within the public employees grievance procedure, in the following circumstances:

(1) The employee organization has obtained the express written or oral consent of the employee;

(2) The employee has, by other act or conduct, waived the confidentiality of the communication or information; or

(3) The employee is deceased or has been adjudicated incompetent by a court of competent jurisdiction and the employee organization has obtained the written or oral consent of the personal representative of the employee’s estate or of the employee’s guardian.

(g) If there is a conflict between the application of this section and any federal or state labor law, the provisions of the federal or other state law shall control.
AN ACT to amend and reenact §6-7-1 of the Code of West Virginia, 1931, as amended, relating to authorizing state agencies, state institutions of higher education and the Higher Education Policy Commission to transition all employees, officers and officials, except elected officials, into payment in arrears and to pay employees biweekly as part of the standardization of the state’s accounting and payroll functions under the Enterprise Resource Planning Board.

Be it enacted by the Legislature of West Virginia:

That §6-7-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-1. State officials, officers and employees to be paid at least twice per month; new employees paid in arrears; effective date.

1 All full-time and part-time salaried and hourly officials, officers and employees of the state, state institutions of higher education and the Higher Education Policy Commission shall be paid at least twice per month, and under the same procedures and in the same manner as the State Auditor currently pays agencies:

Provided, That on and after July 1, 2002, all new officials,
officers and employees of the state, a state institution of higher education and the Higher Education Policy Commission, statutory officials, contract educators with higher education and any exempt official who does not earn annual and sick leave, except elected officials, shall be paid one pay cycle in arrears. The term "new employee" does not include an employee who transfers from one state agency, a state institution of higher education or the Higher Education Policy Commission to another state agency, another state institution of higher education or the Higher Education Policy Commission without a break in service: Provided, however, That, after July 1, 2014, all state employees paid on a current basis will be converted to payment in arrears. For accounting purposes only, any payments received by such employees at the end of the pay cycle of the conversion pay period will be accounted for as a credit due the state. Notwithstanding any other code provision to the contrary, any such credit designation made for accounting of this conversion will be accounted for by the Auditor at the termination of an employee’s employment and such accounting shall be documented in the employee’s final wage payment. Nothing contained in this section is intended to increase or diminish the salary or wages of any official, officer or employee.

CHAPTER 147

(S. B. 460 - By Senators Miller, Laird, Unger, Beach, Snyder, Stollings and Jenkins)

[Passed March 4, 2014, in effect ninety days from passage.]
[Approved by the Governor on March 7, 2014.]

AN ACT to amend and reenact §12-1-12d of the Code of West Virginia, 1931, as amended, relating to adding West Virginia
School of Osteopathic Medicine to the list of state institutions of higher education that are permitted to invest certain moneys with its foundation; and establishing a cap on the amount of moneys that it may invest.

Be it enacted by the Legislature of West Virginia:

That §12-1-12d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12d. Investments by Marshall University, West Virginia University and West Virginia School of Osteopathic Medicine.

(a) Notwithstanding any provision of this article to the contrary, the governing boards of Marshall University, West Virginia University and West Virginia School of Osteopathic Medicine each may invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that university and which exists on January 1, 2005. The investment is subject to the limitations of this section.

(b) A governing board, through its chief financial officer, may enter into agreements, approved as to form by the State Treasurer, for the investment by its foundation of certain funds subject to their administration. Any interest or earnings on the moneys invested is retained by the investing university.

(c) Moneys of a university that may be invested with its foundation pursuant to this section are those subject to the administrative control of the university that are collected under an act of the Legislature for specific purposes and do not include any funds made available to the university from the State General Revenue Fund or the funds established in section
eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code. Moneys permitted to be invested under this section may be aggregated in an investment fund for investment purposes.

(d) Of the moneys authorized for investment by this section, Marshall University, West Virginia School of Osteopathic Medicine and West Virginia University each, respectively, may have invested with its foundation at any time not more than the greater of:

(1) Sixty million dollars for Marshall University, $25 million for West Virginia School of Osteopathic Medicine and $70 million for West Virginia University; or

(2) Sixty-five percent of its unrestricted net assets as presented in the statement of net assets for the fiscal year end audited financial reports.

(e) Investments by foundations that are authorized under this section shall be made in accordance with and subject to the provisions of the Uniform Prudent Investor Act, codified as article six-c, chapter forty-four of this code. As part of its fiduciary responsibilities, each governing board shall establish investment policies in accordance with the Uniform Prudent Investor Act for those moneys invested with its foundation. The governing board shall review, establish and modify, if necessary, the investment objectives as incorporated in its investment policies so as to provide for the financial security of the moneys invested with its foundation. The governing boards shall give consideration to the following:

(1) Preservation of capital;

(2) Diversification;

(3) Risk tolerance;
(4) Rate of return;

(5) Stability;

(6) Turnover;

(7) Liquidity; and

(8) Reasonable cost of fees.

(f) A governing board shall report annually by December 31 to the Governor and to the Joint Committee on Government and Finance on the performance of investments managed by its foundation pursuant to this section.

(g) The amendments to this section in the second extraordinary session of the Legislature in 2010 apply retroactively so that the authority granted by this section shall be construed as if that authority did not expire on July 1, 2010.

CHAPTER 148

(Com. Sub. for S. B. 499 - By Senators Kirkendoll, McCabe, Edgell, Cann, M. Hall, Carmichael, Plymale, Palumbo and Nohe)

[Passed March 3, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2014.]

AN ACT to repeal §12-6-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §12-6-2 and §12-6-11 of said code, all relating to investment of moneys by the West Virginia Investment Management Board; modifying the definition of the term “securities”; continuing the prudent investor standard of care
set forth in the West Virginia Uniform Prudent Investor Act as the primary standard of care for the trustees of the West Virginia Investment Management Board; removing certain restrictions on investments by the Investment Management Board; limiting disclosure of information; and restating and adding certain restrictions on investments by the West Virginia Investment Management Board.

Be it enacted by the Legislature of West Virginia:

That §12-6-12 of the Code of West Virginia, 1931, as amended, be repealed; and that §12-6-2 and §12-6-11 of said code be amended and reenacted, all to read as follows:

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-2. Definitions.

As used in this article, unless a different meaning clearly appears from the context:

(1) "Beneficiaries" means those individuals entitled to benefits from the participant plans;

(2) "Board" means the governing body for the West Virginia Investment Management Board and any reference elsewhere in this code to Board of Investments or West Virginia Trust Fund means the board as defined in this subdivision;

(3) "401(a) plan" means a plan which is described in Section 401(a) of the Internal Revenue Code of 1986, as amended, and with respect to which the board has been designated to hold assets of the plan in trust pursuant to the provisions of section nine-a of this article;

(4) "Local government funds" means the moneys of a political subdivision, including policemen’s pension and relief
16 funds, firemen's pension and relief funds and volunteer fire departments, transferred to the board for deposit;

18 (5) "Participant plan" means any plan or fund subject now or hereafter to subsection (a), section nine-a of this article;

20 (6) "Political subdivision" means and includes a county, municipality or any agency, authority, board, county board of education, commission or instrumentality of a county or municipality and regional councils created pursuant to the provisions of section five, article twenty-five, chapter eight of this code;

26 (7) "Trustee" means any member serving on the West Virginia Investment Management Board: Provided, That in section nine-a of this article in which the terms of the trusts are set forth, "trustee" means the West Virginia Investment Management Board;

31 (8) "Securities" means all forms and types of investments, financial instruments or financial transactions which may be considered prudent for investment by the board under section eleven of this article; and

35 (9) "State funds" means all moneys of the state which may be lawfully invested except the "school fund" established by section four, article XII of the State Constitution.

§12-6-11. Standard of care and investment requirements; disclosure of information.

1 (a) Any investments made under this article shall be made in accordance with the provisions of the Uniform Prudent Investor Act codified as article six-c, chapter forty-four of this code and is further subject to the following requirements:
(1) Trustees shall discharge their duties with respect to the 401(a) plans for the exclusive purpose of providing benefits to participants and their beneficiaries;

(2) Trustees shall diversify fund investment so as to minimize the risk of large losses unless, under the circumstances, it is clearly prudent not to do so;

(3) Trustees shall defray reasonable expenses of investing and operating the funds under management;

(4) Trustees shall discharge their duties in accordance with the documents and instruments governing the trusts or other funds under management insofar as the documents and instruments are consistent with the provisions of this article;

(5) Trustees, at the annual meeting required in subsection (h), section three of this article, shall review, establish and modify, if necessary, the investment objectives of the individual participant plans as incorporated in the investment policy statements of the respective trusts so as to provide for the financial security of the trust funds giving consideration to the following:

(A) Preservation of capital;

(B) Diversification;

(C) Risk tolerance;

(D) Rate of return;

(E) Stability;

(F) Turnover;

(G) Liquidity; and
(H) Reasonable cost of fees;

(6) The board may invest in a private real estate fund, a private equity fund or a hedge fund only if the investment satisfies the following conditions:

(A) A professional, third-party fiduciary investment adviser registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940, as amended, recommends the investment;

(B) The board or a committee designated by the board approves the investment;

(C) The board’s ownership interest in the fund will be less than forty percent of the fund’s assets at the time of acquisition;

(D) The combined investment of institutional investors, other public sector entities and educational institutions and their endowments and foundations in the fund is equal to or greater than fifty percent of the board’s total investment in the fund at the time of acquisition; and

(E) The largest investment of such fund is not greater than forty percent of the fund’s assets at the time of acquisition; and

(7) The total assets of the private real estate fund, private equity fund or hedge fund shall be used in calculating the percentage requirements and limitations set forth in subdivision (6) of this subsection without regard to any particular investment vehicle in which assets may be held pending investment.

(b) If the standard confidentiality agreements, policies or procedures of any firm, company or organization through which the board invests in securities prohibit, restrict or limit the disclosure of information pertaining to the securities, the information is exempt from disclosure, under the provisions of
(c) The duties of the board apply only with respect to those assets deposited with or otherwise held by it.

CHAPTER 149

(Com. Sub. for S. B. 387 - By Senators Cole, Blair, Carmichael, D. Hall, M. Hall, Jenkins, McCabe, Walters, Williams and Nohe)

[Passed March 6, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-10-6, relating to clarifying that duly authorized officers of the United States, the District of Columbia or other states have legal custody of their prisoners while they are in West Virginia.

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 §15-10-6, to read as follows:

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-6. Transportation of out-of-state prisoners; authority of foreign law-enforcement officers.

(a) Duly authorized law-enforcement officers of the United States, the District of Columbia and other states or political
subdivisions thereof who are transporting prisoners through this
state, delivering prisoners to this state or taking custody of a
person in this state for transport to another jurisdiction are
deemed to have lawful custody of said prisoner while in this
state.

(b) Given that duly authorized officers of other jurisdictions
often have a need to travel through or to this state with prisoners
for short durations of time, such as for medical treatment, the
purpose of this section is to clarify the authority and jurisdiction
of those officers of the United States, the District of Columbia
and other states while having custody of a prisoner during the
time they are in West Virginia.

CHAPTER 150

(Com. Sub. for H. B. 2803 - By Delegates Manchin,
M. Poling, Iaquinta, Guthrie and Manypenny)

[Passed March 7, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §24-2-19, relating to
requiring electric utilities to develop integrated resource plans;
requiring the Public Service Commission to order development of
integrated resource plans; specifying certain deadlines for the
plans; requiring commission review; authorizing commission to
request additional information from the utilities; and providing
considerations for commission when developing requirements for
integrated resource plans.
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 §24-2-19, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.


(a) Not later than March 31, 2015, the Public Service Commission shall issue an order directing any electric utility that does not have an existing requirement approved by the Public Service Commission that provides for the future review of both supply side and demand side resources to develop an initial integrated resource plan to be filed not later than January 1, 2016, in conjunction with other similar deadlines required by other states or entities of the electric utilities. This order may include guidelines for developing an integrated resource plan.

(b)(1) Any electric utility that has an existing requirement approved by the Public Service Commission that provides for the future review of both supply side and demand side resources is exempt from this initial integrated resource plan filing until such time as that existing requirement has been satisfied. Thereafter, such electric utility is required to file an integrated resource plan pursuant to subsection (a) of this section.

(2) Each electric utility that has filed the initial integrated resource plan shall file an updated plan at least every five years after the initial integrated resource plan has been filed. Any electric utility that was exempt from filing an initial integrated resource plan shall file an integrated resource plan within five years of satisfying any existing requirement and at least every five years thereafter. All integrated resource plans shall comply with the provisions of any relevant order of the Public Service Commission.
Commission establishing guidelines for the format and contents of updated and revised integrated resource plans.

(c) The Public Service Commission shall analyze and review an integrated resource plan. The Public Service Commission may request further information from the utility, as necessary. Nothing in this section affects the obligations of utilities to obtain otherwise applicable commission approvals.

(d) The commission may consider both supply-side and demand-side resources when developing the requirements for the integrated resource plans. The plan shall compare projected peak demands with current and planned capacity resources in order to develop a portfolio of resources that represents a reasonable balance of cost and risk for the utility and its customers in meeting future demand for the provision of adequate and reliable service to its electric customers as specified by the Public Service Commission.

CHAPTER 151

(Com. Sub. for S. B. 356 - By Senators Kessler (Mr. President) and M. Hall)
[By Request of the Executive]

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2014.]

AN ACT to amend and reenact §5A-1-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5A-1-10; to amend and reenact §5A-3-1, §5A-3-3, §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28, §5A-3-30 and §5A-3-31 of said code; to amend said code by
adding thereto three new sections, designated §5A-3-10d, §5A-3-10e and §5A-3-60; and to amend and reenact §12-3-10d of said code, all relating generally to purchasing; revising definitions; eliminating definitions; defining terms; requiring state spending units purchase commodities and services on a competitive basis where possible; authorizing the Secretary of the Department of Administration to issue a notice to cease and desist when purchases are not made on a competitive basis; clarifying the purposes and policies of the Purchasing Division; clarifying applicability of article; clarifying that procurements must include adequate specifications and descriptions; clarifying the powers and duties of the Director of Purchasing; authorizing the Director of Purchasing to issue a notice to cease and desist when purchases are not made on a competitive basis; ensuring the purchasing requirements apply to services and commodities; authorizing reverse auctions for purchasing commodities; permitting third-party vendors to administer reverse auctions; affording the Director of the Purchasing Division rule-making authority to implement reverse auctions; authorizing master contracts and direct order process for the direct procurement of certain commodities; defining additional terms; requiring approval of the Director of the Purchasing Division for master contracts; setting forth direct order requirements and procedures; authorizing direct order of commodities in excess of statutory amount with the written approval of the Director of Purchasing; affording the Director of the Purchasing Division rule-making authority to establish procedures regarding master contracts, preapproval, direct ordering process and related matters; clarifying circumstances in which grants are exempt from competitive bidding requirements; imposing personal liability upon spending officers and other responsible individuals who have knowingly and willfully violated competitive bidding requirements; creating felony offense for acting alone to undermine competition; requiring certain executive department officials to attend annual training on purchasing
procedures; adjusting the percentage rebate moneys transferred to the Purchasing Improvement Fund; adjusting the percentage of rebate moneys transferred to the Hatfield-McCoy Regional Recreation Authority; transferring ten percent of rebate moneys to the State Park Operating Fund; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §5A-1-1 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 §5A-1-10; that §5A-3-1, §5A-3-3, §5A-3-4, §5A-3-5, §5A-3-11, §5A-3-17, §5A-3-28, §5A-3-30 and §5A-3-31 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §5A-3-10d, §5A-3-10e and §5A-3-60; and that §12-3-10d of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-1. Definitions.

For the purpose of this chapter:

(1) “Commodities” means supplies, material, equipment and any other articles or things used by or furnished to a department, agency or institution of state government.

(2) “Contract” means an agreement between a state spending unit and a vendor relating to the procurement of commodities or services, or both.

(3) “Debarment” means the exclusion of a vendor from the right to bid on contracts to sell goods or supply services to the state or its subdivisions for a specified period of time.
(4) "Director" means the director of the division referred to in the heading of the article in which the word appears.

(5) "Electronic" means electrical, digital, magnetic, optical, electromagnetic or any other similar technology.

(6) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

(7) "Expendable commodities" means those commodities which, when used in the ordinary course of business, will become consumed or of no market value within the period of one year or less.

(8) "Grant" means the furnishing of assistance, financial or otherwise, to any person or entity to support a program authorized by law.

(9) "Nonprofit workshops" means an establishment: (A) Where any manufacture or handiwork is carried on; (B) which is operated either by a public agency or by a cooperative or by a nonprofit private corporation or nonprofit association in which no part of the net earnings thereof inures, or may lawfully inure, to the benefit of any private shareholder or individual; (C) which is operated for the primary purpose of providing remunerative employment to blind or severely disabled persons who cannot be absorbed into the competitive labor market; and (D) which shall be approved, as evidenced by a certificate of approval, by the State Board of Vocational Education, Division of Vocational Rehabilitation.

(10) "Printing" means printing, binding, ruling, lithographing, engraving and other similar services.

(11) "Procurement" means the buying, purchasing, renting, leasing or otherwise obtaining of commodities or services.
(12) "Public funds" means funds of any character, including federal moneys, belonging to or in the custody of any state spending unit.

(13) "Record" means information that is inscribed on a read-only tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "Removable property" means any personal property not permanently affixed to or forming a part of real estate.

(15) "Request for quotations" means a solicitation for a bid where cost is the primary factor in determining the award.

(16) "Responsible bidder" means a vendor who has the capability to fully perform the contract requirements, and the integrity and reliability which will assure good-faith performance.

(17) "Responsive bidder" means a vendor who has submitted a bid which conforms in all material respects to the bid solicitation.

(18) "Secretary" means the Secretary of Administration.

(19) "Services" means the furnishing of labor, time, expertise or effort, not involving the delivery of a specific end commodity or product other than one that may be incidental to the required performance.

(20) "Spending officer" means the executive head of a spending unit, or a person designated by him or her.

(21) "Spending unit" means a department, bureau, department, division, office, board commission, authority, agency or institution of the state government for which an appropriation is requested of the Governor, or to which an
appropriation is made by the Legislature, unless a specific exemption from this chapter is provided in this code.

(22) “The state and its subdivisions” means the State of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.

(23) “Vendor” means any person or entity that may, through contract or other means, supply the state or its subdivisions with commodities or services, and lessors of real property.

§5A-1-10. General procurement provisions for state spending units.

(a) Unless this code specifically provides to the contrary, all spending units, whenever possible, shall base purchases for commodities and services on a competitive process and utilize available statewide contracts.

(b) The secretary shall issue a notice to cease and desist to any spending unit when the secretary has credible evidence that a spending unit has failed, whenever possible, to purchase commodities and services on a competitive basis or to use available statewide contracts. Failure to abide by such notice may result in penalties set forth in section seventeen, article three of this chapter.

ARTICLE 3. PURCHASING DIVISION.

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

(a) The Purchasing Division within the Department of Administration is continued. The underlying purposes and policies of the Purchasing Division are:
(1) To establish centralized offices to provide purchasing and travel services to the various state agencies;

(2) To simplify, clarify and modernize the law governing procurement by this state;

(3) To permit the continued development of procurement policies and practices;

(4) To make as consistent as possible the procurement rules and practices among the various spending units;

(5) To provide for increased public confidence in the procedures followed in public procurement;

(6) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this state;

(7) To provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;

(8) To foster effective broad-based competition within the free enterprise system;

(9) To provide safeguards for the maintenance of a procurement system of quality and integrity; and

(10) To obtain in a cost-effective and responsive manner the commodities and services required by spending units in order for those spending units to better serve this state’s businesses and residents.

(b) The Director of the Purchasing Division shall, at the time of appointment:

(1) Be a graduate of an accredited college or university; and
30 (2) Have spent a minimum of ten of the fifteen years immediately preceding his or her appointment employed in an executive capacity in purchasing for any unit of government or for any business, commercial or industrial enterprise.

34 (c) The provisions of this article apply to all of the spending units of state government, except as otherwise provided by this article or by law.

37 (d) The provisions of this article do not apply to the judicial branch, the legislative branch, to purchases of stock made by the Alcohol Beverage Control Commissioner and to purchases of textbooks for the State Board of Education.

41 (e) The provisions of this article apply to every expenditure of public funds by a spending unit for commodities and services irrespective of the source of the funds.

§5A-3-3. Powers and duties of Director of Purchasing.

1 The director, under the direction and supervision of the secretary, shall be the executive officer of the Purchasing Division and shall have the power and duty to:

4 (1) Direct the activities and employees of the Purchasing Division;

6 (2) Ensure that the purchase of or contract for commodities and services shall be based, whenever possible, on competitive bid;

9 (3) Purchase or contract for, in the name of the state, the commodities, services and printing required by the spending units of the state government;

12 (4) Apply and enforce standard specifications established in accordance with section five of this article as hereinafter provided;
(5) Transfer to or between spending units or sell commodities that are surplus, obsolete or unused as hereinafter provided;

(6) Have charge of central storerooms for the supply of spending units, as the director deems advisable;

(7) Establish and maintain a laboratory for the testing of commodities and make use of existing facilities in state institutions for that purpose as hereinafter provided, as the director deems advisable;

(8) Suspend the right and privilege of a vendor to bid on state purchases when the director has evidence that such vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director;

(9) Examine the provisions and terms of every contract entered into for and on behalf of the State of West Virginia that impose any obligation upon the state to pay any sums of money for commodities or services and approve each such contract as to such provisions and terms; and the duty of examination and approval herein set forth does not supersede the responsibility and duty of the Attorney General to approve such contracts as to form: Provided, That the provisions of this subdivision do not apply in any respect whatever to construction or repair contracts entered into by the Division of Highways of the Department of Transportation: Provided, however, That the provisions of this subdivision do not apply in any respect whatever to contracts entered into by the University of West Virginia Board of Trustees or by the Board of Directors of the State College System, except to the extent that such boards request the facilities and services of the director under the provisions of this subdivision;

(10) Assure that the specifications and descriptions in all solicitations are prepared so as to provide all potential
suppliers-vendors who can meet the requirements of the state an
opportunity to bid and to assure that the specifications and
descriptions do not favor a particular brand or vendor. If the
director determines that any such specifications or descriptions
as written favor a particular brand or vendor or if it is decided,
either before or after the bids are opened, that a commodity or
service having different specifications or quality or in different
quantity can be bought, the director may rewrite the solicitation
and the matter shall be rebid; and

(11) Issue a notice to cease and desist to a spending unit
when the director has credible evidence that a spending unit has
violated competitive bidding or other requirements established
by this article and the rules promulgated hereunder. Failure to
abide by such notice may result in penalties set forth in section
seventeen of this article.

§5A-3-4. Rules of director.

(a) The director shall propose rules for legislative approval
in accordance with the provisions of article three, chapter
twenty-nine-a of this code to:

(1) Authorize a spending unit to purchase specified
commodities and services directly and prescribe the manner in
which such purchases shall be made;

(2) Authorize, in writing, a spending unit to purchase
commodities and services in the open market for immediate
delivery in emergencies, define emergencies and prescribe the
manner in which such purchases shall be made and reported to
the director;

(3) Prescribe the manner in which commodities and services
shall be purchased, delivered, stored and distributed;

(4) Prescribe the time for making requisitions and estimates
of commodities and services, the future period which they are to

cover, the form in which they shall be submitted and the manner of their authentication;

(5) Prescribe the manner of inspecting all deliveries of commodities, and making chemical and physical tests of samples submitted with bids and samples of deliveries to determine compliance with specifications;

(6) Prescribe the amount and type of deposit or bond to be submitted with a bid or contract and the amount of deposit or bond to be given for the faithful performance of a contract;

(7) Prescribe a system whereby the director shall be required, upon the payment by a vendor of an annual fee established by the director, to give notice to such vendor of all bid solicitations for commodities and services of the type with respect to which such vendor specified notice was to be given, but no such fee shall exceed the cost of giving the notice to such vendor, nor shall such fee exceed the sum of $125 per fiscal year nor shall such fee be charged to persons seeking only reimbursement from a spending unit;

(8) Prescribe that each state contract entered into by the Purchasing Division shall contain provisions for liquidated damages, remedies or provisions for the determination of the amount or amounts which the vendor shall owe as damages, in the event of default under such contract by such vendor, as determined by the director;

(9) Prescribe contract management procedures for all state contracts except government construction contracts including, but not limited to, those set forth in article twenty-two, chapter five of this code;

(10) Prescribe procedures by which oversight is provided to actively monitor spending unit purchases, including, but not
limited to, all technology and software commodities and services exceeding $1 million, approval of change orders and final acceptance by the spending units;

(11) Prescribe that each state contract entered into by the Purchasing Division contain provisions for the cancellation of the contract upon thirty days' notice to the vendor;

(12) Prescribe procedures for selling surplus commodities to the highest bidder by means of an Internet auction site;

(13) Provide such other matters as may be necessary to give effect to the foregoing rules and the provisions of this article; and

(14) Prescribe procedures for encumbering purchase orders to ensure that the proper account may be encumbered before sending purchase orders to vendors.

(b) The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to prescribe qualifications to be met by any person who is to be employed in the Purchasing Division as a state buyer. The rules must provide that a person may not be employed as a state buyer unless he or she at the time of employment either is:

(1) 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.

Persons serving as state buyers are subject to the provisions of article six, chapter twenty-nine of this code.
§5A-3-5. Purchasing section standard specifications — Promulgation and adoption by director; applicable to all purchases.

1 (a) The director shall promulgate and adopt standard specifications based on scientific and technical data for appropriate commodities and services, which shall establish the quality to which commodities to be purchased and services to be contracted for by the state must conform.

6 (b) Standard specifications shall apply to every future purchase of or contract for the commodities or services described in the specifications and shall include information relating to the cost of maintenance and expected life of the commodity if the director determines there are nationally accepted industry standards for the commodity.

12 (c) No purchases by any spending unit may be exempt from compliance with the standard specifications so established, but the director may exempt the purchase of particular items from the standard specifications if it is considered necessary and advisable.

(d) The director shall update the standard specifications, as necessary.

§5A-3-10d. Reverse auctions.

1 (a) Notwithstanding any other provision of this code, the director is hereby authorized to initiate reverse auctions to procure commodities. The director may not use reverse auctions for the procurement of services under any circumstances.

5 (b) Reverse auctions may be utilized if the director determines their use would be fair, economical and in the best interests of the state, and the commodities to be procured:
(1) Are subject to low price volatility;

(2) Have specifications that are common and not complex;

(3) Vary little between suppliers;

(4) Are sourced primarily based on price, with limited ancillary considerations;

(5) Require little collaboration from suppliers; and

(6) Are sold by a large, competitive supply base.

(c) For purposes of this section, “reverse auction” means a process by which bidders compete to provide commodities in an open and interactive market, including but not limited to the Internet. Reverse auction bids are opened and made public upon receipt by the director, and then bidders are given the opportunity to submit revised bids until the bidding process is complete. The contract is awarded to the lowest responsible bidder.

(d) The director may contract with qualified, industry-recognized third-party vendors to conduct reverse auctions on behalf of the director.

(e) The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish the procedures for conducting reverse auctions. The rules shall include procedures for contracting with qualified, industry-recognized third-party vendors.

§5A-3-10e. Master contracts; direct ordering process.

(a) Subject to the limitations of this section, the director may permit spending units to procure commodities directly from a
preapproved vendor through a master contract direct ordering process if the director determines the process is fair, economical and in the best interests of the state.

(b) Definitions. — For purposes of this section:

(1) “Information technology” means hardware and software related to electronic processing, and storage, retrieval, transmittal and manipulation of data.

(2) “Master contract” means an agreement, having a term of no more than one year, between the Purchasing Division and at least two preapproved vendors authorizing a spending unit to purchase a commodity directly and on a recurrent basis through the direct ordering process.

(3) “Preapproved vendor” means a “vendor”, as that term is defined in section one, article one, chapter five-a of this code, that has entered into a master contract with the Purchasing Division and may participate in the direct ordering process subject to the terms and conditions of the master contract.

(4) “Direct ordering process” means the competitive bidding process whereby the preapproved vendors that are parties to a master contract may submit sealed bids directly to spending units to provide a commodity identified in the master contract subject to the limitations set forth in this section.

(c) Master contract procedures. —

(1) For each master contract, the director shall set forth the requirements, technical or otherwise, under which a vendor may be qualified to supply a commodity through the direct ordering process. For each master contract, the director shall follow the notice and advertising requirements set forth in section ten, article three, chapter five-a of this code.
(2) A master contract may authorize the direct ordering process for only one type of commodity.

(3) A vendor may submit information to the director to establish that it meets the requirements set forth in the master contract.

(4) If the director determines that a vendor meets the requirements set forth in the master contract, the vendor may enter into the master contract as a preapproved vendor.

(d) Direct ordering procedures. —

(1) A spending unit may commence the direct ordering process by issuing a request for a commodity identified in the master contract, stating in the request the quantity of the commodity to be procured in that particular instance.

(2) The preapproved vendor that submits the lowest bid in response to the request shall be awarded the procurement in that particular instance.

(3) The direct ordering process may not be utilized for any request for commodities, other than information technology, anticipated to cost more than $50,000, unless approved in writing by the Director of Purchasing. The state may not issue a series of orders each anticipated to cost less than $50,000 to circumvent the monetary limitation in this subsection.

(4) The direct ordering process may not be utilized for any request for information technology anticipated to cost more than $1 million, unless approved in writing by the Director of Purchasing. The state may not issue a series of orders each anticipated to cost less than $1 million to circumvent the monetary limitation in this subsection.

(e) Rule-making authority. — The Director of the Purchasing Division shall propose rules for legislative approval in
accordance with the provisions of article three, chapter twenty-nine-a of this code to implement this section, including but not limited to provisions to establish procedures for the solicitation and authorization of master contracts, preapproval of vendors and implementation of direct ordering.

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

(a) The director may make a purchase of commodities, printing and services of $25,000 or less in amount in the open market, but the purchase shall, wherever possible, be based on at least three competitive bids, and shall include the cost of maintenance and expected life of the commodities if the director determines there are nationally accepted industry standards for the commodities being purchased.

(b) The director may authorize spending units to purchase commodities, printing and services in the amount of $2,500 or less in the open market without competitive bids: Provided, That the cost of maintenance and expected life of the commodities must be taken into consideration if the director determines there are nationally accepted industry standards for the commodities being purchased.

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

(d) A vendor who has been debarred pursuant to the provisions of sections thirty-three-b through thirty-three-f of this article may not bid on or be awarded a contract under this section.
(e) All open market orders, purchases based on advertised bid requests or contracts made by the director or by a state department shall be awarded to the lowest responsible bidder or bidders, taking into consideration the qualities of the commodities or services to be supplied, their conformity with specifications, their suitability to the requirements of the government, the delivery terms and, if the director determines there are nationally accepted industry standards, cost of maintenance and the expected life of the commodities: Provided, That state bids on school buses shall be accepted from all bidders who shall then be awarded contracts if they meet the state board's Minimum Standards for Design and Equipment of School Buses. County boards of education may select from those bidders who have been awarded contracts and shall pay the difference between the state aid formula amount and the actual cost of bus replacement. Any or all bids may be rejected.

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

(g) The bid must be received by the Purchasing Division prior to the specified date and time of the bid opening. The failure to deliver or the nonreceipt of the bid by the Purchasing Division prior to the appointed date and hour shall result in the rejection of the bid. The vendor is solely responsible for the receipt of bid by the Purchasing Division prior to the appointed date and hour of the bid opening. All bids will be opened publicly by two or more persons from the Purchasing Division. Vendors will be given notice of the day, time and place of the public bid opening. Bids may be viewed immediately after being opened.
(h) After the award of the order or contract, the director, or someone appointed by him or her for that purpose, shall indicate upon the successful bid that it was the successful bid. Thereafter, the copy of each bid in the possession of the director shall be maintained as a public record, shall be open to public inspection in the office of the director and may not be destroyed without the written consent of the Legislative Auditor.

(i)(1) A grant awarded by the state is exempt from the competitive bidding requirements set forth in this chapter, unless the grant is used to procure commodities or services that directly benefit a spending unit.

(2) If a grant awarded to the state requires the procurement of commodities or services that will directly benefit a spending unit, the procurement is not exempt from the competitive bidding requirements set forth in this chapter.

(3) If a grant awarded to the state requires the state to transfer some or all of the grant to an individual, entity or vendor as a subgrant to accomplish a public purpose, and no contract for commodities or services directly benefitting a spending unit will result, the subgrant is not subject to the competitive bidding requirements set forth in this chapter.

§5A-3-17. Purchases or contracts violating article void; personal liability.

If a spending unit purchases or contracts for commodities or services contrary to the provisions of this article or the rules and regulations made thereunder, such purchase or contract shall be void and of no effect. The spending officer of such spending unit, or any other individual charged with responsibility for the purchase or contract, shall be personally liable for the costs of such purchase or contract and, if already paid out of state funds, the amount thereof may be recovered in the name of the state in an appropriate action instituted therefor: Provided, That the state
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10 establishes by a preponderance of the evidence that the
11 individual acted knowingly and willfully.

§5A-3-28. Financial interest of secretary, etc.; receiving reward
from interested party; penalty; application of bribery
statute.

(a) Neither the secretary, nor the director nor any employee
of the Division of Purchasing, shall be financially interested, or
have any beneficial personal interest, directly or indirectly, in the
purchase of any commodities, services or printing, nor in any
firm, partnership, corporation or association furnishing them.
Neither the secretary, nor the director nor any employee of the
Division of Purchasing, shall accept or receive directly or
indirectly from any person, firm or corporation, known by such
secretary, director or employee to be interested in any bid,
contract or purchase, by rebate, gift or otherwise, any money or
other thing of value whatsoever, or any promise, obligation or
contract for future reward or compensation.

(b) A person who violates this section shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be confined in
jail not less than three months nor more than one year, or fined
not less than $50 nor more than $1,000, or both, in the discretion
of the court: Provided, That any person who violates any of the
provisions of the last sentence of the first paragraph of this
section under circumstances constituting the crime of bribery
under the provisions of section three, article five-a, chapter
sixty-one of this code, shall, upon conviction of bribery, be
punished as provided in said article five-a.

§5A-3-30. Statement of purpose; obtaining money and property
under false pretenses or by fraud from the state;
penalties; definition.

(a) The Legislature of the State of West Virginia hereby
declares that the purpose of this statute is to promote equal and
fair bidding for the purchase of commodities and services by the
state, to eliminate fraud in the procurement of commodities and services by the state.

(b) It is unlawful for any person to obtain any services, money, goods or other property from the state under any contract made under the provisions of this article, by false pretense, token or representation, or by delivery of inferior commodities, with intent to defraud. A person who violates this subsection is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one year nor more than five years, and shall be fined not exceeding $10,000.

(c) It shall not be a defense to a charge under this section that: (1) The commodities or services purchased were accepted and used, or are being used, by the state; or (2) the commodities or services are functional or suitable for the purpose for which the commodities or services were purchased by the state notwithstanding the standard or specification issued by the purchasing agency or the Division of Purchasing.

(d) For the purpose of this section, "inferior commodities" includes, but shall not be limited to: (1) Any commodity which does not meet the specification or standard issued by the purchasing agency and the Division of Purchasing, or any change order approved by both the purchasing agency and Division of Purchasing; and (2) any commodity which is of a lesser quality, quantity or measure of any kind set forth within the specification or standard issued by the purchasing agency and the Division of Purchasing.

§5A-3-31. Corrupt actions, combinations, collusions or conspiracies prohibited; penalties.

(a) It shall be unlawful for any person to corruptly act alone or combine, collude or conspire with one or more other persons with respect to the purchasing or supplying of services,
commodities or printing to the state under the provisions of this article if the purpose or effect of such action, combination, collusion or conspiracy is either to: (1) Lessen competition among prospective vendors; or (2) cause the state to pay a higher price for such services, commodities or printing than would be or would have been paid in the absence of such action, combination, collusion or conspiracy; or (3) cause one prospective vendor or vendors to be preferred over one or more other prospective vendor or vendors.

(b) Any person who violates any provision of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years, and be fined not exceeding $10,000.

§5A-3-60. Annual purchasing training.

(a) All executive department secretaries, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads are hereby required to take two hours of training on purchasing procedures and purchasing cards annually.

(b) The Director of the Purchasing Division and the Auditor shall offer the two-hour training required by this section at least two times per year and shall develop its substance in accordance with the requirements of this article and other relevant provisions of this code. The training shall be recorded by audio and visual means and shall be made available to the individuals listed in subsection (a) of this section in the event they are unable to attend the training in person.

(c) All individuals listed in subsection (a) of this section shall certify, in writing and on a form developed by the Director of the Purchasing Division, the date, time, location and manner
18 in which they took the training. Completed forms shall be
19 returned to the director and maintained in his or her office.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND
DEDUCTIONS.

§12-3-10d. Purchasing Card Fund created; expenditures.

1 (a) All money received by the state pursuant to any
2 agreement with vendors providing purchasing charge cards, and
3 any interest or other return earned on the money, shall be
4 deposited in a special revenue revolving fund, designated the
5 Purchasing Card Administration Fund, in the State Treasury to
6 be administered by the Auditor. The fund shall be used to pay all
7 expenses incurred by the Auditor in the implementation and
8 operation of the Purchasing Card Program and may be used to
9 pay expenses related to the general operation of the Auditor's
10 office. The Auditor also may use the fund to pay expenses
11 incurred by spending units associated with the use of the card,
12 including system and program enhancements, and inspection and
13 monitoring of compliance with all applicable rules and
14 procedures. Expenditures from the fund shall be made in
15 accordance with appropriations by the Legislature pursuant to
16 the provisions of article three, chapter twelve of this code and
17 upon fulfillment of the provisions of article two, chapter five-a
18 of this code.

19 (b) Within three days of receiving rebate moneys resulting
20 from state spending unit purchasing card purchases, the Auditor
21 shall transfer fifteen and one-half percent of such rebate moneys
22 to the Purchasing Improvement Fund created pursuant to section
23 fifty-eight, article three, chapter five-a of this code.

24 (c) Within three days of receiving rebate moneys resulting
25 from state spending unit purchasing card purchases, the Auditor
26 shall transfer ten percent of such rebate moneys to the Hatfield-McCoy Regional Recreation Authority and ten percent of such moneys to the State Park Operating Fund.

CHAPTER 152

(S. B. 585 - By Senator Palumbo)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to repeal §24-3-3b of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-1-1 of said code, relating to removing unconstitutional language regarding access to rail lines.

Be it enacted by the Legislature of West Virginia:

That §24-3-3b of the Code of West Virginia, 1931, as amended, be repealed; and that §24-1-1 of said code be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with Joint Committee on Government and Finance.

(a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon the Public Service Commission of this state the authority and duty to enforce and regulate the practices, services and rates of public utilities in order to:
(1) Ensure fair and prompt regulation of public utilities in the interest of the using and consuming public;

(2) Provide the availability of adequate, economical and reliable utility services throughout the state;

(3) Encourage the well-planned development of utility resources in a manner consistent with state needs and in ways consistent with the productive use of the state’s energy resources, such as coal;

(4) Ensure that rates and charges for utility services are just, reasonable, applied without unjust discrimination or preference, applied in a manner consistent with the purposes and policies set forth in article two-a of this chapter, and based primarily on the costs of providing these services;

(5) Encourage energy conservation and the effective and efficient management of regulated utility enterprises; and

(6) Encourage removal of artificial barriers to rail carrier service, stimulate competition, stimulate the free flow of goods and passengers throughout the state and promote the expansion of the tourism industry, thereby improving the economic condition of the state.

(b) The Legislature creates the Public Service Commission to exercise the legislative powers delegated to it. The Public Service Commission is charged with the responsibility for appraising and balancing the interests of current and future utility service customers, the general interests of the state’s economy and the interests of the utilities subject to its jurisdiction in its deliberations and decisions.

(c) The Legislature directs the Public Service Commission to identify, explore and consider the potential benefits or risks associated with emerging and state-of-the-art concepts in utility
management, rate design and conservation. The commission may conduct inquiries and hold hearings regarding such concepts in order to provide utilities subject to its jurisdiction and other interested persons the opportunity to comment, and shall report to the Governor and the Legislature regarding its findings and policies to each of these areas not later than the first day of the regular session of the Legislature in the year 1985, and every two years thereafter.

(d) It is legislative policy to ensure that the Legislature and the general public become better informed regarding the regulation of public utilities in this state and the conduct of the business of the Public Service Commission. To aid in the achievement of this policy, the Public Service Commission annually shall present to the Joint Committee on Government and Finance, created by article three, chapter four of this code, or a subcommittee designated by the joint committee, a management summary report which describes in a concise manner:

(1) The major activities of the commission for the year especially as such activities relate to the implementation of the provisions of this chapter;

(2) Important policy decisions reached and initiatives undertaken during the year;

(3) The current balance of supply and demand for natural gas and electric utility services in the state and forecast of the probable balance for the next ten years; and

(4) Other information considered by the commission to be important including recommendations for statutory reform and the reasons for such recommendations.

(e) In addition to any other studies and reports required to be conducted and made by the Public Service Commission pursuant
to any other provision of this section, the commission shall study
and initially report to the Legislature no later than the first day
of the regular session of the Legislature in the year 1980 upon:

(1) The extent to which natural gas wells or wells heretofore
supplying gas utilities in this state have been capped off or shut
in; the number of such wells; their probable extent of future
production and the reasons given and any justification for
capping off or shutting in such wells; the reasons, if any, why
persons engaged or heretofore engaged in the development of
gas wells in this state or the Appalachian areas have been
discouraged from drilling, developing or selling the production
of such wells; and whether there are fixed policies by any utility
or group of utilities to avoid the purchase of natural gas
produced in the Appalachian region of the United States
generally and in West Virginia specifically.

(2) The extent of the export and import of natural gas utility
supplies in West Virginia.

(3) The cumulative effect of the practices mentioned in
subdivisions (1) and (2) of this subsection upon rates theretofore
and hereafter charged gas utility customers in West Virginia.

In carrying out the provisions of this section the commission
shall have jurisdiction over such persons, whether public utilities
or not, as may be in the opinion of the commission necessary to
the exercise of its mandate and may compel attendance before it,
take testimony under oath and compel the production of papers
or other documents. Upon reasonable request by the commission,
all other state agencies shall cooperate with the commission in
carrying out the provisions and requirements of this subsection.

(f) No later than the first day of the regular session of the
Legislature in the year 1980, the Public Service Commission
shall submit to the Legislature a plan for internal reorganization
which plan shall specifically address the following:
(1) A division within the Public Service Commission which shall include the office of the commissioners, the hearing examiners and such support staff as may be necessary to carry out the functions of decisionmaking and general supervision of the commission, which functions shall not include advocacy in cases before the commission;

(2) The creation of a division which shall act as an advocate for the position of and in the interest of all customers;

(3) The means and procedures by which the division to be created pursuant to the provisions of subdivision (2) of this subsection shall protect the interests of each class of customers and the means by which the commission will assure that such division will be financially and departmentally independent of the division created by subdivision (1) of this subsection;

(4) The creation of a division within the Public Service Commission which shall assume the duties and responsibilities now charged to the commissioners with regard to motor carriers which division shall exist separately from those divisions set out in subdivisions (1) and (2) of this subsection and which shall relieve the commissioners of all except minimal administrative responsibilities as to motor carriers and which plan shall provide for a hearing procedure to relieve the commissioners from hearing motor carrier cases;

(5) Which members of the staff of the Public Service Commission shall be exempted from the salary schedules or pay plan adopted by the civil service commission and identify such staff members by job classification or designation, together with the salary or salary ranges for each such job classification or designation;

(6) The manner in which the commission will strengthen its knowledge and independent capacity to analyze key conditions
and trends in the industries it regulates extending from general industry analysis and supply-demand forecasting to continuing and more thorough scrutiny of the capacity planning, construction management, operating performance and financial condition of the major companies within these industries.

Such plan shall be based on the concept that each of the divisions mentioned in subdivisions (1), (2) and (4) of this subsection shall exist independently of the others and the plan shall discourage ex parte communications between them by such means as the commission shall direct, including, but not limited to, separate clerical and professional staffing for each division. Further, the Public Service Commission is directed to incorporate within the said plan to the fullest extent possible the recommendations presented to the subcommittee on the Public Service Commission of the Joint Committee on Government and Finance in a final report dated February, 1979, and entitled "A Plan for Regulatory Reform and Management Improvement."

The commission shall, before January 5, 1980, adopt said plan by order, which order shall promulgate the same as a rule of the commission to be effective upon the date specified in said order, which date shall be no later than December 31, 1980. Certified copies of such order and rule shall be filed on the first day of the 1980 regular session of the Legislature, by the chairman of the commission with the clerk of each house of the Legislature, the Governor and the Secretary of State. The chairman of the commission shall also file with the Office of the Secretary of State the receipt of the clerk of each house and of the Governor, which receipt shall evidence compliance with this section.

Upon the filing of a certified copy of such order and rule, the clerk of each house of the Legislature shall report the same to their respective houses and the presiding officer thereof shall refer the same to appropriate standing committee or committees.
Within the limits of funds appropriated therefor, the rule of the Public Service Commission shall be effective upon the date specified in the order of the commission promulgating it unless an alternative plan be adopted by general law or unless the rule is disapproved by a concurrent resolution of the Legislature adopted prior to adjournment sine die of the regular session of the Legislature to be held in the year 1980: Provided, That if such rule is approved in part and disapproved in part by a concurrent resolution of the Legislature adopted prior to such adjournment, such rule shall be effective to the extent and only to the extent that the same is approved by such concurrent resolution.

The rules promulgated and made effective pursuant to this section shall be effective notwithstanding any other provisions of this code for the promulgation of rules or regulations.

(g) The Public Service Commission is hereby directed to cooperate with the Joint Committee on Government and Finance of the Legislature in its review, examination and study of the administrative operations and enforcement record of the Railroad Safety Division of the Public Service Commission and any similar studies.

(h) (1) The Legislature hereby finds that rates for natural gas charged to customers of all classes have risen dramatically in recent years to the extent that such increases have adversely affected all customer classes. The Legislature further finds that it must take action necessary to mitigate the adverse consequences of these dramatic rate increases.

(2) The Legislature further finds that the practices of natural gas utilities in purchasing high-priced gas supplies, in purchasing gas supplies from out-of-state sources when West Virginia possesses abundant natural gas, and in securing supplies, directly or indirectly by contractual agreements including take-or-pay
provisions, indefinite price escalators or most-favored nation
clauses have contributed to the dramatic increase in natural gas
prices. It is therefore the policy of the Legislature to discourage
such purchasing practices in order to protect all customer
classes.

(3) The Legislature further finds that it is in the best interests
of the citizens of West Virginia to encourage the transportation
of natural gas in intrastate commerce by interstate or intrastate
pipelines or by local distribution companies in order to provide
competition in the natural gas industry and in order to provide
natural gas to consumers at the lowest possible price.

(i) The Legislature further finds that transactions between
utilities and affiliates are a contributing factor to the increase in
natural gas and electricity prices and tend to confuse
consideration of a proper rate of return calculation. The
Legislature therefore finds that it is imperative that the Public
Service Commission have the opportunity to properly study the
issue of proper rate of return for lengthy periods of time and to
limit the return of a utility to a proper level when compared to
return or profit that affiliates earn on transactions with sister
utilities.

CHAPTER 153

(S. B. 444 - By Senators Kirkendoll, Cann,
Edgell, Carmichael and Plymale)

[Passed February 19, 2014; in effect from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §5-10-2, §5-10-31 and §5-10-48 of the
Code of West Virginia, 1931, as amended, all relating to the Public
Employees Retirement System; defining “compensation” and “employee” in this article; removing the requirement to set employer contribution rate by legislative rule; and allowing employee and employer retirement contributions to be credited to the participating public employer when a retirant is reemployed for less than one year.

Be it enacted by the Legislature of West Virginia:

That §5-10-2, §5-10-31 and §5-10-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.

Unless a different meaning is clearly indicated by the context, the following words and phrases as used in this article have the following meanings:

(1) “Accumulated contributions” means the sum of all amounts deducted from the compensations of a member and credited to his or her individual account in the members’ deposit fund, together with regular interest on the contributions;

(2) “Accumulated net benefit” means the aggregate amount of all benefits paid to or on behalf of a retired member;

(3) “Actuarial equivalent” means a benefit of equal value computed upon the basis of a mortality table and regular interest adopted by the board of trustees from time to time: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, “actuarial equivalent” shall be computed using
the mortality tables and interest rates required to comply with those requirements;

(4) "Annuity" means an annual amount payable by the retirement system throughout the life of a person. All annuities shall be paid in equal monthly installments, rounding to the upper cent for any fraction of a cent;

(5) "Annuity reserve" means the present value of all payments to be made to a retirant or beneficiary of a retirant on account of any annuity, computed upon the basis of mortality and other tables of experience, and regular interest, adopted by the board of trustees from time to time;

(6) "Beneficiary" means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(7) "Board of Trustees" or "board" means the Board of Trustees of the West Virginia Consolidated Public Retirement System;

(8) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by the member to the participating public employer. In the event a member's remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of the remuneration which is not paid in money: Provided, That members hired in a position for the first time on or after July 1, 2014, who receive nonmonetary remuneration shall not have nonmonetary remuneration included in compensation for retirement purposes and nonmonetary remuneration may not be used in calculating a member's final average salary. Any lump sum or other payments paid to members that do not constitute regular salary or wage payments are not considered compensation for the purpose of withholding contributions for
the system or for the purpose of calculating a member's final average salary. These payments include, but are not limited to, attendance or performance bonuses, one-time flat fee or lump sum payments, payments paid as a result of excess budget or employee recognition payments. The board shall have final power to decide whether the payments shall be considered compensation for purposes of this article;

(9) "Contributing service" means service rendered by a member within this state and for which the member made contributions to a public retirement system account of this state, to the extent credited him or her as provided by this article;

(10) "Credited service" means the sum of a member's prior service credit, military service credit, workers' compensation service credit and contributing service credit standing to his or her credit as provided in this article;

(11) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia National Guard whose compensation, in whole or in part, is paid by the federal government: Provided, That an employee of the Legislature whose term of employment is otherwise classified as temporary and who is employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who has been or is employed during regular sessions or during the interim between regular sessions in seven or more consecutive calendar years, as certified by the clerk of the house in which the employee served, is an employee, any provision to the contrary in this article
notwithstanding, and is entitled to credited service in accordance with provisions of section fourteen, article ten, chapter five of this code and: Provided, however, That members of the legislative body of any political subdivision and judges of the State Court of Claims are employees receiving one year of service credit for each one-year term served and pro rated service credit for any partial term served, anything contained in this article to the contrary notwithstanding: Provided further, That only a compensated board member of a participating public employer appointed to a board of a nonlegislative body for the first time on or after July 1, 2014, who normally is required to work twelve months per year and one thousand forty hours of service per year is an employee. In any case of doubt as to who is an employee within the meaning of this article, the Board of Trustees shall decide the question;

(12) "Employer error" means an omission, misrepresentation, or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations 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 section by a participating public employer does not constitute employer error.

(13) "Final average salary" means either of the following: Provided, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code: Provided, however, That the provisions of section twenty-two-h of this article are not applicable to the amendments made to this subdivision during the 2011 Regular Session of the Legislature.
(A) The average of the highest annual compensation received by a member (including a member of the Legislature who participates in the retirement system in the year 1971 or thereafter), during any period of three consecutive years of credited service contained within the member’s fifteen years of credited service immediately preceding the date his or her employment with a participating public employer last terminated; or

(B) If the member has less than five years of credited service, the average of the annual rate of compensation received by the member during his or her total years of credited service; and in determining the annual compensation, under either paragraph (A) or (B) of this subdivision, of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year 1971, or in any year thereafter, his or her actual legislative compensation (the total of all compensation paid under sections two, three, four and five, article two-a, chapter four of this code), in the year 1971, or in any year thereafter, plus any other compensation he or she receives in any year from any other participating public employer including the State of West Virginia, without any multiple in excess of one times his or her actual legislative compensation and other compensation, shall be used: Provided, That “final average salary” for any former member of the Legislature or for any member of the Legislature in the year 1971, who, in either event, was a member of the Legislature on November 30, 1968, or November 30, 1969, or November 30, 1970, or on November 30 in any one or more of those three years and who participated in the retirement system as a member of the Legislature in any one or more of those years means: (I) Either (notwithstanding the provisions of this subdivision preceding this proviso) $1,500 multiplied by eight, plus the highest other compensation the former member or member received in any one of the three years from any other participating public employer including the State of West Virginia; or (ii) “final
average salary" determined in accordance with paragraph (A) or (B) of this subdivision, whichever computation produces the higher final average salary (and in determining the annual compensation under subparagraph (ii) of this proviso, the legislative compensation of the former member shall be computed on the basis of $1,500 multiplied by eight, and the legislative compensation of the member shall be computed on the basis set forth in the provisions of this subdivision immediately preceding this proviso or on the basis of $1,500 multiplied by eight, whichever computation as to the member produces the higher annual compensation);

(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, codified at Title 26 of the United States Code;

(15) "Limited credited service" means service by employees of the West Virginia Educational Broadcasting Authority, in the employment of West Virginia University, during a period when the employee made contributions to another retirement system, as required by West Virginia University, and did not make contributions to the Public Employees Retirement System: Provided, That while limited credited service can be used for the formula set forth in subsection (e), section twenty-one of this article, it may not be used to increase benefits calculated under section twenty-two of this article;

(16) "Member" means any person who has accumulated contributions standing to his or her credit in the members' deposit fund;

(17) "Participating public employer" means the State of West Virginia, any board, commission, department, institution or spending unit, and includes any agency created by rule of the Supreme Court of Appeals having full-time employees, which for the purposes of this article is considered a department of state
government; and any political subdivision in the state which has
elected to cover its employees, as defined in this article, under
the West Virginia Public Employees Retirement System;

(18) “Plan year” means the same as referenced in section
forty-two of this article;

(19) “Political subdivision” means the State of West
Virginia, a county, city or town in the state; a school corporation
or corporate unit; 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 mental health agency
participating in the Public Employees Retirement System before
July 1, 1997, is considered a political subdivision solely for the
purpose of permitting those employees who are members of the
Public Employees Retirement System to remain members and
continue to participate in the retirement system at their option
after July 1, 1997: Provided, however, That the Regional
Community Policing Institute which participated in the Public
Employees Retirement System before July 1, 2000, is considered
a political subdivision solely for the purpose of permitting those
employees who are members of the Public Employees
Retirement System to remain members and continue to
participate in the Public Employees Retirement System after July
1, 2000;

(20) “Prior service” means service rendered prior to July 1,
1961, to the extent credited a member as provided in this article;

(21) “Regular interest” means the rate or rates of interest per
annum, compounded annually, as the Board of Trustees adopts
from time to time;
(22) "Required beginning date" means April 1 of the calendar year following the later of: (A) the calendar year in which the member attains age seventy and one-half years of age; or (B) the calendar year in which a member who has attained the age seventy and one-half years of age and who ceases providing service covered under this system to a participating employer;

(23) "Retirant" means any member who commences an annuity payable by the retirement system;

(24) "Retirement" means a member’s withdrawal from the employ of a participating public employer and the commencement of an annuity by the retirement system;

(25) "Retirement system" or "system" means the West Virginia Public Employees Retirement System created and established by this article;

(26) "Retroactive service" means: (1) Service between July 1, 1961, and the date an employer decides to become a participating member of the Public Employees Retirement System; (2) service prior to July 1, 1961, for which the employee is not entitled to prior service at no cost in accordance with 162 CSR 5.13; and (3) service of any member of a legislative body or employees of the State Legislature whose term of employment is otherwise classified as temporary for which the employee is eligible, but for which the employee did not elect to participate at that time;

(27) "Service" means personal service rendered to a participating public employer by an employee of a participating public employer; and

(28) "State" means the State of West Virginia.
§5-10-31. Employers Accumulation Fund; employers contributions.

(a) The Employers Accumulation Fund is hereby continued. It is the fund in which shall be accumulated the contributions made by the participating public employers to the retirement system, and from which transfers shall be made as provided in this section.

(b) Based upon the provisions of section thirteen of this article, the participating public employers' contributions to the retirement system, as determined by the Consolidated Public Retirement Board, shall be a percent of the members' total annual compensation related to benefits under this retirement system. In determining the amount, the board shall give consideration to setting the amount at a sum equal to an amount which, if paid annually by the participating public employers, will be sufficient to provide for the total normal cost of the benefits expected to become payable to all members and to amortize any unfunded liability found by application of the actuarial funding method chosen for that purpose by the Consolidated Public Retirement Board, over a period of years determined actuarially appropriate.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

(a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual’s ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted,
within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed capacities. The Legislature further finds and declares that it has the need for qualified employees and that in many cases an employee of the Legislature will retire and be available to return to work for the Legislature as a per diem employee. The Legislature further finds and declares that in many instances these employees have particularly valuable expertise which the Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying these persons on a limited per diem basis after they have retired is not only in the best interests of this state, but has no adverse effect whatsoever upon the actuarial soundness of this particular retirement system.

(b) For the purposes of this section: (1) "Regularly employed on a full-time basis" means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires twelve months per year service and at least one thousand forty hours of service per year in that position; (2) "temporary full-time employment" or "temporary part-time employment" means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed; (3) "former employee of the Legislature" means any person who has retired from employment with the Legislature and who has at least ten years’ contributing service with the Legislature; and (4) "reemployed by the Legislature" means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed one hundred seventy-five days per calendar year.

(c) In the event a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing
44 member to the retirement system. If his or her reemployment is
45 for a period of one year or longer, his or her annuity shall be
46 recalculated and he or she shall be granted an increased annuity
47 due to the additional employment, the annuity to be computed
48 according to section twenty-two of this article. If his or her
49 reemployment is for a period less than one year, he or she may
50 request in writing that the employee and employer retirement
51 contributions submitted during reemployment be credited to the
52 participating public employer pursuant to section forty-four of
53 this article, and his or her previous annuity shall be reinstated
54 effective the first day of the month following termination of
55 reemployment and the board’s receipt of written notice thereof.
56 A retirant may accept legislative per diem, temporary full-time
57 or temporary part-time employment from a participating
58 employer without suspending his or her retirement annuity so
59 long as he or she does not receive annual compensation in excess
60 of $20,000.

61 (d) In the event a member retires and is then subsequently
62 elected to a public office or is subsequently appointed to hold an
63 elected public office, or is a former employee of the Legislature
64 who has been reemployed by the Legislature, he or she has the
65 option, notwithstanding subsection (c) of this section, to either:

66 (1) Continue to receive payment of his or her annuity while
67 holding public office or during any reemployment of a former
68 employee of the Legislature on a per diem basis, in addition to
69 the salary he or she may be entitled to as an office holder or as
70 a per diem reemployed former employee of the Legislature; or

71 (2) Suspend the payment of his or her annuity and become
72 a contributing member of the retirement system as provided in
73 subsection (c) of this section. Notwithstanding the provisions of
74 this subsection, a member who is participating in the system as
75 an elected public official may not retire from his or her elected
76 position and commence to receive an annuity from the system
and then be elected or reappointed to the same position unless and until a continuous twelve-month period has passed since his or her retirement from the position: \textit{Provided}, That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least sixty days after the employee has retired: \textit{Provided, however}, That the limitation on compensation provided by subsection (c) of this section does not apply to the reemployed former employee: \textit{Provided further}, That in no event may reemployment by the Legislature of a per diem employee exceed one hundred seventy-five days per calendar year.

(e) A member who is participating in the system simultaneously as both a regular, full-time employee of a participating public employer and as an elected or appointed member of the legislative body of the state or any political subdivision may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: \textit{Provided}, That the retired member shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall not continue to accrue any additional service credit or benefits in the system related to the continued service.

(f) Notwithstanding the provisions of section twenty-seven-b of this article, any publicly elected member of the legislative body of any political subdivision or of the State Legislature, the Clerk of the House of Delegates and the Clerk of the Senate may elect to commence receiving in-service retirement distributions from this system upon attaining the age of seventy and one-half years: \textit{Provided}, That the member is eligible to retire under the provisions of section twenty or twenty-one of this article:
Provided, however, That the member elects to stop actively contributing to the system while receiving the in-service distributions.

(g) The provisions of section twenty-two-h of this article are not applicable to the amendments made to this section during the 2006 Regular Session.

CHAPTER 154

(S. B. 452 - By Senators Kirkendoll, Cann, Edgell, Carmichael and Plymale)

[Passed February 19, 2014; in effect ninety days from passage.] [Approved by the Governor on March 7, 2014.]

AN ACT to amend and reenact §5-13-2 and §5-13-4 of the Code of West Virginia, 1931, as amended, all relating to the Teachers Retirement System annuity calculation for reciprocal service credit; defining “teacher final average salary”; and providing procedure for annuity calculation for reciprocal service.

Be it enacted by the Legislature of West Virginia:

That §5-13-2 and §5-13-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13. PUBLIC EMPLOYEES’ AND TEACHERS’ RECIPROCAL SERVICE CREDIT ACT.


The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:
(a) "Accumulated contributions" means the sum of the amounts deducted from the compensation of a member and credited to his or her individual account in a state system, together with interest, if any, credited thereto.

(b) "Annuity" means the annuity payable by a state system.

(c) "Member" means a member of either the West Virginia Public Employees Retirement System or the State Teachers Retirement System. The term "member" does not include any person who has retired under either state system.

(d) "Public final average salary" means a member's final average salary computed according to the law governing the public system. In computing his or her public final average salary, the compensation, if any, received by the member for services rendered in positions covered by the teacher system shall be used in the same manner as if the compensation were received for services covered by the public system.

(e) "Public system" means the West Virginia Public Employees Retirement System established in article ten, chapter five of this code.

(f) "Reciprocal service credit" for a member of the public system who subsequently becomes a member of the teacher system, or vice versa, means the sum of his or her credited service in force acquired as a member of the public system and his or her credited service in force acquired as a member of the teacher system.

(g) "State system" means the West Virginia Public Employees Retirement System and the State Teachers Retirement System.

(h) "Teacher final average salary" means a member's final average salary computed according to the law governing the
teacher system. In computing his or her teacher final average
salary, the compensation, if any, received by the member for
services rendered in positions covered by the public system shall
be used in the same manner as if the compensation were received
for services covered by the teacher system.

(i) "Teacher system" means the State Teachers Retirement
System established in article seven-a, chapter eighteen of this
code.

(j) The masculine gender includes the feminine, and words
of the singular number with respect to persons include the plural
number, and vice versa.

§5-13-4. Reciprocal service.

In the event a member leaves a position covered by the
public system and within five years thereafter becomes
employed in a position covered by the teacher system, or a
member leaves the position covered by the teacher system and
within five years thereafter becomes employed in a position
covered by the public system, in either case, the following
provisions shall apply.

(a) A member's reciprocal service credit in force shall be
used to satisfy the service requirements for retirement under the
state system from which he or she retires.

(b) If a member, who has reciprocal service credit in force,
retires under the public system, he or she shall receive an annuity
payable by the public system and an annuity payable by the
teacher system. His or her public system annuity shall be based
upon: (1) The portion of his or her reciprocal service credit
acquired as a member of the public system; and (2) his or her
public final average salary. The member's teacher system
annuity shall be based upon: (1) The portion of his or her
reciprocal service credit acquired as a member of the teacher
system; and (2) his or her teachers’ final average salary as provided by the teachers retirement act. His or her teacher system annuity shall begin as of the date he or she retires under the public system, but in no case prior to the date the member would have been eligible to retire under the teacher system if all his or her reciprocal service credit had been acquired as a member of the teacher system.

(c) If a member, who has reciprocal service credit in force, retires under the teacher system, he or she shall receive an annuity payable by the teacher system and an annuity payable by the public system. The member’s teacher system annuity shall be based upon: (1) The portion of his or her reciprocal service credit acquired as a member of the teacher system; and (2) his or her teachers’ final average salary as provided by the teachers retirement act. His or her public system annuity shall be based upon: (1) The portion of the reciprocal service credit acquired as a member of the public system; and (2) his or her public final average salary. His or her public system annuity shall begin as of the date he or she retired under the teacher system, but in no case prior to the date he or she would have been eligible to retire under the public system if all his or her reciprocal service credit had been acquired as a member of the public system.

CHAPTER 155

(S. B. 443 - By Senators Kirkendoll, Cann, Edgell and Carmichael)

[Passed February 19, 2014; in effect from passage.]
[Approved by the Governor on March 7, 2014.]

AN ACT to amend and reenact §15-2A-2, §15-2A-5 and §15-2A-11a of the Code of West Virginia, 1931, as amended, all relating to the
West Virginia State Police Retirement System; providing definitions; removing the requirement to set the employer contribution rate by legislative rule; requiring that a disability retirant’s annuity be terminated when the board determines that the recipient has engaged in substantial gainful activity; requiring that a partially disabled retirant’s annuity be terminated when they become employed as a law-enforcement officer; providing for reapplication of disability retirement within ninety days of effective termination; and clarifying that application for regular retirement benefits may be made by those terminated upon meeting eligibility requirements.

Be it enacted by the Legislature of West Virginia:

That §15-2A-2, §15-2A-5 and §15-2A-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.


1 As used in this article, unless the context clearly requires a different meaning:

2 (1) “Accumulated contributions” means the sum of all amounts deducted from base salary, together with four percent interest compounded annually.

3 (2) “Active military duty” means full-time active duty with the armed forces of the United States, namely, the United States Air Force, Army, Coast Guard, Marines or Navy; and service with the National Guard or reserve military forces of any of the armed forces when the employee has been called to active full-time duty.
(3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: Provided, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(4) "Agency" means the West Virginia State Police.

(5) "Base salary" means compensation paid to an employee without regard to any overtime pay.

(6) "Beneficiary" means a surviving spouse or other surviving beneficiary who is entitled to, or will be entitled to, an annuity or other benefit payable by the fund.

(7) "Board" means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

(8) "Dependent child" means any unmarried child or children born to or adopted by a member or retirant of the fund who:

(A) Is under the age of eighteen;

(B) After reaching eighteen years of age, continues as a full-time student in an accredited high school, college, university or business or trade school until the child or children reaches the age of twenty-three years; or

(C) Is financially dependent on the member or retirant by virtue of a permanent mental or physical disability upon evidence satisfactory to the board.

(9) "Dependent parent" means the member's or retirant's parent or stepparent claimed as a dependent by the member or
(10) "Employee" means any person regularly employed in the service of the agency as a law-enforcement officer after March 12, 1994, and who is eligible to participate in the fund.

(11) "Final average salary" means the average of the highest annual compensation received for employment with the agency, including compensation paid for overtime service, received by the employee during any five calendar years within the employee's last ten years of service: Provided, That annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401(a)(17) of the Internal Revenue Code.

(12) "Fund", "plan", "system" or "retirement system" means the West Virginia State Police Retirement Fund created and established by this article.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(14) "Law-enforcement officer" means an individual employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or private safety, including, but not limited to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other law-enforcement position which requires certification, but excluding positions held by elected sheriffs or appointed chiefs of police whose duties are purely administrative in nature.
(15) "Member" means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

(16) "Month of service" means each month for which an employee is paid or entitled to payment for at least one hour of service for which contributions were remitted to the fund. These months shall be credited to the member for the calendar year in which the duties are performed.

(17) "Partially disabled" means an employee's inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than twelve months, but which impairment does not preclude the employee from engaging in other types of nonlaw-enforcement employment.

(18) "Physical or mental impairment" means an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

(19) "Plan year" means the twelve-month period commencing on July 1 of any designated year and ending the following June 30.

(20) "Qualified public safety employee" means any employee of a participating state or political subdivision who provides police protection, fire fighting services or emergency medical services for any area within the jurisdiction of the state or political subdivision, or such other meaning given to the term by Section 72(t)(10)(B) of the Internal Revenue Code or by Treasury Regulation §1.401(a)-1(b)(2)(v) as they may be amended from time to time.
(21) "Required beginning date" means April 1 of the calendar year following the later of: (a) The calendar year in which the member attains age seventy and one-half years; or (b) the calendar year in which he or she retires or otherwise separates from service with the agency after having attained the age of seventy and one-half years.

(22) "Retirant" or "retiree" means any member who commences an annuity payable by the retirement system.

(23) "Salary" means the compensation of an employee, excluding any overtime payments.

(24) "Surviving spouse" means the person to whom the member or retirant was legally married at the time of the member’s or retirant’s death and who survived the member or retirant.

(25) "Totally disabled" means an employee’s probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. For purposes of this subdivision, an employee is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as an employee of the agency, but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the employee lives; (B) a specific job vacancy exists; or (C) the employee would be hired if he or she applied for work.

(26) "Years of service" means the months of service acquired by a member while in active employment with the
agency divided by twelve. Years of service shall be calculated in years and fraction of a year from the date of active employment of the member with the agency through the date of termination of employment or retirement from the agency. If a member returns to active employment with the agency following a previous termination of employment with the agency and the member has not received a refund of contributions plus interest for the previous employment under section eight of this article, service shall be calculated separately for each period of continuous employment and years of service shall be the total service for all periods of employment. Years of service shall exclude any periods of employment with the agency for which a refund of contributions plus interest has been paid to the member unless the employee repays the previous withdrawal, as provided in section eight of this article, to reinstate the years of service.

§15-2A-5. Employee contributions; employer contributions; forfeitures.

(a) There shall be deducted from the monthly payroll of each employee and paid into the fund created pursuant to section four of this article twelve percent of the amount of his or her salary: Provided, That after July 1, 2008, if the funding percentage of the fund determined by the board falls below the ninety-percent threshold, then the employee rate of contribution shall be increased to thirteen percent of the amount of the employee’s salary until the ninety-percent or better funding level is again achieved. Once that funding level is achieved the employee contribution rate will be reduced to twelve percent.

(b) The State of West Virginia’s contributions to the retirement system, as determined by the board, shall be a percent of the employees’ total annual base salary related to benefits under this retirement system. In determining the amount, the board shall give consideration to setting the amount at a sum
equal to an amount which, if paid annually by the state, will be sufficient to provide for the total normal cost of the benefits expected to become payable to all members and retirants and to amortize any unfunded liability found by application of the actuarial funding method chosen for that purpose by the board over a period of years determined actuarially appropriate. The state’s contributions shall be paid monthly into the fund created pursuant to section four of this article out of the annual appropriation for the agency.

(c) Notwithstanding any other provisions of this article, forfeitures under the system shall not be applied to increase the benefits any member or retirant would otherwise receive under the system.

§15-2A-11a. Physical examinations of prospective members; application for disability benefit; determinations.

(a) Not later than thirty days after an employee becomes a member of the fund, the employer shall forward to the board a copy of the physician’s report of a physical examination which incorporates the standards or procedures described in section seven, article two, chapter fifteen of this code. A copy of the physicians’ report shall be placed in the employee’s retirement system file maintained by the board.

(b) Application for a disability benefit may be made by an employee or, if the employee is under an incapacity, by a person acting with legal authority on the employee’s behalf. After receiving an application for a disability benefit, the board shall notify the superintendent of the agency that an application has been filed: Provided, That when, in the judgment of the superintendent, an employee is no longer physically or mentally fit for continued duty as an employee of the agency and the employee has failed or refused to make application for disability benefits under this article, the superintendent may petition the
board to retire the employee on the basis of disability pursuant
to legislative rules proposed in accordance with article three,
chapter twenty-nine-a of this code. Within thirty days of the
superintendent’s receipt of the notice from the board or the filing
of the superintendent’s petition with the board, the
superintendent shall forward to the board a statement certifying
the duties of the employee’s job description, information relating
to the superintendent’s position on the work relatedness of the
employee’s alleged disability, complete copies of the employee’s
medical file and any other information requested by the board in
its processing of the application.

(c) The board shall propose legislative rules in accordance
with article three, chapter twenty-nine-a of this code relating to
the processing of applications and petitions for disability
retirement under this article.

(d) The board shall notify an employee and the
superintendent of its final action on the disability application or
petition within ten days of the board’s final action. The notice
shall be sent by certified mail, return receipt requested. If either
the employee or the superintendent is aggrieved by the decision
of the board and intends to pursue judicial review of the board’s
decision as provided in section four, article five, chapter twenty-nine-a of this code, the party aggrieved shall notify the board
within twenty days of the employee’s or superintendent’s receipt
of the board’s notice that they intend to pursue judicial review of
the board’s decision.

(e) The board may require a disabled retirant to file an
annual statement of earnings and any other information required
in rules which may be adopted by the board. The board may
waive the requirement that a disabled retirant file the annual
statement of earnings if the board’s physician certifies that the
recipient’s disability is ongoing. The board shall annually
examine the information submitted by the disabled retirant. If a
disabled retirant refuses to file the statement or information, the
disability benefit shall be suspended until the statement and
information are filed.

(f) If after review of a disability retirant’s annual statement
of earnings, tax records or other financial information, as
required or otherwise obtained by the board, the board
determines that earnings of the recipient of total disability
benefits in the preceding year are sufficient to show that the
recipient engaged in substantial gainful activity, the disability
retirant’s disability annuity shall be terminated by the board,
upon recommendation of the board’s disability review
committee, on the first day of the month following the board’s
action.

(g) If the board obtains information that a partially disabled
disability retirant is employed as a law-enforcement officer, the
disability retirant’s disability annuity shall be terminated by the
board, upon recommendation of the board’s disability review
committee, the first day of the month following the board’s
action.

(h) Any person who wishes to reapply for disability
retirement and whose disability retirement has been terminated
by the board pursuant to this section may do so within ninety
days of the effective date of termination: Provided, That any
person reapplying for disability benefits shall undergo an
examination at the applicant’s expense by an appropriate
medical professional selected by the board as part of the
reapplication process.

(I) Notwithstanding other provisions in this section, any
person whose disability retirement has been terminated by the
board pursuant to this section may apply for regular retirement
benefits upon meeting eligibility requirements of age and years
of service.
CHAPTER 156

(Com. Sub. for S. B. 393 - By Senators Kessler (Mr. President) and M. Hall)
[By Request of the Executive]

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 24, 2014.]

AN ACT to amend and reenact §11B-2-20 of the Code of West Virginia, 1931, as amended, relating to the Revenue Shortfall Reserve Fund; and allowing the Governor to borrow money from the fund prior to the first day of April, 2014, if revenues are inadequate to make timely payments of the state's obligations.

Be it enacted by the Legislature of West Virginia:

That §11B-2-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve Fund and permissible expenditures therefrom.

(a) Notwithstanding any provision of this section, the Governor may reduce appropriations according to any of the methods set forth in sections twenty-one and twenty-two of this article. The Governor may, in lieu of imposing a reduction in appropriations, request an appropriation by the Legislature from the Revenue Shortfall Reserve Fund established in this section.

(b) The Revenue Shortfall Reserve Fund is continued within the State Treasury. The Revenue Shortfall Reserve Fund shall be
9 funded continuously and on a revolving basis in accordance with
10 this subsection up to an aggregate amount not to exceed thirteen
11 percent of the total appropriations from the State Fund, General
12 Revenue, for the fiscal year just ended. The Revenue Shortfall
13 Reserve Fund shall be funded as set forth in this subsection from
14 surplus revenues, if any, in the State Fund, General Revenue, as
15 the surplus revenues may accrue from time to time.

16 Within sixty days of the end of each fiscal year, the secretary
17 shall cause to be deposited into the Revenue Shortfall Reserve
18 Fund such amount of the first fifty percent of all surplus
19 revenues, if any, determined to have accrued during the fiscal
20 year just ended, as may be necessary to bring the balance of the
21 Revenue Shortfall Reserve Fund to thirteen percent of the total
22 appropriations from the State Fund, General Revenue, for the
23 fiscal year just ended. If at the end of any fiscal year the
24 Revenue Shortfall Reserve Fund is funded at an amount equal to
25 or exceeding thirteen percent of the state’s General Revenue
26 Fund budget for the fiscal year just ended, then there shall be no
27 further deposit by the secretary under the provisions of this
28 section of any surplus revenues as set forth in this subsection
29 until that time the Revenue Shortfall Reserve Fund balance is
30 less than thirteen percent of the total appropriations from the
31 State Fund, General Revenue.

32 (c) Not earlier than November 1 of each calendar year, if the
33 state’s fiscal circumstances are such as to otherwise trigger the
34 authority of the Governor to reduce appropriations under this
35 section or section twenty-one or twenty-two of this article, then
36 in that event the Governor may notify the presiding officers of
37 both houses of the Legislature in writing of his or her intention
38 to convene the Legislature pursuant to section nineteen, article
39 VI of the Constitution of West Virginia for the purpose of
40 requesting the introduction of a supplementary appropriation bill
41 or to request a supplementary appropriation bill at the next
preceding regular session of the Legislature to draw money from the surplus Revenue Shortfall Reserve Fund to meet any anticipated revenue shortfall. If the Legislature fails to enact a supplementary appropriation from the Revenue Shortfall Reserve Fund during any special legislative session called for the purposes set forth in this section or during the next preceding regular session of the Legislature, then the Governor may proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article. Should any amount drawn from the Revenue Shortfall Reserve Fund pursuant to an appropriation made by the Legislature prove insufficient to address any anticipated shortfall, then the Governor may also proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article.

(d) Upon the creation of the fund, the Legislature is authorized and may make an appropriation from the Revenue Shortfall Reserve Fund for revenue shortfalls, for emergency revenue needs caused by acts of God or natural disasters or for other fiscal needs as determined solely by the Legislature.

(e) Prior to October 31 in any fiscal year in which revenues are inadequate to make timely payments of the state's obligations, the Governor may, by executive order, after first notifying the presiding officers of both houses of the Legislature in writing, borrow funds from the Revenue Shortfall Reserve Fund: Provided, That for the fiscal year 2014, pursuant to this subsection and subject to all other conditions, requirements and limitations set forth in this section, the Governor may borrow funds from the Revenue Shortfall Reserve Fund prior to the first day of April. The amount of funds borrowed under this subsection shall not exceed one and one-half percent of the general revenue estimate for the fiscal year in which the funds are to be borrowed, or the amount the Governor determines is necessary to make timely payment of the state's obligations,
whichever is less. Any funds borrowed pursuant to this subsection shall be repaid, without interest, and redeposited to the credit of the Revenue Shortfall Reserve Fund within ninety days of their withdrawal.

(f) The Revenue Shortfall Reserve Fund—Part B is continued within the State Treasury. The Revenue Shortfall Reserve Fund—Part B shall consist of moneys transferred from the West Virginia Tobacco Settlement Medical Trust Fund pursuant to the provisions of section two, article eleven-a, chapter four of this code, repayments made of the loan from the West Virginia Tobacco Settlement Medical Trust Fund to the Physician’s Mutual Insurance Company pursuant to the provisions of article twenty-f, chapter thirty-three of this code and all interest and other return earned on the moneys in the Revenue Shortfall Reserve Fund—Part B. Moneys in the Revenue Shortfall Reserve Fund—Part B may be expended solely for the purposes set forth in subsection (d) of this section, subject to the following conditions:

(1) No moneys in the Revenue Shortfall Reserve Fund—Part B nor any interest or other return earned thereon may be expended for any purpose unless all moneys in the Revenue Shortfall Reserve Fund described in subsection (b) of this section have first been expended, except that the interest or other return earned on moneys in the Revenue Shortfall Reserve Fund—Part B may be expended as provided in subdivision (2) of this subsection;

(2) Notwithstanding any other provision of this section to the contrary, the Legislature may appropriate any interest and other return earned thereon that may accrue on the moneys in the Revenue Shortfall Reserve Fund—Part B after June 30, 2025, for expenditure for the purposes set forth in section three, article eleven-a, chapter four of this code; and
3 Any appropriation made from Revenue Shortfall Reserve Fund – Part B shall be made only in instances of revenue shortfalls or fiscal emergencies of an extraordinary nature.

(g) Subject to the conditions upon expenditures from the Revenue Shortfall Reserve Fund – Part B prescribed in subsection (f) of this section, in appropriating moneys pursuant to the provisions of this section, the Legislature may in any fiscal year appropriate from the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B a total amount up to, but not exceeding, ten percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended.

(h) (1) Of the moneys in the Revenue Shortfall Reserve Fund, $100 million, or such greater amount as may be certified as necessary by the Director of the Budget Office for the purposes of subsection (e) of this section, shall be made available to the West Virginia Board of Treasury Investments for management and investment of the moneys in accordance with the provisions of article six-c, chapter twelve of this code. All other moneys in the Revenue Shortfall Reserve Fund shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of article six, chapter twelve of this code. Any balance of the Revenue Shortfall Reserve Fund, including accrued interest and other return earned thereon at the end of any fiscal year, does not revert to the General Fund but shall remain in the Revenue Shortfall Reserve Fund for the purposes set forth in this section.

(2) All of the moneys in the Revenue Shortfall Reserve Fund – Part B shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of article six, chapter twelve of this code. Any balance of the Revenue Shortfall
139 Reserve Fund – Part B, including accrued interest and other
140 return earned thereon at the end of any fiscal year, shall not
141 revert to the General Fund but shall remain in the Revenue
142 Shortfall Reserve Fund – Part B for the purposes set forth in this
143 section.

CHAPTER 157

(Com. Sub. for H. B. 4156 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)
[By Request of the Executive]

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §17-16D-1, §17-16D-2,
§17-16D-3, §17-16D-4, §17-16D-5, §17-16D-6, §17-16D-7,
§17-16D-8, §17-16D-9, §17-16D-10, §17-16D-11, §17-16D-12,
§17-16D-13 and §17-16D-14, all relating to electronic collection
and enforcement of tolls; defining terms; authorizing the West
Virginia Parkways Authority to electronically collect and enforce
tolls; establishing liability of the registered owner for violation as
a rebuttable inference; providing civil penalties for nonpayment of
tolls; providing exceptions when the registered owner is a lessor;
providing that certain information collected is confidential and not
subject to the Freedom of Information Act; allowing limited
restricted and confidential access to certain information pursuant
to subpoenas and court orders on a strictly confidential basis;
providing criminal penalties for damage to facilities; providing for
nonrenewal of vehicle registration; authorizing reciprocal
agreements with other jurisdictions for enforcement; and granting
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 §17-16D-1, §17-16D-2, §17-16D-3, §17-16D-4, §17-16D-5, §17-16D-6, §17-16D-7, §17-16D-8, §17-16D-9, §17-16D-10, §17-16D-11, §17-16D-12, §17-16D-13, and §17-16D-14, all to read as follows:

ARTICLE 16D. ELECTRONIC TOLL COLLECTION.

§17-16D-1. Legislative findings and purpose.

The Legislature finds and declares that the use of electronic and video technology for collection of tolls on roads, highways and bridges will benefit the citizens of this state by making toll roads, highways and bridges in this state safer and collection of tolls more efficient, by easing traffic congestion, by improving traffic flow, by furthering economic development and by promoting and enhancing more efficient commercial traffic and the shipment of goods in the state. This article shall be known as and may be cited as the "Electronic Toll Collection Act."


The following words and phrases have the following meanings when used in this article:

(1) "Authority" or "Parkways Authority" means the West Virginia Parkways Authority established by article sixteen-a of this chapter.

(2) "Division" means the Division of Highways of the West Virginia Department of Transportation, except where another division is clearly identified.

(3) "Electronic toll collection" means a system of collecting tolls or charges that has or includes the capability of charging an
account holder, owner or operator of a vehicle for the prescribed toll:

(A) By electronic transmission of information between a device on a vehicle and a device located in a toll lane or otherwise used at a toll collection facility; or

(B) By means of a video collection system.

(4) "Owner" means any person in whose name a motor vehicle is registered under:

(A) Article three, chapter seventeen-a of this code;

(B) The laws of another state;

(C) The laws of a foreign county; or

(D) The International Registration Plan.

(5) "Toll collection facility" or "toll facility" means any facility, including all related structures, equipment, systems and software, used in connection with collecting or charging tolls for a toll road, highway or bridge in this state, regardless of whether the facility is located on, over or adjacent to the toll road, highway or bridge and regardless of whether the facility has toll lanes with toll booths and toll collection equipment that require passing vehicles to stop or slow down in order to pay a toll or uses additional or different methods, structures, technology and equipment in order to charge or collect tolls from some vehicles passing under or by the facility at highway speeds: Provided, That any such facility shall have the ability to accept cash for the payment of tolls.

(6) "Toll road" means any road, highway or bridge in this state upon which there is a toll administered, collected and enforced by the Parkways Authority or on behalf of the Authority.
(7) "Video collection system" means a vehicle sensor, placed in a location to work in conjunction with a toll collection facility, that automatically produces a videotape or photograph, microphotograph or other recorded image of the front or rear portion, or both front and rear portion, of each vehicle at the time the vehicle is used or operated on the toll facility in order to charge or collect tolls or detect violations of this article. This phrase includes, without limitation: (A) Any other technology which identifies a vehicle by photographic, electronic or other method; and (B) all related toll invoices, billing notices and other toll collection and violation enforcement efforts made using any such technology and information.


1 Notwithstanding the provisions of article sixteen-a and section five-b, article seventeen-a of this chapter and section seven-a, article six, chapter seventeen-c of this code to the contrary, the collection and enforcement of tolls for the use of roads, highways and bridges may be accomplished by electronic toll collection as provided in this article and in rules promulgated by authority of this article: Provided, That the application of this article should not apply to:

1. (1) Future highway construction provided for in the Division of Highways' Statewide Transportation Improvement Plan at the time of the enactment of this article; and

2. (2) Existing toll roads: Provided, That this section may not be construed to prohibit the collection and enforcement of tolls pursuant to article sixteen-a, chapter seventeen of this code.

§17-16D-4. Advanced warning signs.

1 Before enforcing a toll, the Parkways Authority, or the operator of the toll facility, must install advance warning signs
§17-16D-5. Imposition of liability for payment of tolls.

(a) If, as evidenced by a video collection system, a violation of this article occurs, the following applies:

1. (1) The Parkways Authority will prepare and mail a notice of violation as follows:

(A) The notice of violation shall be sent by first class mail to each person listed as owner;

(B) The notice shall be mailed, postage prepaid, to the address shown on the vehicle registration, which is presumed to be the last known address of the owner.

(C) Notice shall be mailed no later than one hundred twenty days after:

(i) The violation; or

(ii) The date that a lessor provides sufficient information to identify who is the actual owner.

(D) Personal service is not required.

(E) The notice shall contain the following:

(i) Information advising the person of the violation, when and where it occurred and that the violation may be contested.

(ii) A warning advising the person receiving the notice:

(I) That failure to contest in the manner and time provided is an admission of liability;
(II) That a default judgment may be entered on the notice;

(III) That a violation of this article may subject the owner or operator to civil penalties, administrative fees, administrative hearing costs, and collection fees and costs as provided in this article; and

(IV) That failure to pay civil penalties imposed pursuant to this article may result in denial of an application for a new or renewal of the vehicle registration in this state or in the state in which the vehicle is registered.

(F) A manual or automatic record of mailing prepared in the ordinary course of business is prima facie evidence of the mailing of notice on the date specified in the business record.

(b) If an owner of a vehicle receives a notice of violation of this article for any time period during which the vehicle was reported to a police department as having been stolen, that owner may not be held liable for the violation under this article if he or she provides a certified copy of the police report on the stolen vehicle to the Parkways Authority within thirty days after receiving the notice of violation.

(c) A certified report or a facsimile report of an authorized agent or employee of the Parkways Authority reporting a violation of section six of this article based upon the recorded information obtained from electronic toll collection system is prima facie evidence of the facts contained in the report and is admissible as an official record kept in the ordinary course of business.

(d) Notwithstanding any provision in the code to the contrary, videotapes, photographs, microphotographs or other recorded images, written records, reports or facsimiles prepared pursuant to this article are allowed and are for the exclusive use of the Parkways Authority, its authorized agents, its employees.
and law-enforcement officials for the purpose of discharging duties under this article. Except as may be necessary to enforce collection of tolls, civil penalties, administrative fees, administrative hearing costs and collection fees and costs from persons to whom a notice of violation is sent as provided in this section, or to whom any billing invoice, reminder letter or other toll collection or violation enforcement communication is sent using information from the electronic toll collection system, all images and records created or retained as provided herein that identify individual vehicles or vehicle registration plates, must be destroyed within sixty days after payment in full of the applicable toll or after any toll collection or enforcement action under this article involving the images or records has been resolved. This information may not be considered a public record under chapter twenty-nine-b of this code. The information is not discoverable by court order and it may not be offered in evidence in any action or proceeding that is not directly related to a violation of this article or indemnification permitted by this article. However, these restrictions:

(1) Do not preclude a court of competent jurisdiction from issuing an order directing that the information be provided to law-enforcement officials if the information is reasonably described and is requested in connection with a criminal law-enforcement action;

(2) Do not preclude the exchange of the information between any entities with jurisdiction over or that operate an electronic toll collection system in this state or any other jurisdiction within or outside of the United States; and

(3) Do not prohibit the use of information exclusively for the purpose of billing electronic toll collection account holders, deducting toll charges from the account of an account holder, enforcing toll collection provisions of this code or enforcing the provisions of an account holder agreement.
(e) Civil liability under this article is to be based upon a preponderance of evidence. Persons receiving a notice of violation as provided in this section must respond within thirty days of the date the notice was mailed by:

(1) Remitting the amount of the unpaid toll and any administrative fee assessed; or

(2) Requesting an administrative hearing in accordance with rules promulgated by the Parkways Authority pursuant to this article.

(f) In addition to the amount of any unpaid tolls, the Authority shall assess a reasonable administrative fee, in the amount determined by rule promulgated by the Authority, for each notification for each separate violation of this article. Persons who are found to be liable for payment of tolls and the administrative fees in an administrative hearing shall also be liable payment of the costs of the hearing, except where the judgment of the hearing examiner is reversed or set aside by a court of competent jurisdiction on appeal.

(g) Failure to remit the unpaid toll, assessed administrative fees and assessed hearing costs or to request a hearing shall result in entry of an administrative default judgment. The Parkways Authority may cause notice of the default judgment to be served on the person to whom the notice of violation was sent by certified mail, return receipt requested, advising the person that failure to pay the unpaid tolls, assessed administrative fees and assessed hearing costs within thirty days of receipt of the notice of default judgment will result in denial of an application for a new vehicle registration in this state. If the unpaid tolls, assessed administrative fees, and assessed administrative hearing costs are not paid as provided in the notice of default judgment, or if the judgment is not set aside by a court of competent jurisdiction, the Authority may take all lawful actions to collect
on the judgment and may notify the Commissioner of the Division of Motor Vehicles, who shall refuse the registration or renewal of registration of the vehicle in this state as provided in section eleven of this article.

(h) Civil liability under this article is not a conviction and may not be made part of the owner’s motor vehicle operating record. It may not be considered in the provision of motor vehicle insurance coverage.

(i) A person found to have violated this article is liable for:

1. The amount of the toll evaded or attempted to be evaded; if the amount can be determined, or if it cannot be determined, the minimum toll from the nearest point of entry on the toll facility to the actual point of exit;
2. An administrative fee per notification for each separate violation;
3. Administrative hearing costs assessed under this article; and
4. Reasonable fees and costs of attempting to collect on a judgment under subsection (g) of this section.


(a) All owners and operators of motor vehicles shall pay the posted toll when on any toll road, highway or bridge authorized by the Legislature either by paying the toll at a toll collection facility on the toll road, highway or bridge at the time of travel thereon or by paying the toll within the time prescribed for toll payment in a toll billing notice or invoice generated by an electronic toll collection system. These tolls may be collected by electronic toll collection. If an owner or operator of a vehicle fails to pay the prescribed toll when due, the owner of the vehicle is in violation of this article.
(b) If a violation occurs, the registration plate number of the vehicle as recorded by a video collection system establishes a rebuttable presumption for civil enforcement purposes that the owner of the vehicle was operating the vehicle, or had consented to another person operating the vehicle, at that time. This presumption may be overcome only if the owner (1) proves by a preponderance of the evidence that he or she was not in fact operating the vehicle at the time; (2) identifies by name and mailing address the person who was operating the vehicle.

(c) If the presumption is not overcome by a preponderance of the evidence, the owner of the vehicle shall be found to have violated this article and be held responsible for payment of the tolls and the administrative fees and money penalties imposed by this article for failure to timely pay the tolls.

(d) Nothing in this section prohibits: (1) A law-enforcement officer from issuing a citation to a person in control of a vehicle for a violation of this article or other provisions of law at the time of the violation; or (2) the Parkways Authority from issuing reminder notices or making other communications directly or indirectly in connection with toll collection efforts or efforts to enforce violations of this article. The Parkways Authority is authorized to use secondary sources of information and services including, but not limited to, services such as the National Change of Address Service or skip tracing services.

§17-16D-7. Owner who is lessor.

(a) An owner of a vehicle who is a lessor of the vehicle used in violation of the toll collection monitoring system regulations of the authority shall not be responsible for the violation of this article if the lessor submits to the Parkways Authority, in a timely manner, the name and address of the lessee who leased the vehicle on the day of the violation: Provided, That a lessor shall provide a copy of the rental agreement, lease or other
contract document covering that vehicle on the date of the
violation to the Parkways Authority upon written request for a
violation that is in litigation.

(b) If the lessor fails to provide the information in a timely
manner, the lessor shall be held responsible for the violation of
this article. If the lessor provides the required information to the
Parkways Authority, the lessee of the vehicle on the date of the
violation shall be deemed to be the owner of the vehicle for the
purposes of enforcement of the violation of this article.

(c) Except as otherwise provided in this subsection, a
certified report of an employee or agent of the authority
reporting a violation of the toll collection monitoring system
rules and regulations and any information obtained from a toll
collection monitoring system shall be available for the exclusive
use of the Parkways Authority and any law enforcement official
for the purposes of discharging their duties under this article and
the toll collection monitoring system rules and regulations. Any
such report or information shall not be deemed a public record
under article one, chapter twenty-nine-b of this code or the
common law concerning access to public records. The certified
reports and information, including but not limited to, any
recorded image of any motor vehicle, the license plate of any
motor vehicle or the operator or any passenger in any motor
vehicle, shall not be discoverable as a public record by any
person, entity or governmental agency, except pursuant to a
properly issued subpoena or by an order of a court of competent
jurisdiction, nor shall they be offered in evidence in any civil or
administrative proceeding, not directly related to a violation of
the toll collection monitoring system rules and regulations, or in
any municipal court prosecution for a violation of the motor
vehicle laws of this state. However, in the event that,
notwithstanding the provisions of subsection (c), section nine of
this article, a recorded image of the face of the operator or any
passenger in a motor vehicle is produced by the toll collection
monitoring system, that image shall not be used by the Parkways Authority for any purpose nor shall the image or any record or copy thereof be transmitted or communicated to any person, governmental, non-governmental, or judicial or administrative entity.


An electronic toll collection device that is properly affixed to the front windshield of a vehicle in accordance with rules promulgated by the Parkways Authority, or is mounted elsewhere on a vehicle in accordance with mounting instructions of the manufacturer of the device included with the device, or is otherwise used in a manner that makes it operate as intended, is not a violation of section thirty-six, article fifteen, chapter seventeen-c of this code.


(a) Except as provided in subsection (b) of this section, and notwithstanding any provision in the code to the contrary, videotapes, photographs, microphotographs, other recorded images, written records, reports or facsimiles prepared pursuant to this article are for the exclusive use of the Parkways Authority, its authorized agents, its employees and law-enforcement officials for the purpose of discharging their duties under this article. This information includes names, addresses, account numbers, account balances, personal financial information, vehicle movement records and other information compiled from transactions with the account holders. The information in the hands of the Authority, its authorized agents, its employees and law enforcement officials may not be considered a public record under chapter twenty-nine-b of this code.
(b) Notwithstanding subsection (a) of this section, videotapes, photographs, microphotographs, other recorded images, written records, reports or facsimiles prepared and retained pursuant to this article may be discoverable pursuant to a properly issued subpoena or by an order of a court of competent jurisdiction directing that the information be produced in a civil or criminal action or proceeding: Provided, That any such information required to be produced in response to a properly issued subpoena or court order shall at all times be confidential and may not be disclosed by the Parkways Authority other than in connection with, and only for the purposes of, the underlying civil action or criminal proceeding, and subject to compliance with the provisions of subsections (c), (d) and (e) of this section.

(c) All information disclosed or produced pursuant to subsection (b) of this section shall be clearly marked “CONFIDENTIAL.” Any document or other material which is marked “CONFIDENTIAL” or the contents thereof, may only be used by a party to the underlying action or proceeding or a party’s attorney, expert witness, consultant or other person who is actively engaged in working on the action or proceeding, and only for the purpose of the underlying action or proceeding and not for any other purpose. Prior to a party disclosing any document or other material marked as “CONFIDENTIAL,” or the contents thereof, to an attorney, expert witness, consultant or other person actively engaged in working on such action or proceeding, the party making disclosure must first inform the person that he or she is bound by the duty of confidentiality established under this section and the person to whom disclosure is to be made shall sign an acknowledgment that the information is and shall remain at all times confidential and that the person agrees to abide by the duty of confidentiality established under this section.
(d) Prior to the production of any information under this section with any court of competent jurisdiction, the Parkways Authority shall file a motion with the court seeking to have the documents sealed and withheld from the public record throughout the action or proceeding.

(e) At the conclusion of the action or proceeding, all documents and other material marked as "CONFIDENTIAL" and any copies thereof, and all related notes and memoranda, shall promptly be returned to the Parkways Authority and in any event, within thirty days following the conclusion of the action or proceeding.

(f) All videotapes, photographs, microphotographs, other recorded images, written records, reports or facsimiles prepared pursuant to this article shall be destroyed within sixty days following the conclusion of the action or proceeding.

(g) Nothing in this article authorizes any law-enforcement agency to enter any information in a national database that is contained in videotapes, photographs, microphotographs, other recorded images, written records, reports or facsimiles prepared pursuant to this article.

§17-16D-10. Evading tolls; damaging, interfering with or obstructing video toll collection or infrastructure; violations and criminal penalties.

(a) Any person who knowingly or intentionally evades or seeks to evade the payment of tolls, rents, fees or charges established by the Parkways Authority for the use of any toll facility under the jurisdiction of the Authority is guilty of a misdemeanor and, upon conviction, shall be fined not more than $50 for each violation of this article.

(b) Any person who deliberately damages, defaces or obstructs a video collection system infrastructure or power
supply with the intent to interfere with or alter or prevent the
functioning of the system or electronic toll collection, or who
obstructs a license plate or causes it to be unreadable by the
video collection system, or who causes a transponder or other
device used in an electronic toll system to be inoperable or
unreadable thereby causing no toll to be charged, is guilty of a
misdemeanor and, in addition to any other penalties provided by
the code, and upon conviction, shall be fined not more than $500
for each such action and, if applicable, is additionally liable to
the Parkways Authority for all costs incurred by the Authority to
repair the damaged, defaced or obstructed property.

§17-16D-11. Nonrenewal of vehicle registration; effect of civil or
criminal violation.

(a) Upon receipt of a notice from the Parkways Authority
that a vehicle owner failed to pay tolls and costs in accordance
with a notice of default judgment, or court order, the
Commissioner of Motor Vehicles shall refuse to register, or
renew the registration of any vehicle of which the person
committing the violation is a registered owner or co-owner until
such time as the Commissioner of Motor Vehicles receives
notice from the Parkways Authority that all fees, penalties and
costs imposed on that person pursuant to this article have been
paid or satisfied.

(b) The Commissioner of Motor Vehicles shall refuse or
suspend the registration of any motor vehicle incurring a toll
violation under this article if:

(1) The Commissioner is notified by the Parkways Authority
that a registered owner has been served with a citation in
accordance with this article and:

(A) Has failed to pay the electronic toll, administrative fee
and the civil penalty for the toll violation by the date specified
in the citation; or
(B) Has failed to contest liability for the toll violation by the date identified and in the manner specified in the citation; or

(2) The Commissioner is notified by the Parkways Authority or the circuit court that a person who elected to contest liability for a toll violation under this article has failed to appear for trial or hearing or has been determined to be responsible for the toll violation and has failed to pay the electronic toll and related civil penalty.

(c) In conjunction with any rule promulgated by the Parkways Authority, the Commissioner of Motor Vehicles may adopt regulations and develop procedures to carry out the refusal or suspension of a registration as authorized by this section.

(d) The procedures specified in this section are in addition to any other penalty provided by law for toll violations.

(e) The provisions of this section may be applied to enforce a reciprocal agreement entered into by this state and another jurisdiction in accordance with section thirteen of this article.

(f) The provisions of this section shall only become effective when the Parkways Authority and the Commission have reciprocal enforcement agreements with all of the states sharing a common border with this state.


In connection with any toll road, highway or bridge in this state authorized by the Legislature and in addition to any powers granted to the Parkways Authority, or to the Commissioner of Highways, in this code, the Authority and the Commissioner may individually or jointly enter into cooperative agreements and arrangements with any agency or other entity that handles or assists in the collection or enforcement of tolls on the adjacent

(a) The Parkways Authority and the Commissioner of Highways may individually or jointly enter into agreements with any other jurisdiction that provides for reciprocal enforcement of toll violations between this state and the other jurisdiction.

(b) An agreement made under this section shall provide that drivers and vehicles licensed in this state, while operating on the highways of another jurisdiction, shall receive benefits, privileges, and exemptions of a similar kind with regard to toll enforcement as are extended to drivers and vehicles licensed or registered in the other jurisdiction while operated in the state.

(c) A reciprocal agreement under this section may provide for enforcement of toll violations by refusal to renew or suspension of the registration of a motor vehicle in accordance with section eleven of this article.


The Commissioner of Motor Vehicles and the Parkways Authority shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of the code to implement this article.
CHAPTER 158

(Com. Sub. for S. B. 391 - By Senators Kessler (Mr. President) and M. Hall)
[By Request of the Executive]

[Passed March 8, 2014; in effect July 1, 2014]
[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §18A-4-2 and §18A-4-8a of the Code of West Virginia, 1931, as amended, all relating generally to increasing compensation for teachers and school service personnel; and expressing legislative goal.

Be it enacted by the Legislature of West Virginia:

That §18A-4-2 and §18A-4-8a 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-4-2. State minimum salaries for teachers.

(a) It is the goal of the Legislature to increase the state minimum salary for teachers with zero years of experience and an A. B. degree, including the equity supplement, to at least $43,000 by fiscal year 2019.

(b) Beginning July 1, 2014, and continuing thereafter, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule as set forth in this section, specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.
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<th>2nd Class</th>
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(c) Six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

(d) To meet the objective of salary equity among the counties as set forth in section five of this article, each teacher
shall be paid an equity supplement amount as applicable for his or her classification of certification or classification of training and years of experience as follows, subject to the provisions of that section:

(1) For “4th Class” at zero years of experience, $1,781. An additional $38 shall be paid for each year of experience up to and including thirty-five years of experience;

(2) For “3rd Class” at zero years of experience, $1,796. An additional $67 shall be paid for each year of experience up to and including thirty-five years of experience;

(3) For “2nd Class” at zero years of experience, $1,877. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience;

(4) For “A. B.” at zero years of experience, $2,360. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience;

(5) For “A. B. + 15” at zero years of experience, $2,452. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience;

(6) For “M. A.” at zero years of experience, $2,644. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience;

(7) For “M. A. + 15” at zero years of experience, $2,740. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience;

(8) For “M. A. + 30” at zero years of experience, $2,836. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience;
(9) For "M. A. + 45" at zero years of experience, $2,836. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience; and

(10) For "Doctorate" at zero years of experience, $2,927. An additional $69 shall be paid for each year of experience up to and including thirty-five years of experience.

These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to section five-a of this article; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

§18A-4-8a. Service personnel minimum monthly salaries.

(a) The minimum monthly pay for each service employee shall be as follows:

(1) Beginning July 1, 2014, and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade set forth in this subdivision.

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(2) Each service employee shall receive the amount prescribed in the Minimum Pay Scale in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

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<td>Director or Coordinator of Services</td>
</tr>
<tr>
<td>93</td>
<td>Draftsman</td>
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<td>94</td>
<td>Early Childhood Classroom Assistant Teacher -</td>
</tr>
<tr>
<td>95</td>
<td>Temporary Authorization</td>
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<tr>
<td>96</td>
<td>Early Childhood Classroom Assistant Teacher -</td>
</tr>
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<td>97</td>
<td>Permanent Authorization</td>
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<td>98</td>
<td>Early Childhood Classroom Assistant Teacher -</td>
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<td>99</td>
<td>Paraprofessional Certificate</td>
</tr>
<tr>
<td>100</td>
<td>Educational Sign Language Interpreter I.</td>
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<td>101</td>
<td>Educational Sign Language Interpreter II.</td>
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<td>102</td>
<td>Electrician I.</td>
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<td>103</td>
<td>Electrician II.</td>
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<td>104</td>
<td>Electronic Technician I.</td>
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<td>105</td>
<td>Electronic Technician II.</td>
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<td>106</td>
<td>Executive Secretary</td>
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<tr>
<td>107</td>
<td>Food Services Supervisor</td>
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<tr>
<td>Code</td>
<td>Position</td>
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<tr>
<td>108</td>
<td>Foreman</td>
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<td>109</td>
<td>General Maintenance</td>
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<td>110</td>
<td>Glazier</td>
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<td>111</td>
<td>Graphic Artist</td>
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<td>112</td>
<td>Groundsman</td>
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<td>113</td>
<td>Handyman</td>
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<td>114</td>
<td>Heating and Air Conditioning Mechanic I</td>
</tr>
<tr>
<td>115</td>
<td>Heating and Air Conditioning Mechanic II</td>
</tr>
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<td>116</td>
<td>Heavy Equipment Operator</td>
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<td>117</td>
<td>Inventory Supervisor</td>
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<td>118</td>
<td>Key Punch Operator</td>
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<td>119</td>
<td>Licensed Practical Nurse</td>
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<td>120</td>
<td>Locksmith</td>
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<td>121</td>
<td>Lubrication Man</td>
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<td>122</td>
<td>Machinist</td>
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<td>123</td>
<td>Mail Clerk</td>
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<td>124</td>
<td>Maintenance Clerk</td>
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<td>125</td>
<td>Mason</td>
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<td>126</td>
<td>Mechanic</td>
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<td>127</td>
<td>Mechanic Assistant</td>
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<td>Code</td>
<td>Position</td>
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<td>128</td>
<td>Office Equipment Repairman I</td>
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<td>129</td>
<td>Office Equipment Repairman II</td>
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<td>130</td>
<td>Painter</td>
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<td>131</td>
<td>Paraprofessional</td>
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<td>132</td>
<td>Payroll Supervisor</td>
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<td>133</td>
<td>Plumber I</td>
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<tr>
<td>134</td>
<td>Plumber II</td>
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<td>135</td>
<td>Printing Operator</td>
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<td>136</td>
<td>Printing Supervisor</td>
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<tr>
<td>137</td>
<td>Programmer</td>
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<tr>
<td>138</td>
<td>Roofing/Sheet Metal Mechanic</td>
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<tr>
<td>139</td>
<td>Sanitation Plant Operator</td>
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<tr>
<td>140</td>
<td>School Bus Supervisor</td>
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<td>141</td>
<td>Secretary I</td>
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<td>142</td>
<td>Secretary II</td>
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<tr>
<td>143</td>
<td>Secretary III</td>
</tr>
<tr>
<td>144</td>
<td>Sign Support Specialist</td>
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<tr>
<td>145</td>
<td>Supervisor of Maintenance</td>
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<td>146</td>
<td>Supervisor of Transportation</td>
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<tr>
<td>147</td>
<td>Switchboard Operator-Receptionist</td>
</tr>
</tbody>
</table>
(b) An additional $12 per month is added to the minimum monthly pay of each service person who holds a high school diploma or its equivalent.

(c) An additional $11 per month also is added to the minimum monthly pay of each service person for each of the following:

1. A service person who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

2. A service person who holds twenty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

3. A service person who holds thirty-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

4. A service person who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

5. A service employee who holds sixty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;
(6) A service person who holds seventy-two college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service person who holds eighty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service person who holds ninety-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service person who holds one hundred eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service person who holds one hundred twenty college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(d) An additional $40 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds an associate’s degree;

(2) A service person who holds a bachelor’s degree;

(3) A service person who holds a master’s degree;

(4) A service person who holds a doctorate degree.

(e) An additional $11 per month is added to the minimum monthly pay of each service person for each of the following:
(1) A service person who holds a bachelor's degree plus fifteen college hours;

(2) A service person who holds a master's degree plus fifteen college hours;

(3) A service person who holds a master's degree plus thirty college hours;

(4) A service person who holds a master's degree plus forty-five college hours; and

(5) A service person who holds a master's degree plus sixty college hours.

(f) To meet the objective of salary equity among the counties, each service person is paid an equity supplement, as set forth in section five of this article, of $164 per month, subject to the provisions of that section. These payments: (i) Are in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to section five-b of this article; (ii) are paid in equal monthly installments; and (iii) are considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service person's daily shift of work is performed between the hours of six o'clock p. m. and five o'clock a. m. the following day, the employee is paid no less than an additional $10 per month and one half of the pay is paid with local funds.

(h) Any service person required to work on any legal school holiday is paid at a rate one and one-half times the person's usual hourly rate.
(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid is paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) A service person may not have his or her daily work schedule changed during the school year without the employee's written consent and the person's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in section eight-b of this article is no less than one seventh of the person's daily total salary for each hour the person is involved in performing the assignment and paid entirely from local funds: Provided, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time persons within that classification category of employment within that county: Provided, however, that the vote is by secret ballot if requested by a service person within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment is prorated accordingly. When performing extra duty assignments, persons who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the person were employed on a full-day salary basis.

(l) The minimum pay for any service personnel engaged in the removal of asbestos material or related duties required for
asbestos removal is their regular total daily rate of pay and no less than an additional $3 per hour or no less than $5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos, decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos-related duties outside of the employee’s regular employment county, the daily rate of pay is no less than the minimum amount as established in the employee’s regular employment county for asbestos removal and an additional $30 per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel may be used in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act-approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(m) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide is considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of a certified professional person within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever supervision is required. For purposes of this section, “under the direct supervision of a certified professional person” means that certified professional person is present, with and accompanying the aide.
AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended, relating to increasing the longevity pay for members of the State Police.

Be it enacted by the Legislature of West Virginia:

That §15-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from wages and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia State Police a system to provide for: The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class or corporal; the classification of members assigned to the forensic laboratory as criminalist I-VIII; and the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII.
(b) The superintendent may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code for the purpose of ensuring consistency, predictability and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.

(d) Beginning on July 1, 2011, members shall receive annual salaries as follows:

**ANNUAL SALARY SCHEDULE (BASE PAY)**

**SUPERVISORY AND NONSUPERVISORY RANKS**

27 Cadet During Training. ............... $2,833 Mo. $33,994
28 Cadet Trooper After Training. ...... $3,438 Mo. $41,258
29 Trooper Second Year. .................. 42,266
30 Trooper Third Year. .................... 42,649
31 Senior Trooper. ....................... 43,048
32 Trooper First Class. .................... 43,654
33 Corporal. ............................... 44,260
34 Sergeant. ............................... 48,561
35 First Sergeant. ......................... 50,712
36 Second Lieutenant. ..................... 52,862
37 First Lieutenant. ....................... 55,013
38 Captain. ................................. 57,164
| 39 | Major. ........................................... | 59,314 |
| 40 | Lieutenant Colonel............................. | 61,465 |

### ANNUAL SALARY SCHEDULE (BASE PAY)

#### ADMINISTRATION SUPPORT SPECIALIST CLASSIFICATION

| 44 | I ................................................ | 42,266 |
| 45 | II ................................................ | 43,048 |
| 46 | III ............................................... | 43,654 |
| 47 | IV ................................................ | 44,260 |
| 48 | V .................................................. | 48,561 |
| 49 | VI ................................................. | 50,712 |
| 50 | VII. ............................................... | 52,862 |
| 51 | VIII............................................... | 55,013 |

#### CRIMINALIST CLASSIFICATION

| 54 | I ................................................ | 42,266 |
| 55 | II ................................................ | 43,048 |
| 56 | III ............................................... | 43,654 |
| 57 | IV ................................................ | 44,260 |
| 58 | V .................................................. | 48,561 |
| 59 | VI ................................................. | 50,712 |
| 60 | VII. ............................................... | 52,862 |
| 61 | VIII............................................... | 55,013 |

Each member of the West Virginia State Police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in subsection (e) of this
section and supplemental pay as provided in subsection (g) of
this section.

(e) Each member of the West Virginia State Police whose
salary is fixed and specified pursuant to this section shall
receive, and is entitled to, an increase in salary over that set forth
in subsection (d) of this section for grade in rank, based on
length of service, including that service served before and after
the effective date of this section with the West Virginia State
Police as follows: Beginning on January 1, 2015 and continuing
thereafter, at the end of two years of service with the West
Virginia State Police, the member shall receive a salary increase
of $500 to be effective during his or her next year of service and
a like increase at yearly intervals thereafter, with the increases to
be cumulative.

(f) In applying the salary schedules set forth in this section
where salary increases are provided for length of service,
members of the West Virginia State Police in service at the time
the schedules become effective shall be given credit for prior
service and shall be paid the salaries the same length of service
entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the
unique duties of members of the West Virginia State Police, it is
not appropriate to apply the provisions of state wage and hour
laws to them. Accordingly, members of the West Virginia State
Police are excluded from the provisions of state wage and hour
law. This express exclusion shall not be construed as any
indication that the members were or were not covered by the
wage and hour law prior to this exclusion.

In lieu of any overtime pay they might otherwise have
received under the wage and hour law, and in addition to their
salaries and increases for length of service, members who have
completed basic training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The authority of the superintendent to propose a legislative rule or amendment thereto for promulgation in accordance with article three, chapter twenty-nine-a of this code to establish the number of hours per month which constitute the standard work month for the members of the West Virginia State Police is hereby continued. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard work month. The superintendent shall certify monthly to the West Virginia State Police’s payroll officer the names of those members who have worked in excess of the standard work month and the amount of their entitlement to supplemental payment. The supplemental payment may not exceed $400 monthly. The superintendent and civilian employees of the West Virginia State Police are not eligible for any supplemental payments.

(h) Each member of the West Virginia State Police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of $5,000 payable to the State of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor.

(i) In consideration for compensation paid by the West Virginia State Police to its members during those members’ participation in the West Virginia State Police Cadet Training Program pursuant to section eight, article twenty-nine, chapter thirty of this code, the West Virginia State Police may require of its members by written agreement entered into with each of them
in advance of such participation in the program that, if a member
should voluntarily discontinue employment any time within one
year immediately following completion of the training program,
he or she shall be obligated to pay to the West Virginia State
Police a pro rata portion of such compensation equal to that part
of such year which the member has chosen not to remain in the
employ of the West Virginia State Police.

(j) Any member of the West Virginia State Police who is
called to perform active duty training or inactive duty training in
the National Guard or any reserve component of the Armed
Forces of the United States annually shall be granted, upon
request, leave time not to exceed thirty calendar days for the
purpose of performing the active duty training or inactive duty
training and the time granted may not be deducted from any
leave accumulated as a member of the West Virginia State
Police.

CHAPTER 160

(Com. Sub. for S. B. 486 - By Senators Snyder,
Unger, Kessler (Mr. President), Williams,
Wells, Miller, D. Hall, Jenkins, Green and Barnes)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §15-2-7 of the Code of West Virginia,
1931, as amended, relating to establishing annual longevity salary
increases for West Virginia State Police civilian employees;
providing salary increase for current employees within the West
Virginia State Police Forensic Laboratory; and requiring the
Director of the West Virginia State Police Forensic Laboratory to submit a report before January 1, 2018, to the Joint Committee on Government and Finance detailing the West Virginia State Police Forensic Laboratory’s ability to retain employees.

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

That §15-2-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. WEST VIRGINIA STATE POLICE.**

§15-2-7. Cadet selection board; qualifications for and appointment to membership in State Police; civilian employees; forensic laboratory employees; salaries.

(a) The superintendent shall establish within the West Virginia State Police a cadet selection board which shall be representative of commissioned and noncommissioned officers within the State Police.

(b) The superintendent shall appoint a member to the position of trooper from among the top three names on the current list of eligible applicants established by the cadet selection board.

(c) Preference in making appointments shall be given whenever possible to honorably discharged members of the armed forces of the United States and to residents of West Virginia. Each applicant for appointment shall be a person not less than twenty-one years of age nor more than thirty-nine years of age, of sound constitution and good moral character and is required to pass any mental and physical examination and meet other requirements as provided in rules promulgated by the cadet selection board: *Provided,* That a former member may, at the discretion of the superintendent, be reenlisted.
(d) No person may be barred from becoming a member of the State Police because of his or her religious or political convictions.

(e) The superintendent shall adhere to the principles of equal employment opportunity set forth in article eleven, chapter five of this code and shall take positive steps to encourage applications for State Police membership from females and minority groups within the state. An annual report shall be filed with the Legislature on or before January 1 of each year by the superintendent which includes a summary of the efforts and the effectiveness of those efforts intended to recruit females, African-Americans and other minorities into the ranks of the State Police.

(f) Except for the superintendent, no person may be appointed or enlisted to membership in the State Police at a grade or rank above the grade of trooper.

(g) The superintendent shall appoint civilian employees as are necessary and all employees may be included in the classified service of the civil service system except those in positions exempt under the provisions of article six, chapter twenty-nine of this code.

(h) Effective July 1, 2001, through June 30, 2014, civilian employees with a minimum of five years’ service shall receive a salary increase equal to $100 a year for each year of service as a civilian employee. Every three years thereafter, civilian employees who have five or more years of service shall receive an annual salary increase of $300. The increases in salary provided by this subsection are in addition to any other increases to which the civilian employees might otherwise be entitled. After June 30, 2014, the provisions of this subsection are not operative.
(i) After June 30, 2014, West Virginia State Police civilian employees with a minimum of one year service shall receive an annual longevity salary increase equal to $500. The increases in salary provided by this subsection are in addition to any other increases to which the civilian employees might otherwise be entitled.

(j) Effective July 1, 2014, all current West Virginia State Police Forensic Laboratory analysts, directors and evidence technicians shall receive a one-time, across-the-board salary increase equal to twenty percent of their current salary.

(k) On or before January 1, 2018, the Director of the West Virginia State Police Forensic Laboratory shall submit a report to the Joint Committee on Government and Finance detailing the West Virginia State Police Forensic Laboratory’s ability to retain employees.

CHAPTER 161

(Com. Sub. for H. B. 2606 - By Delegates Hartman, Campbell, A. Evans, Rowan, Boggs and Lynch)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 21, 2014.]

AN ACT to amend and reenact §6-7-2a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §29-18-4a, all relating to having the salary of the executive director of the West Virginia State Rail Authority set by the authority; and limiting such salary.
Be it enacted by the Legislature of West Virginia:

That §6-7-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §29-18-4a, all to read as follows:

CHAPTER 6. GENERAL PROVISIONS
RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified.

Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer is as follows:

Commissioner, Division of Highways, $92,500;
Commissioner, Division of Corrections, $80,000; Director, Division of Natural Resources, $75,000; Superintendent, State Police, $85,000; Commissioner, Division of Banking, $75,000;
Commissioner, Division of Culture and History, $65,000;
Commissioner, Alcohol Beverage Control Commission, $75,000; Commissioner, Division of Motor Vehicles, $75,000;
Chairman, Health Care Authority, $80,000; members, Health...
Care Authority, $70,000; Director, Human Rights Commission, $55,000; Commissioner, Division of Labor, $70,000; prior to July 1, 2011, Director, Division of Veterans Affairs, $65,000; Chairperson, Board of Parole, $55,000; members, Board of Parole, $50,000; members, Employment Security Review Board, $17,000; and Commissioner, Workforce West Virginia, $75,000.

Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, $95,000; Transportation, $95,000: Provided, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid $120,000; Revenue, $95,000; Military Affairs and Public Safety, $95,000; Administration, $95,000; Education and the Arts, $95,000; Commerce, $95,000; Veterans’ Assistance, $95,000; and Environmental Protection, $95,000: Provided, however, That any officer specified in this subsection whose salary is increased by more than $5,000 as a result of the amendment and reenactment of this section during the 2011 regular session of the Legislature shall be paid the salary increase in increments of $5,000 per fiscal year beginning July 1, 2011 up to the maximum salary provided in this subsection.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code, and shall be paid an annual salary as follows:

Director, Board of Risk and Insurance Management, $80,000; Director, Division of Rehabilitation Services, $70,000; Director, Division of Personnel, $70,000; Executive Director, Educational Broadcasting Authority, $75,000; Secretary, Library Commission, $72,000; Director, Geological and Economic Survey, $75,000; Executive Director, Prosecuting Attorneys Institute, $70,000; Executive Director, Public Defender Services, $70,000; Commissioner, Bureau of Senior Services, $75,000; Executive Director, Women’s Commission, $45,000; Director, Hospital Finance Authority, $35,000; member, Racing Commission, $12,000; Chairman, Public Service Commission,
(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers’ successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, $92,500; Insurance Commissioner, $92,500; Director, Lottery Commission, $92,500; Director, Division of Homeland Security and Emergency Management, $65,000; and Adjutant General, $125,000.

(d) No increase in the salary of any appointive state officer pursuant to this section may be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.
CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-4a. West Virginia State Rail Authority director’s salary set by the authority.

(a) Notwithstanding any other provisions of this code to the contrary, the salary of the Executive Director of the State Rail Authority shall be set by the authority: Provided, That the salary set by the State Rail Authority for the Executive Director may not be less than $60,000 and not more than $70,000 per year.

CHAPTER 162

(S. B. 375 - By Senators Cann and Snyder)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2014.]

AN ACT to amend and reenact §7-11B-3 of the Code of West Virginia, 1931, as amended, relating to tax increment financing; and adding items to those which are excluded from base assessed value and current assessed value of real and personal property.

Be it enacted by the Legislature of West Virginia:

That §7-11B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-3. Definitions.

(a) General. — When used in this article, words and phrases defined in this section have the meanings ascribed to them in this
section unless a different meaning is clearly required either by
the context in which the word or phrase is used or by specific
definition in this article.

(b) Words and phrases defined. —

(1) “Agency” includes a municipality, a county or municipal
development agency established pursuant to authority granted in
section one, article twelve of this chapter, a port authority, an
airport authority or any other entity created by this state or an
agency or instrumentality of this state that engages in economic
development activity.

(2) “Base assessed value” means the taxable assessed value
of all real and tangible personal property, excluding personal
motor vehicles, having a tax situs within a development or
redevelopment district as shown upon the landbooks and
personal property books of the assessor on July 1 of the calendar
year preceding the effective date of the order or ordinance
creating and establishing the development or redevelopment
district: Provided, That for any development or redevelopment
district approved after the effective date of the amendments to
this section enacted during the regular session of the Legislature
in 2014, personal trailers, personal boats, personal campers,
personal motor homes, personal ATVs and personal motorcycles
having a tax situs within a development or redevelopment
district are excluded from the base assessed value.

(3) “Blighted area” means an area within the boundaries of
a development or redevelopment district located within the
territorial limits of a municipality or county in which the
structures, buildings or improvements, by reason of dilapidation,
deterioration, age or obsolescence, inadequate provision for
access, ventilation, light, air, sanitation, open spaces, high
density of population and overcrowding or the existence of
conditions which endanger life or property, are detrimental to the
public health, safety, morals or welfare. "Blighted area" includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, defective or unusual conditions of title or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any area which is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

(4) "Conservation area" means any improved area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which fifty percent or more of the structures in the area have an age of thirty-five years or more. A conservation area is not yet a blighted area but is detrimental to the public health, safety, morals or welfare and may become a blighted area because of any one or more of the following factors: Dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning. A conservation
area shall meet at least three of the factors provided in this subdivision.

(5) "County commission" means the governing body of a county of this state and, for purposes of this article only, includes the governing body of a Class I or II municipality in this state.

(6) "Current assessed value" means the annual taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbook and personal property records of the assessor: Provided, That for any development or redevelopment district approved after the effective date of the amendments to this section enacted during the regular session of the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a development or redevelopment district are excluded from the current assessed value.

(7) "Development office" means the West Virginia Development Office created in section one, article two, chapter five-b of this code.

(8) "Development project" or "redevelopment project" means a project undertaken in a development or redevelopment district for eliminating or preventing the development or spread of slums or deteriorated, deteriorating or blighted areas, for discouraging the loss of commerce, industry or employment, for increasing employment or for any combination thereof in accordance with a tax increment financing plan. A development or redevelopment project may include one or more of the following:

(A) The acquisition of land and improvements, if any, within the development or redevelopment district and clearance of the land so acquired; or
(B) The development, redevelopment, revitalization or conservation of the project area whenever necessary to provide land for needed public facilities, public housing or industrial or commercial development or revitalization, to eliminate unhealthful, unsanitary or unsafe conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to public welfare or otherwise remove or prevent the spread of blight or deterioration;

(C) The financial or other assistance in the relocation of persons and organizations displaced as a result of carrying out the development or redevelopment project and other improvements necessary for carrying out the project plan, together with those site improvements that are necessary for the preparation of any sites and making any land or improvements acquired in the project area available, by sale or lease, for public housing or for development, redevelopment or rehabilitation by private enterprise for commercial or industrial uses in accordance with the plan;

(D) The construction of capital improvements within a development or redevelopment district designed to increase or enhance the development of commerce, industry or housing within the development project area; or

(E) Any other projects the county commission or the agency deems appropriate to carry out the purposes of this article.

(9) “Development or redevelopment district” means an area proposed by one or more agencies as a development or redevelopment district which may include one or more counties, one or more municipalities or any combination thereof, that has been approved by the county commission of each county in which the project area is located if the project is located outside the corporate limits of a municipality, or by the governing body
of a municipality if the project area is located within a
municipality, or by both the county commission and the
governing body of the municipality when the development or
redevelopment district is located both within and without a
municipality.

(10) "Economic development area" means any area or
portion of an area within the boundaries of a development or
redevelopment district located within the territorial limits of a
municipality or county that does not meet the requirements of
subdivisions (3) and (4) of this subsection and for which the
county commission finds that development or redevelopment
will not be solely used for development of commercial
businesses that will unfairly compete in the local economy and
that development or redevelopment is in the public interest
because it will:

(A) Discourage commerce, industry or manufacturing from
moving their operations to another state;

(B) Result in increased employment in the municipality or
county, whichever is applicable; or

(C) Result in preservation or enhancement of the tax base of
the county or municipality.

(11) "Governing body of a municipality" means the city
council of a Class I or Class II municipality in this state.

(12) "Incremental value", for any development or
redevelopment district, means the difference between the base
assessed value and the current assessed value. The incremental
value will be positive if the current value exceeds the base value
and the incremental value will be negative if the current value is
less than the base assessed value.
(13) "Includes" and "including", when used in a definition contained in this article, shall not exclude other things otherwise within the meaning of the term being defined.

(14) "Local levying body" means the county board of education and the county commission and includes the governing body of a municipality when the development or redevelopment district is located, in whole or in part, within the boundaries of the municipality.

(15) "Obligations" or "tax increment financing obligations" means bonds, loans, debentures, notes, special certificates or other evidences of indebtedness issued by a county commission or municipality pursuant to this article to carry out a development or redevelopment project or to refund outstanding obligations under this article.

(16) "Order" means an order of the county commission adopted in conformity with the provisions of this article and as provided in this chapter.

(17) "Ordinance" means a law adopted by the governing body of a municipality in conformity with the provisions of this article and as provided in chapter eight of this code.

(18) "Payment in lieu of taxes" means those estimated revenues from real property and tangible personal property having a tax situs in the area selected for a development or redevelopment project which revenues, according to the development or redevelopment project or plan, are to be used for a private use, which levying bodies would have received had a county or municipality not adopted one or more tax increment financing plans and which would result from levies made after the date of adoption of a tax increment financing plan during the time the current assessed value of all taxable real and tangible personal property in the area selected for the development or
redevelopment project exceeds the total base assessed value of all taxable real and tangible personal property in the development or redevelopment district until the designation is terminated as provided in this article.

(19) "Person" means any natural person, and any corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature, other than a government agency or instrumentality.

(20) "Private project" means any project that is subject to ad valorem property taxation in this state or to a payment in lieu of tax agreement that is undertaken by a project developer in accordance with a tax increment financing plan in a development or redevelopment district.

(21) "Project" means any capital improvement, facility or both, as specifically set forth and defined in the project plan, requiring an investment of capital including, but not limited to, extensions, additions or improvements to existing facilities, including water or wastewater facilities, and the remediation of contaminated property as provided for in article twenty-two, chapter twenty-two of this code, but does not include performance of any governmental service by a county or municipal government.

(22) "Project area" means an area within the boundaries of a development or redevelopment district in which a development or redevelopment project is undertaken as specifically set forth and defined in the project plan.

(23) "Project costs" means expenditures made in preparation of the development or redevelopment project plan and made, or estimated to be made, or monetary obligations incurred, or estimated to be incurred, by the county commission which are listed in the project plan as capital improvements within a
development or redevelopment district, plus any costs incidental thereto. “Project costs” include, but are not limited to:

(A) 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, environmental remediation, parking and landscaping, the acquisition of equipment and site clearing, grading and preparation;

(B) Financing costs, including, but not limited to, an 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;

(C) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the county commission of real or personal property having a tax situs within a development or redevelopment district for consideration that is less than its cost to the county commission;

(D) Professional service costs including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;

(E) Imputed administrative costs including, but not limited to, reasonable charges for time spent by county employees or municipal employees in connection with the implementation of a project plan;

(F) Relocation costs including, but not limited to, those relocation payments made following condemnation and job training and retraining;
(G) 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 creation of a development or redevelopment district and the implementation of project plans;

(H) Payments made, in the discretion of the county commission or the governing body of a municipality, which are found to be necessary or convenient to creation of development or redevelopment districts or the implementation of project plans; and

(I) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the project plan for a development or redevelopment district, whether or not the construction, alteration, rebuilding or expansion is within the area or on land contiguous thereto.

(24) “Project developer” means any person who engages in the development of projects in the state.

(25) “Project plan” means the plan for a development or redevelopment project that is adopted by a county commission or governing body of a municipality in conformity with the requirements of this article and this chapter or chapter eight of this code.

(26) “Real property” means all lands, including improvements and fixtures on them and property of any nature appurtenant to them or used in connection with them and every estate, interest and right, legal or equitable, in them, including terms of years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by the liens.
“Redevelopment area” means an area designated by a county commission or the governing body of a municipality in respect to which the commission or governing body has made a finding that there exist conditions which cause the area to be classified as a blighted area, a conservation area, an economic development area or a combination thereof, which area includes only those parcels of real property directly and substantially benefitted by the proposed redevelopment project located within the development or redevelopment district or land contiguous thereto.

“Redevelopment plan” means the comprehensive program under this article of a county or municipality for redevelopment intended by the payment of redevelopment costs to reduce or eliminate those conditions, the existence of which qualified the redevelopment area as a blighted area, conservation area, economic development area or combination thereof, and to thereby enhance the tax bases of the levying bodies which extend into the redevelopment area. Each redevelopment plan shall conform to the requirements of this article.

“Tax increment” means the amount of regular levy property taxes attributable to the amount by which the current assessed value of real and tangible personal property having a tax situs in a development or redevelopment district exceeds the base assessed value of the property.

“Tax increment financing fund” means a separate fund for a development or redevelopment district established by the county commission or governing body of the municipality into which all tax increment revenues and other pledged revenues are deposited and from which projected project costs, debt service and other expenditures authorized by this article are paid.

“This code” means the Code of West Virginia, 1931, as amended by the Legislature.
"Total ad valorem property tax regular levy rate" means the aggregate levy rate of all levying bodies on all taxable property having a tax situs within a development or redevelopment district in a tax year but does not include excess levies, levies for general obligation bonded indebtedness or any other levies that are not regular levies.

CHAPTER 163

(S. B. 601 - By Senator Palumbo)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §11-3-25 of the Code of West Virginia, 1931, as amended, relating to appeals of assessments by the Board of Equalization and Review or order of the Board of Assessment Appeals; removing a phrase giving appeal authority to an entity’s agent, which the Supreme Court of Appeals of West Virginia interpreted as unconstitutional; and clarifying that appeals must be made by attorneys.

Be it enacted by the Legislature of West Virginia:

That §11-3-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-25. Relief in circuit court against erroneous assessment.

(a) Any person claiming to be aggrieved by any assessment in any land or personal property book of any county who shall have appeared and contested the valuation as provided in section
twenty-four or twenty-four-a of this article, or whose assessment has been raised by the county commission sitting as a Board of Equalization and Review above the assessment fixed by the assessor may, at any time up to thirty days after the adjournment of the board sitting as a Board of Equalization and Review, or at any time up to thirty days after the order of the Board of Assessment Appeals is served on the parties, apply for relief to the circuit court of the county in which the property books are made out; but any person applying for relief in circuit court shall, before any application is heard, give ten days' notice to the prosecuting attorney of the county, whose duty it shall be to attend to the interests of the state, county and district in the matter, and the prosecuting attorney shall give at least five days' notice of hearing to the Tax Commissioner.

(b) The right of appeal from any assessment by the Board of Equalization and Review or order of the Board of Assessment Appeals as provided in this section may be taken either by the applicant or by the state, and in case the applicant, by his or her attorney, or in the case of the state, by its prosecuting attorney or other attorney representing the Tax Commissioner. The party desiring to take an appeal from the decision of either board shall have the evidence taken at the hearing of the application before either board, including a transcript of all testimony and all papers, motions, documents, evidence and records as were before the board, certified by the county clerk and transmitted to the circuit court as provided in section four, article three, chapter fifty-eight of this code, except that, any other provision of this code notwithstanding, the evidence shall be certified and transmitted within thirty days after the petition for appeal is filed with the court or judge, in vacation.

(c) If there was an appearance by or on behalf of the taxpayer before either board, or if actual notice, certified by the board, was given to the taxpayer, the appeal, when allowed by the court or judge, in vacation, shall be determined by the court
from the record as so certified: Provided, That in cases where the court determines that the record made before the board is inadequate as a result of the parties having had insufficient time to present evidence at the hearing before the board to make a proper record, as a result of the parties having received insufficient notice of changes in the assessed value of the property and the reason or reasons for the changes to make a proper record at the hearing before the board, as a result of irregularities in the procedures followed at the hearing before the board, or for any other reason not involving the negligence of the party alleging that the record is inadequate, the court may remand the appeal back to the county commission of the county in which the property is located, even after the county commission has adjourned sine die as a Board of Equalization and Review or a Board of Assessment Appeals for the tax year in which the appeal arose, for the purpose of developing an adequate record upon which the appeal can be decided. The county commission shall schedule a hearing for the purpose of taking additional evidence at any time within ninety days of the remand order that is convenient for the county commission and for the parties to the appeal. If, however, there was no actual notice to the taxpayer, and no appearance by or on behalf of the taxpayer before the board, or if a question of classification or taxability is presented, the matter shall be heard de novo by the circuit court.

(d) If, upon the hearing of appeal, it is determined that any property has been assessed at more than sixty percent of its true and actual value determined as provided in this chapter, the circuit court shall, by an order entered of record, correct the assessment, and fix the assessed value of the property at sixty percent of its true and actual value. A copy of the order or orders entered by the circuit court reducing the valuation shall be certified to the Auditor, if the order or orders pertain to real property, by the clerk within twenty days after the entering of the same, and every order or judgment shall show that the
prosecuting attorney or Tax Commissioner was present and
defended the interest of the state, county and district. If it be
ascertained that any property has been valued too high, and that
the taxpayer has paid the excess tax, it shall be refunded or
credited to the taxpayer in accordance with the provisions of
section twenty-five-a of this article, and if not paid, he or she
shall be relieved from the payment thereof. If it is ascertained
that any property is valued too low, the circuit court shall, by an
order entered of record, correct the valuation and fix it at sixty
percent of its true and actual value. A copy of any order entered
by any circuit court increasing the valuation of property shall be
certified within twenty days, if the order pertains to real
property, to the Auditor, the county clerk and the sheriff.
However, if the order pertains only to personal property, then the
copy shall be certified within twenty days to the county clerk and
to the sheriff and it shall be the duty of the Auditor, the county
clerk and the sheriff to charge the taxpayer affected with the
increase of taxes occasioned by the increase of valuation by
applying the rate of levies for every purpose in the district where
the property is situated for the current year. The order shall also
be filed in the office of the Auditor and clerk of the county
commission. The circuit court shall review the record submitted
from the board. If the court determines that the record is
adequate, it shall establish a briefing and argument schedule that
will result in the appeal being submitted to the court for decision
within a reasonable time, but not to exceed eight months after
the appeal is filed. All final decisions or orders of the circuit
court shall be issued within a reasonable time, not to exceed
ninety days, from the date the last brief is filed and the case is
submitted to the court for decision. The state or the aggrieved
taxpayer may appeal a question of valuation to the Supreme
Court of Appeals if the assessed value of the property is $50,000
or more, and either party may appeal a question of classification
or taxability.
(e) All persons applying for relief to the circuit court under this section shall be governed by the same presumptions, burdens and standards of proof as established by law for taxpayers applying for such relief.

(f) Effective date. — The amendments to this section enacted in 2010 shall apply to tax years beginning after December 31, 2011.

CHAPTER 164

(Com. Sub. for S. B. 574 - By Senators Tucker, Fitzsimmons and Edgell)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §11-5-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17A-3-12b of said code, all relating to cancelling certificates of title for certain mobile and manufactured homes; clarifying that a mobile home permanently attached to the real estate by the owner may not be classified as personal property if the owner has filed a canceled certificate of title with the clerk of the county commission and the clerk has recorded the canceled certificate of title; and providing a procedure for returning a canceled title to an owner or lienholder.

Be it enacted by the Legislature of West Virginia:

That §11-5-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17A-3-12b of said code be amended and reenacted, all to read as follows:
CHAPTER 11. TAXATION.

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-12. Mobile homes situate upon property owned by a person other than owner of mobile home.

Mobile homes situated upon property owned by a person other than the owner of the mobile home are classified as personal property whether or not the mobile home is permanently affixed to the real estate and, unless subject to assessment as Class II property under section eleven of this article or section two, article four of this chapter, are assessed as Class III or Class IV personal property, as may be appropriate in the circumstances.

A mobile home permanently attached to the real estate of the owner may not be classified as personal property if the owner has filed a canceled certificate of title with the clerk of the county commission and the clerk has recorded it in the same manner as deeds are recorded and indexed.

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-12b. Canceled certificates of title for certain mobile and manufactured homes.

The commissioner may cancel a certificate of title for a mobile or manufactured home affixed to the real property of the owner of the mobile or manufactured home. The person requesting the cancellation shall submit to the commissioner an
application for cancellation together with the certificate of title. The application shall be on a form prescribed by the commissioner. The commissioner shall return one copy of the cancellation certificate to the owner and shall send a copy of the cancellation certificate to the clerk of the county commission to be recorded and indexed in the same manner as a deed, with the owner’s name being indexed in the grantor index. The commissioner shall charge a fee of $10 per certificate of title canceled. The clerk shall return a copy of the recorded cancellation certificate to the owner, unless there is a lien attached to the mobile or manufactured home, in which case the copy of the recorded cancellation certificate shall be returned to the lienholder. Upon its recording in the county clerk’s office, the mobile or manufactured home shall be treated for all purposes as an appurtenance to the real estate to which it is affixed and be transferred only as real estate and the ownership interest in the mobile or manufactured home, together with all liens and encumbrances on the home, shall be transferred to and shall encumber the real property to which the mobile or manufactured home has become affixed.

CHAPTER 165

(Com. Sub. for S. B. 416 - By Senators Prezioso and Edgell)

[Passed March 4, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §11-6K-4 and §11-6K-5 of the Code of West Virginia, 1931, as amended, all relating to tentative appraisals of natural resources property by the Tax Commissioner for ad valorem property tax purposes; clarifying that notice requirements apply to all oil and natural gas property in production
and reserve; and clarifying that informal review procedures do not apply to oil or natural gas property in production and reserve.

Be it enacted by the Legislature of West Virginia:

That §11-6K-4 and §11-6K-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6K. ASSESSMENT OF INDUSTRIAL PROPERTY AND NATURAL RESOURCES PROPERTY.

§11-6K-4. Review of returns; procuring information for tentative appraisals; tentative appraisals by Tax Commissioner; notification to taxpayers.

(a) All returns delivered to the Tax Commissioner shall be examined by him or her, and if found insufficient in form, defective, imperfect or not in compliance with law, he or she shall compel the person delivering the return to make it in proper and sufficient form in all respects as required by law.

(b) If any owner, operator or producer fails to make a required return, the Tax Commissioner shall proceed to obtain the facts and information required to be furnished by the returns.

(c) For the purposes of ascertaining the correctness of any return filed pursuant to this article or of valuing the property of any industrial taxpayer or natural resources property owner or operator, the Tax Commissioner may exercise all of the powers and authority granted to him or her by sections five-a, five-b and five-c, article ten of this chapter.

(d) Using information provided on the returns and all other pertinent evidence, information and data the Tax Commissioner has been able to procure, the Tax Commissioner shall annually value and make tentative appraisals of all industrial property and natural resources property as provided in section ten, article one-c of this chapter.
(e) (1) On or before October 15 of the assessment year, the Tax Commissioner shall complete the preparation of tentative appraisals of all industrial property and natural resources property and shall notify the affected owner or operator of the amount of the tentative appraisals: *Provided,* That in the case of oil property, natural gas property and managed timberland, the Tax Commissioner shall complete the preparation of tentative appraisals and notify the affected owner or operator by December 1 of the assessment year, and: *Provided, however,* That no notification shall be required where the total increase in the aggregate amount of the tentative appraisals to the affected owner or operator does not exceed $1,000 and the total tentative appraisals did not increase by more than ten percent from the prior year’s appraisals. Notification may, at the reasonable discretion of the Tax Commissioner, be:

(A) By written notice deposited in the United States mail, addressed to the owner or operator at the principal office or place of business of the owner or operator;

(B) By electronic notification; or

(C) By any other means designed to communicate the tentative appraisal information to the owner or operator in a timely and efficient manner and in a convenient useable form.

(2) Any notice required to be provided under this section to an owner or operator shall also be provided by the Tax Commissioner to the assessor of the county in which the property is located. The Tax Commissioner shall retain in his or her office true copies of tentative appraisals and of the underlying work sheets used to compute the tentative appraisals, all of which shall be available for inspection by any owner or operator or his or her duly authorized representative.
§11-6K-5. Informal petition to Tax Commissioner for review of tentative appraisals.

(a) A taxpayer who is of the opinion that the tentative appraisal of its industrial property or natural resources property, except oil property, natural gas property and managed timberland, does not reflect the true and actual value of the property or is otherwise improperly valued may, after receiving its tentative appraisal and on or before November 15 of the assessment year, informally petition the Tax Commissioner requesting a review of the tentative appraisal. Likewise, an assessor who is of the opinion that the tentative appraisal of any industrial property or natural resources property, except oil property, natural gas property and managed timberland, located in the county does not reflect the true and actual value of the property or is otherwise improperly valued may, after receiving the tentative appraisal and on or before November 15 of the assessment year, informally petition the Tax Commissioner requesting a review of the tentative appraisal. The Tax Commissioner may require the petition be made on a written form prescribed by the Tax Commissioner. At the time a petition is filed by a taxpayer with the Tax Commissioner, the petitioner shall provide a copy of the petition to the assessor of the county in which the property is located. At the time a petition is filed by an assessor with the Tax Commissioner, the petitioner shall provide a copy of the petition to the taxpayer involved.

(b) At the petitioner's request, the Tax Commissioner or his or her representative shall meet with the petitioner or the petitioner's representative to discuss the petition at a time and place designated at least five working days in advance by the Tax Commissioner after the petition is filed. If the petitioner is unable to appear and meet with the Tax Commissioner at the time and place set by the Tax Commissioner, the petitioner may submit written evidence to support the petition if it is submitted before the date of the meeting.
(c) The Tax Commissioner shall consider and rule on each informal petition filed under this section on or before January 15 of the tax year. If the Tax Commissioner agrees with the petition he or she shall modify the tentative appraisal accordingly. The Tax Commissioner shall then notify the petitioner and assessor of the county in which the property is located in writing of his or her decision and shall include supporting data that the assessor might need to evaluate the appraisal.

CHAPTER 166

(S. B. 402 - By Senators Prezioso, Edgell and Plymale)

[Passed February 20, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 7, 2014.]

AN ACT to amend and reenact §11-10-5n of the Code of West Virginia, 1931, as amended, relating to recovery of service charges and fees charged to the Tax Commissioner by financial institutions relating to all permitted forms of payment returned or not duly paid; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

That §11-10-5n of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5n. Payment by commercially acceptable means.

(a) Authority to receive.— The Tax Commissioner may receive in payment for taxes or fees collected under this article
(or in payment for excise tax stamps and tax crowns) any commercially acceptable means that the commissioner considers appropriate to the extent and under the conditions provided in rules proposed by the commissioner for legislative approval in accordance with article three, chapter twenty-nine-a of this code.

(b) Ultimate liability.— If a check, money order or other method of payment, including payment by credit card, debit card or charge card received in payment of taxes or fees or tax stamps or crowns is not duly paid, or is paid and subsequently charged back to the Tax Commissioner, the person by whom the check, money order or other method of payment was tendered remains liable for payment of the tax or fee or for the tax stamps or crowns, and for all legal penalties and additions thereto, to the same extent as if the check, money order or other method of payment had not been tendered.

(c) Liability of bank and others.— If any certified, treasurer’s or cashier’s check (or other guaranteed draft), any money order or any means of payment that has been guaranteed by a financial organization (such as a credit card, debit card or charge card transaction which has been guaranteed expressly by a financial organization), is received for payment of taxes or fees or tax stamps or crowns and is not duly paid, the State of West Virginia shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for:

1. The amount of the check (or draft) upon all the assets of the financial institution on which it is drawn;

2. The amount of the money order upon all the assets of the issuer thereof; or

3. The guaranteed amount of any other transaction upon all assets of the institution making the guarantee; and the amount shall be paid out of the assets in preference to any other claims.
(d) Charges and fees due to insufficient funds or nonpayment by financial institution.— If any check, money order or any other commercially acceptable method of payment permitted under this article, its amendments and related rules, tendered in payment of any amount of tax or fee or tax stamps or crowns or any interest, additions to tax or penalties is not duly paid, then, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered the payment, regardless of its form, upon written notice and demand by the Tax Commissioner, in the same manner as tax, an amount equal to the service charge or fee which the bank or other financial institution charged the state for each payment returned or not duly paid to the Tax Commissioner because the account is closed, there are insufficient funds in the account, payment was stopped or payment was refused by the bank, financial institution or other entity, including the state or political subdivision thereof. Recovery of such charges and fees will apply to all methods of payment permitted under this section. The Tax Commissioner may propose rules necessary to carry out this subsection and to provide guidelines and requirements necessary to ensure uniform administrative practices statewide to effect the intent of this subsection, all in accordance with article three, chapter twenty-nine-a of this code: Provided, That for purposes of this subsection, the term “payment” includes any transaction performed at the request of the taxpayer, including claims for refund that result in a service charge or fee.

(e) Payment by other means.—

(1) Authority to prescribe rule.— The Tax Commissioner shall propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, as the Tax
Commissioner considers necessary to receive payment by commercially acceptable means, including rules that:

(A) Specify which methods of payment by commercially acceptable means are acceptable:

(B) Specify when payment by those means shall be considered received;

(C) Identify types of nontax matters related to payment by those means that are to be resolved by persons ultimately liable for payment and financial intermediaries, without the involvement of the Tax Commissioner; and

(D) Ensure that tax matters shall be resolved by the Tax Commissioner, without the involvement of financial intermediaries.

(2) Obtaining services.—The Tax Commissioner shall use the State Treasurer’s contracts and system for receiving payments by credit card, debit card, charge card or any other commercially acceptable means. The Tax Commissioner may not pay any fee or provide any other consideration in obtaining these services. The State Treasurer may not pay any fee or provide any consideration for receiving payments of taxes or fees (or in payment for excise tax stamps and tax crowns) described in this section by credit card, debit card, charge card or any other commercially acceptable means, and any cost for processing the payment shall be included, in advance, in the amount of the transaction and assessed to the party making the payment.

(3) Special provisions for use of credit cards.—If use of credit cards is accepted as a method of payment of taxes pursuant to subsection (a) of this section:
(A) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) by a person by use of a credit card shall not be subject to Section 161 of the Truth in Lending Act (15 U. S. C.§1666), or to any similar provisions of state law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the credit card account such as a computational error or numerical transposition in the credit card transaction or an issue as to whether the person authorized payment by use of the credit card;

(B) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) shall not be subject to Section 170 of the Truth in Lending Act (15 U. S. C.1666i), or to any similar provisions of state law;

(C) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) by a person by use of a debit card shall not be subject to Section 908 of the Electronic Fund Transfer Act (15 U. S. C.1693f), or to any similar provisions of state law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the debit card account such as a computational error or numerical transposition in the debit card transaction or an issue as to whether the person authorized payment by use of the debit card;

(D) To the extent allowed under federal law, the term “creditor” under Section 103(f) of the Truth in Lending Act (15 U. S. C.§1602(f)) shall not include the Tax Commissioner with respect to credit card transactions in payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns); and
(E) Notwithstanding any other provisions of law to the contrary, in the case of payment made by credit card or debit card transaction of an amount owed to a person as the result of the correction of an error under Section 161 of the Truth in Lending Act (15 U. S. C.§1666) or Section 908 of the Electronic Fund Transfer Act (15 U. S. C.§ 1693f), the Tax Commissioner is authorized to provide such amount to such person as a credit to that person’s credit card or debit card account through the applicable credit card or debit card system.

(f) Confidentiality of information.—

(1) In general.— Except as otherwise authorized by this subsection, no person may use or disclose any information relating to credit card, debit card or charge card transactions other than for purposes directly related to the processing of the transactions or the billing or collection of amounts charged or debited pursuant thereto.

(2) Exceptions.—

(A) Credit card, debit card or charge card issuers or others acting on behalf of the issuers may also use and disclose the information for purposes directly related to servicing an issuer’s accounts.

(B) Credit card, debit card or charge card issuers or others directly involved in the processing of credit card, debit card or charge card transactions or the billing or collection of amounts charged or debited to the credit card, debit card or charge card, may also use and disclose the information for purposes directly related to:

(I) Statistical risk and profitability assessment;

(ii) Transferring receivables, accounts or interest therein;
(iii) Auditing the account information;
(iv) Complying with federal, state or local law; and
(v) Properly authorized civil, criminal or regulatory
investigation by federal, state or local authorities.

(3) Procedures.— Use and disclosure of information under
this paragraph shall be made only to the extent authorized by
written procedures promulgated by the Tax Commissioner.

AN ACT to amend and reenact §11-11-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §44-1-14 of said code, all relating to the filing of estate appraisement and nonprobate inventory forms; eliminating certain filing with the Tax Commissioner; providing for maintenance and preservation of certain forms by the county clerk; providing for disclosure of certain forms under certain circumstances; and providing for confidentiality of certain forms under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §11-11-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §44-1-14 of said code be amended and reenacted, all to read as follows:
ARTICLE 11. ESTATE TAXES.

§11-11-7. Nonprobate inventory of estates; penalties.

(a) The personal representative of every resident decedent who owned or had an interest in any nonprobate personal property, and the personal representative of every nonresident decedent who owned or had an interest in any nonprobate personal property which is a part of the taxable estate located in West Virginia, shall, under oath, list and appraise on a nonprobate inventory form prescribed by the Tax Commissioner all tangible and intangible nonprobate personal property owned by the decedent or in which the decedent had an interest, at its fair market value on the date of the decedent’s death. The nonprobate personal property to be included on the nonprobate inventory form includes, but is not limited to, the following:

(1) Personal property held as joint tenants with right of survivorship with one or more third parties;

(2) Personal property payable on the death of the decedent to one or more third parties;

(3) Personal property held by the decedent as a life tenant;

(4) Insurance on the decedent’s life payable to beneficiaries other than the executor or administrator of the decedent’s estate;

(5) Powers of appointment;

(6) Annuities;

(7) Transfers during the decedent’s life in which any beneficial interest passes by trust or otherwise to another person by reason of the death of the decedent;
(8) Revocable transfers in trust or otherwise;

(9) Taxable gifts under Section 2503 of the United States Internal Revenue Code of 1986; and

(10) All other nonprobate personal property included in the federal gross estate of the decedent.

(b) For purposes of this section, "nonprobate personal property" means all personal property which does not pass by operation of the decedent's will or by the laws of intestate descent and distribution or is otherwise not subject to administration in a decedent's estate at common law.

(c) The personal representative shall prepare the nonprobate inventory form and file it, together with the appraisement form required by section fourteen, article one, chapter forty-four of this code, for estates of decedents dying on or after July 13, 2001, with the clerk of the county commission or the fiduciary supervisor within ninety days of the date of qualification of the personal representative in this state: Provided, That for estates of decedents dying on or after July 13, 2001, but before the date the amendments to this section become effective, the requirement to file the nonprobate inventory form with the clerk or supervisor applies only if that form has not already been filed with Tax Commissioner.

(d) The nonprobate inventory form shall be maintained and preserved by the clerk of the county commission or the fiduciary supervisor, but shall not be recorded in the records of the clerk of the county commission. The nonprobate inventory form is confidential tax return information subject to the provisions of section five-d, article ten, chapter eleven of this code and may not be disclosed by the clerk of the county commission and his or her officers and employees or former officers and employees. Nothing in this section may be construed to hinder, abrogate or
prevent disclosure of information as authorized in section thirty-five, article eleven, chapter eleven of this code.

(e) Any personal representative who fails to comply with the provisions of this section, without reasonable cause, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $500.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-14. Appraisalment of real estate and probate personal property of decedents; disposition; hiring of experts.

(a) The personal representative of an estate of a deceased person shall appraise the deceased’s real estate and personal probate property, or any real estate or personal probate property in which the deceased person had an interest at the time of his or her death, as provided in this section.

(b) After having taken the appropriate oath, the personal representative shall, on the appraisalment form prescribed by the Tax Commissioner, list the following items owned by the decedent or in which the decedent had an interest and the fair market value of the items at the date of the decedent’s death:

(1) All probate and nonprobate real estate including, but not limited to, real estate owned by the decedent, as a joint tenant with right of survivorship with one or more parties, as a life estate, subject to a power of appointment of the decedent, or in which any beneficial interest passes by trust or otherwise to another person by reason of the death of the decedent; and

(2) All probate personal property, whether tangible or intangible, including, but not limited to, stocks and bonds, bank
accounts, mortgages, notes, cash, life insurance payable to the executor or administrator of the decedent's estate and all other items of probate personal property.

(c) Any real estate or interest in real estate so appraised must be identified with particularity and description. The personal representative shall identify the source of title in the decedent and the location of the realty for purposes of real property ad valorem taxation.

(d) For purposes of this section, the term "probate personal property" means all personal property which passes by or under the decedent's will or by the laws of intestate descent and distribution or is otherwise subject to administration in a decedent's estate under common law.

(e) The personal representative shall complete, under oath, a questionnaire included in the appraisement form designed by the Tax Commissioner for the purpose of reporting whether the decedent owned or had an interest in any nonprobate personal property: Provided, That the Tax Commissioner shall design a questionnaire that is as much as possible phrased in understandable English.

(f) The appraisement form shall be executed and signed by the personal representative. The original appraisement form and two of its copies, together with the completed and notarized nonprobate inventory form required by section seven, article eleven, chapter eleven of this code, shall be returned to the clerk of the county commission by whom the personal representative was appointed or to the fiduciary supervisor within ninety days of the date of qualification of the personal representative. The clerk or supervisor shall inspect the appraisement form to determine whether it is in proper form. If the appraisement form is returned to a fiduciary supervisor, within ten days after being received and approved, the supervisor shall deliver the
documents to the clerk of the county commission. Upon receipt of the appraisement form, the clerk of the county commission shall record it with the certificate of approval of the supervisor. The date of return of an appraisement form must be entered by the clerk of the county commission in his or her record of fiduciaries. The nonprobate inventory form shall be maintained and preserved by the clerk of the county commission or the fiduciary supervisor, but shall not be recorded in the records of the clerk of the county commission. The nonprobate inventory form is confidential tax return information subject to the provisions of section five-d, article ten, chapter eleven of this code and may not be disclosed by the clerk of the county commission and his or her officers and employees or former officers and employees. Nothing in this section may be construed to hinder, abrogate or prevent disclosure of information as authorized in section thirty-five, article eleven, chapter eleven of this code.

(g) An executed and signed appraisement form is prima facie evidence:

(1) Of the value of the property listed;

(2) That the property is subject to administration; and

(3) That the property was received by the personal representative.

(h) Any personal representative who refuses or declines, without reasonable cause, to comply with the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $500.

(i) Every personal representative has authority to retain the services of an expert as may be appropriate to assist and advise him or her concerning his or her duties in appraising any asset or property pursuant to the provisions of this section. An expert so
82 retained shall be compensated a reasonable sum by the personal 
83 representative from the assets of the estate. The compensation 
84 and its reasonableness is subject to review and approval by the 
85 county commission, upon recommendation of the fiduciary 
86 supervisor.

87 (j) Except as specifically provided in subdivision (1), 
88 subsection (b) of this section and in section seven, article eleven, 
89 chapter eleven of this code, the personal representative is not 
90 required to list and appraise nonprobate real estate or nonprobate 
91 personal property of the decedent on the forms required in this 
92 section or section seven, article eleven, chapter eleven of this 
93 code.

CHAPTER 168

(Com. Sub. for H. B. 4449 - By Delegates R. Phillips, 
Lynch, Tomblin, Eldridge, Barker, Marcum, White, 
Caputo, Skaff, Craig and Sumner)

[Passed March 6, 2014; in effect ninety days from passage.] 
[Approved by the Governor on March 21, 2014.]

AN ACT to amend and reenact §11-13BB-3 and §11-13BB-14 of the 
Code of West Virginia, 1931, as amended, all relating to the West 
Virginia Innovative Mine Safety Technology Tax Credit Act; 
including proximity detection systems and cameras used on 
continuous mining machines and underground haulage equipment 
for tax credit purposes; and extending termination date for credit.

Be it enacted by the Legislature of West Virginia:

That §11-13BB-3 and §11-13BB-14 of the Code of West Virginia, 
1931, as amended, be amended and reenacted, all to read as follows:

(a) Any term used in this article has the meaning ascribed by this section unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purposes of this article, the term:

(1) “Certified eligible safety property” means eligible safety property in which an eligible taxpayer has made qualified investment for which credit has been certified under this article.

(2) “Coal mining company” means:

(A) A person subject to tax imposed on the severance of coal by section three, article thirteen-a of this chapter; or

(B) A person working as a contract miner of coal, mining coal in this state, under contract with a person subject to tax imposed on the severance of coal by section three, article thirteen-a of this chapter.

(3) “Director” means the Director of the Office of Miners’ Health, Safety and Training or West Virginia Office of Miners’ Health, Safety and Training established under article one, chapter twenty two-a of this code.

(4) “Eligible safety property” means safety technology equipment that, at the time of acquisition, is on the list of approved innovative mine safety technology: Provided, That eligible safety property includes proximity detection systems and cameras used on continuous mining machines and underground haulage equipment and machine mounted methane monitors.
25 required by section forty-three, article two, chapter twenty-two-a of this code.

27 (5) “Eligible taxpayer” means a coal mining company that purchases eligible safety property.

29 (6) “List of approved innovative mine safety technology” means the list required to be compiled and maintained by the Mine Safety Technology Task Force and approved and published by the director under this article.

33 (7) “Office of Miners’ Health, Safety and Training” or “West Virginia Office of Miners’ Health, Safety and Training” means the Office of Miners’ Health, Safety and Training established under article one, chapter twenty-two-a of this code.

37 (8) “Person” includes any corporation, limited liability company or partnership.

39 (9) “Qualified investment” means the eligible taxpayer’s investment in eligible safety property pursuant to a qualified purchase as qualified and limited by section six of this article.

42 (10) “Qualified purchase” means and includes only acquisitions of eligible safety property for use in this state.

44 (A) A lease of eligible safety property may constitute a qualified purchase if the lease was entered into and became effective at a time when the equipment is on the list of approved innovative mine safety technology and if the primary term of the lease for the eligible safety property is five years or more. Leases having a primary term of less than five years do not qualify.

48 (B) “Qualified purchase” does not include:

51 (i) Purchases or leases of realty or any cost for, or related to, the construction of a building, facility or structure attached to realty;
(ii) Purchases or leases of property not exclusively used in West Virginia;

(iii) Repair costs including materials used in the repair unless, for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(iv) Motor vehicles licensed by the Division of Motor Vehicles;

(v) Clothing;

(vi) Airplanes;

(vii) Off-premises transportation equipment;

(viii) Leases of tangible personal property having a primary term of less than five years;

(ix) Property that is used outside this state; and

(x) Property that is acquired incident to the purchase of the stock or assets of an industrial taxpayer that was or had been used by the seller in his or her industrial business in this state or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.

(C) Acquisitions, including leases, of eligible safety property may constitute qualified purchases for purposes of this article only if:

(i) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended;

(ii) The property is not acquired from a related person or by one component member of a controlled group from another component member of the same controlled group but the Tax
Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and (iii) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired or under Section 1014(e) of the United States Internal Revenue Code of 1986, as amended.

(11) “Safety technology” means depreciable tangible personal property and equipment, other than clothing, principally designed to directly minimize workplace injuries and fatalities in coal mines.

(12) “Taxpayer” means a person subject to any of the taxes imposed by article thirteen-a, twenty-three or twenty-four of this chapter.


The tax credit authorized in this article shall terminate December 31, 2018.
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 §11-13R-13, to read as follows:

ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT.


1 The Strategic Research and Development Tax Credit Act terminates on January 1, 2014, and no credit is available to any taxpayer for any qualified investment or expenditure made on or after that date. Taxpayers which have gained entitlement to the credit pursuant to qualified investment or expenditure prior to January 1, 2014, retain that entitlement and may apply the credit pursuant to the requirements and limitations of this article.

CHAPTER 170

(H. B. 4154 - By Mr. Speaker (Mr. Miley) and Delegate Armstead) [By Request of the Executive]

[Passed March 5, 2014; in effect from passage.] [Approved by the Governor on March 20, 2014.]

AN ACT to amend and reenact §11-14C-9 of the Code of West Virginia, 1931, as amended, relating to clarifying that the refundable amount from the flat rate component of the motor fuel excise tax for certain qualified persons remains six cents per gallon.
Be it enacted by the Legislature of West Virginia:

That §11-14C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-9. Exemptions from tax; claiming refunds of tax.

(a) Per se exemptions from flat rate component of tax. – Sales of motor fuel to the following, or as otherwise stated in this subsection, are exempt per se from the flat rate of the tax levied by section five of this article and the flat rate may not be paid at the rack:

(1) All motor fuel exported from this state to any other state or nation: Provided, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation. This exemption does not apply to motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(2) Sales of aviation fuel;

(3) Sales of dyed special fuel; and

(4) Sales of propane unless sold for use in a motor vehicle.

(b) Per se exemptions from variable component of tax. – Sales of motor fuel to the following are exempt per se from the variable component of the tax levied by section five of this article and the variable component may not be paid at the rack:

All motor fuel exported from this state to any other state or nation: Provided, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on
the motor fuel transported to that state or nation. This exemption
does not apply to motor fuel which is transported and delivered
outside this state in the motor fuel supply tank of a highway
vehicle.

(c) Refundable exemptions from flat rate component of
tax. – A person having a right or claim to any of the following
exemptions from the flat rate component of the tax levied by
section five of this article shall first pay the tax levied by this
article and then apply to the Tax Commissioner for a refund:

(1) The United States or agency thereof: Provided, That if
the United States government, or agency or instrumentality
thereof, does not pay the seller the tax imposed by section five
of this article on a purchase of motor fuel, the person selling tax
previously paid motor fuel to the United States government, or
its agencies or instrumentalities, may claim a refund of the flat
rate component of tax imposed by section five of this article on
those sales;

(2) A county government or unit or agency thereof;

(3) A municipal government or any agency thereof;

(4) A county board of education;

(5) An urban mass transportation authority created pursuant
to the provisions of article twenty-seven, chapter eight of this
code;

(6) A municipal, county, state or federal civil defense or
emergency service program pursuant to a government contract
for use in conjunction therewith or to a person who is required
to maintain an inventory of motor fuel for the purpose of the
program: Provided, That motor fueling facilities used for these
purposes are not capable of fueling motor vehicles and the
person in charge of the program has in his or her possession a letter of authority from the Tax Commissioner certifying his or her right to the exemption. In order for this exemption to apply, motor fuel sold under this subdivision and subdivisions (1) through (5), inclusive, of this subsection shall be used in vehicles or equipment owned and operated by the respective government entity or government agency or authority;

(7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund or the exporter has reported to the destination state or nation that the motor fuel was sold in a transaction not subject to tax in that state or nation. A refund may not be granted on motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(8) All gallons of motor fuel used and consumed in stationary off-highway turbine engines;

(9) All gallons of fuel used for heating any public or private dwelling, building or other premises;

(10) All gallons of fuel used for boilers;

(11) All gallons of motor fuel used as a dry cleaning solvent or commercial or industrial solvent;

(12) All gallons of motor fuel used as lubricants, ingredients or components of a manufactured product or compound;

(13) All gallons of motor fuel sold for use or used as a motor fuel for commercial watercraft;
(14) All gallons of motor fuel sold for use or consumed in railroad diesel locomotives;

(15) All gallons of motor fuel purchased in quantities of twenty-five gallons or more for use as a motor fuel for internal combustion engines not operated upon highways of this state;

(16) All gallons of motor fuel purchased in quantities of twenty-five gallons or more and used to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary equipment uses motor fuel and there is no auxiliary motor for the equipment or separate tank for a motor, the person claiming the refund may present to the Tax Commissioner a statement of his or her claim and is allowed a refund for motor fuel used in operating a power take-off unit on a cement mixer truck or garbage truck equal to twenty-five percent of the tax levied by this article paid on all motor fuel used in such a truck;

(17) Motor fuel used by a person regularly operating a vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons when purchased in an amount of twenty-five gallons or more: Provided, That the amount refunded is equal to $0.06 per gallon: Provided, however, That the gallons of motor fuel have been consumed in the operation of urban and suburban bus lines and the majority of passengers use the bus for traveling a distance not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools; and

(18) All gallons of motor fuel that are not otherwise exempt under subdivisions (1) through (6), inclusive, of this subsection and that are purchased and used by any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county
112 wherein the bona fide volunteer fire department, nonprofit
113 ambulance service or emergency rescue service is located.

114 (d) **Refundable exemptions from variable rate component of**
115 **tax.** – Any of the following persons may claim an exemption
116 from the variable rate component of the tax levied by section
117 five of this article on the purchase and use of motor fuel by first
118 paying the tax levied by this article and then applying to the Tax
119 Commissioner for a refund.

120 (1) The United States or agency thereof: **Provided,** That if
121 the United States government, or agency or instrumentality
122 thereof, does not pay the seller the tax imposed by section five
123 of this article on any purchase of motor fuel, the person selling
124 tax previously paid motor fuel to the United States government,
125 or its agencies or instrumentalities, may claim a refund of the
126 variable rate of tax imposed by section five of this article on
127 those sales.

128 (2) This state and its institutions;

129 (3) A county government or unit or agency thereof;

130 (4) A municipal government or agency thereof:

131 (5) A county board of education;

132 (6) An urban mass transportation authority created pursuant
133 to the provisions of article twenty-seven, chapter eight of this
134 code;

135 (7) A municipal, county, state or federal civil defense or
136 emergency service program pursuant to a government contract
137 for use in conjunction therewith, or to a person who is required
138 to maintain an inventory of motor fuel for the purpose of the
139 program: **Provided,** That fueling facilities used for these
140 purposes are not capable of fueling motor vehicles and the
person in charge of the program has in his or her possession a letter of authority from the Tax Commissioner certifying his or her right to the exemption;

(8) A bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county where the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located; or

(9) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund. A refund may not be granted on motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.

(e) The provision in subdivision (9), subsection (a), section nine, article fifteen of this chapter that exempts as a sale for resale those sales of gasoline and special fuel by a distributor or importer to another distributor does not apply to sales of motor fuel under this article.

CHAPTER 171

(S. B. 331 - By Senators Kessler (Mr. President) and M. Hall)
[By Request of the Executive]

[Passed March 5, 2014; in effect from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §11-15-16 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-21-74
of said code, all relating to providing accelerated payment of consumers sales and service and use tax and employee withholding taxes for certain taxpayers and employers.

Be it enacted by the Legislature of West Virginia:

That §11-15-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-21-74 of said code be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-16. Tax return and payment; exception; requiring a combined return.

1 (a) Payment of tax. — Subject to the exceptions set forth in subsection (b) of this section, the taxes levied by this article are due and payable in monthly installments, on or before the twentieth day of the month next succeeding the month in which the tax accrued, except as otherwise provided in this article.

(b) Combined return required. —

1 (1) The Tax Commissioner shall, no later than June 15, 2008, design a return that combines filing of the taxes levied by this article and article fifteen-a of this chapter.

1 (2) Beginning July 1, 2008, each person required to file a return required by this article or article fifteen-a of this chapter, or both this article and article fifteen-a of this chapter, shall complete and file the return required by the Tax Commissioner.

1 (3) The Tax Commissioner may promulgate rules pursuant to article three, chapter twenty-nine-a of this code and otherwise use any combination of notices, forms and instructions he or she determines necessary to implement the use of the form required by subsection (c) of this section.
(c) **Tax return.** — The taxpayer shall, on or before the twentieth day of each month, make out and mail to the Tax Commissioner a return for the preceding month, in the form prescribed by the Tax Commissioner, showing:

1. The total gross proceeds of the vendor's business for the preceding month;
2. The gross proceeds of the vendor's business upon which the tax is based;
3. The amount of the tax for which the vendor is liable; and
4. Any further information necessary in the computation and collection of the tax which the Tax Commissioner may require, except as otherwise provided in this article or article fifteen-b of this chapter.

(d) **Remittance to accompany return.** — Except as otherwise provided in this article or article fifteen-b of this chapter, a remittance for the amount of the tax shall accompany the return.

(e) **Deposit of collected tax.** — Tax collected by the Tax Commissioner shall be deposited as provided in section thirty of this article, except that:

1. Tax collected on sales of gasoline and special fuel shall be deposited in the State Road Fund; and
2. Any sales tax collected by the Alcohol Beverage Control Commissioner from persons or organizations licensed under authority of article seven, chapter sixty of this code shall be paid into a revolving fund account in the State Treasury, designated the Drunk Driving Prevention Fund, to be administered by the Commission on Drunk Driving Prevention, subject to appropriations by the Legislature.
(f) Return to be signed. — A return shall be signed by the taxpayer or the taxpayer’s duly authorized agent, when a paper return is prepared and filed. When the return is filed electronically, the return shall include the digital mark or digital signature, as defined in article three, chapter thirty-nine-a of this code, or the personal identification number of the taxpayer, or the taxpayer’s duly authorized agent, made in accordance with any procedural rule that may be promulgated by the Tax Commissioner.

(g) Accelerated payment. —

(1) Notwithstanding any other provision of this code to the contrary, after June 30, 2014, taxpayers whose average monthly payment of the taxes levied by this article and article fifteen-a of this chapter during the previous calendar year exceeds $100,000, shall remit the tax attributable to the first fifteen days of June each year by June 20.

(2) For purposes of complying with subdivision (1) of this subsection, the taxpayer shall remit an amount equal to the amount of tax imposed by this article and article fifteen-a of this chapter on actual taxable sales of tangible personal property and custom software and sales of taxable services during the first fifteen days of June or, at the taxpayer’s election, the taxpayer may remit an amount equal to fifty percent of the taxpayer’s liability for tax under this article on taxable sales of tangible personal property and custom software and sales of taxable services made during the preceding month of May.

(3) For a business which has not been in existence for a full calendar year, the total tax due from the business during the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year; and if that amount exceeds $100,000, the tax attributable to the first fifteen days of June each year shall be remitted by June 20 as provided in subdivision (2) of this subsection.
(4) When a taxpayer required to make an advanced payment of tax under subdivision (1) of this subsection makes out its return for the month of June, which is due by July 20, the taxpayer may claim as a credit against liability under this article for tax on taxable transactions during the month of June the amount of the advanced payment of tax made under subdivision (1) of this subsection.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-74. Filing of employer’s withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employer.

(a) General. — Every employer required to deduct and withhold tax under this article shall, for each calendar quarter, on or before the last day of the month following the close of the calendar quarter, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld. Where the average quarterly amount deducted and withheld by any employer is less than $150 and the aggregate for the calendar year can reasonably be expected to be less than $600, the Tax Commissioner may by rule permit an employer to file an annual return and pay over to the Tax Commissioner the taxes deducted and withheld on or before the last day of the month following the close of the calendar year. The Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amounts established by this subsection. The Tax Commissioner may, if he or she determines necessary for the protection of the revenues, require any employer to make the return and pay to him or her the tax deducted and withheld at any time or from time to time. Notwithstanding the provisions of this subsection, after December 31, 2008, every employer required to deduct and withhold tax under this article shall file a withholding return as
prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld, in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code.

(b) Monthly returns and payments of withheld tax after December 31, 2000. — Notwithstanding the provisions of subsection (a) of this section, after December 31, 2000, every employer required to deduct and withhold tax under this article shall, for each of the first eleven months of the calendar year, by the twentieth day of the succeeding month, and for the last calendar month of the year, by the last day of the succeeding month, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld, if the withheld taxes aggregate $250 or more for the month, except any employer with respect to whom the Tax Commissioner may have by rule provided otherwise in accordance with the provisions of subsection (a) of this section. Notwithstanding the provisions of this subsection, after December 31, 2008, every employer required to deduct and withhold tax under this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld. The due dates for returns and payments shall be established by the Tax Commissioner to match as closely as practicable the due dates in effect for federal income tax purposes, in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code.

(c) Annual returns and payments of withheld tax of certain domestic and household employees. — Employers of domestic and household employees whose withholdings of federal income tax are annually paid and reported by the employer pursuant to the filing of Schedule H of federal form 1040, 1040A, 1040NR,
1040NR-EZ, 1040SS or 1041 may, on or before January 31 next succeeding the end of the calendar year for which withholdings are deducted and withheld, file an annual withholding return with the Tax Commissioner and annually remit to the Tax Commissioner West Virginia personal income taxes deducted and withheld for the employees. The Tax Commissioner may promulgate legislative or other rules pursuant to article three, chapter twenty-nine-a of this code for implementation of this subsection. Notwithstanding the provisions of this subsection, after December 31, 2008, every employer required to deduct and withhold tax under this article shall file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes required to be deducted and withheld. The due dates for annual returns and payments shall be established by the Tax Commissioner to match as closely as practicable the due dates in effect for federal income tax purposes in accordance with the procedures established by the Internal Revenue Service pursuant to Section 3402 of the Internal Revenue Code.

(d) Deposit in trust for Tax Commissioner. — Whenever any employer fails to collect, truthfully account for or pay over the tax, or to make returns of the tax as required in this section, the Tax Commissioner may serve a notice requiring the employer to collect the taxes which become collectible after service of the notice, to deposit the taxes in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to keep the amount of the tax in the separate account until payment over to the Tax Commissioner. The notice remains in effect until a notice of cancellation is served by the Tax Commissioner.

(e) Accelerated payment. —

(1) Notwithstanding the provisions of subsections (a) and (b) of this section, after June 30, 2014, every employer required to deduct and withhold tax whose average payment per calendar
(2) For purposes of complying with subdivision (1) of this subsection, the employer shall remit an amount equal to the withholding tax due under this article on employee compensation subject to withholding tax payable or paid to employees for the first fifteen days of June or, at the employer’s election, the employer may remit an amount equal to fifty percent of the employer’s liability for withholding tax under this article on compensation payable or paid to employees for the preceding month of May.

(3) For an employer which has not been in business for a full calendar year, the total amount the employer was required to deduct and withhold under subsection (b) of this section for the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year and if that amount exceeds $100,000, the employer shall remit the tax attributable to the first fifteen days of June each year by June 23, as provided in subdivision (2) of this subsection.

(4) When an employer required to make an advanced payment of withholding tax under subdivision (1) of this subsection makes out its return for the month of June, which is due by July 20, that employer may claim as a credit against its liability under this article for tax on employee compensation paid or payable for employee services rendered during the month of June the amount of the advanced payment of tax made under subdivision (1) of this subsection.

(f) The amendments to this section enacted in the year 2006 are effective for tax years beginning after December 31, 2005.

(g) An annual reconciliation of West Virginia personal income tax withheld shall be submitted by the employer by
February 28 following the close of the calendar year, together with Tax Division copies of all withholding tax statements for that preceding calendar year. The reconciliation shall be accompanied by a list of the amounts of income withheld for each employee in such form as the Tax Commissioner prescribes and shall be filed separately from the employer’s monthly or quarterly return.

(h) Any employer required to file a withholding return for two hundred fifty or more employees shall file its return using electronic filing as defined in section fifty-four of this article:

Provided, That for any tax period beginning after December 31, 2010, any employer with fifty or more employees shall file its return using electronic filing as defined in section fifty-four of this article. An employer that is required to file electronically but does not do so is subject to a penalty in the amount of $25 per employee for whom the return was not filed electronically, unless the employer shows that the failure is due to a technical inability to comply.

AN ACT to amend and reenact §11-16-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-16-17a; and to amend and reenact §11-16-20 and §11-16-21 of said code, all relating to the regulation of
nonintoxicating beer brewers and distributors, agreements, networks, products, brands and extensions of a line of brands; permitting the commissioner to investigate, review and approve or deny franchise agreements, labels, brands and line extensions; providing hearings; extending certain dates; establishing nonintoxicating beer, resident brewers, distributors, franchise distributor networks and line extensions standards; defining terms; providing sanctions; and authorizing rule making.

Be it enacted by the Legislature of West Virginia:

That §11-16-3 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 §11-16-17a; and that §11-16-20 and §11-16-21 of said code be amended and reenacted, all to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

1 For the purpose of this article, except where the context clearly requires differently:

2 (1) “Brand” means a nonintoxicating beer product manufactured, brewed, mixed, concocted, blended, bottled or otherwise produced, or imported or transhipped by a brewer or manufacturer, the labels of which have been registered and approved by the commissioner that is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid franchise agreement or a valid amendment thereto.

3 (2) “Brewer” or “manufacturer” means any person manufacturing, otherwise producing or importing or transshipping nonintoxicating beer or nonintoxicating craft beer for sale at wholesale to any licensed distributor. Brewer or manufacturer may be used interchangeably throughout this
article. A brewer may obtain only one brewer’s license for its
nonintoxicating beer or nonintoxicating craft beer.

(3) "Brewpub" means a place of manufacture of
nonintoxicating beer owned by a resident brewer, subject to
federal and state regulations and guidelines, a portion of which
premises are designated for retail sales of nonintoxicating beer
or nonintoxicating craft beer by the resident brewer owning the
brewpub.

(4) “Class A retail license” means a retail license permitting
the retail sale of liquor at a freestanding liquor retail outlet
licensed pursuant to chapter sixty of this code.

(5) “Commissioner” means the West Virginia Alcohol
Beverage Control Commissioner.

(6) “Distributor” means and includes any person jobbing or
distributing nonintoxicating beer or nonintoxicating craft beer to
retailers at wholesale and whose warehouse and chief place of
business shall be within this state. For purposes of a distributor
only, the term “person” means and includes an individual, firm,
trust, partnership, limited partnership, limited liability company,
association or corporation. Any trust licensed as a distributor or
any trust that is an owner of a distributor licensee, and the trustee
or other persons in active control of the activities of the trust
relating to the distributor license, is liable for acts of the trust or
its beneficiaries relating to the distributor license that are
unlawful acts or violations of article eleven of this chapter
notwithstanding the liability of trustees in article ten, chapter
forty-four-d of this code.

(7) “Franchise agreement” means the written agreement
between a brewer and a distributor that is identical as to terms
and conditions between the brewer and all its distributors, which
agreement has been approved by the commissioner. The
franchise agreement binds the parties so that a distributor, appointed by a brewer, may distribute all of the brewer’s nonintoxicating beer products, brands or family of brands imported and offered for sale in West Virginia, including, but not limited to, existing brands, line extensions and new brands all in the brewer’s assigned territory for the distributor. All brands and line extensions being imported or offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a written amendment to the franchise agreement. A franchise agreement may be amended by mutual written agreement of the parties as approved by the commissioner with identical terms and conditions for a brewer and all of its distributors. Any approved amendment to the franchise agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually agree in writing to cancel a franchise agreement. A distributor terminated by a brewer as provided in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer may appoint a successor distributor who accedes to all the rights of the cancelled or terminated distributor.

(8) “Franchise distributor network” means the distributors who have entered into a binding written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating beer products, brands and line extensions in an assigned territory for a brewer. A brewer may only have one franchise distributor network: Provided, That a brewer that has acquired the manufacturing, bottling or other production rights for the sale of nonintoxicating beer at wholesale from a selling brewer as specified in subdivision (2), subsection (a), section twenty-one of this article shall continue to maintain and be bound by the selling brewer’s separate franchise distributor’s network for any of its existing brands, line extensions and new brands.
(9) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, beer, nonintoxicating beer and other alcohol-related products, as defined pursuant to section four, article three-a, chapter sixty of this code.

(10) "Growler" means a glass ceramic or metal container or jug, capable of being securely sealed, utilized by a brewpub for purposes of off-premise sales of nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed premise and not for resale.

(11) "Line extension" means any nonintoxicating beer product that is an extension of brand or family of brands that is labeled, branded, advertised, marketed, promoted or offered for sale with the intent or purpose of being manufactured, imported, associated, contracted, affiliated or otherwise related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent entities, contracted entities, affiliated entities or other related entities. In determining whether a nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited to, the following factors: name or partial name; trade name or partial trade name; logos; copyrights; trademarks or trade design; product codes; advertising promotion or pricing.

(12) "Nonintoxicating beer" means all natural cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale and all other mixtures and preparations produced by the brewing industry, including malt coolers and nonintoxicating craft beers with no caffeine infusion or any additives masking or altering the alcohol effect containing at least one half of one percent alcohol by volume, but not more than nine and six-tenths of alcohol by weight, or twelve percent by volume, whichever is greater. The word "liquor" as used in chapter sixty of this code does not include or embrace...
(13) “Nonintoxicating beer sampling event” means an event approved by the commissioner for a Class A retail Licensee to hold a nonintoxicating beer sampling authorized pursuant to section eleven-a of this article.

(14) “Nonintoxicating beer sampling day” means any days and hours of the week where Class A retail licensees may sell nonintoxicating beer pursuant to subdivision (1), subsection (a), section eighteen of this article, and is approved, in writing, by the commissioner to conduct a nonintoxicating beer sampling event.

(15) “Nonintoxicating craft beer” means any beverage obtained by the natural fermentation of barley, malt, hops or any other similar product or substitute and containing not less than one half of one percent by volume and not more than twelve percent alcohol by volume or nine and six-tenths percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect.

(16) “Original container” means the container used by the brewer at the place of manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale.

(17) “Person” means and includes an individual, firm, partnership, limited partnership, limited liability company, association or corporation.

(18) “Resident brewer” means any brewer or manufacturer of nonintoxicating beer or nonintoxicating craft beer whose principal place of business and manufacture is located in the State of West Virginia and which does not brew or manufacture more than twenty-five thousand barrels of nonintoxicating beer or nonintoxicating craft beer annually, and does not self-
distribute more than ten thousand barrels thereof in the State of West Virginia annually.

(19) "Retailer" means any person selling, serving, or otherwise dispensing nonintoxicating beer and all products regulated by this article, including, but not limited to, malt coolers at his or her established and licensed place of business.

(20) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or the commissioner's designee.

§11-16-17a. Commissioner to investigate, review and approve or deny franchise agreements, labels, brands and line extensions.

(a) The commissioner shall investigate and review:

(1) All franchise agreements and any amendments to a franchise agreement to verify compliance with this article and the promulgated rules.

(2) The registration of all container labels for brands manufactured, imported or sold in West Virginia.

(3) The registration of all brands and line extensions with the commissioner that are the subject of a franchise agreement or an amendment to a franchise agreement.

(4) The appointment of all brands or line extensions to a distributor in a brewer's established franchise distributor network and to that distributor's assigned territory from the brewer.

(5) The appointment of all brands or line extensions acquired by a brewer as either an acquiring brewer, successor brewer and also any successor entities of a brewer, as specified in subdivision (3), subsection (a), section twenty-one of this article,
to the distributor in the selling brewer’s established franchise
distributor network and to that distributor’s assigned territory.

(b) The commissioner’s investigation and review under
subsection (a) of this section may include, but is not limited to:
the brewer, its subsidiaries, parent entities, contracted entities,
affiliated entities, associated entities or any other related entities,
the brewer’s corporate structure, the nature of the relatedness of
various entities, ownership, trade names or partial trade names,
logos, copyrights, trademarks or trade design, product codes,
marketing and advertising, promotion or pricing.

(c) The commissioner may approve or deny any item listed
in subsection (a) of this section as determined by the
commissioner in accordance with this article, the promulgated
rules as the facts and circumstances dictate.

(d) Any brewer adversely affected by a denial as specified in
subdivision (3) or (4), subsection (a) of this section, may request,
in writing, a final written determination from the commissioner.

(e) Upon receipt of final determination as provided in
subsection (d), a brewer may request an administrative hearing
by filing a written petition and as otherwise required per section
twenty-four of this article and the rules promulgated by the
commissioner. Upon filing a written petition, the brewer shall
file a $1,000 hearing deposit, via certified check or money order,
to cover the costs of the hearing. Such certified check or money
order shall be made payable to the commissioner. In any such
hearing held by the request of a brewer, the burden of proof is on
the brewer and the standard of review for the administrative
hearing is by a preponderance of the evidence.

§11-16-20. Unlawful acts of brewers or manufacturers; criminal
penalties.

(a) It is unlawful:
(1) For any brewer or manufacturer, or any other person, firm or corporation engaging in the business of selling nonintoxicating beer, ale or other malt beverage or cooler to a distributor or wholesaler, to discriminate in price, allowance, rebate, refund, commission, discount or service between distributors or wholesalers licensed in West Virginia. "Discriminate," as used in this section, shall mean granting of more favorable prices, allowances, rebates, refunds, commissions, discounts or services to one West Virginia distributor or wholesaler than to another.

(2) For any brewer or manufacturer, or any other person, firm or corporation engaged in the business of selling nonintoxicating beer, ale or other malt beverage or malt cooler to a distributor or wholesaler, to sell or deliver nonintoxicating beer, ale or other malt beverage or malt cooler to any licensed distributor or wholesaler unless and until such brewer, manufacturer, person, firm or corporation, as the case may be, shall have filed the brewery or dock price of such beer, ale or other malt beverage or malt cooler, by brands and container sizes, with the commissioner. The pricing submitted to the commissioner shall also be submitted contemporaneously to the licensed distributor or wholesaler. No price schedule shall be put into effect until ninety days after receipt of same by the commissioner and shall be submitted on or before the following quarterly dates of January 1, April 1, July 1 and October 1 of the calendar year to be effective: Provided, That any price shall remain in effect not less than ninety days.

(3) For any brewer or manufacturer, resident brewer or any other person, firm or corporation engaged in the business of selling nonintoxicating beer, ale or other malt beverage or malt cooler to a distributor or wholesaler to sell, offer for sale or transport to West Virginia any nonintoxicating beer, ale or other malt beverage or malt cooler unless it has first registered its
labels and assigned to the appropriate distributor per an equitable franchise agreement, all as approved by the commissioner.

(4) For any brewer or manufacturer, or any other person, firm or corporation engaged in the business of selling nonintoxicating beer, ale or other malt beverage or malt cooler to provide, furnish, transport or sell its nonintoxicating beer products, brands and line extensions to any person or distributor other than the appointed distributor per the franchise agreement and established in the franchise distributor network in the territory assigned to that appointed distributor.

(5) For any brewer or manufacturer, or any other person, firm or corporation engaged in the business of selling nonintoxicating beer, ale or other malt beverage or malt cooler to provide, furnish, transport or sell its nonintoxicating beer products, brands and line extensions that have been denied by the commissioner.

(6) For any resident brewer that chooses to utilize a franchise agreement and a franchise distributor network, either in addition to or in conjunction with its limited quantity of nonintoxicating beer for self-distribution, to violate this section and the resident brewer is subject to the sanctions in subsections (b) and (c) of this section.

(b) The violation of any provision of this section by any brewer or manufacturer shall constitute grounds for the forfeiture of the bond furnished by such brewer or manufacturer in accordance with the provisions of section twelve of this article.

(c) The violation of this section by any brewer or manufacturer is grounds for sanctions as determined by the commissioner in accordance with sections twenty-three and twenty-four of this article and the rules promulgated by the commissioner.
(d) Any resident brewer that chooses to utilize a franchise agreement and a franchise distributor network, either in addition to or in conjunction with its limited quantity of nonintoxicating beer for self-distribution, shall be treated as a brewer under this article and the applicable promulgated rules.

§11-16-21. Requirements as to franchise agreements between brewers and distributors; transfer of franchise by distributor; franchise distributor network; notice thereof to brewer; arbitration of disputes as to such transfer; violations and penalties; limitation of section.

(a) On and after July 1, 1971, it shall be unlawful for any brewer to transfer or deliver to a distributor any nonintoxicating beer, ale or other malt beverage or malt cooler without first having entered into an equitable franchise agreement with such distributor, which franchise agreement and any amendments to that agreement shall be in writing, shall be identical as to terms and conditions with all other franchise agreements and any amendments between such brewer and its other distributors in this state in its approved franchise distributor network, all as approved by the commissioner and which shall contain a provision in substance or effect as follows:

(1) The brewer recognizes that the distributor is free to manage his or her business in the manner the distributor deems best and that this prerogative vests in the distributor, subject to the provisions of this article, the exclusive right: (A) To establish his or her selling prices; (B) to have the distribution rights to the brands and line extensions of nonintoxicating beer products that are bound by franchise agreements specifying a distributor’s assigned territory and that are assigned to a franchise distributor network, and, further, that the distributor may determine which brands and line extensions of nonintoxicating beer products he or she wishes to handle; and (C) to determine the efforts and
resources which the distributor will exert to develop and promote
the sale of the brewer’s nonintoxicating beer products handled
by the distributor. However, since the brewer’s nonintoxicating
beer products, brands and line extensions shall only be handled
by the distributor with a franchise agreement for a certain
territory in West Virginia as a part of the brewer’s overall
franchise distributor network in West Virginia and will not be
sold by other distributors in the territory, the brewer is dependent
upon the appointed distributor alone for the sale of such products
in the assigned territory. Consequently, the brewer expects that
the distributor will price competitively the nonintoxicating beer
products handled by the distributor, devote reasonable effort and
resources to the sale of such products and maintain a satisfactory
sales level.

(2) The franchise agreement binds the parties so that a
distributor, appointed by a brewer, may distribute all of the
brewer’s nonintoxicating beer products, brands or family of
brands imported and offered for sale in West Virginia, including,
but not limited to: existing brands, line extensions and new
brands in the brewer’s assigned territory for the distributor. All
brands and line extensions being imported or offered for sale in
West Virginia must be listed by the brewer in the franchise
agreement or a written amendment to the franchise agreement.
A franchise agreement may be amended by mutual written
agreement of the parties as approved by the commissioner with
identical terms and conditions for a brewer and all of its
distributors. Any approved amendment to the franchise
agreement becomes a part of the franchise agreement.

(3) Whenever the manufacturing, bottling or other
production rights for the sale of nonintoxicating beer at
wholesale of any brewer is acquired by another brewer, the
franchised distributor and franchise distributor network of the
selling brewer shall be entitled to continue distributing the
selling brewer’s nonintoxicating beer products as authorized in
the franchised distributor's existing franchise agreement and the acquiring brewer shall market all the selling brewer's nonintoxicating beer products through said franchised distributor and franchise distributor network as though the acquiring brewer had made the franchise agreement and the acquiring brewer may terminate said franchise agreement only in accordance with subdivision (2), subsection (b) of this section: Provided, That the acquiring brewer may distribute any of its other nonintoxicating beer products through its duly authorized franchises and franchise distributor network in accordance with all other provisions of this section. Further, this subdivision shall apply to the brewer, successor brewers and also any successor entities of a brewer who shall be bound by the existing franchise agreement and the franchise distributor network, unless all the parties mutually agree, in writing, to change or cancel the existing franchise agreement and franchise distributor network or unless the brewer terminates a distributor as provided in this article and the promulgated rules.

(b) It shall also be unlawful:

(1) For any brewer, resident brewer or distributor, or any officer, agent or representative of any brewer, resident brewer or distributor, to coerce or persuade or attempt to coerce or persuade any person licensed to sell, distribute or job nonintoxicating beer, ale or other malt beverage or malt cooler at wholesale or retail, to enter into any contracts or agreements, whether written or oral, or to take any other action which will violate or tend to violate any provision of this article or any of the rules, regulations, standards, requirements or orders of the commissioner promulgated as provided in this section;

(2) For any brewer, resident brewer or distributor, or any officer, agent or representative of any brewer, resident brewer or distributor, to cancel, terminate or rescind without due regard for the equities of such brewer, resident brewer or distributor and
without just cause, any franchise agreement, whether oral or written, and in the case of an oral franchise agreement, whether the same was entered into on or before June 11, 1971, and in the case of a franchise agreement in writing, whether the same was entered into on, before or subsequent to July 1, 1971. The cancellation, termination or rescission of any such franchise agreement shall not become effective for at least ninety days after written notice of such cancellation, termination or rescission has been served on the affected party and the Commissioner by certified mail, return receipt requested: Provided, That said ninety-day period and said notice of cancellation, termination or rescission shall not apply if such cancellation, termination or rescission is agreed to in writing by both the brewer and the distributor involved.

(c) In the event a distributor desires to sell or transfer his or her franchise and assigned territory in the brewer or resident brewer’s franchise distributor network, such distributor shall give to the brewer, or resident brewer at least sixty days’ notice in writing of such impending sale or transfer and the identity of the person, firm or corporation to whom such sale or transfer is to be made and such other information as the brewer or resident brewer may reasonably request. Such notice shall be made upon forms and contain such additional information as the Commissioner by rule or regulation shall prescribe. A copy of such notice shall be forwarded to the commissioner. The brewer or resident brewer shall be given sixty days to approve or disapprove of such sale or transfer. If the brewer or resident brewer neither approves nor disapproves thereof within sixty days of the date of receipt of such notice, the sale or transfer of such franchise shall be deemed to be approved by such brewer or resident brewer. In the event the brewer or resident brewer shall disapprove of the sale or transfer to the prospective franchisee, transferee or purchaser, such brewer or resident brewer shall give notice to the distributor of that fact in writing, setting forth the reason or reasons for such disapproval. The
approval shall not be unreasonably withheld by the brewer or resident brewer. The fact that the prospective franchisee, transferee or purchaser has not had prior experience in the nonintoxicating beer business or beer business shall not be deemed sufficient reason in and of itself for a valid disapproval of the proposed sale or transfer, but may be considered in conjunction with other adverse factors in supporting the position of the brewer or resident brewer. Nor may the brewer or resident brewer impose requirements upon the prospective franchisee, transferee or purchaser which are more stringent or restrictive than those currently demanded of or imposed upon the brewer or resident brewers or other distributors in the State of West Virginia. A copy of such notice of disapproval shall likewise be forwarded to the commissioner and to the prospective franchisee, transferee or purchaser. In the event the issue be not resolved within twenty days from the date of such disapproval, either the brewer, resident brewer, distributor or prospective franchisee, transferee or purchaser shall notify the other parties of his or her demand for arbitration and shall likewise notify the commissioner thereof. A dispute or disagreement shall thereupon be submitted to arbitration in the county in which the distributor's principal place of business is located by a board of three arbitrators, which request for arbitration shall name one arbitrator. The party receiving such notice shall within ten days thereafter by notice to the party demanding arbitration name the second arbitrator or, failing to do so, the second arbitrator shall be appointed by the chief judge of the circuit court of the county in which the distributor's principal place of business is located on request of the party requesting arbitration in the first instance. The two arbitrators so appointed shall name the third or, failing to do so within ten days after appointment of the second arbitrator, the third arbitrator may be appointed by said chief judge upon request of either party. The arbitrators so appointed shall promptly hear and determine and the questions submitted pursuant to the procedures established by the American
Arbitration Association and shall render their decision with all reasonable speed and dispatch but in no event later than twenty days after the conclusion of evidence. Said decision shall include findings of fact and conclusions of law and shall be based upon the justice and equity of the matter. Each party shall be given notice of such decision. If the decision of the arbitrators be in favor of or in approval of the proposed sale or transfer, the brewer or resident brewer shall forthwith agree to the same and shall immediately transfer the franchise to the proposed franchisee, transferee or purchaser unless notice of intent to appeal such decision is given the arbitrators and all other parties within ten days of notification of such decision. If any such party deems himself or herself aggrieved thereby, such party shall have a right to bring an appropriate action in circuit court. Any and all notices given pursuant to this subsection shall be given to all parties by certified or registered mail, return receipt requested.

(d) The violation of any provision of this section by any brewer or resident brewer shall constitute grounds for the forfeiture of the bond furnished by such brewer or resident brewer in accordance with the provisions of section twelve of this article and shall also constitute grounds for sanctions in accordance with sections twenty-three and twenty-four of this article. Moreover, any circuit court of the county in which a distributor’s principal place of business is located shall have the jurisdiction and power to enjoin the cancellation, termination or rescission of any franchise agreement between a brewer or resident brewer and such distributor and, in granting an injunction to a distributor, the court shall provide that the brewer or resident brewer so enjoined shall not supply the customers or territory of the distributor while the injunction is in effect.
CHAPTER 173  

(H. B. 4159 - By Delegates Mr. Speaker (Mr. Miley) and Armstead)  
[By Request of the Executive]  

[Passed March 5, 2014; in effect from its passage.]  
[Approved by the Governor on March 20, 2014.]  

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal adjusted gross income and certain other terms used in the West Virginia Personal Income Tax Act; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.


(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2012, but prior to January 1, 2014, shall be given effect in determining the taxes imposed by this article to the same extent those changes are
allowed for federal income tax purposes, whether the changes
are retroactive or prospective, but no amendment to the laws of
the United States made on or after January 1, 2014, may be given
any effect.

(b) Medical savings accounts. — The term "taxable trust"
does not include a medical savings account established pursuant
to section twenty, article fifteen, chapter thirty-three of this code
or section fifteen, article sixteen of that chapter. Employer
contributions to a medical savings account established pursuant
to those sections are not wages for purposes of withholding
under section seventy-one of this article.

(c) Surtax. — The term "surtax" means the twenty percent
additional tax imposed on taxable withdrawals from a medical
savings account under section twenty, article fifteen, chapter
thirty-three of this code and the twenty percent additional tax
imposed on taxable withdrawals from a medical savings account
under section fifteen, article sixteen of that chapter which are
collected by the Tax Commissioner as tax collected under this
article.

(d) Effective date. — The amendments to this section
enacted in the year 2014 are retroactive to the extent allowable
under federal income tax law. With respect to taxable years that
began prior to January 1, 2015, the law in effect for each of those
years shall be fully preserved as to that year, except as provided
in this section.

(e) For purposes of the refundable credit allowed to a low
income senior citizen for property tax paid on his or her
homestead in this state, the term "laws of the United States" as
used in subsection (a) of this section means and includes the
term "low income" as defined in subsection (b), section
twenty-one of this article and as reflected in the poverty
guidelines updated periodically in the federal register by the U.S.
AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of "federal adjusted gross income" and certain other terms used in the West Virginia Corporation Net Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-24-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.


(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of
1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2012, but prior to January 1, 2014, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2014, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year 2014 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2015, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.
CHAPTER 175

(S. B. 456 - By Senator Stollings)

[Passed March 6, 2014; in effect from passage.]
[Approved by the Governor on March 19, 2014.]

AN ACT to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended, relating generally to health care provider taxes; modifying the expiration date for tax rate on eligible acute care hospitals; changing the tax rate on eligible acute care hospitals; and providing for disbursement of any funds remaining in the Eligible Acute Care Provider Enhancement Account.

Be it enacted by the Legislature of West Virginia:

That §11-27-38 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-38. Contingent increase of tax rate on certain eligible acute care hospitals.

1. (a) In addition to the rate of the tax imposed by sections nine and fifteen of this article on providers of inpatient and outpatient hospital services, there is imposed on certain eligible acute care hospitals an additional tax of sixty-two one hundredths of one percent on the gross receipts received or receivable by eligible acute care hospitals that provide inpatient or outpatient hospital services in this state through a Medicaid upper payment limit program.
(b) For purposes of this section, the term “eligible acute care hospital” means any inpatient or outpatient hospital conducting business in this state that is not:

1. A state-owned or -designated facility;
2. A nonstate, but government-owned facility such as a county or city hospital;
3. A critical access hospital, designated as a critical access hospital after meeting all federal eligibility criteria;
4. A licensed free-standing psychiatric or medical rehabilitation hospital; or
5. A licensed long-term acute care hospital.

(c) The taxes imposed by this section may not be imposed or collected until all of the following have occurred:

1. A state plan amendment is developed by the Bureau of Medical Services, as authorized by the Secretary of the Department of Health and Human Resources;
2. The state plan amendment is reviewed by the Medical Fund Services Advisory Council;
3. A comment period of not less than thirty days for public comment on the state plan amendment shall have passed; and
4. The state plan amendment is approved by the Centers for Medicare and Medicaid Services.

(d) The state plan amendment shall include all of the following:

1. The provisions of the proposed upper payment limit program or programs;
(2) A state maintenance of effort to maintain adequate Medicaid funding; and

(3) A provision that any other state Medicaid program will not negatively impact the hospital upper payment limit payments. The taxes imposed and collected may be imposed and collected beginning on the earliest date permissible under applicable federal law under the upper payment limit program, as determined by the secretary.

(e) There is continued a special revenue account in the State Treasury, designated the Medicaid State Share Fund. The amount of taxes collected under this section, including any interest, additions to tax and penalties collected under article ten of this chapter, less the amount of allowable refunds, the amount of any interest payable with respect to such refunds and costs of administration and collection, shall be deposited into the Special Revenue Fund and may not revert to general revenue. The Tax Commissioner shall establish and maintain a separate account and accounting for the funds collected under this section in an account to be designated as the Eligible Acute Care Provider Enhancement Account. The amounts collected shall be deposited, within fifteen days after receipt by the Tax Commissioner, into the Eligible Acute Care Provider Enhancement Account. Disbursements from the Eligible Acute Care Provider Enhancement Account within the Medicaid State Share Fund may only be used as set forth in this section.

(f) The imposition and collection of taxes imposed by this section is suspended immediately upon the occurrence of any of the following:

(1) The effective date of any action by Congress that would disqualify the taxes imposed by this section from counting toward state Medicaid funds available to be used to determine the federal financial participation;
(2) The effective date of any decision, enactment or other determination by the Legislature or by any court, officer, department, agency of office of state or federal government that has the effect of disqualifying the tax from counting toward state Medicaid funds available to be used to determine federal financial participation for Medicaid matching funds, or creating for any reason a failure of the state to use the assessment of the Medicaid program as described in this section; and

(3) The effective date of an appropriation for any state fiscal year for hospital payments under the state Medicaid program that is less than the amount appropriate for state fiscal year ending June 30, 2011. Fifty percent of any funds remaining in the Eligible Acute Care Provider Enhancement Account as of June 30, 2014, shall be transferred to the West Virginia Medical Services Fund. This transfer shall occur no later than September 30, 2014. These funds shall be used during state fiscal year 2015 at the discretion of the Bureau of Medical Services. The remaining fifty percent of any funds in the Eligible Acute Care Provider Enhancement Account as of June 30, 2014, shall remain in the Eligible Acute Care Provider Enhancement Account and shall be used in state fiscal year 2015. If the program expires on June 30, 2015, as set forth in subsection (h) of this section, fifty percent of any funds remaining as of June 30, 2016, shall be transferred on that date to the West Virginia Medical Services Fund. This transfer shall occur only after state fiscal year 2015 fourth quarter tax collections and program payments. The remaining fifty percent of the funds shall be distributed to the eligible acute care providers no later than June 30, 2016. The distribution of funds to the eligible acute care providers shall be made in the same proportion as the taxes paid by the eligible acute care providers into the Eligible Acute Care Provider Enhancement Fund during state fiscal year 2015.

(g) The provisions of this section are retroactive and become effective on the first day of the quarter in which the state plan amendment is submitted.
102 (h) The tax imposed by this section expires on and after June 30, 2015, unless otherwise extended by the Legislature.

CHAPTER 176

(Com. Sub. for H. B. 4237 - By Delegates Lawrence, Barrett, Guthrie, Skinner, Perdue, Campbell, Marshall, Poore, Fleischauer, Staggers and A. Evans)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend and reenact §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7 and §16-9A-8 of the Code of West Virginia, 1931, as amended, all relating to restrictions placed on tobacco products and tobacco-derived products containing nicotine; defining terms; defining vapor products and alternative nicotine products as tobacco-derived products; creating exclusions; limiting the use of and sale of tobacco-derived products to persons under the age of eighteen in the same manner as tobacco; prohibiting the sale or furnishing of tobacco and tobacco-derived products to individuals under eighteen years of age; prohibiting the use and possession of tobacco or tobacco-derived products by an individual under eighteen years of age; allowing employers to dismiss an employee for cause for the knowing or intentional sale or furnishing of tobacco or tobacco-derived to someone under the age of eighteen; allowing for the conduct of unannounced inspections to ensure compliance with sales restrictions; restricting the use of tobacco and tobacco-derived products on school grounds; restricting the sale of tobacco and tobacco-derived products in vending machines; creating misdemeanor offenses and criminal penalties relating to tobacco-derived products that are consistent with tobacco products; creating a defense in certain circumstances; and authorizing continued rule-making authority.
Be it enacted by the Legislature of West Virginia:

That §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7 and §16-9A-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-2. Definitions; sale or gift of cigarette, cigarette paper, pipe, cigar, snuff, chewing tobacco, pipe tobacco, roll-your-own tobacco, tobacco products, tobacco-derived and alternative nicotine product or vapor products to persons under eighteen; penalties for first and subsequent offense; consideration of prohibited act as grounds for dismissal; impact on eligibility for unemployment benefits.

(a) For purposes of this article, the term:

(1) “Tobacco product” and “tobacco-derived product” means any product, containing, made or derived from tobacco, or containing nicotine derived from tobacco, that is intended for human consumption, whether smoked, breathed, chewed, absorbed, dissolved, inhaled, vaporized, snorted, sniffed or ingested by any other means, including but not limited to cigarettes, cigars, cigarillos, little cigars, pipe tobacco, snuff, snus, chewing tobacco or other common tobacco-containing products. A “tobacco-derived product” includes electronic cigarettes or similar devices, alternative nicotine products and vapor products. “Tobacco product” or “tobacco-derived product” does not include any product that is regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.

(2) “Alternative nicotine product” means any non-combustible product containing nicotine that is intended for
human consumption, whether chewed, absorbed, dissolved or ingested by any other means. "Alternative nicotine product" does not include any tobacco product, vapor product or product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.

(3) "Vapor product" means any non-combustible product containing nicotine that employs a heating element, power source, electronic circuit or other electronic, chemical or mechanical means, regardless of shape and size, that can be used to produce vapor from nicotine in a solution or other form. "Vapor product" includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device, and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device. "Vapor product" does not include any product that is regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.

(b) No person, firm, corporation or business entity may sell, give or furnish, or cause to be sold, given or furnished, to any person under the age of eighteen years:

(1) Any pipe, cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco or tobacco product;

(2) Any cigar, cigarette, snuff, chewing tobacco or tobacco product, in any form; or

(3) Any tobacco-derived product, alternative nicotine product or vapor product.
(c) Any firm or corporation that violates any of the provisions of subsection (b) of this section and any individual who violates any of the provisions of subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined $50 for the first offense. Upon any subsequent violation at the same location or operating unit, the firm, corporation or individual shall be fined as follows: At least $250 but not more than $500 for the second offense, if it occurs within two years of the first conviction; at least $500 but not more than $750 for the third offense, if it occurs within two years of the first conviction; and at least $1,000 but not more than $5,000 for any subsequent offenses, if the subsequent offense occurs within five years of the first conviction.

(d) Any individual who knowingly and intentionally sells, gives or furnishes or causes to be sold, given or furnished to any person under the age of eighteen years any cigar, cigarette, snuff, chewing tobacco, tobacco product or tobacco-derived product, in any form, is guilty of a misdemeanor and, upon conviction thereof, for the first offense shall be fined not more than $100; upon conviction thereof for a second or subsequent offense, is guilty of a misdemeanor and shall be fined not less than $100 nor more than $500.

(e) Any employer who discovers that his or her employee has sold or furnished tobacco products or tobacco-derived products to minors may dismiss such employee for cause. Any such discharge shall be considered as “gross misconduct” for the purposes of determining the discharged employee’s eligibility for unemployment benefits in accordance with the provisions of section three, article six, chapter twenty-one-a of this code, if the employer has provided the employee with prior written notice in the workplace that such act or acts may result in their termination from employment.
§16-9A-3. Use or possession of tobacco or tobacco products, alternative nicotine products or vapor products by persons under the age of eighteen years; penalties.

No person under the age of eighteen years shall have on or about his or her person or premises or use any cigarette, or cigarette paper or any other paper prepared, manufactured or made for the purpose of smoking any tobacco products, in any form; any pipe, snuff, chewing tobacco, tobacco product or tobacco-derived product: Provided, That minors participating in the inspection of locations where tobacco products or tobacco-derived products, are sold or distributed pursuant to section seven of this article is not considered to violate the provisions of this section. Any person violating the provisions of this section shall for the first violation be fined $50 and be required to serve eight hours of community service; for a second violation, the person shall be fined $100 and be required to serve sixteen hours of community service; and for a third and each subsequent violation, the person shall be fined $200 and be required to serve twenty-four hours of community service. Notwithstanding the provisions of section two, article five, chapter forty-nine, the magistrate court has concurrent jurisdiction.

§16-9A-4. Use of tobacco, tobacco products, alternative nicotine products or vapor products in certain areas of certain public schools prohibited; penalty.

Every person who shall smoke a cigarette or cigarettes, pipe, cigar or other implement, of any type or nature, designed, used or employed for smoking any tobacco or tobacco product; or who shall use any tobacco product or tobacco-derived product in any building or part thereof used for instructional purposes, in any school of this state, as defined in section one, article one, chapter eighteen of this code, or on any lot or grounds actually used for instructional purposes of any such school of this state while such school is used or occupied for school purposes, shall
be guilty of a misdemeanor, and, upon conviction thereof, shall
be punished for each offense by a fine of not less than one nor
more than five dollars: Provided, That this prohibition shall not
be construed to prevent the use of any tobacco or tobacco
product or tobacco-derived product, in any faculty lounge or
staff lounge or faculty office or other area of said public school
not used for instructional purposes: Provided, however, That
students do not have access thereto: Provided further, That
nothing herein contained shall be construed to prevent any
county board of education from promulgating rules and
regulations that further restrict the use of tobacco products or
tobacco-derived products, in any form, from any other part or
section of any public school building under its jurisdiction.

§16-9A-7. Enforcement of youth smoking laws and youth nicotine
restrictions; inspection of retail outlets where
tobacco, tobacco products, vapor products or
alternative nicotine products are sold; use of minors
in inspections; annual reports; penalties; defenses.

(a) The Commissioner of the West Virginia Alcohol
Beverage Control Administration, the Superintendent of the
West Virginia State Police, the sheriffs of the counties of this
state and the chiefs of police of municipalities of this state, may
periodically conduct unannounced inspections at locations where
tobacco products or tobacco-derived products, are sold or
distributed to ensure compliance with the provisions of sections
two and three of this article and in such manner as to conform
with applicable federal and state laws, rules and regulations.
Persons under the age of eighteen years may be enlisted by such
commissioner, superintendent, sheriffs or chiefs of police or
employees or agents thereof to test compliance with these
sections: Provided, That the minors may be used to test
compliance only if the testing is conducted under the direct
supervision of the commissioner, superintendent, sheriffs or
chiefs of police or employees or agents thereof and written
consent of the parent or guardian of such person is first obtained and such minors shall not be in violation of section three of this article and chapter when acting under the direct supervision of the commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof and with the written consent of the parent or guardian. It is unlawful for any person to use persons under the age of eighteen years to test compliance in any manner not set forth herein and the person so using a minor is guilty of a misdemeanor and, upon conviction thereof, shall be fined the same amounts as set forth in section two of this article.

(b) A person charged with a violation of section two or three of this article as the result of an inspection under subsection (a) of this section has a complete defense if, at the time the cigarette, other tobacco product or tobacco-derived product, or cigarette wrapper, was sold, delivered, bartered, furnished or given:

(1) The buyer or recipient falsely evidenced that he or she was eighteen years of age or older;

(2) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be eighteen years of age or older; and

(3) Such person carefully checked a driver’s license or an identification card issued by this state or another state of the United States, a passport or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was eighteen years of age or older.

(c) Any fine collected after a conviction of violating section two of this article shall be paid to the clerk of the court in which the conviction was obtained: Provided, That the clerk of the court upon receiving the fine shall promptly notify the Commissioner of the West Virginia Alcohol Beverage Control
Administer the conviction and the collection of the fine:
Provided, however, That any community service penalty imposed after a conviction of violating section three of this article shall be recorded by the clerk of the court in which the conviction was obtained: Provided further, That the clerk of the court upon being advised that community service obligations have been fulfilled shall promptly notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the conviction and the satisfaction of imposed community service penalty.

(d) The Commissioner of the West Virginia Alcohol Beverage Control Administration or his or her designee shall prepare and submit to the Governor on the last day of September of each year a report of the enforcement and compliance activities undertaken pursuant to this section and the results of the same, with a copy to the Secretary of the West Virginia Department of Health and Human Resources. The report shall be in the form and substance that the Governor shall submit to the applicable state and federal programs.

§16-9A-8. Selling of tobacco products, tobacco-derived products, alternative nicotine products or vapor products in vending machines prohibited except in certain places.

No person or business entity may offer for sale any cigarette, tobacco product or tobacco-derived product, in a vending machine. Any person or business entity which violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined $250: Provided, That an establishment is exempt from this prohibition if individuals under the age of eighteen years are not permitted to be in the establishment or if the establishment is licensed by the alcohol beverage control commissioner as a Class A licensee. The alcohol beverage control commissioner shall promulgate rules pursuant to article three, chapter twenty-nine-a of this code to
12 establish standards for the location and control of the vending
13 machines in Class A licensed establishments for the purpose of
14 restricting access by minors.

CHAPTER 177

(Com. Sub. for H. B. 4184 - By Mr. Speaker (Mr. Miley)
and Delegate Armstead)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2014.]

AN ACT to amend and reenact §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-
2E-7, §5B-2E-7a, §5B-2E-8 and §5B-2E-11 of the Code of West
Virginia, 1931, as amended; and to amend said code by adding
thereto a new section, designated §5B-2E-7b, all relating generally
to the West Virginia Tourism Development Act; providing,
modifying or eliminating certain definitions; removing
requirement for engagement of a consulting firm to review
proposed projects; imposing application filing fee; providing
additional criteria for evaluation of applications; eliminating
limitation on total amount of tourism development expansion
project tax credits for all approved companies each calendar year;
providing increased tax credit amounts for projects located on or
adjacent to state and federal recreational property; establishing tax
credit for qualified professional services destination facilities
under certain circumstances; specifying benefits upon application
and review; providing certain limitations on benefits; authorizing
rulemaking by the Tax Commissioner; providing for recapture;
extending the deadline for project applications; and making
technical corrections.
Be it enacted by the Legislature of West Virginia:

That §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-7, §5B-2E-7a, §5B-2E-8 and §5B-2E-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §5B-2E-7b, all to read as follows:

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

§5B-2E-3. Definitions.

As used in this article, unless the context clearly indicates otherwise:

(1) “Agreement” means a tourism development agreement entered into, pursuant to section six of this article, between the development office and an approved company with respect to a project.

(2) “Approved company” means any eligible company approved by the development office pursuant to section five of this article seeking to undertake a project.

(3) “Approved costs” means:

(a) Included costs:

(i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, delivery persons and material persons in connection with the acquisition, construction, equipping or installation of a project;

(ii) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(iii) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the
acquisition, construction, equipping, or installation of a project which is not paid by the vendor, supplier, delivery person, contractor or otherwise provided;

(iv) All costs of architectural and engineering services, including, but not limited to: Estimates, plans and specifications, preliminary investigations and supervision of construction, installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping or installation of a project;

(v) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping or installation of a project;

(vi) All costs required for the installation of utilities, including, but not limited to: Water, sewer, sewer treatment, gas, electricity, communications and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons; and

(vii) All other costs comparable with those described in this subdivision;

(b) Excluded costs. – The term “approved costs” does not include any portion of the cost required to be paid for the acquisition, construction, equipping or installation of a project that is financed with governmental incentives, grants or bonds or for which the eligible taxpayer elects to qualify for other tax credits, including, but not limited to, those provided by article thirteen-q, chapter eleven of this code. The exclusion of certain costs of a project under this paragraph (b) does not automatically disqualify the remainder of the costs of the project.
(4) "Base tax revenue amount" means the average monthly amount of consumer sales and service tax collected by an approved company, based on the twelve-month period ending immediately prior to the opening of a new tourism development project for business or a tourism development expansion project, as certified by the State Tax Commissioner.

(5) "Development office" means the West Virginia Development Office as provided in article two of this chapter.

(6) "Crafts and products center" means a facility primarily devoted to the display, promotion and sale of West Virginia products and at which a minimum of eighty percent of the sales occurring at the facility are of West Virginia arts, crafts or agricultural products.

(7) "Eligible company" means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture or any other entity operating or intending to operate a project, whether owned or leased, within the state that meets the standards required by the development office. An eligible company may operate or intend to operate directly or indirectly through a lessee.

(8) "Ineligible company" means any West Virginia pari-mutuel racing facility licensed to operate multiple video lottery machines as authorized by article twenty-two-a, chapter twenty-nine of this code or any limited lottery retailer holding a valid license issued under article seven, chapter sixty of this code.

(9) "Entertainment destination center" means a facility containing a minimum of two hundred thousand square feet of building space adjacent or complementary to an existing tourism attraction, an approved project, or a major convention facility and which provides a variety of entertainment and leisure
options that contain at least one major theme restaurant and at least three additional entertainment venues, including, but not limited to, live entertainment, multiplex theaters, large-format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions or other cultural and leisure time activities. Entertainment and food and drink options shall occupy a minimum of sixty percent of total gross area, as defined in the application, available for lease and other retail stores shall occupy no more than forty percent of the total gross area available for lease.

(10) “Final approval” means the action taken by the executive director of the development office qualifying the eligible company to receive the tax credits provided in this article.

(11) “Project” means a tourism development project and/or a tourism development expansion project administered in accordance with the provisions of this article.

(12) “Qualified professional services destination facility” means a facility with a minimum qualified investment, as defined in this article, of not less than $80 million physically located in this state and adjacent or complementary to a historic resort hotel, which primarily furnishes and provides personal or professional services, or both types of services, to individuals who primarily are residents of another state or foreign county.

(13) “State agency” means any state administrative body, agency, department, division, board, commission or institution exercising any function of the state that is not a municipal corporation or political subdivision.

(14) “Tourism attraction” means a cultural or historical site, a recreation or entertainment facility, an area of natural
phenomenon or scenic beauty, a West Virginia crafts and products center, or an entertainment destination center or a qualified professional services destination facility. A project or tourism attraction does not include any of the following:

(A) Lodging facility, unless:

(i) The facility constitutes a portion of a project and represents less than fifty percent of the total approved cost of the project, or the facility is to be located on recreational property owned or leased by the state or federal government and the facility has received prior approval from the appropriate state or federal agency;

(ii) The facility involves the restoration or rehabilitation of a structure that is listed individually in the national register of historic places or is located in a national register historic district and certified by the state historic preservation officer as contributing to the historic significance of the district and the rehabilitation or restoration project has been approved in advance by the state historic preservation officer; or

(iii) The facility involves the construction, reconstruction, restoration, rehabilitation or upgrade of a full-service lodging facility or the reconstruction, restoration, rehabilitation or upgrade of an existing structure into a full-service lodging facility having not less than five hundred guest rooms, with construction, reconstruction, restoration, rehabilitation or upgrade costs exceeding ten million dollars;

(B) A facility that is primarily devoted to the retail sale of goods, other than an entertainment destination center, a West Virginia crafts and products center or a project where the sale of goods is a secondary and subordinate component of the project; and
(C) A recreational facility that does not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the project or existing attraction.

(15) “Tourism development project” means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten years, construction and equipping of a tourism attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, installation of a tourism attraction, including, but not limited to, surveys, installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons, but does not include a project that will be substantially owned, managed or controlled by an eligible company with an existing project located within a ten mile radius, or by a person or persons related by a family relationship, including spouses, parents, children or siblings, to an owner of an eligible company with an existing project located within a ten mile radius.

(16) “Tourism development expansion project” means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten years; the construction and installation of improvements to facilities necessary or desirable for the expansion of an existing tourism attraction including, but not limited to, surveys, installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications and similar facilities; and off-site construction of utility extension to the boundaries of real estate on which the facilities are located, all of which are to be used to improve the
tourism development project tax credit means the tourism development project tax credit allowed by section seven of this article.

(18) “Tourism development expansion project tax credit” means the tourism development expansion project tax credit allowed by section seven-a of this article.

§5B-2E-4. Additional powers and duties of the development office.

The development office has the following powers and duties, in addition to those set forth in this case, necessary to carry out the purposes of this article including, but not limited to:

(1) Make approval of all applications for projects and enter into agreements pertaining to projects with approved companies;

(2) Employ fiscal consultants, attorneys, appraisers and other agents as the executive director of the development office finds necessary or convenient for the preparation and administration of agreements and documents necessary or incidental to any project; and

(3) Impose and collect fees and charges in connection with any transaction.

(4) Impose and collect from the applicant a non-refundable application fee in the amount of $10,000 to be paid to the Development Office when the application is filed.

§5B-2E-5. Project application; evaluation standards; approval of projects.

(a) Each eligible company that seeks to qualify a project for the tourism development project tax credit provided by section
seven of this article, or for the tourism development expansion project tax credit provided by section seven-a of this article, as applicable, must file a written application for approval of the project with the Development Office.

(b) With respect to each eligible company making an application to the Development Office for a tourism development project tax credit or a tourism development expansion project tax credit, the Development Office shall make inquiries and request documentation, including a completed application, from the applicant that shall include: A description and location of the project; capital and other anticipated expenditures for the project and the sources of funding therefor; the anticipated employment and wages to be paid at the project; business plans that indicate the average number of days in a year in which the project will be in operation and open to the public; and the anticipated revenues and expenses generated by the project.

(c) On and after the effective date of this section as amended in 2014, the executive director of the Development Office, within sixty days following receipt of an application or receipt of any additional information requested by the Development Office respecting the application, whichever is later, shall act to grant or not to grant approval of the application, based on the following criteria:

(1) The project will attract at least twenty-five percent of its visitors from outside of this state;

(2) The project will have approved costs in excess of $1,000,000;

(3) The project will have a significant and positive economic impact on the state considering, among other factors, the extent to which the project will compete directly with or complement existing tourism attractions in the state and the amount by which
increased tax revenues from the project will exceed the credit
given to the approved company;

(4) The project will produce sufficient revenues and public
demand to be operating and open to the public for a minimum of
one hundred days per year;

(5) The project will provide additional employment
opportunities in the state;

(6) The quality of the proposed project and how it addresses
economic problems in the area in which the project will be
located;

(7) Whether there is substantial and credible evidence that
the project is likely to be started and completed in a timely
fashion;

(8) Whether the project will, directly or indirectly, improve
the opportunities in the area where the project will be located for
the successful establishment or expansion of other industrial or
commercial businesses;

(9) Whether the project will, directly or indirectly, assist in
the creation of additional employment opportunities in the area
where the project will be located;

(10) Whether the project helps to diversify the local
economy;

(11) Whether the project is consistent with the goals of this
article;

(12) Whether the project is economically and fiscally sound
using recognized business standards of finance and accounting;
and

(13) The ability of the eligible company to carry out the
project.
(d) The Development Office may establish other criteria for consideration when approving the applications.

(e) The decision by the executive director of the Development Office is final.

(f) This section as amended and reenacted in 2014 shall apply to applications under review by the director of the development office prior to the effective date of this section as well as to applications filed on and after the effective date of this section as amended and reenacted in 2014.

§5B-2E-7. Amount of credit allowed for tourism development project; approved projects.

(a) Approved companies are allowed a credit against the West Virginia consumers sales and service tax imposed by article fifteen, chapter eleven of this code and collected by the approved company on sales generated by or arising from the operations of the tourism development project: Provided, That if the consumers sales and service tax collected by the approved company is not solely attributable to sales resulting from the operation of the new tourism development project, the credit shall only be applied against that portion of the consumers sales and service tax collected in excess of the base tax revenue amount. The amount of this credit is determined and applied as provided in this article.

(b) The maximum amount of credit allowable in this article is equal to twenty-five percent of the approved company's approved costs as provided in the agreement: Provided, That, if the tourism development project site is located within the permit area or an adjacent area of a surface mining operation, as these terms are defined in section three, article three, chapter twenty-two of this code, from which all coal has been or will be extracted prior to the commencement of the tourism
development project, or the tourism development project site is located on or adjacent to recreational property owned or leased by the state or federal government and when the project is located on property owned or leased by the state or federal government, the project has received prior approval from the appropriate state or federal agency, the maximum amount of credit allowable is equal to thirty-five percent of the approved company’s approved costs as provided in the agreement.

(c) The amount of credit allowable must be taken over a ten-year period, at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the project is opened to the public, unless the approved company elects to delay the beginning of the ten-year period until the next succeeding taxable year. This election shall be made in the first consumers sales and service tax return filed by the approved company following the date the project is opened to the public. Once made, the election cannot be revoked.

(d) The amount determined under subsection (b) of this section is allowed as a credit against the consumers sales and service tax collected by the approved company on sales from the operation of the tourism development project. The amount determined under said subsection may be used as a credit against taxes required to be remitted on the approved company’s monthly consumers sales and service tax returns that are filed pursuant to section sixteen, article fifteen, chapter eleven of this code. The approved company shall claim the credit by reducing the amount of consumers sales and service tax required to be remitted with its monthly consumers sales and service tax returns by the amount of its aggregate annual credit allowance until such time as the full current year annual credit allowance has been claimed. Once the total credit claimed for the tax year equals the approved company’s aggregate annual credit allowance no further reductions to its monthly consumers sales and service tax returns will be permitted.
(e) If any credit remains after application of subsection (d) of this section, the amount of credit is carried forward to each ensuing tax year until used or until the expiration of the third taxable year subsequent to the end of the initial ten-year credit application period. If any unused credit remains after the thirteenth year, that amount is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

§5B-2E-7a. Amount of credit allowed for tourism development expansion project; approved projects.

(a) Approved companies are allowed a credit against the West Virginia consumers sales and service tax imposed by article fifteen, chapter eleven of this code and collected by the approved company on sales generated by or arising from the operations of the tourism development expansion project: Provided, That the tourism development expansion project tax credit allowed under this section is separate and distinct from any credit allowed for a tourism development project in accordance with the provisions of section seven of this article: Provided, however, That if the consumers sales and service tax collected by the approved company is not solely attributable to sales resulting from the operation of the tourism development expansion project, the credit shall only be applied against that portion of the consumers sales and service tax collected in excess of the base tax revenue amount. The amount of this credit is determined and applied as provided in this article.

(b) The maximum amount of credit allowable in this article is equal to twenty-five percent of the approved company’s approved costs as provided in the agreement: Provided, That, if the tourism development expansion project site is located within the permit area or an adjacent area of a surface mining operation, as these terms are defined in section three, article three, chapter twenty-two of this code, from which all coal has been or will be
extracted prior to the commencement of the tourism
development project, or the tourism development project site is
located on or adjacent to recreational property owned or leased
by the state or federal government and when the project is
located on property owned or leased by the state or federal
government, the project has received prior approval from the
appropriate state or federal agency, the maximum amount of
credit allowable is equal to thirty-five percent of the approved
company’s approved costs as provided in the agreement.

(c) The amount of credit allowable must be taken over a ten-
year period, at the rate of one tenth of the amount thereof per
taxable year, beginning with the taxable year in which the
project is opened to the public, unless the approved company
elects to delay the beginning of the ten-year period until the next
succeeding taxable year. This election shall be made in the first
consumers sales and service tax return filed by the approved
company following the date the project is opened to the public.
Once made, the election cannot be revoked.

(d) The amount determined under subsection (b) of this
section is allowed as a credit against the consumers sales and
service tax collected by the approved company on sales from the
operation of the tourism development expansion project. The
amount determined under said subsection may be used as a
credit against taxes required to be remitted on the approved
company’s monthly consumers sales and service tax returns that
are filed pursuant to section sixteen, article fifteen, chapter
eleven of this code. The approved company shall claim the credit
by reducing the amount of consumers sales and service tax
required to be remitted with its monthly consumers sales and
service tax returns by the amount of its aggregate annual credit
allowance until such time as the full current year annual credit
allowance has been claimed. Once the total credit claimed for the
tax year equals the approved company’s aggregate annual credit
57 allowance no further reductions to its monthly consumers sales
58 and service tax returns will be permitted.
59
60 (e) If any credit remains after application of subsection (d)
61 of this section, the amount of credit is carried forward to each
62 ensuing tax year until used or until the expiration of the third
63 taxable year subsequent to the end of the initial ten-year credit
64 application period. If any unused credit remains after the
65 thirteenth year, that amount is forfeited. No carryback to a prior
66 taxable year is allowed for the amount of any unused portion of
67 any annual credit allowance.

§5B-2E-7b. Credit against taxes.

1 (a) General. – When a qualified professional services
2 destination facility is located at or adjacent to an existing historic
3 resort hotel with at least five hundred rooms and the qualified
4 professional services destination facility eligible for credit under
5 this section is primarily engaged in furnishing services that are
6 not subject to the tax imposed by article fifteen, chapter eleven
7 of this code, then in lieu of the credits that otherwise would be
8 allowable under section seven or seven-a of this article, the
9 eligible company that complies with the requirements of this
10 section may claim the credit provided in this section: Provided,
11 That the maximum amount of credit allowable under this section
12 is equal to twenty-five percent of the eligible company’s
13 qualified investment, as defined in this section.

14 (b) Definitions. – The following words and phrases when
15 used in this section have the meanings given to them in this
16 subsection unless the context in which used clearly indicates that
17 a different meaning was intended by the Legislature.

18 (1) “Agreement” means an agreement entered into under
19 subsection (g) of this section.
20 (2) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

23 (3) "Cost-of-living adjustment" for any calendar year is the percentage, if any, by which the consumer price index for the preceding calendar year exceeds the consumer price index for the calendar year 2015.

27 (4) "Consumer price index" for any calendar year means the average of the federal consumer price index as of the close of the twelve-month period ending on August 31 of that calendar year.

30 (5) "Eligible company" for purposes of this section means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture or any other entity operating a qualified professional services destination facility, whether owned or leased, within the state that: (A) creates at least one hundred twenty-five new jobs in this state within thirty-six months after the date the qualified investment is placed into service or use, and maintains those jobs for the entire ten year life of the tax credit specified in this section, (B) makes available to its full-time employees health insurance coverage and pays at least fifty percent of the premium for the health insurance, (C) generates, within thirty-six months after the date the qualified investment is placed into service or use, not less than $10 million of gross receipts upon which the taxes imposed under article twenty-seven, chapter eleven of this code are paid, and (D) meets the standards, limitations and requirements of this section and of the development office. An eligible company may operate or intend to operate directly or indirectly through a lessee or a contract operator.

49 (6) "Federal consumer price index" means the most recent consumer price index as of August 31 each year for all urban consumers published by the United States Department of Labor.
(7) "Health insurance benefits" means employer-provided coverage for medical expenses of the employee or the employee and his or her family under a group accident or health plan, or employer contributions to an Archer medical savings account, as defined in Section 220 of the Internal Revenue Code of 1986, as amended, or to a health savings account, as defined in Section 223 of the Internal Revenue Code, of the employee when the employer’s contribution to any such account is not less than fifty percent of the maximum amount permitted for the year as employer-provided coverage under Section 220 or 223 of the Internal Revenue Code, whichever section is applicable.

(8) "Historic resort hotel" means a resort hotel registered with the United States Department of the Interior on the effective date of this amendment as a national historic landmark in its National Registry of Historic Places having not fewer than five hundred guest rooms.

(9) "New employee" means a person residing and domiciled in this state hired by the taxpayer to fill a position or a job in this state which previously did not exist in the taxpayer’s business enterprise in this state prior to the date the application was filed under subsection (c) of this section. In no event may the number of new employees exceed the total net increase in the employer’s employment in this state: Provided, That the Tax Commissioner may require that the net increase in the taxpayer’s employment in this state be determined and certified for the taxpayer’s controlled group as defined in article twenty-four of this chapter. In addition, a person is a “new employee” only if the person’s duties are on a regular, full-time and permanent basis:

(A) “Full-time employment” means employment for at least eighty hours per month at a wage not less than the amount specified in subdivision (1), subsection (d) of this section; and

(B) “Permanent employment” does not include employment that is temporary or seasonal and therefore the wages, salaries
and other compensation paid to the temporary or seasonal employees will not be considered for purposes of this section even if the compensation paid to the temporary or seasonal employee equals or exceeds the amount specified in paragraph (A) of this subdivision.

(10) "New job" means a job which did not exist in the business of the taxpayer in this state prior to filing the application for benefits under this section, and which is filled by a new employee.

(11) "Professional services" means only those services provided directly by: a physician licensed to practice in this State, a surgeon licensed to practice in this State, a dentist licensed to practice in this State, a podiatrist licensed to practice in this State, an osteopathic physician licensed to practice in this State, a psychologist licensed to practice in this State, an optometrist licensed to practice in this State, a registered nurse licensed to practice in this State, a physician assistant licensed to practice in this State, a licensed practical nurse licensed to practice in this State, a dental hygienist licensed to practice in this State, a social worker licensed to practice in this State, or any other health care professional licensed to practice in this State;

(12) "Qualified investment" means one-hundred percent of the cost of property purchased or leased for the construction and equipping of a qualified professional services destination facility which is placed in service or use in this State by an eligible company.

(A) The cost of property purchased for a qualified professional services destination facility is determined under the following rules:

(i) Cost does not include the value of property given in trade or exchange for the property purchased for business expansion.
(ii) If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property does not include any insurance proceeds received in compensation for the loss.

(iii) The cost of real property acquired by written lease for a primary term of ten years or longer is one hundred percent of the rent reserved for the primary term of the lease, not to exceed ten years.

(iv) The cost of tangible personal property acquired by written lease for a primary term of not less than four years.

(v) In the case of self-constructed property, the cost thereof is the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

(vi) The cost of property used by the taxpayer out-of-state and then brought into this State, is determined based on the remaining useful life of the property at the time it is placed in service or use in this State, and the cost is the original cost of the property to the taxpayer less straight line depreciation allowable for the tax years or portions thereof the taxpayer used the property outside this State. In the case of leased tangible personal property, cost is based on the period remaining in the primary term of the lease after the property is brought into this State for use in a new or expanded business facility of the taxpayer, and is the rent reserved for the remaining period of the primary term of the lease, not to exceed ten years, or the remaining useful life of the property, determined as aforesaid, whichever is less.

(c) Credit against taxes. – The credit allowed by this section shall be equal to twenty-five percent of the eligible company’s qualified investment in the qualified professional services destination facility and shall be taken and applied as provided in this subsection (c). Notwithstanding any other provision of this
article to the contrary, no taxpayer or group of taxpayers may
gain entitlement to more than $37.5 million total aggregate tax
credit under this section and no taxpayer, or group of taxpayers,
in the aggregate may apply more than $2.5 million of annual
credit in any tax year under this section, either in the form of a
refund or directly against a tax liability or in any combination
thereof. This limitation applies to initial tax credit attributable to
qualified investment in a qualified professional services
destination facility, and to qualified investment in a follow-up
project expansion, so that credit attributable additively and in the
aggregate to both may not be applied to exceed $2.5 million
annual credit in any tax year.

(1) Application of credit. – The amount of credit allowable
under this subsection shall be taken over a ten-year period, at the
rate of one tenth of the amount thereof per taxable year,
beginning with the taxable year in which the eligible company
places the qualified professional services destination facility, or
part thereof, in service or use in this state, unless the eligible
company elected to delay the beginning of the ten-year period
until the next succeeding taxable year. This election shall be
made in the annual income tax return filed under chapter eleven
of this code for the taxable year in which the qualified
professional services destination facility is first placed into
service or use by the taxpayer. Once made, the election may not
be revoked. The annual credit allowance is taken in the manner
prescribed in subdivision (3) of this subsection (c): Provided,
That if any credit remains after the initial ten year credit
application period, the amount of remaining credit is carried
forward to each ensuing tax year until used or until the
expiration of the fifth taxable year subsequent to the end of the
initial ten year credit application period. If any unused credit
remains after expiration of the fifth taxable year subsequent to
the end of the initial ten year credit application period, the
amount thereof is forfeited. No carryback to a prior taxable year
is allowed for the amount of any unused portion of any annual
credit allowance.

(2) Placed in service or use. – For purposes of the credit
allowed by this subsection (c), qualified investment or qualified
investment property is considered placed in service or use in the
earlier of the following taxable years:

(A) The taxable year in which, under the eligible company’s
depreciation practice, the period for depreciation with respect to
the property begins; or

(B) The taxable year in which the property is placed in a
condition or state of readiness and availability for a specifically
assigned function.

(3) Application of annual credit allowance.

(A) In general. – The aggregate annual credit allowance for
the current taxable year is an amount equal to the one-tenth part
allowed under subdivision (1) of this subsection for qualified
investment placed into service or use.

(B) Application of current year annual credit allowance. –
The amount determined under this subsection (c) is allowed as
a credit against one hundred percent of the eligible company’s
state tax liabilities applied as provided in paragraphs (C) and (D)
of this subdivision (3), and in that order:

(C) Corporation net income taxes. – The amount of
allowable tax credit for the year determined under paragraph (A)
of this subdivision (3) shall first be applied to reduce the taxes
imposed by article twenty-four, chapter eleven of this code, for
the taxable year determined before application of allowable
credits against tax.

(D) Personal income taxes. –
(i) If the eligible company is an electing small business corporation, as defined in section 1361 of the United States Internal Revenue Code of 1986, as amended, a partnership, a limited liability company that is treated as a partnership for federal income tax purposes or a sole proprietorship, then any unused credit after application of paragraph (C) of this subdivision (3) is allowed as a credit against the taxes imposed by article twenty-one, chapter eleven of this code on the members, owners, partners or interest holders in the eligible company.

(ii) Electing small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among their members in the same manner as profits and losses are allocated for the taxable year.

(E) No credit is allowed under this subdivision (3) against any employer withholding taxes imposed by article twenty-one, chapter eleven of this code.

(F) The tax credits allowed under articles thirteen-j, thirteen-q, thirteen-s, thirteen-r, thirteen-w, and thirteen-aa of this code may not be applied to offset any tax against which the tax credit allowed under this article is allowed or authorized. No person, entity, company, or eligible company authorized or entitled to any tax credit allowed under this section or any member of the unitary group or any member of the controlled group of which the taxpayer is a member, may gain entitlement to any other economic development tax credit or economic development tax incentive which relates to the investment or activity upon which the credit authorized under this section is based.

(G) (i) In order to effectuate the purposes of this subdivision (3), the Tax Commissioner may propose for promulgation rules, including emergency rules, in accordance with article three, chapter twenty-nine-a of this code.
(ii) The Tax Commissioner may apply any amount of the tax credit otherwise available to a taxpayer under this article, to pay any delinquent West Virginia state tax liability of the taxpayer, and interest and penalties as applicable.

(iii) Any amount of the tax credit otherwise available to a taxpayer under this article may be applied by the applicable administering agency to pay any outstanding obligation to a Workers' Compensation Fund, as defined in article two-c of chapter twenty-three of this code, or any outstanding obligation under the West Virginia Unemployment Compensation Act.

(iv) Any amount of the tax credit otherwise available to a taxpayer under this article, may be applied by the applicable administering agency to pay any delinquent or unpaid assessment, fee, fine, civil penalty or monetary imposition imposed by the West Virginia Division of Environmental Protection or the United States Environmental Protection Agency, or any agency charged with enforcing federal, state or local environmental or hazardous waste regulations.

(H) Unused credit, refundable credit. – If any annual credit remains after application of preceding paragraphs of this subdivision (3), the amount thereof shall be refunded annually to the eligible company, and distributed in accordance with the credit distribution specified in this subdivision (3): Provided, That the amount thereof may not exceed the limitation on annual tax credit or the limitation on total aggregate tax credit specified in this section.

(I) Forfeiture of credit. – If any credit remains after expiration of the fifth taxable year subsequent to the end of the initial ten year credit application period, such credit is forfeited, and may not be used to offset any West Virginia tax liability.

(d) Compensation of employees filling new jobs.
The new jobs and new employee criteria which count toward qualification of a taxpayer as an eligible company for purposes of the tax credit allowed by this section shall be subject to the following limitations and requirements. A job counts toward qualification of a taxpayer as an eligible company if the job is a new job, as defined in this section, held by a new employee, as defined in this section, and the new job:

(A) Pays a median wage of at least $37,000 annually. Beginning January 1, 2015, and on January 1 of each year thereafter, the Tax Commissioner shall prescribe an amount that shall apply in lieu of the $37,000 amount for new jobs filled during that calendar year. This amount is prescribed by increasing the $37,000 figure by the cost-of-living adjustment for that calendar year. If any increase under this subdivision is not a multiple of $50, the increase shall be rounded to the next lowest multiple of $50;

(B) Provides health insurance. The employer may, in addition, offer benefits including child care, retirement and other benefits; and

(C) Is a full-time, permanent position, as those terms are defined in this section.

(D) Jobs that pay less than the statewide average nonfarm payroll wage, as determined annually by the West Virginia Bureau of Employment Programs, or that pay that salary, but do not also provide health benefits in addition to the salary, do not count toward qualification of a taxpayer as an eligible company under this section. Jobs that are less than full-time, permanent positions do not count toward qualification of a taxpayer as an eligible company under this section.

(E) The employer having obtained qualification as an eligible company under this section for the year in which the new job is filled is not required to raise wages of the employees
currently employed in the new jobs upon which the initial qualification as an eligible company under this section was based by reason of the cost-of-living adjustment for new jobs filled in subsequent years provided the employer continues to provide healthcare.

(e) Application and review.

(1) Application. — An eligible company that meets the requirements of this section may apply to the Development Office for entitlement to the tax credit authorized under this section. The application shall be on a form prescribed by the Development Office and shall include all of the following:

(A) The name and address of the applicant;

(B) Documentation that the applicant is a eligible company;

(C) Documentation that the applicant meets the requirements of this section;

(D) Documentation that the applicant does not owe any delinquent taxes or any other amounts to the federal government, this state or any political subdivision of this state;

(E) An affidavit that the applicant has not filed for or publicly announced its intention to file for bankruptcy protection and that the company will not seek bankruptcy protection within the next six calendar months following the date of the application;

(F) A waiver of confidentiality under section five-d, article ten, chapter eleven of this code for information provided in the application; and

(G) Any other information required by the Development Office.
(f) Credit allowable.

(1) Certified multiple year projects.

(A) In general. – A multiple year qualified professional services destination facility project certified by the West Virginia Development Office is eligible for the credit allowable by this article. A project eligible for certification under this section is one where the qualified investment under this article creates at least the required minimum number of new jobs but the qualified investment is placed in service or use over a period of up to three successive tax years: Provided, That the qualified investment is made pursuant to a written business facility development plan of the taxpayer providing for an integrated project for investment at one or more new or expanded business facilities, a copy of which must be attached to the taxpayer’s application for project certification and approved by the West Virginia Development Office, and the qualified investment placed in service or use during the first tax year would not have been made without the expectation of making the qualified investment placed in service or use during the next two succeeding tax years.

(B) Application for certification. – The application for certification of a project under this section shall be filed with and approved by the West Virginia Development Office prior to any credit being claimed or allowed for the project’s qualified investment and new jobs created as a direct result of the qualified investment. This application shall be approved in writing and contain the information as the West Virginia Development Office may require to determine whether the project should be certified as eligible for credit under this article.

(C) Review. – Within thirty days of receipt of a complete application, the Development Office, in conjunction with the Tax Division of the Department of Revenue, shall review the
application and determine if the applicant is an eligible company and that the requirements of this section have been met. Applications not approved within the thirty days specified in this subdivision are hereby deemed denied.

(D) Approval. – The Development Office may approve or deny the application. Upon approval of an application, the Development Office shall notify the applicant in writing and enter into an agreement with the eligible company for benefits under this section.

(2) Certified follow-up project expansions.

(A) An eligible company that intends to undertake a follow-up project expansion, may apply to the West Virginia Development Office for certification of a single, one-time, follow-up project expansion, and entitlement to an additional tax credit under this section in an amount which is the lesser of twenty-five percent of qualified investment in the follow-up project expansion or $12.5 million. No taxpayer, or group of taxpayers, in the aggregate may apply more than $2.5 million of annual credit in any tax year under this section, either in the form of a refund or directly against a tax liability or in any combination thereof. This limitation applies to initial tax credit attributable to qualified investment in a qualified professional services destination facility, and to qualified investment in a follow-up project expansion, so that credit attributable additively and in the aggregate to both may not be applied to exceed $2.5 million annual credit in any tax year.

(B) The requirements, limitations and qualifications applicable to qualified professional services destination facility projects under this section apply to follow-up project expansions, except for those requirements, limitations and qualifications expressly specified in this subdivision (2).
(C) Requirements for certification of a follow-up project expansion are as follows:

(i) The eligible company, pursuant to certification and authorization for entitlement to tax credit under subsection (1) of this section (f), has placed qualified investment of not less than $80 million into service in a qualified professional services destination facility within an initial period of not more than three tax years;

(ii) The eligible company intends to place additional qualified investment in service or use in the previously certified qualified professional services destination facility project, or an expansion or extension thereof. In no case shall a follow-up project expansion be certified if the follow-up project expansion property is not contiguous to, or within not more than one mile of, the initial qualified professional services destination facility;

(iii) The eligible company proposes to place the qualified investment in the follow-up project expansion in service or use in the fourth tax year subsequent to the tax year in which qualified investment was first placed into service or use in the initial qualified professional services destination facility project, or under a multiple year project certification, in the fourth, fifth and sixth tax year subsequent to the tax year in which qualified investment was first placed into service or use in the initial qualified professional services destination facility project;

(iv) The follow-up project expansion must create and maintain at least twenty-five net new jobs held by new employees, in addition to the new jobs created by the initial qualified professional services destination facility project. The loss of any West Virginia job at the eligible company will be subtracted from the count of new jobs attributable to the follow-up project expansion;
(v) The West Virginia Development Office shall not issue more than one certification for any follow-up project expansion; and

(vi) The West Virginia Development Office shall not issue certification of a follow-up project expansion unless the applicant provides convincing evidence to show that the follow-up project expansion will result in jobs creation specified in this subdivision, that such jobs will remain and be maintained in West Virginia for at least ten years subsequent to the placement of qualified investment into service or use in the follow-up project expansion, that the follow-up project expansion will not operate to the detriment of other West Virginia businesses or to the detriment of the economy, public welfare or moral character of West Virginia or its people.

(g) Agreement.

(1) The agreement between the eligible company and the Development Office shall be entered into before any benefits may be provided under this section.

(2) The agreement shall do all of the following:

(A) Specify the terms and conditions the eligible company must comply with in order to receive benefits under this section, other than those terms, limitations and conditions specified and mandated by statute or regulation; and

(B) Require the Development Office to certify all of the following to the Tax Division of the Department of Revenue each taxable year an agreement under this section is in effect:

(i) That the eligible company is eligible to receive benefits under this section;
(ii) The number of new jobs created by the company during each taxable year;

(iii) The amount of gross wages, as determined for purposes of Form W2, as filed with the Internal Revenue Service, being paid to each individual employed in a new job;

(iv) The amount of an eligible company’s qualified investment;

(v) The maximum amount of credit allowable to the eligible company under this section; and

(vi) Any other information deemed necessary by the Development Office.

(h) **Filing and contents.**

(1) **Filing.** — On or before the due date of the income tax return for each tax year in which the agreement is in effect, an eligible company shall file with the Tax Division of the Department of Revenue a form prescribed by the Tax Commissioner.

(2) **Contents.** — The form specified under subdivision (1) of this subsection (h) shall request the following information:

(A) The name and employer identification number of the eligible company;

(B) The effective date of the agreement;

(C) The reporting period end date;

(D) Information relating to each individual employed in a new job as required by the Tax Commissioner;

(E) Aggregate gross receipts for the tax period and gross receipts on which tax has been paid under article twenty-seven, chapter eleven of this code for the tax period; and
Any other information required by the Tax Commissioner.

(3) **Taking of credit.** – The taxpayer, participant or participants claiming the credit for qualified investments in a certified project shall annually file with their income tax returns filed under chapter eleven of this code:

(A) Certification that the taxpayer’s or participant’s qualified investment property continues to be used in the project and if disposed of during the tax year, was not disposed of prior to expiration of its useful life;

(B) Certification that the new jobs created by the project’s qualified investment continue to exist and are filled by persons who are residents of this State; and

(C) Any other information the Tax Commissioner requires to determine continuing eligibility to claim the annual credit allowance for the project’s qualified investment.

(4) **Confidentiality.** – The contents of the completed form shall be subject to the confidentiality rules set forth in section five-d, article ten, chapter eleven of this code: Provided, That notwithstanding the provisions of section five-d, article ten, chapter eleven of this code, or any other provision of this code, tax returns, tax return information and such other information as may be necessary to administer the tax credits and programs authorized and specified by this article and in this section may be exchanged between the Tax Commissioner and the West Virginia Development Office without restriction.

§5B-2E-8. **Forfeiture of unused tax credits; credit recapture; recapture tax imposed; information required to be submitted annually to development office; transfer of tax credits to successors.**

(a) The approved company or eligible company shall forfeit the tourism development project tax credit allowed by section
seven of this article, or the tourism development expansion tax
credit allowed by section seven-a of this article, or the tax credit
allowed by section seven-b of this article, as applicable, with
respect to any calendar year and shall pay the recapture tax
imposed by subsection (b) of this section, if:

(1) In any year following the first calendar year the project
is open to the public, the project fails to attract at least twenty-
five percent of its visitors from among persons who are not
residents of the state;

(2) In any year following the first year the project is open to
the public, the project is not operating and open to the public for
at least one hundred days; or

(3) The approved company or eligible company, as of the
beginning of each calendar year, has an outstanding obligation
under the West Virginia state tax and revenue laws; or

(4) Any company, approved company or eligible company,
to which entitlement to the tax credit authorized under section
seven-b of this article has been previously established, fails to
meet the requirements specified in section seven-b for an eligible
company and for a qualified professional services destination
facility, including, but not limited to, jobs maintenance,
employee wage and employee health benefits, aggregate gross
receipts, and gross receipts subject to the tax imposed under
article twenty-seven, chapter eleven of this code.

(5) Any company, approved company or eligible company,
to which entitlement to the tax credit authorized under section
seven-b of this article has been previously established:

(A) Is delinquent in payment of any assessment, fee, fine,
civil penalty or monetary imposition imposed by the West
Virginia Division of Environmental Protection or the United
States Environmental Protection Agency, or any agency charged
34 with enforcing federal, state or local environmental or hazardous waste regulations.

36 (B) Is delinquent in compliance with any order, injunction, compliance agreement, agreed order, court order, mandamus or other enforcement or compliance instrumentality of the West Virginia Division of Environmental Protection or United States Environmental Protection Agency or any agency charged with enforcing federal, state or local environmental or hazardous waste regulations.

39 (C) Is out of compliance or not compliant with any citation or order issued by the West Virginia Division of Environmental Protection or the United States Environmental Protection Agency, or any agency charged with enforcing federal, state or local environmental or hazardous waste regulations, requiring that a condition be abated or corrected.

49 (b) In addition to the loss of credit allowed under this article for the calendar year, a credit recapture tax is hereby imposed on any approved company or successor eligible company that forfeits the tourism development project tax credit or the tourism development expansion project credit or the credit authorized under section seven-b of this article, under the provisions of subsection (a) of this section. The credit recapture tax shall apply and the approved company, and successor eligible companies, and any other person or entity that has received the tax credit allowed under this article shall be liable for an amount of recapture tax equal to all previously claimed tourism development project tax credit or tourism development expansion project credit, or the tax credits authorized under section seven-b of this article, and allowed by this article, as applicable, plus interest and penalties applicable in accordance with the Tax Procedure and Administration Act. The recapture tax shall be calculated and paid pursuant to the filing, with the Tax Commissioner of an amended return, and such other forms,
schedules and documents as the Tax Commissioner may require, for the prior calendar year, or calendar years, for which credit recapture is required, along with interest, as provided in section seventeen, article ten, chapter eleven of this code: Provided, That the approved company, eligible company, person or entity who previously claimed the tourism development project tax credit, or the tourism development expansion project credit, or the tax credits allowed by section seven-b of this article, as applicable, under this article and successor eligible companies, persons or entities are jointly and severally liable for payment of any recapture tax subsequently imposed under this section. For purposes of this recapture tax, the statute of limitations otherwise applicable under the Tax Procedure and Administration Act shall not begin to run until the eighteenth year subsequent to the earlier of: the year when qualified investment is first placed into service or use, or the year when the application for the tax credit authorized under this article was filed with the West Virginia Development Office.

(c) Within forty-five days after the end of each calendar year during the term of the agreement, the approved company shall supply the development office with all reports and certifications the development office requires demonstrating to the satisfaction of the development office that the approved company is in compliance with applicable provisions of law. Based upon a review of these materials and other documents that are available, the development office shall then certify to the Tax Commissioner that the approved company is in compliance with this section.

(d) The tax credit allowed in this article is transferable, subject to the written consent of the development office, to an eligible successor company that continues to operate the approved project.
§5B-2E-11. Termination.

The Development Office may not accept any new project application after December 31, 2019, and all applications submitted prior to January 1, 2020, that have not been previously approved or not approved, shall be deemed not approved and shall be null and void as of January 1, 2020.

CHAPTER 178

(Com. Sub. for S. B. 378 - By Senator Cookman)

[Passed March 5, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17C-6-11; and to amend and reenact §17C-15-26 of said code, all relating to special speed limitations as to waste service vehicles; directing that no person shall drive a motor vehicle and meet or overtake from either direction a stopped waste service vehicle at a speed in excess of fifteen miles per hour under certain circumstances; defining “waste service vehicle”; setting forth situations in which the special speed limit applies; providing criminal penalties; and permitting waste service vehicles to be equipped with special lights.

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 §17C-6-11; and that §17C-15-26 of said code be amended and reenacted, all to read as follows:
ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-11. Special speed limitations when meeting or overtaking waste service vehicles; penalty.

(a) No person shall drive a motor vehicle and meet or overtake from either direction a stopped waste service vehicle at a speed in excess of fifteen miles per hour.

(b) For purposes of this section, “waste service vehicle” means any garbage collection vehicle, including a vehicle collecting recyclables or yard waste, which is used for curbside collection, makes frequent stops and is not fully automated.

(c) The speed limitation set forth in subsection (a) of this section applies only under the following circumstances:

(1) The waste service vehicle is identifiable as a waste service vehicle based on the vehicle configuration or markings on the vehicle;

(2) The waste service vehicle operator is giving a visual signal by means of a stationary sign to warn of the presence of workers or must use flashing lights as permitted in this code to caution other drivers; and

(3) The waste service vehicle is not located on a private driveway, controlled access highway, interstate highway, turnpike or road or highway with a center line and more than two lanes.

(d) Any person who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $300. If the person convicted of violating subsection (a) exceeded the speed limit by fifteen miles per hour or more or caused serious injury or death to a service vehicle worker, then the person shall
be fined not less than $300 nor more than $1,000 or confined in jail for not more than one year, or both confined and fined.

ARTICLE 15. EQUIPMENT.


(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(b) No person may drive or move any vehicle or equipment upon any highway with any lamp or device on the vehicle displaying other than a white or amber light visible from directly in front of the center of the vehicle except as authorized by subsection (d) of this section.

(c) Except as authorized in subsections (d) and (g) of this section and authorized in section nineteen of this article, flashing lights are prohibited on motor vehicles: Provided, That any vehicle as a means for indicating right or left turn or any vehicle as a means of indicating the same is disabled or otherwise stopped for an emergency may have blinking or flashing lights.

(d) Notwithstanding any other provisions of this chapter, the following colors of flashing warning lights are restricted for the use of the type of vehicle designated:

(1) Blue flashing warning lights are restricted to police vehicles. Authorization for police vehicles shall be designated by the chief administrative official of each police department.

(2) Except for standard vehicle equipment authorized by section nineteen of this article, red flashing warning lights are restricted to the following:
(A) Ambulances;
(B) Firefighting vehicles;
(C) Hazardous material response vehicles;
(D) Industrial fire brigade vehicles;
(E) Rescue squad vehicles not operating out of a fire department;
(F) School buses;
(G) Class A vehicles, as defined by section one, article ten, chapter seventeen-a of this code, of those firefighters who are authorized by their fire chiefs to have the lights;
(H) Class A vehicles of members of duly chartered rescue squads not operating out of a fire department;
(I) Class A vehicles of members of ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;
(J) Class A vehicles of out-of-state residents who are active members of West Virginia fire departments, ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;
(K) West Virginia Department of Agriculture emergency response vehicles;
(L) Vehicles designated by the Secretary of the Department of Military Affairs and Public Safety for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services and Division of Homeland Security and Emergency Management; and
(M) Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Military Affairs and Public Safety and the county commission of the county of residence.

Red flashing warning lights attached to a Class A vehicle may be operated only when responding to or engaged in handling an emergency requiring the attention of the firefighters, members of the ambulance services or chartered rescue squads.

(3) The use of red flashing warning lights is authorized as follows:

(A) Authorization for all ambulances shall be designated by the Department of Health and Human Resources and the sheriff of the county of residence.

(B) Authorization for all fire department vehicles shall be designated by the fire chief and the State Fire Marshal’s Office.

(C) Authorization for all hazardous material response vehicles and industrial fire brigades shall be designated by the chief of the fire department and the State Fire Marshal’s Office.

(D) Authorization for all rescue squad vehicles not operating out of a fire department shall be designated by the squad chief, the sheriff of the county of residence and the Department of Health and Human Resources.

(E) Authorization for school buses shall be designated as set out in section twelve, article fourteen of this chapter.

(F) Authorization for firefighters to operate Class A vehicles shall be designated by their fire chiefs and the state Fire Marshal’s office.

(G) Authorization for members of ambulance services or any other emergency medical service personnel to operate Class A
vehicles shall be designated by their chief official, the
Department of Health and Human Resources and the sheriff of
the county of residence.

(H) Authorization for members of duly chartered rescue
squad not operating out of a fire department to operate Class A
to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of
the county of residence and the Department of Health and
Human Resources.

(I) Authorization for out-of-state residents operating Class
A vehicles who are active members of a West Virginia fire
department, ambulance services or duly chartered rescue squads
shall be designated by their respective chiefs.

(J) Authorization for West Virginia Department of
Agriculture emergency response vehicles shall be designated by
the Commissioner of the Department of Agriculture.

(K) Authorization for vehicles for emergency response or
emergency management by the Division of Corrections,
Regional Jail and Correctional Facility Authority, Division of
Juvenile Services and Division of Homeland Security and
Emergency Management shall be designated by the Secretary of
the Department of Military Affairs and Public Safety.

(L) Authorization for Class A vehicles of emergency
response or emergency management personnel as designated by
the Secretary of the Department of Military Affairs and Public
Safety and the county commission of the county of residence.

(4) Yellow or amber flashing warning lights are restricted to
the following:

(A) All other emergency vehicles, including tow trucks and
wreckers, authorized by this chapter and by section twenty-seven
of this article;
(B) Postal service vehicles and rural mail carriers, as authorized in section nineteen of this article;

(C) Rural newspaper delivery vehicles;

(D) Flag car services;

(E) Vehicles providing road service to disabled vehicles;

(F) Service vehicles of a public service corporation;

(G) Snow removal equipment;

(H) School buses; and

(I) Automotive fire apparatus owned by a municipality or other political subdivision, by a volunteer or part-volunteer fire company or department or by an industrial fire brigade.

(5) The use of yellow or amber flashing warning lights shall be authorized as follows:

(A) Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation and postal service vehicles shall be designated by the sheriff of the county of residence.

(B) Authorization for snow removal equipment shall be designated by the Commissioner of the Division of Highways.

(C) Authorization for school buses shall be designated as set out in section twelve, article fourteen of this chapter.

(D) Authorization for automotive fire apparatus shall be designated by the fire chief in conformity with the NFPA 1901 Standard for Automotive Fire Apparatus as published by the National Fire Protection Association (NFPA) on July 18, 2003,
and adopted by the state Fire Commission by legislative rule (87 CSR 1, et seq.), except as follows:

(i) With the approval of the State Fire Marshal, used automotive fire apparatus may be conformed to the NFPA standard in effect on the date of its manufacture or conformed to a later NFPA standard; and

(ii) Automotive fire apparatus may be equipped with blinking or flashing headlamps.

(e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education, an organization receiving funding from the state or Federal Transit Administration for the purpose of providing general public transportation or hauling solid waste may be equipped with a white flashing strobotron warning light. This strobe light may be installed on the roof of a school bus, a public transportation vehicle or a vehicle hauling solid waste not to exceed one-third the body length forward from the rear of the roof edge. The light shall have a single clear lens emitting light three hundred sixty degrees around its vertical axis and may not extend above the roof more than six and one-half inches. A manual switch and a pilot light must be included to indicate the light is in operation.

(f) Notwithstanding the foregoing provisions of this section, any waste service vehicle as defined in section eleven, article six of this chapter may be equipped with yellow or amber flashing warning lights.

(g) It is unlawful for flashing warning lights of an unauthorized color to be installed or used on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights.
AN ACT to amend and reenact §17C-7-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-11-5 and §17C-11-7 of said code, all relating to use of a bicycle on a roadway; setting standards for overtaking a bicycle on a roadway; creating a misdemeanor offense for failure to follow requirements for overtaking a bicycle on a roadway; requiring bicycles to generally ride in bicycle lanes or as close as practicable to the right edge of the roadway; providing exceptions to the requirement that bicycles ride in bicycle lanes or as close as practicable to the right edge of the roadway; removing requirement to ride a bicycle on an adjacent path; and allowing a person to operate a bicycle without a bell or other device capable of giving an audible signal.

Be it enacted by the Legislature of West Virginia:

That §17C-7-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17C-11-5 and §17C-11-7 of said code be amended and reenacted, all to read as follows:

ARTICLE 7. DRIVING ON RIGHT SIDE OF ROADWAY, OVERTAKING AND PASSING, ETC.

§17C-7-3. Overtaking and passing vehicle or bicycle proceeding in same direction — Passing on the left generally; penalty.
(a) The following rules govern the overtaking and passing of vehicles proceeding in the same direction subject to these limitations, exceptions, and special rules hereinafter stated:

1. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an audible signal and pass to the left of the overtaken vehicle at a safe distance and may not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

2. The driver of a vehicle overtaking a bicycle traveling in the same direction shall pass to the left of the bicycle at a distance of not less than three feet at a careful and reduced speed, and may not again drive to the right side of the roadway until safely clear of the overtaken bicycle.

3. Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and may not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100; upon a second conviction within one year thereafter, shall be fined not more than $200; and upon a third or subsequent conviction, shall be fined not more than $500.

ARTICLE 11. OPERATION OF BICYCLES AND PLAY VEHICLES.

§17C-11-5. Riding on roadways and bicycle paths.

(a) Any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride in the lane marked for
bicycle use or, if no lane is marked for bicycle use, as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

(1) When overtaking and passing another bicycle or vehicle proceeding in the same direction;

(2) When preparing for a left turn at an intersection or into a private road or driveway; or

(3) When reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane. For the purposes of this subsection, a “substandard-width lane” is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(b) Any person operating a bicycle upon a one-way roadway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.

(c) Persons riding bicycles upon a roadway may not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

§17C-11-7. Lamps and other equipment on bicycles.

(a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which emits a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear of a type approved by the department which shall be visible from all distances from fifty feet to three hundred feet to the rear when directly in front of lawful upper beams of
head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector.

(b) Every bicycle shall be equipped with a brake that enables the operator to make the braked wheels skid on dry, level and clean pavement.

CHAPTER 180

(S. B. 572 - By Senators Tucker, Fitzsimmons and Edgell)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2014.]

AN ACT to amend and reenact §46-9-515 of the Code of West Virginia, 1931, as amended, relating to financing statements covering as-extracted collateral or timber to be cut.

Be it enacted by the Legislature of West Virginia:

That §46-9-515 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.

§46-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.

(a) Five-year effectiveness. — Except as otherwise provided in subsections (b), (e), (f) and (g) of this section, a filed financing statement is effective for a period of five years after the date of filing.
(b) Public-finance or manufactured-home transaction. — Except as otherwise provided in subsections (e), (f) and (g) of this section, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of forty years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) Lapse and continuation of financing statement. — The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) When continuation statement may be filed. — A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) of this section or the thirty-year period specified in subsection (b) of this section, whichever is applicable.

(e) Effect of filing continuation statement. — Except as otherwise provided in section five hundred ten of this article, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c) of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection (d) of this section. Succeeding
continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) Transmitting utility financing statement. — If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) Record of mortgage as financing statement. — A record of a mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under subsection (c), section five hundred two of this article remains effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

CHAPTER 181

(S. B. 3 - By Senators Kirkendoll, Cookman, Blair, Fitzsimmons, D. Hall, Nohe, Wells, Miller, McCabe, Tucker and M. Hall)

[Passed March 7, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2014.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §36-12-1, §36-12-2, §36-12-3, §36-12-4, §36-12-5, §36-12-6, §36-12-7, §36-12-8, §36-12-9, §36-12-10, §36-12-11, §36-12-12, §36-12-13, §36-12-14, §36-12-15, §36-12-16 and §36-12-17, all relating to creating Uniform Real Property Transfer on Death Act; authorizing
transfer of real property effective at time of transferor’s death; providing for applicability and nonexclusivity of this method of transferring real property; providing that transfer on death deed is revocable and nontestamentary; establishing capacity of transferor; setting forth requirements for transfer on death deed; providing that transfer on death deed exempt from payment of excise tax on privilege of transferring real estate; providing that notice, delivery, acceptance or consideration are not required; providing requirements for revocation of deed; setting forth effect of transfer on death deed during transferor’s life and effect of deed at transferor’s death; providing disclaimer; providing for liberal construction; providing for uniformity of application and construction; setting forth article’s relation to Electronic Signatures in Global and National Commerce Act; and defining terms.

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 §36-12-1, §36-12-2, §36-12-3, §36-12-4, §36-12-5, §36-12-6, §36-12-7, §36-12-8, §36-12-9, §36-12-10, §36-12-11, §36-12-12, §36-12-13, §36-12-14, §36-12-15, §36-12-16 and §36-12-17, all to read as follows:

ARTICLE 12. UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT.

§36-12-1. Short Title.

This article may be cited as the Uniform Real Property Transfer on Death Act.

§36-12-2. Definitions.

In this article:

(1) “Beneficiary” means a person who receives property under a transfer on death deed.
(2) “Contingent beneficiary” means a person designated in a transfer on death deed to receive property only if a different person fails to survive the transferor.

(3) “Designated beneficiary” means a person designated to receive property in a transfer on death deed. The term includes contingent beneficiaries.

(4) “Joint owner” means an individual who owns property concurrently with one or more other individuals with a right of survivorship.

(5) “Person” means an individual, corporation, business trust, estate, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(6) “Property” means an interest in real property located in this state which is transferable on the death of the owner.

(7) “Transfer on death deed” means a deed authorized under this article.

(8) “Transferor” means an individual who makes a transfer on death deed.

§36-12-3. Applicability.

This article applies to a transfer on death deed made on or after the effective date of this article, by a transferor dying on or after the effective date of this article.

§36-12-4. Nonexclusivity.

This article does not affect any method of transferring property otherwise permitted under the law of this state.
§36-12-5. **Transfer on death deed authorized.**

1 An individual may transfer property to one or more beneficiaries or contingent beneficiaries effective at the transferor’s death by a transfer on death deed.

§36-12-6. **Transfer on death deed revocable.**

1 A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

§36-12-7. **Transfer on death deed nontestamentary.**

1 A transfer on death deed is nontestamentary.

§36-12-8. **Capacity of transferor.**

1 The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

§36-12-9. **Requirements.**

1 A transfer on death deed:

2 (1) Except as otherwise provided in subdivision (2) of this section, must contain the essential elements and formalities of a properly recordable *inter vivos* deed;

3 (2) Must state that the transfer to the designated beneficiary is to occur at the transferor’s death; and

4 (3) Must be recorded before the transferor’s death in the office of the clerk of the county commission in the county where the property is located: *Provided, That,* notwithstanding section two, article twenty-two, chapter eleven of this code, a transfer on death deed is exempt from the payment of excise tax on the privilege of transferring real estate for the reason that no interest in the property is at the time of recording being passed to the
§36-12-10. Notice, delivery, acceptance and consideration not required.

1 A transfer on death deed is effective without:

2 (1) Notice or delivery to or acceptance by the designated beneficiary during the transferor’s life; or

4 (2) Consideration.

§36-12-11. Revocation by instrument authorized; revocation by act not permitted.

1 (a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

4 (1) Is one of the following:

5 (A) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

7 (B) An instrument of revocation that expressly revokes the deed or part of the deed; or

9 (C) An inter vivos deed that expressly revokes the transfer on death deed or part of the deed; and

11 (2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked and recorded before the transferor’s death in the public records in the office of the clerk of the county commission of the county where the deed is recorded.

16 (b) If a transfer on death deed is made by more than one transferor:
18 (1) Revocation by a transferor does not affect the deed as to the interest of another transferor; and

20 (2) A deed of joint owners is revoked only if it is revoked by all of the living joint owners.

22 (c) After a transfer on death deed is recorded it may not be revoked by a revocatory act on the deed.

24 (d) This section does not limit the effect of an inter vivos transfer of the property.

§36-12-12. Effect of transfer on death deed during transferor’s life.

During a transferor’s life, a transfer on death deed does not:

1 (1) Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

2 (2) Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

3 (3) Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor even if the creditor has actual or constructive notice of the deed;

4 (4) Affect the transferor’s or designated beneficiary’s eligibility for any form of public assistance;

5 (5) Create a legal or equitable interest in favor of the designated beneficiary; or

6 (6) Subject the property to claims or process of a creditor of the designated beneficiary.

§36-12-13. Effect of transfer on death deed at transferor’s death.

(a) Except as otherwise provided in the transfer on death deed in this article, section six, article one, chapter forty-one of
this code, section three, article three, chapter forty-one of this
code, article three, chapter forty-two of this code, section two,
article four, chapter forty-two of this code or article five, chapter
forty-two of this code, on the death of the transferor the
following rules apply to property that is the subject of a transfer
on death deed and owned by the transferor at death:

(1) Subject to subdivision (2) of this subsection, the interest
in the property is transferred to the designated beneficiary in
accordance with the deed.

(2) The interest of a designated beneficiary is contingent on
the designated beneficiary surviving the transferor. The interest
of a designated beneficiary that fails to survive the transferor
lapses.

(3) Subject to subdivision (4) of this subsection, concurrent
interests are transferred to the beneficiaries in equal and
undivided shares with no right of survivorship.

(4) If the transferor has identified two or more designated
beneficiaries to receive concurrent interests in the property, the
share of one which lapses or fails for any reason is transferred to
the other, or to the others in proportion to the interest of each in
the remaining part of the property held concurrently.

(b) Subject to article two, chapter thirty-nine and chapter
thirty-eight of this code, a beneficiary takes the property subject
to all conveyances, encumbrances, assignments, contracts,
mortgages, liens and other interests to which the property is
subject at the transferor's death. For purposes of this subsection,
article two, chapter thirty-nine and chapter thirty-eight of this
code, the recording of the transfer on death deed is deemed to
have occurred at the transferor's death.

(c) If a transferor is a joint owner and is:
(1) Survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(2) The last surviving joint owner, the transfer on death deed is effective.

(d) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

§36-12-14. Disclaimer.

A beneficiary may disclaim all or part of the beneficiary’s interest as provided by article six, chapter forty-two of this code.

§36-12-15. Prior transfer on death liberally construed.

(a) Any transfer on death deed properly recorded in an office of the clerk of a county commission before the effective date of this article containing language that shows a clear intent to designate a transfer on death beneficiary shall be liberally construed to do so.

(b) Any survivorship clause in a deed properly recorded before the effective date of this article in an office of the clerk of a county commission that attempts to create a right of survivorship tenancy, which survivorship tenancy otherwise fails, but otherwise is an effective deed, and shows a clear intent to designate a beneficiary to receive the property upon death of one or more cotenants by survivorship shall be liberally construed to be an effective transfer on death deed governed by this article.

§36-12-16. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.
§36-12-17. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S. C. §7001, et seq., but does not modify, limit or supersedes section 101(c) of that act, 15 U. S. C. §7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U. S. C. §7003(b).

CHAPTER 182

(Com. Sub. for H. B. 4349 - By Delegates Pethel, Jones, Canterbury, Kump, Craig, Lynch and Ellem)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §5-10-27 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-20 and §7-14D-21 of said code; to amend and reenact §8-22A-22 and §8-22A-23 of said code; to amend and reenact §15-2-33 of said code; to amend and reenact §15-2A-12 of said code; and to amend and reenact §16-5V-25 and §16-5V-26 of said code, all relating to retirement burial and scholarship benefits awarded on behalf of deceased uniformed service officers as it relates to the distribution of marital property under a Qualified Domestic Relations Order.

Be it enacted by the Legislature of West Virginia:

That §5-10-27 of the Code of West Virginia, be amended and reenacted; that §7-14D-20 and §7-14D-21 of said code be amended and
reenacted; that §8-22A-22 and §8-22A-23 of said code be amended and reenacted; that §15-2-33 of said code be amended and reenacted; that §15-2A-12 of said code be amended and reenacted; and that §16-5V-25 and §16-5V-26 of said code be amended and reenacted, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-27. Preretirement death annuities.

(a) (1) Except as otherwise provided in this section, in the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article, may at any time prior to the effective date of his or her retirement, by written declaration duly executed and filed with the board of trustees, in the same manner as if he or she were then retiring from the employ of a participating public employer, elect option A provided in section twenty-four of this article and nominate a beneficiary whom the board finds to have had an insurable interest in the life of the member. Prior to the effective date of his or her retirement, a member may revoke his or her election of option A and nomination of beneficiary and he or she may again prior to his or her retirement elect option A and nominate a beneficiary as provided in this subsection. Upon the death of a member who has an option A election in force, his or her beneficiary, if living, shall immediately receive an annuity computed in the same
manner in all respects as if the same member had retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty years, and elected the said option A. If at the time of his or her retirement a member has an option A election in force, his or her election of option A and nomination of beneficiary shall thereafter continue in force. As an alternative to annuity option A, a member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.

(2) In the event any member or former member, who first became a member of the Public Employees Retirement System after the effective date of amendments made to this section during the 2006 regular legislative session and who has ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies without leaving a surviving spouse; but leaves surviving him or her a child who is financially dependent on the member by virtue of a permanent mental or physical disability upon evidence satisfactory to the board; and has named the disabled child as sole beneficiary, the disabled child shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her disabled child as beneficiary. A member or former member with ten or more years of credited service, who does not leave surviving him or her a spouse or a disabled child, may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.
(b)(1) In the event any member who has ten or more years of credited service, or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article, dies; and leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: Provided, That he or she executes a valid and notarized waiver on a form provided by the board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the board, the member or former member, may nominate a beneficiary who has an insurable interest in the member’s or former member’s life. As an alternative to annuity option A, the member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses in the event a waiver, as provided in this section, has been presented to and accepted by the board.

(2) Whenever any member or former member who first became a member of the retirement system after the effective date of the amendments to this section made during the 2006 regular legislative session and who has ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article, dies and leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her
death, notwithstanding that he or she might not have attained age
sixty or sixty-two years, as the case may be; (B) elected option
A provided in section twenty-four of this article; and (C)
nominated his or her surviving spouse as beneficiary. However,
the surviving spouse shall have the right to waive the annuity
provided in this section: Provided, That he or she executes a
valid and notarized waiver on a form provided by the board and
that the member or former member attests to the waiver. If the
waiver is presented to and accepted by the board, the member or
former member may: (1) Elect to have the preretirement death
benefit paid in a lump sum amount, rather than annuity option A
provided in section twenty-four of this article, as a return of
accumulated contributions to any beneficiary or beneficiaries he
or she chooses; or (2) may name his or her surviving child, who
is financially dependent on the member by virtue of a permanent
mental or physical disability, as his or her sole beneficiary to
receive an annuity computed in the same manner in all respects
as if the member had: (A) Retired the day preceding the date of
his or her death, notwithstanding that he or she might not have
attained the age of sixty or sixty-two as the case may be; (B)
elected option A provided in section twenty-four of this article;
and (C) nominated his or her disabled child as beneficiary.

(c) In the event any member who has ten or more years of
credited service or any former member with ten or more years of
credited service and who is entitled to a deferred annuity,
pursuant to section twenty-one of this article: (1) Dies without
leaving surviving him or her a spouse; but (2) leaves surviving
him or her an infant child or children; and (3) does not have a
beneficiary nominated as provided in subsection (a) of this
section, the infant child or children are entitled to an annuity to
be calculated as follows: The annuity reserve shall be calculated
as though the member had retired as of the date of his or her
decease and elected a straight life annuity and the amount of the
annuity reserve shall be paid in equal monthly installments to the
member’s infant child or children until the child or children
attain age twenty-one or sooner marry or become emancipated;
however, in no event shall any child or children receive more
than $250 per month each. The annuity payments shall be
computed as of the date of the death of the member and the
amount of the annuity shall remain constant during the period of
payment. The annual amount of the annuities payable by this
section shall not exceed sixty percent of the deceased member’s
final average salary.

(d) In the event any member or former member does not
have ten or more years of credited service, no preretirement
death annuity may be authorized, owed or awarded under this
section, except as provided in subdivision (4), subsection (a),
section fifteen of this article as amended during the 2005 regular
session of the Legislature.

(e) Any person qualified as a surviving dependent child
under this section, who is the surviving dependent child of a law-
enforcement officer who loses his or her life in the performance
of duty, in addition to any other benefits due under this or other
sections of this article is entitled to receive a scholarship to be
applied to the career development education of that person. This
sum, up to but not exceeding $7,500 per year, shall be paid from
the fund to any higher education institution in this state, career-
technical education provider in this state or other entity in this
state approved by the board, to offset the expenses of tuition,
room and board, books, fees or other costs incurred in a course
of study at any of those institutions so long as the recipient
makes application to the board on an approved form and under
rules as provided by the board and maintains scholastic eligibilit
as defined by the institution or the board. The board
may by appropriate rules define age requirements, physical and
mental requirements, scholastic eligibility, disbursement
methods, institutional qualifications and other requirements as necessary and not inconsistent with this section. Scholarship benefits awarded pursuant to this subsection are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-20. Additional death benefits and scholarships - Dependent children.

(a) In addition to the spouse death benefits in sections eighteen and nineteen of this article, the surviving spouse is entitled to receive and there shall be paid to the spouse $100 monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one fourth of the surviving spouse’s entitlement under either section eighteen or nineteen of this article. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: Provided, however, That if there is no surviving spouse, dependent child nor dependent parent of the deceased member the accumulated contributions shall be paid to a named beneficiary or beneficiaries: Provided
That if there is no surviving spouse, dependent child, nor dependent parent of the deceased member, nor any named beneficiary or beneficiaries then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under such rules as the board may provide, and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section. Scholarship benefits awarded pursuant to this subsection are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.


Any member who dies as a result of any service related illness or injury after the effective date is entitled to a lump sum burial benefit of five thousand dollars. If the member is married, the burial benefit shall be paid to the member's spouse. If the member is not married, the burial benefit shall be paid to the member's estate for the purposes of paying burial expenses,
settling the member's final affairs, or both. Any unspent balance shall be distributed as a part of the member's estate. Burial benefits awarded pursuant to this section are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.


(a) Except as provided in subsection (a), section nine of this article, in addition to the spouse death benefits in this article, the surviving spouse is entitled to receive and there shall be paid to the spouse $100 monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one hundred percent of the spouse's entitlement under this article divided by the number of dependent children. If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: Provided, however, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named
beneficiary or beneficiaries: Provided further, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under rules provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section. Scholarship benefits awarded pursuant to this subsection are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.


Except as provided in subsection (a), section nine of this article, any member who dies as a result of any service-related illness or injury after the effective date is entitled to a lump sum burial benefit of $5,000. If the member is married, the burial benefit shall be paid to the member’s spouse. If the member is
6 not married, the burial benefit shall be paid to the member's
7 estate for the purposes of paying burial expenses, settling the
8 member's final affairs, or both. Burial benefits awarded pursuant
9 to this section are not subject to division or payable to an
10 alternate payee by any Qualified Domestic Relations Order.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-33. Awards and benefits to dependents of member when the
member dies in performance of duty; to dependents
of a duty disability retirant; dependent child
scholarship and amount.

(a) The surviving spouse or the dependent child or children
or dependent parent or parents of any member who has lost or
loses his or her life by reason of injury, illness or disease
resulting from an occupational risk or hazard inherent in or
peculiar to the service required of employees while the member
was or is engaged in the performance of his or her duties as an
employee of the agency, or if a retirant dies from any cause after
having been retired pursuant to the provisions of section
twenty-nine of this article, the surviving spouse or other
dependent is entitled to receive and shall be paid from the fund
benefits as follows: To the surviving spouse annually, in equal
monthly installments during his or her lifetime the greater of one
or the other of two amounts:

(1) An amount equal to five and one-half percent of the total
salary which was or would have been earned by the deceased
member or duty disability retirant during twenty-five years of
service based on the average earnings of the member or duty
disability retirant while employed by the agency; or
(2) The sum of $6,000.

(b) In addition, the surviving spouse is entitled to receive and shall be paid $100 monthly for each dependent child or children. If the surviving spouse dies or if there is no surviving spouse, there shall be paid monthly to each dependent child or children from the fund a sum equal to twenty-five percent of the surviving spouse's entitlement. If there is no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the fund to the dependent parents of the deceased member or retiree during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive.

(c) Any person qualified as a surviving dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $7,500 per year, shall be paid from the fund to any higher education institution in this state, career-technical education provider in this state or other entity in this state approved by the board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of those institutions so long as the recipient makes application to the board on an approved form and under rules as provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may, by appropriate rules, define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.
Scholarship benefits awarded pursuant to this subsection are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.

(d) A surviving spouse or dependent of an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day following the date the deceased employee is removed from payroll by the agency. A surviving spouse or dependent of a member who is not currently an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day following the date of the deceased member’s death. A surviving spouse or dependent of a retirant meeting the requirements of this section is entitled to receive beneficiary payments on the first day of the month following the date of the deceased retirant’s death. Upon receipt of properly executed forms from the agency and the surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

(e) For the purposes of this section, the term “salary” does not include any compensation paid for overtime service.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-12. Awards and benefits to dependents of employees or retirants - When employee dies in performance of duty, etc.; dependent child scholarship and amount.

(a) The surviving spouse, the dependent child or children or dependent parent or parents of any employee who has lost or shall lose his or her life by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of employees while the employee
was engaged in the performance of his or her duties as an
employee of the agency, or the survivor of a retirant who dies
from any cause after having been retired pursuant to the
provisions of section nine of this article, is entitled to receive and
shall be paid from the fund benefits as follows: To the surviving
spouse annually, in equal monthly installments during his or her
lifetime, one or the other of two amounts, which shall become
payable the first day of the month following the employee's or
retirant's death and which shall be the greater of:

(1) An amount equal to nine-tenths of the base salary
received in the preceding full twelve-month employment period
by the deceased employee: Provided, That if the employee had
not been employed with the agency for twelve full months prior
to his or her death, the amount of monthly salary shall be
annualized for the purpose of determining the benefit; or

(2) The sum of $10,000.

(b) In addition, the surviving spouse is entitled to receive
and shall be paid $150 monthly for each dependent child. If the
surviving spouse dies or if there is no surviving spouse, there
shall be paid monthly to each dependent child or children from
the fund a sum equal to one third of the surviving spouse's
entitlement. If there is no surviving spouse and no dependent
child or children, there shall be paid annually in equal monthly
installments from the fund to the dependent parents of the
deceased member during their joint lifetimes a sum equal to the
amount which a surviving spouse, without children, would have
received: Provided, That when there is one dependent parent
surviving, that parent is entitled to receive during his or her
lifetime one-half the amount which both parents, if living, would
have been entitled to receive: Provided, however, That if there
is no surviving spouse, dependent child or dependent parent of
the deceased member, the accumulated contributions shall be
38 paid to a named beneficiary or beneficiaries: Provided further, 
39 That if there is no surviving spouse, dependent child, dependent 
40 parent of the deceased member or any named beneficiary or 
41 beneficiaries, then the accumulated contributions shall be paid 
42 to the estate of the deceased member.

43 (c) Any person qualifying as a surviving dependent child 
44 under this section, in addition to any other benefits due under 
45 this or other sections of this article, is entitled to receive a 
46 scholarship to be applied to the career development education of 
47 that person. This sum, up to but not exceeding $7,500 per year, 
48 shall be paid from the fund to any higher education institution in 
49 this state, career-technical education provider in this state or 
50 other entity in this state approved by the board to offset the 
51 expenses of tuition, room and board, books, fees or other costs 
52 incurred in a course of study at any of these institutions as long 
53 as the recipient makes application to the board on an approved 
54 form and under rules provided by the board and maintains 
55 scholastic eligibility as defined by the institution or the board. 
56 The board may by appropriate rules define age requirements, 
57 physical and mental requirements, scholastic eligibility, 
58 disbursement methods, institutional qualifications and other 
59 requirements as necessary and not inconsistent with this section. 
60 Scholarship benefits awarded pursuant to this subsection are not 
61 subject to division or payable to an alternate payee by any 
62 Qualified Domestic Relations Order.

63 (d) A surviving spouse or dependent of an employee meeting 
64 the requirements of this section is entitled to receive beneficiary 
65 payments on the first day of the month following the date the 
66 deceased member is removed from payroll by the agency. A 
67 surviving spouse or dependent of a member who is not currently 
68 an employee meeting the requirements of this section is entitled 
69 to receive beneficiary payments on the first day of the month 
70 following the date of the deceased member’s death. A surviving
spouse or dependent of a retirant meeting the requirements of this section is entitled to receive beneficiary payments on the first day of the month following the date of the deceased retirant’s death. Upon receipt of properly executed forms from the agency and surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

(e) It is the intent of the Legislature that the levels of benefits provided by operation of this section from the effective date of the enactment of this section during the regular session of the Legislature, 2005, be the same levels of benefits as provided by this section as amended and reenacted during the fourth extraordinary session of the Legislature, 2005. Accordingly, the effective date of the operation of this section as amended and reenacted during the fourth extraordinary session of the Legislature, 2005, is expressly made retrospective to April 9, 2005.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-25. Additional death benefits and scholarships — Dependent children.

(a) In addition to the spouse death benefits in this article, the surviving spouse is entitled to receive and there shall be paid to the spouse $100 monthly for each dependent child.

(b) If the surviving spouse dies or if there is no surviving spouse, the fund shall pay monthly to each dependent child a sum equal to one hundred percent of the spouse’s entitlement under this article divided by the number of dependent children.
If there is neither a surviving spouse nor a dependent child, the fund shall pay in equal monthly installments to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is only one dependent parent surviving, that parent is entitled to receive during his or her lifetime one-half the amount which both parents, if living, would have been entitled to receive: Provided, however, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, the accumulated contributions shall be paid to a named beneficiary or beneficiaries: Provided further, That if there is no surviving spouse, dependent child or dependent parent of the deceased member, or any named beneficiary or beneficiaries, then the accumulated contributions shall be paid to the estate of the deceased member.

(c) Any person qualifying as a dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding $6,000 per year, shall be paid from the fund to any university or college in this state or to any trade or vocational school or other entity in this state approved by the board to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the board on an approved form and under rules provided by the board and maintains scholastic eligibility as defined by the institution or the board. The board may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code which define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other
Scholarship benefits awarded pursuant to this subsection are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.


Any member who dies as a result of any service related illness or injury after the effective date is entitled to a lump sum burial benefit of $5,000. If the member is married, the burial benefit shall be paid to the member’s spouse. If the member is not married, the burial benefit shall be paid to the member’s estate for the purposes of paying burial expenses, settling the member’s final affairs, or both. Burial benefits awarded pursuant to this section are not subject to division or payable to an alternate payee by any Qualified Domestic Relations Order.

CHAPTER 183

(H. B. 4601 - By Delegates White (By Request), Boggs and Skaff)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2014.]

AN ACT to amend and reenact §16-13A-18a of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-2-4a and §24-2-4b of said code, all relating to fiscal management and regulation of publicly owned utilities; waiving certain cash distribution requirements in the case of a sale between two political subdivisions; eliminating a suspension period for a rate increase established by municipal rate ordinance or enacted by a
public service district that increases rates less than twenty-five percent of gross revenues; providing a process to apply for a waiver of the suspension period for rates established by municipal rate ordinance or enacted by a public service district that increases rates by more than twenty-five percent of gross revenues; and providing a refund procedure for proposed municipal or public service district rate increase in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §16-13A-18a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-2-4a and §24-2-4b of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-18a. Sale, lease or rental of water, sewer, stormwater or gas system by district; distribution of proceeds.

In any case where a public service district owns a water, sewer, stormwater or gas system, and a majority of not less than sixty percent of the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer, stormwater or gas system to any municipality or privately-owned water, sewer, stormwater or gas system, or to any water, sewer, stormwater or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer, stormwater or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon: (1) The publication of notice of a hearing before the board of the public service district, as a
Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper published and of general circulation in the county or counties wherein the district is located, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; (2) approval by the county commission or commissions of the county or counties in which the district operates; and (3) approval by the Public Service Commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of construction of such water, sewer, stormwater or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer, stormwater or gas system is located to be placed in the general funds of such county commission: Provided, That no such distribution shall be required in the case of a sale between political subdivisions of the state.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.


After June 30, 1981, no public utility subject to this chapter except those utilities subject to the provisions of section four-b and section four-d of this article, shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days’ notice to the commission and the public, which
notice shall plainly state the changes proposed to be made in the
schedule then in force and the time when the changed rates or
charges shall go into effect; but the commission may enter an
order suspending the proposed rate as hereinafter provided. The
proposed changes shall be shown by printing new schedules, or
shall be plainly indicated upon the schedules in force at the time,
and kept open to public inspection: Provided, That the
commission may, in its discretion, and for good cause shown,
allow changes upon less time than the notice herein specified, or
may modify the requirements of this section in respect to
publishing, posting and filing of tariffs, either by particular
instructions or by general order.

Whenever there shall be filed with the commission any
schedule stating a change in the rates or charges, or joint rates or
charges, or stating a new individual or joint rate or charge or
joint classification or any new individual or joint regulation or
practice affecting any rate or charge, the commission may either
upon complaint or upon its own initiative without complaint
enter upon a hearing concerning the propriety of such rate,
charge, classification, regulation or practice; and, if the
commission so orders, it may proceed without answer or other
form of pleading by the interested parties, but upon reasonable
notice, and, pending such hearing and the decisions thereon, the
commission, upon filing with such schedule and delivering to the
public utility affected thereby a statement in writing of its
reasons for such suspension, may suspend the operation of such
schedule and defer the use of such rate, charge, classification,
regulation or practice, but not for a longer period than two
hundred seventy days beyond the time when such rate, charge,
classification, regulation or practice would otherwise go into
effect; and after full hearing, whether completed before or after
the rate, charge, classification, regulation or practice goes into
effect, the commission may make such order in reference to such
rate, charge, classification, regulation or practice as would be
proper in a proceeding initiated after the rate, charge,
classification, regulation or practice had become effective:

Provided, That in the case of a public utility having two
thousand five hundred customers or less and which is not
principally owned by any other public utility corporation or
public utility holding corporation, the commission may suspend
the operation of such schedule and defer the use of such rate,
charge, classification, regulation or practice, but not for a longer
period than one hundred twenty days beyond the time when such
rate, charge, classification, regulation or practice would
otherwise go into effect; and in the case of a public utility having
more than two thousand five hundred customers, but not more
than five thousand customers, and which is not principally
owned by any other public utility corporation or public utility
holding corporation, the commission may suspend the operation
of such schedule and defer the use of such rate, charge,
classification, regulation or practice, but not for a longer period
than one hundred fifty days beyond the time when such rate,
charge, classification, regulation or practice would otherwise go
into effect; and in the case of a public utility having more than
five thousand customers, but not more than seven thousand five
hundred customers, and which is not principally owned by any
other public utility corporation or public utility holding
corporation, the commission may suspend the operation of such
schedule and defer the use of such rate, charge, classification,
regulation or practice, but not for a longer period than one
hundred eighty days beyond the time when such rate, charge,
classification, regulation or practice would otherwise go into
effect; and after full hearing, whether completed before or after
the rate, charge, classification, regulation or practice goes into
effect, the commission may make such order in reference to such
rate, charge, classification, regulation or practice as would be
proper in a proceeding initiated after the rate, charge,
classification, regulation or practice had become effective:

Provided, however, That, in the case of rates established or proposed that increase by less than twenty-five percent of the gross revenue of the public service district, there shall be no suspension period in the case of rates established by a public service district pursuant to section nine, article thirteen-a, chapter sixteen of this code, and the proposed rates of public service districts shall go into effect upon the date of filing with the commission, subject to refund modification at the conclusion of the commission proceeding. In the case of rates established or proposed that increase by more than twenty-five percent of the gross revenue of the public service district, the district may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon the date of filing with the commission. The public service district shall provide notice by Class 1 legal advertisement in a newspaper of general circulation in its service territory of the percentage increase in rates at least fourteen days prior to the effective date of the increased rates. Any refund determined to be determined to be due and owing as a result of any difference between any final rates approved by the commission and the rates placed into effect subject to refund shall be refunded by the public service district as a credit against each customer’s account for a period of up to six months after entry of the commission’s final order. Any remaining balance which is not fully credited by credit within six months after entry of the commission’s final order shall be directly refunded to the customer by check: Provided, further, That if any such hearing and decision thereon is not concluded within the periods of suspension, as above stated, such rate, charge, classification, regulation or practice shall go into effect at the end of such period not subject to refund: And provided further, That if any such rate, charge, classification, regulation or practice goes into effect because of the failure of the commission to reach a decision, the same shall not preclude
the commission from rendering a decision with respect thereto which would disapprove, reduce or modify any such proposed rate, charge, classification, regulation or practice, in whole or in part, but any such disapproval, reduction or modification shall not be deemed to require a refund to the customers of such utility as to any rate, charge, classification, regulation or practice so disapproved, reduced or modified. The fact of any rate, charge, classification, regulation or practice going into effect by reason of the commission's failure to act thereon shall not affect the commission's power and authority to subsequently act with respect to any such application or change in any rate, charge, classification, regulation or practice. Any rate, charge, classification, regulation or practice which shall be approved, disapproved, modified or changed, in whole or in part, by decision of the commission shall remain in effect as so approved, disapproved, modified or changed during the period or pendency of any subsequent hearing thereon or appeal therefrom. Orders of the commission affecting rates, charges, classifications, regulations or practices which have gone into effect automatically at the end of the suspension period are prospective in effect only.

At any hearing involving a rate sought to be increased or involving the change of any rate, charge, classification, regulation or practice, the burden of proof to show the justness and reasonableness of the increased rate or proposed increased rate, or the proposed change of rate, charge, classification, regulation or practice shall be upon the public utility making application for such change. The commission shall, whenever practicable and within budgetary constraints, conduct one or more public hearings within the area served by the public utility making application for such increase or change, for the purpose of obtaining comments and evidence on the matter from local ratepayers.
Each public utility subject to the provisions of this section shall be required to establish, in a written report which shall be incorporated into each general rate case application, that it has thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility management, rate design and conservation as reported by the commission under subsection (c), section one, article one of this chapter, as alternatives to, or in mitigation of, any rate increase. The utility report shall contain as to each concept considered the reasons for adoption or rejection of each. When in any case pending before the commission all evidence shall have been taken and the hearing completed, the commission shall render a decision in such case. The failure of the commission to render a decision with respect to any such proposed change in any such rate, charge, classification, regulation or practice within the various time periods specified in this section after the application therefor shall constitute neglect of duty on the part of the commission and each member thereof.

Where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the community where the majority of the resident members of the public affected by such change reside or, in case of nonresidents, have their principal place of business within this state.

The commission may order rates into effect subject to refund, plus interest in the discretion of the commission, in cases in which the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress, or in which the costs upon which these rates are based...
are subject to modification by the commission or another regulatory commission and to refund to the public utility. In such case the commission may require such public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned upon the refund to the persons or parties entitled thereto of the amount of the excess if such rates so put into effect are subsequently determined to be higher than those finally fixed for such utility.

No utility may make application for a general rate increase while another general rate application is pending before the commission and not finally acted upon, except pursuant to the provisions of the next preceding paragraph of this section. The provisions of this paragraph shall not be construed so as to prohibit any such rate application from being made while a previous application which has been finally acted upon by the commission is pending before or upon appeal to the West Virginia Supreme Court of Appeals.

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.

(a) The rates and charges of electric cooperatives, natural gas cooperatives and municipally operated public utilities, except for municipally operated commercial solid waste facilities as defined in section two, article fifteen, chapter twenty-two of this code, and the rates and charges for local exchange services provided by telephone cooperatives are not subject to the rate approval provisions of section four or four-a of this article, but are subject to the limited rate provisions of this section.

(b) All rates and charges set by electric cooperatives, natural gas cooperatives and municipally operated public utilities and all
rates and charges for local exchange services set by telephone cooperatives shall be just, reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing these services. The rates and charges shall be adopted by the electric, natural gas or telephone cooperative’s governing board and in the case of the municipally operated public utility by municipal ordinance to be effective not sooner than forty-five days after adoption: Provided, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of the utility for the month next preceding the month in which the rate change is to become effective or the utility shall give its customers, and in the case of a cooperative, its customers, members and stockholders, other reasonable notices as will allow filing of timely objections to the rate change or full participation in municipal rate legislation. The rates and charges or ordinance shall be filed with the commission, together with any information showing the basis of the rates and charges and other information as the commission considers necessary. Any change in the rates and charges with updated information shall be filed with the commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section is received and the electric cooperative, natural gas cooperative or telephone cooperative or municipality has failed to file with the commission the rates and charges with information showing the basis of rates and charges and other information as the commission considers necessary, the suspension period limitation of one hundred twenty days and the one hundred-day period limitation for issuance of an order by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the necessary information is filed. The electric cooperative, natural gas cooperative, telephone cooperative or municipality shall set the date when any new rate or charge is to go into effect.
(c) The commission shall review and approve or modify the rates upon the filing of a petition within thirty days of the adoption of the ordinance or resolution changing the rates or charges by:

(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by not less than twenty-five percent of the customers served by the municipally operated public utility or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state;

(2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in the rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. The petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers who are affected by the change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between customer or group of customers and other customers of the municipal utility. The petition shall be accompanied by evidence of discrimination.

(d)(1) The filing of a petition with the commission signed by not less than twenty-five percent of the customers served by the municipally operated public utility or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state under subdivision (1), subsection (c) of this section shall suspend the adoption of the rate change contained in the ordinance or resolution for a period of one
hundred twenty days from the date the rates or charges would otherwise go into effect or until an order is issued as provided herein.

Upon sufficient showing of discrimination by customers outside the municipal boundaries or a customer or a group of customers within the municipal boundaries under a petition filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the adoption of the rate change contained in the ordinance for a period of one hundred twenty days from the date the rates or charges would otherwise go into effect or until an order is issued as provided herein. A municipal rate ordinance enacted pursuant to the provisions of this section and municipal charter or state code that establishes or proposes a rate increase that results in an increase of less than twenty-five percent of the gross revenue of the utility shall be presumed valid and rates shall be allowed to go into effect, subject to refund, upon the date stated in that ordinance. In the case of rates established or proposed that increase by more than twenty-five percent of the gross revenue of the municipally operated public utility, the utility may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon enactment.

The commission shall forthwith appoint a hearing examiner from its staff to review the grievances raised by the petitioners. The hearing examiner shall conduct a public hearing and shall, within one hundred days from the date the rates or charges would otherwise go into effect, unless otherwise tolled as provided in subsection (b) of this section, issue an order approving, disapproving or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas or telephone cooperative or by the municipally operated public utility pursuant to this section.
(f) Upon receipt of a petition for review of the rates under the provisions of subsection (c) of this section, the commission may exercise the power granted to it under the provisions of section three of this article, consistent with the applicable rate provisions of section twenty, article ten, chapter eight of this code, section four, article nineteen, chapter eight of this code, and section sixteen, article thirteen, chapter sixteen of this code. The commission may determine the method by which the rates are reviewed and may grant and conduct a de novo hearing on the matter if the customer, electric, natural gas or telephone cooperative or municipality requests a hearing.

(g) A municipal utility shall be required to refund revenues collected from rates enacted that are disapproved or modified upon subsequent order of the commission entered in a proceeding under this section. Any refund determined to be due and owing as a result of any difference between the municipal rates placed into effect subject to refund and any final rates approved the commission shall be refunded by the municipal utility as a credit against each customer’s account for a period of up to six months after entry of the commission’s final order. Any remaining balance which is not fully refunded by credit within six months after entry of the commission’s final order shall be directly refunded to the individual customer by check.

(h) The commission may, upon petition by a municipality or electric, natural gas or telephone cooperative, allow an interim or emergency rate to take effect, subject to refund or future modification, if it is determined that the interim or emergency rate is necessary to protect the municipality from financial hardship attributable to the purchase of the utility commodity sold, or the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress. In such cases, the commission shall waive the 45-day
waiting period provided for in subsection (b) of this section and
the one hundred twenty-day suspension period provided for in
subsection (d) of this section.

(i) Notwithstanding any other provision, the commission has
no authority or responsibility with regard to the regulation of
rates, income, services or contracts by municipally operated
public utilities for services which are transmitted and sold
outside of the State of West Virginia.

CHAPTER 184

(Com. Sub. for S. B. 523 - By Senators Green, D. Hall,
Facemire, Laird, McCabe, Miller, Prezioso, Wells, Plymale,
Carmichael, Jenkins, Yost and Stollings)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2014.]

AN ACT to amend and reenact §9A-1-10 of the Code of West
Virginia, 1931, as amended; to amend and reenact §16-1B-1 of
said code; and to amend and reenact §19-1-4 of said code, all
relating to the authority of the Secretary of the Department of
Veterans' Assistance; authorizing the Secretary of the Department
of Veterans' Assistance and the Commissioner of the Department
of Agriculture to enter into an agreement to transfer certain
property for construction of a veterans skilled nursing facility;
removing outdated language; providing additional powers to the
Secretary of Department of Veteran's Assistance; authorizing the
Secretary to award grants to provide transportation for veterans;
and making legislative findings.
Be it enacted by the Legislature of West Virginia:

That §9A-1-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §16-1B-1 of said code be amended and reenacted; and that §19-1-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 9A. VETERANS’ ASSISTANCE.

ARTICLE 1. DEPARTMENT OF VETERANS’ ASSISTANCE.


The secretary is the executive and administrative head of the department and has the power and duty, subject to the provisions of section four of this article, to:

(a) Supervise and put into effect the purposes and provisions of this article and the rules for the government of the department;

(b) Prescribe methods pertaining to investigations and reinvestigations of all claims and to the rights and interests of all veterans, their widows, widowers, dependents and orphans;

(c) Prescribe uniform methods of keeping all records and case records of the veterans, their widows, widowers, dependents and orphans;

(d) Sign and execute, in the name of the state by West Virginia Department of Veterans’ Assistance, any contract or agreement with the federal government or its agencies, other

* CLERKS NOTE: This section was also amended by H. B. 4268 (Chapter 186), which passed prior to this Act.
16 states, subdivisions of this state, corporations, associations, partnerships or individuals;

18 (e) Supervise the fiscal affairs and responsibilities of the department;

20 (f) Organize the department to comply with the requirements of this article and with the standards required by any federal act or any federal agency;

23 (g) Establish any regional or area offices throughout the state that are necessary to promote efficiency and economy in administration;

26 (h) Make reports that comply with the requirements of any federal act or federal agency and the provisions of this article;

28 (i) Cooperate with the federal and state governments for the more effective attainment of the purposes of this article;

30 (j) Keep a complete and accurate record of all proceedings; record and file all contracts and agreements and assume responsibility for the custody and preservation of all papers and documents pertaining to his or her office and the department;

34 (k) Prepare for the Veterans' Council the annual reports to the Governor of the condition, operation and functioning of the department;

37 (l) Exercise any other powers necessary and proper to standardize the work; to expedite the service and business; to assure fair consideration of the rights and interests and claims of veterans, their widows, widowers, dependents and orphans; to provide resources for a program which will promote a greater outreach to veterans and which will advise them of the benefits
and services that are available; and to promote the efficiency of
the department;

(m) Invoke any legal, equitable or special remedies for the
enforcement of his or her orders or the provisions of this article;

(n) Appoint the officers and heads of divisions of the
department, and of regional or area offices, and employ
assistants and employees, including case managers and
counselors, that are necessary for the efficient operation of the
department;

(o) Provide resources and assistance in the development of
an Internet website which is to be used to inform veterans of
programs and services available to them through the department
and the state and federal governments;

(p) Delegate to all or any of his or her appointees, assistants
or employees all powers and duties vested in the secretary,
except the power to sign and execute contracts and agreements:
Provided, That the secretary shall be responsible for the acts of
his or her appointees, assistants and employees; and

(q) Award grants, in his or her discretion, subject to
available appropriations, to provide for the transportation of
veterans to veterans' hospitals from the veteran's home or local
Veterans' Assistance offices.

(r) Enter into an agreement with the Commissioner of the
Department of Agriculture to transfer without consideration all
or part of the approximately seventeen acres of the Department
of Agriculture property in Beckley, West Virginia, located
adjacent to the Jackie Withrow Hospital which was formerly
known as Pinecrest Hospital, for construction of a veterans
skilled nursing facility.
CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1B. SKILLED NURSING FACILITIES FOR VETERANS OF THE UNITED STATES ARMED FORCES.

§16-1B-1. Legislative findings.

The Legislature finds that the health and welfare of the veterans of the armed forces who are citizens of our state will be best served by the establishment of one or more skilled nursing facilities exclusively for these veterans. Furthermore, the Legislature finds that nearly two hundred thousand veterans in this state have distinguished themselves with the highest level of participation per capita of any state in the wars fought by this nation. Further, an aging veterans' population which suffers from wartime disabilities and illnesses are, or will be, in need of skilled nursing care.

The Legislature further finds that construction of an additional 120-bed veterans skilled nursing facility in southern West Virginia is needed, to be located on Department of Agriculture property in Beckley, West Virginia, adjacent to the Jackie Withrow Hospital which was formerly known as Pinecrest Hospital. The West Virginia veterans skilled nursing facility located in Clarksburg is currently at its maximum capacity and has a large waiting list for admission. With a veteran population that has now reached over two hundred twenty thousand, there is an overwhelming need for additional nursing home beds in other areas of our state to accommodate our veterans as they become unable to take care of themselves.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.
§19-1-4. Duties of commissioner.

The Commissioner of Agriculture shall perform the following duties:

(a) Devise means of advancing the agricultural interests of the state and, in the performance of such duty, he or she shall have authority to call upon any state department, or officer of the state or county, to cooperate in promoting the agricultural interests of the state. It shall be the duty of any such department, or officer, upon request of the commissioner to render the assistance desired;

(b) Promote and encourage the organization of such societies and associations as have for their object the improvement and development of the state’s agricultural, horticultural and kindred interests, especially in production, processing for market and distribution;

(c) Conduct cooperative work with the United States Department of Agriculture in inspecting and determining the grade and condition of farm produce at collecting centers, receiving centers and shipping points;

(d) Induce the investment of capital in, and immigration into, this state by the dissemination of information relative to the soil, climate, health, natural resources, market opportunities and advantages of the state;

(e) Investigate and report upon the kinds, conditions and extent of the mineral products of the state and their value;

(f) Take charge of the museum of the Department of Agriculture, collect, preserve and exhibit therein specimens of
agricultural, horticultural and kindred products, products of the forests, minerals, flora and fauna of the state;

(g) Publish and distribute, from time to time, such reports and bulletins concerning agriculture, horticulture and kindred subjects as may be of value to the farmers of the state and, as conditions may demand, publish a handbook giving the resources of the several counties of the state, the varieties of soil and products, both mineral and vegetable, and the adaptability of the different sections of the state to the different branches of agriculture, horticulture and kindred interests;

(h) Submit a biennial report to the Governor and Legislature containing such information as to the operations of the department as may be helpful to the agricultural interests of the state, together with an itemized statement of all receipts and disbursements during the biennial period covered thereby and giving the name of every person employed during such period, the time employed and the amount paid each employee;

(i) Perform such other duties and exercise such other powers as are provided in this chapter and by general law;

(j) Enter into an agreement with the Secretary of the Department of Veterans' Assistance to transfer without consideration all or part of the approximately seventeen acres of Department of Agriculture property in Beckley, West Virginia, located adjacent to the Jackie Withrow Hospital which was formerly known as Pinecrest Hospital, for construction of a veterans skilled nursing facility; and

(k) Propose rules, including regulatory standards, for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code for the purpose of carrying out the requirements of this chapter.
AN ACT to amend of the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-1G-10, relating to providing for the awarding of a West Virginia veterans service decoration, and a West Virginia Service Cross and ribbon to certain qualifying West Virginia veterans; and providing 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 §15-1G-10, to read as follows:

ARTICLE 1G. SERVICE MEDALS.

§15-1G-10. West Virginia veterans service decoration; West Virginia Service Cross.

(a) In addition to any other medals or awards authorized under the provisions of this article, the following medals are authorized:

(1) A West Virginia veterans service decoration may be awarded to any resident of West Virginia who served in any of the five federally recognized military services for a period at a time during which there was armed conflict.
(2) A West Virginia Service Cross and ribbon bar, along with a certificate signed by the Governor and State Adjutant General, may be awarded to any veteran who meets the criteria set forth in subdivision (1) of this subsection, and who also was awarded a federal achievement medal, commendation medal, meritorious service medal or a medal for valor by one of the five federally recognized military services.

(b) West Virginia National Guard members may also be authorized to receive and wear the medals and ribbons authorized under the provisions of this section in an order of precedence determined by the Adjutant General.

(c) The Adjutant General may propose rules pursuant to article three, chapter twenty-nine-a of this code to implement the provisions of this section.

CHAPTER 186

(Com. Sub. for H. B. 4268 - By Delegates Iaquinta, Boggs, Fleischauer, Longstreth, Perry, Morgan, Wells, Poore, D. Evans and Lane)

[Passed March 8, 2014; in effect ninety days from passage.] [Approved by the Governor on March 28, 2014.]

AN ACT to repeal §9A-1-13, §9A-1-14 and §9A-1-15 of the Code of West Virginia, 1931, as amended; and to amend and reenact §9A-1-2, §9A-1-4, §9A-1-5, §9A-1-6, §9A-1-8, §9A-1-9, §9A-1-10, §9A-1-11 and §9A-1-12 of said code, all relating to the Department of Veterans’ Assistance; removing outdated language; providing additional powers to the Secretary of Department of Veteran’s Assistance; modifying the duties of the Veterans’
Council; authorizing the Secretary to award grants to provide transportation for veterans; and authorizing the Secretary of the Department of Veterans’ Assistance to enter into agreement with the Commissioner of the Department of Agriculture to transfer certain property for construction of a veterans skilled nursing facility.

Be it enacted by the Legislature of West Virginia:


CHAPTER 9A. VETERANS’ ASSISTANCE.

ARTICLE 1. DEPARTMENT OF VETERANS’ ASSISTANCE.

§9A-1-2. Veterans’ Council; administration of department.

(a) There is continued the “Veterans’ Council” consisting of nine members who must be citizens and residents of this state and who have served in and been honorably discharged or separated under honorable conditions from the Armed Forces of the United States and whose service was within a time of war as defined by the laws of the United States.

(b) Where feasible, two members of the council shall be veterans of either World War II or the Korean Conflict, at least two members of the council shall be veterans of the Vietnam era, at least one member shall be a veteran of the first Gulf War and at least one member shall be a veteran of the Afghanistan or Iraqi Conflicts. The members of the veterans’ council shall be selected with special reference to their ability and fitness to effectuate the purposes of this article. If an eligible veteran is not available or cannot be selected, a veteran who is a citizen and
resident of this state, who served in and was honorably discharged or separated under honorable conditions from the Armed Forces of the United States and who served during any time of war or peace may be selected.

(c) The secretary and such officers, assistants and employees as the secretary considers advisable, shall administer the West Virginia Department of Veterans' Assistance.

§9A-1-4. Duties and functions of Veterans' Council; appointment of secretary; honoring academic achievement at military academies.

(a) It is the duty and function of The Veterans' Council to advise the secretary on the general administrative policies of the department, to select, at their first meeting in each fiscal year commencing on July 1, a chairperson to serve one year, to advise the secretary on rules as may be necessary, to advise the Governor and the Legislature with respect to legislation affecting the interests of veterans, their widows, widowers, dependents and orphans and to make annual reports to the Governor respecting the service of the department. The secretary has the same eligibility and qualifications prescribed for members of the Veterans' Council. The secretary ex officio shall maintain all records of the Veterans' Council.

(b) The Veterans' Council may annually honor each West Virginian graduating from the U. S. Military Academy, the U. S. Naval Academy, the U. S. Air Force Academy and the U. S. Coast Guard Academy with the highest grade point average by bestowing upon him or her the West Augusta Award. The award shall be in a design and form established by the council and include the famous Revolutionary War phrase from which the award's name is derived: "Once again our brethren from West Augusta have answered the call to duty." The council shall coordinate the manner of recognition of the recipient at graduation ceremonies with each academy.
§9A-1-5. Compensation to and expenses of Secretary and Veterans’ Council members; meetings of Veterans’ Council.

(a) The secretary shall receive an annual salary as provided in section two-a, article seven, chapter six of this code and necessary traveling expenses incident to the performance of his or her duties.

(b) The members of the Veterans’ Council shall receive no salary, but each member shall receive the same compensation and 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. The requisition for such expenses and traveling expenses shall be accompanied by a sworn and itemized statement, which shall be filed with the Auditor and permanently preserved as a public record.

(c) The Veterans’ Council shall meet on the call of its chairman, except as otherwise provided.

(d) The Veterans’ Council shall meet not more than once every two months at such times as may be determined by and upon the call of the chairman for a period of not more than two days, unless there should be an emergency requiring a special meeting or for a longer period and so declared and called by the Governor or by the chairman with the approval of the Governor.

(e) A majority of the members of the Veterans’ Council in office shall constitute a quorum for the conduct of official business.


The members of the Veterans’ Council, the secretary and the officers of the department shall take and subscribe to the oath
prescribed by article four, section five of the state Constitution before entering on their duties. Their oaths shall be filed with the Secretary of State.


(a) The offices of the secretary shall be located at the state capitol or other place provided in the capital city. The secretary shall keep his or her offices open at all reasonable times for the transaction of business.

(b) The offices and meeting place of the Veterans’ Council shall be in the offices of the secretary: Provided, That the Veterans’ Council with the approval of the Governor may hold meetings at other places but not outside of this state, except in the District of Columbia.


The department of veterans’ assistance shall:

(1) Assist veterans, their widows, widowers, dependents and orphans within the state, in properly presenting their claims before the United States Veterans’ Administration, its administrator, or any federal agency, the State of West Virginia, or any of the several states of the United States, when the claims arise out of service with the armed forces of the United States as defined in section one of this article;

(2) Contact all veterans’ organizations in this state through their duly elected or appointive officers to effectuate the purposes of this article and aid in the efficiency of the operations of the department;

(3) Render all possible and proper advice, assistance and counsel to veterans, their families, and their widows, dependents and orphans, within the state, and furnish them information on
compensation, allowances, pensions, insurance, rehabilitation, hospitalization, education, vocational training, or refresher or retraining courses in education or training, employment, loans or aid for the purchase, acquisition or construction of homes, farms, farm equipment and business property, preference in the purchase of property and preference in employment, as provided or may be provided by any federal act, any federal agency, this state or other states;

(4) Make careful inquiry into all claims presented for payment out of the State Treasury from any appropriation made for the benefit of veterans, their widows, widowers, dependents and orphans.


The secretary is the executive and administrative head of the department and has the power and duty, subject to the provisions of section four of this article, to:

(a) Supervise and put into effect the purposes and provisions of this article and the rules for the government of the department;

(b) Prescribe methods pertaining to investigations and reinvestigations of all claims and to the rights and interests of all veterans, their widows, widowers, dependents and orphans;

(c) Prescribe uniform methods of keeping all records and case records of the veterans, their widows, widowers, dependents and orphans;

(d) Sign and execute, in the name of the state by West Virginia Department of Veterans' Assistance, any contract or

* Clerk’s Note: This section was also amended by S. B. 523 (Chapter 184), which passed subsequent to this Act.*
agreement with the federal government or its agencies, other
states, subdivisions of this state, corporations, associations,
partnerships or individuals;

(e) Supervise the fiscal affairs and responsibilities of the
department;

(f) Organize the department to comply with the requirements
of this article and with the standards required by any federal act
or any federal agency;

(g) Establish any regional or area offices throughout the state
that are necessary to promote efficiency and economy in
administration;

(h) Make reports that comply with the requirements of any
federal act or federal agency and the provisions of this article;

(i) Cooperate with the federal and state governments for the
more effective attainment of the purposes of this article;

(j) Keep a complete and accurate record of all proceedings;
record and file all contracts and agreements and assume
responsibility for the custody and preservation of all papers and
documents pertaining to his or her office and the department;

(k) Prepare for the Veterans’ Council the annual reports to
the Governor of the condition, operation and functioning of the
department;

(l) Exercise any other powers necessary and proper to
standardize the work; to expedite the service and business; to
assure fair consideration of the rights and interests and claims of
veterans, their widows, widowers, dependents and orphans; to
provide resources for a program which will promote a greater
outreach to veterans and which will advise them of the benefits
and services that are available; and to promote the efficiency of
the department;

(m) Invoke any legal, equitable or special remedies for the
enforcement of his or her orders or the provisions of this article;

(n) Appoint the officers and heads of divisions of the
department, and of regional or area offices, and employ
assistants and employees, including case managers and
counselors, that are necessary for the efficient operation of the
department;

(o) Provide resources and assistance in the development of
an Internet website which is to be used to inform veterans of
programs and services available to them through the department
and the state and federal governments;

(p) Delegate to all or any of his or her appointees, assistants
or employees all powers and duties vested in the secretary,
except the power to sign and execute contracts and agreements:
Provided, That the secretary shall be responsible for the acts of
his or her appointees, assistants and employees;

(q) Award grants, in his or her discretion, subject to
available appropriations, to provide for the transportation of
veterans to veterans' hospitals from the veteran's home or local
Veterans' Assistance offices; and

(r) Enter into an agreement with the Commissioner of the
Department of Agriculture to transfer without consideration all
or part of the approximately seventeen acres of the Department
of Agriculture property in Beckley, West Virginia, located
adjacent to the Jackie Withrow Hospital which was formerly
known as Pinecrest Hospital, for construction of a veterans
skilled nursing facility.

(a) There is continued in the State Treasury a special revenue fund to be designated and known as the Veterans Facilities Support Fund which shall be administered by the secretary.

(b) All interest or other returns earned on the investment of the moneys in the fund shall be credited to the fund.

(c) Funds paid into the account shall be derived from the following sources: (1) Any gift, grant, bequest, endowed fund or donation which may be received by any veterans facility created by statute from any governmental entity or unit or any person, firm, foundation or corporation; and (2) All interest or other return on investment accruing to the fund.

(d) Moneys in the fund are to be used for the operational costs of any veterans facility created by statute, the acquisition, design, construction, equipping, furnishing, including, without limitation, the payment of debt service on bonds issued to finance the foregoing and/or as otherwise designated or specified by the donor.

(e) Any balance, including accrued interest or other earnings, in this special fund at the end of any fiscal year shall not revert to the General Revenue Fund but shall remain in the fund.

(f) Funds from the Veterans Facility Support Fund for operational costs of any veterans' facility as defined in this section will be distributed by appropriation of the Legislature.

(g) Funds from the Veterans Facility Support Fund for the acquisition, design, construction, equipping, furnishing, including, without limitation, the payment of debt service on bonds issued to finance the veterans nursing home shall be transferred to the Veterans Nursing Home Building Fund upon written request of the secretary.
§9A-1-12. Legal assistance.

The Attorney General of the state and his or her assistants, and the prosecuting attorneys of the various counties, shall render to the Veterans’ Council or secretary, such legal services as may be required in the discharge of the provisions of this article.

CHAPTER 187

(Com. Sub. for S. B. 373 - By Senators Unger, Kessler (Mr. President), Palumbo, Plymale, Laird, Yost, Miller, Prezioso, Fitzimmons, Wells, Cann, Chafin, Tucker, Stollings, Cookman and Snyder)

[Passed March 8, 2014; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2014.]

AN ACT to amend and reenact §16-1-2 and §16-1-9a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §16-1-9c, §16-1-9d and §16-1-9e; to amend and reenact §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and §22-26-8 of said code; to amend said code by adding thereto a new article, designated §22-30-1, §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-20, §22-30-21, §22-30-22, §22-30-23, §22-30-24 and §22-30-25; to amend said code by adding thereto a new article, designated §22-31-1, §22-31-2, §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12; and to amend said code by adding thereto a new article, designated §24-2G-1 and §24-2G-2, all
relating to the protection of water resources and public health generally; defining terms generally; providing for rulemaking generally; providing for civil and criminal penalties generally; providing for the regulation of the public water systems by the Commissioner of the Bureau for Public Health; providing for entry into and evaluations of water systems; authorizing commissioner to seek injunctive relief; requiring source water protection plans; specifying contents of plan; requiring assessment and monitoring of plans; requiring Bureau for Public Health to coordinate the conduct of a long-term medical study; continuing wellhead and source water protection grant program; continuing grant fund to provide water source protection; revising the Water Resources Protection and Management Act; modifying registration requirements; requiring reports to the Secretary of the Department of Environmental Protection; requiring reports by secretary to legislative entities; requiring continuation of matching funds for stream-gauging network; modifying duties of legislative commission; requiring water resources survey and registry; requiring information from drilling contractors for water systems; adopting state water resources management plan; requiring reports from certain water users; establishing the Aboveground Storage Tank Act; requiring the secretary to compile inventory of aboveground storage tanks in the state; requiring registration; authorizing certain fees; requiring secretary to develop regulatory program for the tanks; providing minimum factors to be included in program; requiring annual inspection and certification of the tanks; requiring evidence of financial security; requiring corrective action and plans; requiring spill prevention response plans; requiring notice of inventory of tanks to local water systems and governments; requiring the posting of signs at the tanks; creating an administrative fund; creating the Protect Our Water Fund; authorizing public access to certain information; authorizing inspections, monitoring and testing by secretary; authorizing secretary to issue administrative orders and seek injunctive relief; allowing appeals to Environmental Quality Board; prohibiting
duplicative enforcement; requiring secretary to report to legislative entities; requiring interagency coordination; establishing duties of secretary upon imminent and substantial danger; providing additional duties and powers of secretary generally; providing certain exemptions; creating the Public Water Supply Protection Act; requiring inventories of sources of certain contaminants in the zones of critical concern of certain public water systems; requiring registration and permits; authorizing inspections, monitoring and testing by secretary; requiring individual National Pollutant Discharge Elimination System permits in certain circumstances; authorizing secretary to require National Pollutant Discharge Elimination System permits in certain circumstances; creating public water system supply study commission; membership of study commission; scope of study; establishing reporting requirements; requiring the establishment of advance warning, testing and monitoring at certain water utilities; requiring certain information be filed with the Public Water Commission; and requiring utility to report back to Legislature if technology is infeasible.

Be it enacted by the Legislature of West Virginia:

That §16-1-2 and §16-1-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto three new sections, designated §16-1-9c, §16-1-9d and §16-1-9e; that §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-7 and §22-26-8 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §22-30-1, §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-20, §22-30-21, §22-30-22, §22-30-23, §22-30-24 and §22-30-25; that said code be amended by adding thereto a new article, designated §22-31-1, §22-31-2, §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and
§22-31-12; and that said code be amended by adding thereto a new article, designated §24-2G-1 and §24-2G-2, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-2. Definitions.

1 As used in this article:

2 (1) "Basic public health services" means those services that are necessary to protect the health of the public. The three areas of basic public health services are communicable and reportable disease prevention and control, community health promotion and environmental health protection;

3 (2) "Bureau" means the Bureau for Public Health in the department;

4 (3) "Combined local board of health" means one form of organization for a local board of health and means a board of health serving any two or more counties or any county or counties and one or more municipalities within or partially within the county or counties;

5 (4) "Commissioner" means the commissioner of the bureau, who is the state health officer;

6 (5) "County board of health" means one form of organization for a local board of health and means a local board of health serving a single county;

7 (6) "Department" means the West Virginia Department of Health and Human Resources;

8 (7) "Director" or "director of health" means the state health officer. Administratively within the department, the bureau
through its commissioner carries out the public health functions of the department, unless otherwise assigned by the secretary;

(8) “Essential public health services” means the core public health activities necessary to promote health and prevent disease, injury and disability for the citizens of the state. The services include:

(A) Monitoring health status to identify community health problems;

(B) Diagnosing and investigating health problems and health hazards in the community;

(C) Informing, educating and empowering people about health issues;

(D) Mobilizing community partnerships to identify and solve health problems;

(E) Developing policies and plans that support individual and community health efforts;

(F) Enforcing laws and rules that protect health and ensure safety;

(G) Uniting people with needed personal health services and assuring the provision of health care when it is otherwise not available;

(H) Promoting a competent public health and personal health care workforce;

(I) Evaluating the effectiveness, accessibility and quality of personal and population-based health services; and

(J) Researching for new insights and innovative solutions to health problems;
(9) "Licensing boards" means those boards charged with regulating an occupation, business or profession and on which the commissioner serves as a member;

(10) "Local board of health", "local board" or "board" means a board of health serving one or more counties or one or more municipalities or a combination thereof;

(11) "Local health department" means the staff of the local board of health;

(12) "Local health officer" means the physician with a current West Virginia license to practice medicine who supervises and directs the activities, services, staff and facilities of the local health department and is appointed by the local board of health with approval by the commissioner;

(13) "Municipal board of health" means one form of organization for a local board of health and means a board of health serving a single municipality;

(14) "Performance-based standards" means generally accepted, objective standards such as rules or guidelines against which public health performance can be measured;

(15) "Potential source of significant contamination" means a facility or activity that stores, uses or produces substances or compounds with potential for significant contaminating impact if released into the source water of a public water supply;

(16) "Program plan" or "plan of operation" means the annual plan for each local board of health that must be submitted to the commissioner for approval;

(17) "Public groundwater supply source" means a primary source of water supply for a public water system which is directly drawn from a well, underground stream, underground
reservoir, underground mine or other primary source of water supplies which is found underneath the surface of the state;

(18) "Public surface water supply source" means a primary source of water supply for a public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments or other primary sources of water supplies which are found on the surface of the state;

(19) "Public surface water influenced groundwater supply source" means a source of water supply for a public water system which is directly drawn from an underground well, underground river or stream, underground reservoir or underground mine, and the quantity and quality of the water in that underground supply source is heavily influenced, directly or indirectly, by the quantity and quality of surface water in the immediate area;

(20) "Public water system" means:

(A) Any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include:

(i) Any collection, treatment, storage and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and

(ii) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system;

(B) A public water system does not include a system which meets all of the following conditions:
(i) Consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(ii) Obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition;

(iii) Does not sell water to any person; and

(iv) Is not a carrier conveying passengers in interstate commerce;

(21) "Public water utility" means a public water system which is regulated by the West Virginia Public Service Commission pursuant to the provisions of chapter twenty-four of this code;

(22) "Secretary" means the secretary of the department.

(23) "Service area" means the territorial jurisdiction of a local board of health;

(24) "State Advisory Council on Public Health" means the advisory body charged by this article with providing advice to the commissioner with respect to the provision of adequate public health services for all areas in the state;

(25) "State Board of Health" means the secretary, notwithstanding any other provision of this code to the contrary, whenever and wherever in this code there is a reference to the State Board of Health;

(26) "Zone of critical concern" for a public surface water supply is a corridor along streams within a watershed that warrant more detailed scrutiny due to its proximity to the surface water intake and the intake's susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for
stream flows, gradient and area topography. The length of the
zone of critical concern is based on a five-hour time-of-travel of
water in the streams to the water intake, plus an additional one-
fourth mile below the water intake. The width of the zone of
critical concern is one thousand feet measured horizontally from
each bank of the principal stream and five hundred feet
measured horizontally from each bank of the tributaries draining
into the principal stream.

§16-1-9a. Regulation of public water systems.

(a) The commissioner shall regulate public water systems as
prescribed in this section.

(b) The commissioner shall establish by legislative rule, in
accordance with article three, chapter twenty-nine-a of this code:

(1) The maximum contaminant levels to which all public
water systems shall conform in order to prevent adverse effects
on the health of individuals;

(2) Treatment techniques that reduce the contaminant or
contaminants to a level which will not adversely affect the health
of the consumer;

(3) Provisions to protect and prevent contamination of
wellheads and well fields used by public water supplies so that
contaminants do not reach a level that would adversely affect the
health of the consumer;

(4) Minimum requirements for:

(A) Sampling and testing;

(B) System operation;

(C) Public notification by a public water system on being
granted a variance or exemption or upon failure to comply with
specific requirements of this section and regulations promulgated under this section;

(D) Recordkeeping;

(E) Laboratory certification; and

(F) Procedures and conditions for granting variances and exemptions to public water systems from state public water systems' regulations;

(5) Requirements covering the production and distribution of bottled drinking water;

(6) Requirements governing the taste, odor, appearance and other consumer acceptability parameters of drinking water; and

(7) Any other requirement the commissioner finds necessary to effectuate the provisions of this article.

(c) The commissioner or his or her authorized representatives or designees may enter any part of a public water system, whether or not the system is in violation of a legal requirement, for the purpose of inspecting, sampling or testing and shall be furnished records or information reasonably required for a complete inspection.

(d) The commissioner, his or her authorized representative or designee may conduct an evaluation necessary to assure the public water system meets federal safe drinking water requirements. The public water system shall provide a written response to the commissioner within thirty days of receipt of the evaluation by the public water system, addressing corrective actions to be taken as a result of the evaluation.

(e)(1) Any individual or entity who violates any provision of this article, or any of the rules or orders issued pursuant to this article, is liable for a civil penalty not less than $1,000 nor more
than $5,000. Each day’s violation shall constitute a separate
offense.

(2) For a willful violation of a provision of this article, or of
any of the rules or orders issued under this article, an individual
or entity shall be subject to a civil penalty of not more than
$10,000 and each day’s violation shall be grounds for a separate
penalty.

(3) Civil penalties are payable to the commissioner. All
moneys collected under this section shall be deposited into a
restricted account known as the Safe Drinking Water Fund. All
moneys deposited into the fund shall be used by the
commissioner to provide technical assistance to public water
systems.

(f) The commissioner, or his or her authorized
representative, may also seek injunctive relief in the circuit court
of the county in which all or part of the public water system is
located for threatened or continuing violations.

§16-1-9c. Required update or completion of source water
protection plans.

(a) On or before July 1, 2016, each existing public water
utility which draws and treats water from a surface water supply
source or a surface water influenced groundwater supply source
shall submit to the commissioner an updated or completed
source water protection plan for each of its public water system
plants with such intakes to protect its public water supplies from
contamination. Every effort shall be made to inform and engage
the public, local governments, local emergency planners, local
health departments and affected residents at all levels of the
development of the protection plan.

(b) The completed or updated plan for each affected plant,
at a minimum, shall include the following:
(1) A contingency plan that documents each public water utility’s planned response to contamination of its public surface water supply source or its public surface influenced groundwater supply source;

(2) An examination and analysis of the public water system’s ability to isolate or divert contaminated waters from its surface water intake or groundwater supply, and the amount of raw water storage capacity for the public water system’s plant;

(3) An examination and analysis of the public water system’s existing ability to switch to an alternative water source or intake in the event of contamination of its primary water source;

(4) An analysis and examination of the public water system’s existing ability to close its water intake in the event the system is advised that its primary water source has become contaminated due to a spill or release into a stream, and the duration of time it can keep that water intake closed without creating a public health emergency;

(5) The following operational information for each plant receiving water supplies from a surface water source:

(A) The average number of hours the plant operates each day, and the maximum and minimum number of hours of operation in one day at that plant during the past year; and

(B) The average quantities of water treated and produced by the plant per day, and the maximum and minimum quantities of water treated and produced at that plant in one day during the past year;

(6) An analysis and examination of the public water system’s existing available storage capacity on its system, how its available storage capacity compares to the public water system’s normal daily usage and whether the public water system’s
existing available storage capacity can be effectively utilized to
minimize the threat of contamination to its system;

(7) The calculated level of unaccounted for water
experienced by the public water system for each surface water
intake, determined by comparing the measured quantities of
water which are actually received and used by customers served
by that water plant to the total quantities of water treated at the
water plant over the past year. If the calculated ratio of those two
figures is less than eighty-five percent, the public water system
is to describe all of the measures it is actively taking to reduce
the level of water loss experienced on its system;

(8) A list of the potential sources of significant
contamination contained within the zone of critical concern as
provided by the Department of Environmental Protection, the
Bureau for Public Health and the Division of Homeland Security
and Emergency Management. The exact location of the
contaminants within the zone of critical concern is not subject to
public disclosure in response to a Freedom of Information Act
request under article one, chapter twenty-nine-b of this code.
However, the location, characteristics and approximate
quantities of potential sources of significant contamination
within the zone of critical concern shall be made known to one
or more designees of the public water utility, and shall be
maintained in a confidential manner by the public water utility.
In the event of a chemical spill, release or related emergency,
information pertaining to any spill or release of contaminant
shall be immediately disseminated to any emergency responders
responding to the site of a spill or release, and the general public
shall be promptly notified in the event of a chemical spill,
release or related emergency.

(9) If the public water utility’s water supply plant is served
by a single-source intake to a surface water source of supply or
a surface water influenced source of supply, the submitted plan
shall also include an examination and analysis of the technical and economic feasibility of each of the following options to provide continued safe and reliable public water service in the event its primary source of supply is detrimentally affected by contamination, release, spill event or other reason:

(A) Constructing or establishing a secondary or backup intake which would draw water supplies from a substantially different location or water source;

(B) Constructing additional raw water storage capacity and/or treated water storage capacity, to provide at least two days of system storage, based on the plant's maximum level of production experienced within the past year;

(C) Creating or constructing interconnections between the public water system with other plants on the public water utility system or another public water system, to allow the public water utility to receive its water from a different source of supply during a period its primary water supply becomes unavailable or unreliable due to contamination, release, spill event or other circumstance;

(D) Any other alternative which is available to the public water utility to secure safe and reliable alternative supplies during a period its primary source of supply is unavailable or negatively impacted for an extended period; and

(E) If one or more alternatives set forth in paragraphs (A) through (D) of this subdivision is determined to be technologically or economically feasible, the public water utility shall submit an analysis of the comparative costs, risks and benefits of implementing each of the described alternatives;

(10) A management plan that identifies specific activities that will be pursued by the public water utility, in cooperation and in concert with the Bureau for Public Health, local health
departments, local emergency responders, local emergency planning committee, and other state, county or local agencies and organizations to protect its source water supply from contamination, including, but not limited to, notification to and coordination with state and local government agencies whenever the use of its water supply is inadvisable or impaired, to conduct periodic surveys of the system, the adoption of best management practices, the purchase of property or development rights, conducting public education or the adoption of other management techniques recommended by the commissioner or included in the source water protection plan;

(11) A communications plan that documents the manner in which the public water utility, working in concert with state and local emergency response agencies, shall notify the local health agencies and the public of the initial spill or contamination event and provide updated information related to any contamination or impairment of the source water supply or the system’s drinking water supply, with an initial notification to the public to occur in any event no later than thirty minutes after the public water system becomes aware of the spill, release or potential contamination of the public water system;

(12) A complete and comprehensive list of the potential sources of significant contamination contained within the zone of critical concern, based upon information which is directly provided or can otherwise be requested and obtained from the Department of Environmental Protection, the Bureau for Public Health, the Division of Homeland Security and Emergency Management and other resources; and

(13) An examination of the technical and economic feasibility of implementing an early warning monitoring system.

(c) Any public water utility’s public water system with a primary surface water source of supply or a surface water influenced groundwater source of supply that comes into
existence on or after the effective date of this article shall submit prior to the commencement of its operations a source water protection plan satisfying the requirements of subsection (b) of this section.

(d) The commissioner shall review a plan submitted pursuant to this section and provide a copy to the Secretary of the Department of Environmental Protection. Thereafter, within one hundred eighty days of receiving a plan for approval, the commissioner may approve, reject or modify the plan as may be necessary and reasonable to satisfy the purposes of this article. The commissioner shall consult with the local public health officer and conduct at least one public hearing when reviewing the plan. Failure by a public water system to comply with a plan approved pursuant to this section is a violation of this article.

(e) The commissioner may request a public water utility to conduct one or more studies to determine the actual risk and consequences related to any potential source of significant contamination identified by the plan, or as otherwise made known to the commissioner.

(f) Any public water utility required to file a complete or updated plan in accordance with the provisions of this section shall submit an updated source water protection plan at least every three years or when there is a substantial change in the potential sources of significant contamination within the identified zone of critical concern.

(g) Any public water utility required to file a complete or updated plan in accordance with the provisions of this section shall review any source water protection plan it may currently have on file with the bureau and update it to ensure it conforms with the requirements of subsection (b) of this section on or before July 1, 2016.
(h) The commissioner's authority in reviewing and monitoring compliance with a source water protection plan may be transferred by the bureau to a nationally accredited local board of public health.

§16-1-9d. Wellhead and Source Water Protection Grant Program.

(a) The commissioner shall continue the Wellhead and Source Water Protection Grant Program.

(b) The fund heretofore created to provide funds for the Wellhead and Source Water Protection Grant Program is continued in the State Treasury and shall be known as the Wellhead and Source Water Protection Grant Fund. The fund shall be administered by the commissioner and shall consist of all moneys made available for the program from any source, including, but not limited to, all fees, civil penalties and assessed costs, all gifts, grants, bequests or transfers from any source, any moneys that may be appropriated and designated for the program by the Legislature and all interest or other return earned from investment of the fund. Expenditures from the fund shall be for the purposes set forth in this article to provide water source protection pursuant to the program 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 eleven-b of this code: Provided, That for the fiscal years ending June 30, 2014, and 2015, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

(c) In prospectively awarding any grants under the Wellhead and Source Water Protection Grant Program, the commissioner
shall prioritize those public water systems where there is the highest probability of contamination of the water source based on the source water assessment report or the source water protection plans which were previously performed. Priority shall also be extended to publicly owned public water systems.

(d) The commissioner, or his or her designee, shall apply for and diligently pursue all available federal funds to help offset the cost of completing source water protection plans by the deadlines established in section nine-c of this article.

(e) The commissioner may receive any gift, federal grant, other grant, donation or bequest and receive income and other funds or appropriations to contribute to the Wellhead and Source Water Protection Grant Program.

§16-1-9e. Long-term medical study.

The Bureau for Public Health shall endeavor to engage the Centers for Disease Control and other federal agencies for the purpose of creating, organizing and implementing a medical study to assess any long-term health effects resulting from the chemical spill that occurred on January 9, 2014, and which exposed the public to chemicals, including 4-methylcyclohexane.

The commissioner shall conduct such study pursuant to the authority granted to the commissioner pursuant to section six of this article: Provided, That in the event the commissioner determines that, in order to adequately perform such study, additional authority is required, the commissioner shall provide a report of such additional authority requested to the Governor and the Joint Committee on Government and Finance.

The commissioner shall cause to be collected and preserved information from health providers who treated patients presenting with symptoms diagnosed as having been caused or
exacerbated as a result of exposure related to the January 9, 2014, chemical spill. The commissioner shall analyze such data and other information deemed relevant by the commissioner and provide a report of the commissioner's findings regarding potential long-term health effects of the January 9, 2014, chemical spill to the Joint Committee on Health by January 1, 2015, including the results of its efforts to engage federal cooperation and assistance for a long-term comprehensive study on the costs of conducting such study on behalf of the state.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 26. WATER RESOURCES PROTECTION AND MANAGEMENT ACT.

§22-26-2. Definitions.

For purposes of this article:

(1) "Baseline average" means the average amount of water withdrawn by a large-quantity user over a representative historical time period as defined by the secretary.

(2) "Beneficial use" means uses that include, but are not limited to, public or private water supplies, agriculture, tourism, commercial, industrial, coal, oil and gas and other mineral extraction, preservation of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation and preservation of cultural values.

(3) "Commercial well" means a well that serves small businesses and facilities in which water is the prime ingredient of the service rendered, including water wells drilled to support horizontal well operations.

(4) "Community water system" means a public water system that pipes water for human consumption to at least fifteen service connections used by year-round residents or one that regularly serves at least twenty-five residents.
(5) "Consumptive withdrawal" means any withdrawal of water which returns less water to the water body than is withdrawn.

(6) "Department" means the West Virginia Department of Environmental Protection.

(7) "Farm use" means irrigation of any land used for general farming, forage, aquaculture, pasture, orchards, nurseries, the provision of water supply for farm animals, poultry farming or any other activity conducted in the course of a farming operation.

(8) "Industrial well" means a well used exclusively for nonpotable purposes, including industrial processing, fire protection, washing, packing or manufacturing of a product excluding food and beverages, or other nonpotable uses.

(9) "Interbasin transfer" means the permanent removal of water from the watershed from which it is withdrawn.

(10) "Large-quantity user" means any person who withdraws over three hundred thousand gallons of water in any thirty-day period from the state's waters and any person who bottles water for resale regardless of quantity withdrawn. "Large-quantity user" excludes farm use, including watering livestock or poultry on a farm, though farms may voluntarily report water withdrawals to assist with the accuracy of the survey.

(11) "Maximum potential" means the maximum designed capacity of a facility to withdraw water under its physical and operational design.

(12) "Noncommunity nontransient water system" means a public water system that serves at least twenty-five of the same persons over six months per year.
(13) "Nonconsumptive withdrawal" means any withdrawal of water which is not a consumptive withdrawal as defined in this section.

(14) "Person", "persons" or "people" means an individual, public and private business or industry, public or private water service and governmental entity.

(15) "Secretary" means the Secretary of the Department of Environmental Protection or his or her designee.

(16) "Transient water system" means a public water system that serves at least twenty-five transient people at least sixty days a year.

(17) "Test well" means a well that is used to obtain information on groundwater quantity, quality, aquifer characteristics and availability of production water supply for manufacturing, commercial and industrial facilities.

(18) "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, impounding reservoirs, springs, wells, watercourses and wetlands: Provided, That farm ponds, industrial settling basins and ponds and waste treatment facilities are excluded from the waters of the state.

(19) "Watershed" means a hydrologic unit utilized by the United States Department of Interior's Geological Survey, adopted in 1974, as a framework for detailed water and related land-resources planning.

(20) "Withdrawal" means the removal or capture of water from water resources of the state regardless of whether it is
79 consumptive or nonconsumptive: Provided, That water
80 encountered during coal, oil, gas, water well drilling and initial
81 testing of water wells, or other mineral extraction and diverted,
82 but not used for any purpose and not a factor in low-flow
83 conditions for any surface water or groundwater, is not deemed
84 a withdrawal.

§22-26-3. Waters claimed by state; water resources protection
survey; registration requirements; agency
cooperation; information gathering.

1 (a) The waters of the State of West Virginia are claimed as
2 valuable public natural resources held by the state for the use and
3 benefit of its citizens. The state shall manage and protect its
4 waters effectively for present and future use and enjoyment and
5 for the protection of the environment. Therefore, it is necessary
6 for the state to determine the nature and extent of its water
7 resources, the quantity of water being withdrawn or otherwise
8 used and the nature of the withdrawals or other uses: Provided,
9 That no provisions of this article may be construed to amend or
10 limit any other rights and remedies created by statute or common
11 law in existence on the date of the enactment of this article.

12 (b) The secretary shall conduct an ongoing water resources
13 survey of consumptive and nonconsumptive surface water and
14 groundwater withdrawals by large-quantity users in this state.
15 The secretary shall determine the form and format of the
16 information submitted, including the use of electronic
17 submissions. The secretary shall establish and maintain a
18 statewide registration program to monitor large-quantity users of
19 water resources.

20 (c) Large-quantity users, except those who purchase water
21 from a public or private water utility or other service that is
22 reporting its total withdrawal, shall register with the department
23 and provide all requested survey information regarding
24 withdrawals of the water resources. Multiple withdrawals from
state water resources that are made or controlled by a single
person and used at one facility or location shall be considered a
single withdrawal of water. Water withdrawals for self-supplied
farm use and private households will be estimated. Water
utilities regulated by the Public Service Commission pursuant to
article two, chapter twenty-four of this code are exempted from
providing information on interbasin transfers to the extent those
transfers are necessary to provide water utility services within
the state.

(d) Except as provided in subsection (f) of this section,
large-quantity users who withdraw water from a West Virginia
water resource shall comply with the survey and registration
requirements of this article. Registration shall be maintained
annually by every large-quantity user on forms and in a manner
prescribed by the secretary.

(e) The secretary shall maintain a listing of all large-
quantity users and each user’s baseline average water
withdrawal.

(f) The secretary shall make a good faith effort to obtain
survey and registration information from persons who are
withdrawing water from in-state water resources, but who are
located outside the state borders.

(g) All state agencies and local governmental entities that
have a regulatory, research, planning or other function relating
to water resources, including, but not limited to, the State
Geological and Economic Survey, the Division of Natural
Resources, the Public Service Commission, the Bureau for
Public Health, the Commissioner of the Department of
Agriculture, the Division of Homeland Security and Emergency
Management, Marshall University, West Virginia University and
regional, county and municipal planning authorities may enter
into interagency agreements with the secretary and shall
cooperate by: (i) Providing information relating to the water
resources of the state; (ii) providing any necessary assistance to
the secretary in effectuating the purposes of this article; and (iii)
assisting in the development of a state water resources
management plan. The secretary shall determine the form and
format of the information submitted by these agencies.

(h) Persons required to participate in the survey and
registration shall provide any reasonably available information
on stream flow conditions that impact withdrawal rates.

(i) Persons required to participate in the survey and
registration shall provide the most accurate information available
on water withdrawal during seasonal conditions and future
potential maximum withdrawals or other information that the
secretary determines is necessary for the completion of the
survey or registration: Provided, That a coal-fired electric
generating facility shall also report the nominal design capacity
of the facility, which is the quantity of water withdrawn by the
facility's intake pumps necessary to operate the facility during
a calendar day.

(j) The secretary shall, to the extent reliable water
withdrawal data is reasonably available from sources other than
persons required to provide data and participate in the survey
and registration, utilize that data to fulfill the requirements of
this section. If the data is not reasonably available to the
secretary, persons required to participate in the survey and
registration are required to provide the data. Altering locations
of intakes and discharge points that result in an impact to the
withdrawal of the water resources shall also be reported.

(k) The secretary shall report annually to the Joint
Legislative Oversight Commission on State Water Resources on
the survey results. The secretary shall also make a progress
report annually on the implementation of the State Water
Resources Management Plan and any significant changes that
may have occurred since the State Water Resources Management Plan was submitted in 2013.

(l) In addition to any requirements for completion of the survey established by the secretary, the survey must accurately reflect both actual and maximum potential water withdrawal. Actual withdrawal shall be established through metering, measuring or alternative accepted scientific methods to obtain a reasonable estimate or indirect calculation of actual use.

(m) The secretary shall make recommendations to the Joint Legislative Oversight Commission on Water Resources created in section five of this article relating to the implementation of a water quantity management strategy for the state or regions of the state where the quantity of water resources are found to be currently stressed or likely to be stressed due to emerging beneficial or other uses, ecological conditions or other factors requiring the development of a strategy for management of these water resources.

(n) The secretary may propose rules pursuant to article three, chapter twenty-nine-a of this code as necessary to implement the survey registration or plan requirements of this article.

(o) The secretary is authorized to enter into cooperative agreements with local, state and federal agencies and private policy or research groups to obtain federal matching funds, conduct research and analyze survey and registration data and other agreements as may be necessary to carry out his or her duties under this article.

(p) The department, the Division of Natural Resources, the Division of Highways and the Conservation Agency (cooperating state agencies) shall continue providing matching funds for the United States Geological Survey’s (USGS) stream-gauging network to the maximum extent practicable. Should a cooperating state agency become unable to maintain its
 CONTRIBUTION LEVEL, IT SHOULD NOTIFY THE USGS AND THE COMMISSION OF ITS INABILITY TO CONTINUE FUNDING FOR THE SUBSEQUENT FEDERAL FISCAL YEAR BY JULY 1 IN ORDER TO ALLOW FOR THE POSSIBLE IDENTIFICATION OF ALTERNATIVE FUNDING RESOURCES.

§22-26-5. JOINT LEGISLATIVE OVERSIGHT COMMISSION ON STATE WATER RESOURCES.

(a) The President of the Senate and the Speaker of the House of Delegates shall each designate five members of their respective houses, at least one of whom shall be a member of the minority party, to serve on a joint legislative oversight commission charged with immediate and ongoing oversight of the water resources survey, registration and development of a state water resources management plan. This commission shall be known as the Joint Legislative Oversight Commission on State Water Resources and shall regularly investigate and monitor all matters relating to water resources, including the survey and plan.

(b) The expenses of the commission, including the cost of conducting the survey and monitoring any subsequent strategy and those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel, are to be approved by the Joint Committee on Government and Finance and paid from legislative appropriations.

§22-26-6. MANDATORY SURVEY AND REGISTRATION COMPLIANCE.

(a) The water resources survey and subsequent registry will provide critical information for protection of the state’s water resources and, thus, mandatory compliance with the survey and registry is necessary.

(b) All large-quantity users who withdraw water from a West Virginia water resource shall complete the survey and register
use with the department. Any person who fails to complete the survey or register, provides false or misleading information on the survey or registration, or fails to provide other information as required by this article may be subject to a civil administrative penalty not to exceed $5,000 to be collected by the secretary consistent with the secretary’s authority pursuant to this chapter. Every thirty days after the initial imposition of the civil administrative penalty, another penalty may be assessed if the information is not provided. The secretary shall provide written notice of failure to comply with this section thirty days prior to assessing the first administrative penalty.

§22-26-7. Secretary authorized to log wells; collect data.

(a) In order to obtain important information about the state’s surface and groundwater, the secretary is authorized to collect scientific data on surface and groundwater and to enter into agreements with local and state agencies, the federal government and private entities to obtain this information.

(b) Any person who installs a community water system, noncommunity nontransient water system, transient water system, commercial well, industrial or test well shall notify the secretary of his or her intent to drill a water well no less than ten days prior to commencement of drilling. The ten-day notice is the responsibility of the owner, but may be given by the drilling contractor.

(c) The secretary has the authority to gather data, including driller and geologist logs, run electric and other remote-sensing logs and devices and perform physical characteristics tests on nonresidential and multifamily water wells.

(d) The drilling contractor shall submit to the secretary a copy of the well completion forms submitted to the Bureau for Public Health for a community water system, noncommunity nontransient water system, transient water system, commercial
well, industrial or test well. The drilling contractor shall also provide the well GPS location and depth to groundwater on the well report submitted to the secretary.

(e) Any person who fails to notify the secretary prior to drilling a well or impedes collection of information by the secretary under this section is in violation of the Water Resources Protection and Management Act and is subject to the civil administrative penalty authorized by section six of this article.

(f) Any well contracted for construction by the secretary for groundwater or geological testing must be constructed at a minimum to well design standards as promulgated by the Bureau for Public Health. Any wells contracted for construction by the secretary for groundwater or geological testing that would at a later date be converted to a public use water well must be constructed to comport to state public water design standards.


(a) The secretary shall oversee the development of a State Water Resources Management Plan to be completed no later than November 30, 2013. The plan shall be reviewed and revised as needed after its initial adoption. The plan shall be developed with the cooperation and involvement of local and state agencies with regulatory, research or other functions relating to water resources including, but not limited to, those agencies and institutions of higher education set forth in section three of this article and a representative of large-quantity users. The State Water Resources Management Plan shall be developed utilizing the information obtained pursuant to said section and any other relevant information available to the secretary.

(b) The secretary shall develop definitions for use in the State Water Resources Management Plan for terms that are
defined differently by various state and federal governmental
entities as well as other terms necessary for implementation of
this article.

(c) The secretary shall continue to develop and obtain the
following:

(1) An inventory of the surface water resources of each
region of this state, including an identification of the boundaries
of significant watersheds and an estimate of the safe yield of
sources for consumptive and nonconsumptive uses during
periods of normal conditions and drought.

(2) A listing of each consumptive or nonconsumptive
withdrawal by a large-quantity user, including the amount of
water used, location of the water resources, the nature of the use,
location of each intake and discharge point by longitude and
latitude where available and, if the use involves more than one
watershed or basin, the watersheds or basins involved and the
amount transferred.

(3) A plan for the development of the infrastructure
necessary to identify the groundwater resources of each region
of this state, including an identification of aquifers and
groundwater basins and an assessment of their safe yield, prime
recharge areas, recharge capacity, consumptive limits and
relationship to stream base flows.

(4) After consulting with the appropriate state and federal
agencies, assess and project the existing and future
nonconsumptive use needs of the water resources required to
serve areas with important or unique natural, scenic,
environmental or recreational values of national, regional, local
or statewide significance, including national and state parks;
designated wild, scenic and recreational rivers; national and state
wildlife refuges; and the habitats of federal and state endangered
or threatened species.
(5) Assessment and projection of existing and future consumptive use demands.

(6) Identification of potential problems with water availability or conflicts among water uses and users including, but not limited to, the following:

(A) A discussion of any area of concern regarding historical or current conditions that indicate a low-flow condition or where a drought or flood has occurred or is likely to occur that threatens the beneficial use of the surface water or groundwater in the area; and

(B) Current or potential in-stream or off-stream uses that contribute to or are likely to exacerbate natural low-flow conditions to the detriment of the water resources.

(7) Establish criteria for designation of critical water planning areas comprising any significant hydrologic unit where existing or future demands exceed or threaten to exceed the safe yield of available water resources.

(8) An assessment of the current and future capabilities of public water supply agencies and private water supply companies to provide an adequate quantity and quality of water to their service areas.

(9) An assessment of floodplain and stormwater management problems.

(10) Efforts to improve data collection, reporting and water monitoring where prior reports have found deficiencies.

(11) A process for identifying projects and practices that are being, or have been, implemented by water users that reduce the amount of consumptive use, improve efficiency in water use, provide for reuse and recycling of water, increase the supply or storage of water or preserve or increase groundwater recharge.
and a recommended process for providing appropriate positive
recognition of those projects or practices in actions, programs,
policies, projects or management activities.

(12) An assessment of both structural and nonstructural
alternatives to address identified water availability problems,
adverse impacts on water uses or conflicts between water users,
including potential actions to develop additional or alternative
supplies, conservation measures and management techniques.

(13) A review and evaluation of statutes, rules, policies and
institutional arrangements for the development, conservation,
distribution and emergency management of water resources.

(14) A review and evaluation of water resources
management alternatives and recommended programs, policies,
institutional arrangements, projects and other provisions to meet
the water resources needs of each region and of this state.

(15) Proposed methods of implementing various
recommended actions, programs, policies, projects or
management activities.

(d) The State Water Resources Management Plan shall
consider:

(1) The interconnections and relationships between
groundwater and surface water as components of a single
hydrologic resource.

(2) Regional or watershed water resources needs, objectives
and priorities.

(3) Federal, state and interstate water resource policies,
plans, objectives and priorities, including those identified in
statutes, rules, regulations, compacts, interstate agreements or
comprehensive plans adopted by federal and state agencies and
compact basin commissions.
(4) The needs and priorities reflected in comprehensive plans and zoning ordinances adopted by a county or municipal government.

(5) The water quantity and quality necessary to support reasonable and beneficial uses.

(6) A balancing and encouragement of multiple uses of water resources, recognizing that all water resources of this state are capable of serving multiple uses and human needs, including multiple uses of water resources for reasonable and beneficial uses.

(7) The distinctions between short-term and long-term conditions, impacts, needs and solutions to ensure appropriate and cost-effective responses to water resources issues.

(8) Application of the principle of equal and uniform treatment of all water users that are similarly situated without regard to established political boundaries.

(e) Each November, the secretary shall report to the Joint Legislative Oversight Commission on State Water Resources on the implementation of the State Water Resources Management Plan.

(f) The State Water Resources Management Plan is adopted. Persons identified as large-quantity users prior to the effective date of this subsection shall report actual monthly water withdrawals, or monthly water withdrawals by a method approved by the secretary, for the previous calendar year by March 31 of each succeeding year. Persons identified as large-quantity users on or after the effective date of this subsection shall submit their initial annual report no later than March 31, 2016, and subsequent annual reports by March 31 of each year thereafter.
ARTICLE 30. THE ABOVEGROUND STORAGE TANK ACT.

§22-30-1. Short title.

This article may be known and cited as the Aboveground Storage Tank Act.

§22-30-2. Legislative findings.

(a) The West Virginia Legislature finds the public policy of the State of West Virginia is to protect and conserve the water resources for the state and its citizens. The state's water resources are vital natural resources that are essential to maintain, preserve and promote human health, quality of life and economic vitality of the state.

(b) The West Virginia Legislature further finds the public policy of the state is for clean, uncontaminated water to be made available for its citizens who are dependent on clean water as a basic need for survival, and who rely on the assurances from public water systems and the government that the water is safe to consume.

(c) The West Virginia Legislature further finds it in the public policy of the state that clean, uncontaminated water be available to its businesses and industries that rely on water for their economic survival, and the well-being of their employees. These include hospitals and the medical industry, schools and educational institutions, the food and hospitality industries, the tourism industry, manufacturing, coal, natural gas and other industries. Businesses and industries searching for places to locate or relocate consider the quality of life for their employees as well as the quality of the raw materials such as clean water.

(d) The Legislature further finds that large quantities of fluids are stored in aboveground storage tanks within the state and that emergency situations involving these fluids can and will
arise that may present a hazard to human health, safety, the water resources, the environment and the economy of the state. The Legislature further recognizes that some of these fluids have been stored in aboveground storage tanks in a regulated manner insufficient to protect human health, safety, water resources, the environment and the economy of the state.

§22-30-3. Definitions.

For purposes of this article:

(1) "Aboveground storage tank" or "tank" means a device made to contain an accumulation of more than one thousand three hundred twenty gallons of fluids that are liquids at standard temperature and pressure, which is constructed primarily of noncarbon materials, including wood, concrete, steel, plastic or fiberglass reinforced plastic, which provide structural support, more than ninety percent capacity of which is above the surface of the ground, but does not include any process vessel. The term includes stationary devices which are permanently affixed, and mobile devices which remain in one location on a continuous basis for sixty or more days, and includes all ancillary aboveground pipes and dispensing systems up to the first point of isolation and all ancillary underground pipes and dispensing systems connected to the aboveground containers to the first point of isolation. Notwithstanding any other provision of this code to the contrary, shipping containers, including railroad freight cars, subject to federal regulation under the Federal Railroad Safety Act, 49 U. S. C.§§20101-2015, as amended, including but not limited to federal regulations promulgated thereunder at 49 CFR 172, 173 or 174, or subject to other federal law governing the transportation of hazardous materials are not subject to any provision of this article or of article thirty-one of this chapter. Notwithstanding any other provision of this code to the contrary, barges or boats subject to federal regulation under the United States Coast Guard, United States Department of
Homeland Security, including, but not limited to, federal regulations promulgated at 33 CFR 1, et seq, or subject to other federal law governing the transportation of hazardous materials are not subject to any provision of this article or of article thirty-one of this chapter. Notwithstanding any other provision of this code to the contrary, swimming pools are not subject to any provision of this article or article thirty-one of this chapter.

(2) "Department" means the West Virginia Department of Environmental Protection.

(3) "Nonoperational storage tank" means an empty aboveground storage tank in which fluids will not be deposited or from which fluids will not be dispensed on or after the effective date of this article.

(4) "Operator" means any person in control of, or having responsibility for, the daily operation of an aboveground storage tank.

(5) "Owner" means a person who holds title to, controls or owns an interest in an aboveground storage tank, including owners of tanks immediately preceding the discontinuation of a tank's use. "Owner" does not mean a person who holds an interest in a tank for financial security, unless the holder has taken possession of and operated the tank.

(6) "Person", "persons" or "people" means any individual, trust, firm, owner, operator, corporation or other legal entity, including the United States government, an interstate commission or other body, the state or any agency, board, bureau, office, department or political subdivision of the state, but does not include the Department of Environmental Protection.

(7) "Process vessel" means tanks, containers or other vessels utilized in a facility in the manufacturing process through which
58 there is a steady, variable, recurring or intermittent flow of materials. This does not include tanks used for storage of materials prior to their introduction into the production process or for the storage of finished products or by-products of the production process.

63 (8) "Public groundwater supply source" means a primary source of water supply for a public water system which is directly drawn from a well, underground stream, underground reservoir, underground mine or other primary source of water supplies which is found underneath the surface of the state.

68 (9) "Public surface water supply source" means a primary source of water supply for a public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments or other primary sources of water supplies which are found on the surface of the state.

73 (10) "Public surface water influenced groundwater supply source" means a source of water supply from a public water system which is directly drawn from an underground well, underground river or stream, underground reservoir or underground mine, and the quantity or quality of the water in that underground supply source is heavily influenced, directly or indirectly, by the quantity and quality of surface water in the immediate area.

81 (11) "Public water system" means:

82 (A) Any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include:
(i) Any collection, treatment, storage and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and

(ii) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(B) A public water system does not include a system which meets all of the following conditions:

(i) Consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(ii) Obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition;

(iii) Does not sell water to any person; and

(iv) Is not a carrier conveying passengers in interstate commerce.

(12) “Release” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of fluids from an aboveground storage tank into groundwater, surface water or subsurface soils. The term shall also include spilling, leaking, emitting, discharging, escaping, leaching or disposing of fluids from an aboveground storage tank into a containment structure or facility that poses an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater: Provided, that the overfill or spillage of up to twenty gallons of fluid during the loading or unloading of liquids shall not be required to be reported if the overflow or spillage is wholly contained within a containment structure or facility, it is promptly cleaned up and no portion of the overfill or spillage escapes onto the ground or into adjacent surface water.
(13) “Secondary containment” means a safeguard applied to one or more tanks that prevents the discharge into the waters of the state of the entire capacity of the largest single tank and sufficient freeboard to contain precipitation. In order to qualify as secondary containment, the barrier and containment field must be sufficiently impervious to contain fluids in the event of a release, and may include double-walled tanks, dikes, containment curbs, pits or drainage trench enclosures that safely confine the release from a tank in a facility catchment basin or holding pond. (14) "Secretary" means the Secretary of the Department of Environmental Protection, or his or her designee.

(15) “Source water protection area” for a public groundwater supply source is the area within an aquifer that supplies water to a public water supply well within a five-year time-of-travel, and is determined by the mathematical calculation of the locations from which a drop of water placed at the edge of the protection area would theoretically take five years to reach the well.

(16) “Zone of critical concern” for a public surface water supply is a corridor along streams within a watershed that warrants more detailed scrutiny due to its proximity to the surface water intake and the intake’s susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient and area topography. The length of the zone of critical concern is based on a five-hour time-of-travel of water in the streams to the water intake, plus an additional one-fourth mile below the water intake. The width of the zone of critical concern is one thousand feet measured horizontally from each bank of the principal stream and five hundred feet measured horizontally from each bank of the tributaries draining into the principal stream.

§22-30-4. Inventory and registration of existing aboveground storage tanks.
(a) To assure protection of the water resources of the state, the secretary shall compile an inventory of all aboveground storage tanks in existence in this state, regardless of whether it is an operational or nonoperational storage tank on the effective date of this article. The secretary shall prescribe an inventory and registration form for this purpose within thirty days of the effective date of the enactment of this article.

(b) At a minimum the inventory form shall identify the ownership of the tank, tank location, date of installation if known, type of construction, capacity and age of the tank, the type and volume of fluid stored therein, and the identity of and distance to the nearest groundwater public water supply intake and/or nearest surface water downstream public water supply intake. (c) If the inventoried tank is regulated under any existing state or federal regulatory program, the owner of the tank shall be required to provide the identifying number of any license, registration or permit issued for the tank, and identify the regulatory standards and requirements the tank is required to meet.

(d) Any aboveground storage tank placed into service on or after the effective date of this section, but prior to the establishment of a permit program, shall complete and submit an inventory form with the secretary.

(e) Upon receipt of an inventory form, the secretary shall determine whether the storage tank is required to meet the minimum design, construction, inspection, secondary containment, leak reporting and performance standards equivalent to or greater than the standards and requirements established under an existing license or permit issued for the individual storage tank, storage tank farm or site on which the storage tank is located.

(f) The secretary may charge a reasonable fee to cover the cost of maintaining and overseeing the inventory and registration.
program. The fee may be set by emergency and legislative rules proposed for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(g) On and after October 1, 2014, it shall be unlawful for any owner or operator to operate or use an aboveground storage tank subject to this article which has not been properly registered or for which any applicable registration fee has not been paid.

§22-30-5. Aboveground Storage Tank Regulatory Program; promulgation of appropriate aboveground tank standards; permitting procedures and waiver requirements; rulemaking requirements.

(a) The secretary shall promulgate for review and consideration by the West Virginia Legislature legislative rules during the 2015 Regular Session of the West Virginia Legislature, on all matters related to this article.

(b) To assure further protection of the water resources of the state, the secretary shall develop a regulatory program for new and existing aboveground storage tanks incorporating nationally recognized tank standards such as those standards developed by the American Petroleum Institute (API), the Steel Tank Institute (STI) or comparable authorities, and taking into account the size, location and contents of the tanks. At a minimum, the program shall include the following:

(1) A requirement to submit a verified application for a permit containing information as may be prescribed by the secretary;

(2) Performance standards for design, construction, installation, maintenance, corrosion detection and maintenance, release detection and prevention and secondary containment to ensure the structural integrity of the storage tank and the secondary containment;
(3) Requirements for maintaining a leak detection system, inventory control systems together with tank testing or a comparable system or method designed to identify releases from aboveground storage tanks in a manner consistent with the protection of human health, safety, water resources and the environment;

(4) Requirements for maintaining records of any monitoring or leak detection system, corrosion prevention, inventory control system or tank testing system;

(5) Requirements for early detection of releases and immediate reporting of releases;

(6) Requirements for developing a corrective action plan to expeditiously respond to any releases;

(7) Requirements for the closure of aboveground storage tanks and remediation to prevent future releases of fluids or materials to the state’s water resources;

(8) Requirements for certification of installation, removal, retrofit, corrosion and other testing and inspection of aboveground storage tanks, leak detection systems and secondary containment by a qualified registered professional engineer regulated and licensed by the State Board of Registration for Professional Engineers, or by an individual certified to perform tank inspections by the American Petroleum Institute, or by a person holding certification under another program approved by the secretary;

(9) Requirements for life-cycle management of aboveground storage tanks that include mitigation and corrosion prevention plans that include, but are not limited to:

(A) A life-cycle maintenance schedule for the use of protective coatings and or other repair, rehabilitation, and
maintenance methods used for the preservation of aboveground storage tanks;

(B) A process for ensuring that corrosion prevention and mitigation is carried out according to corrosion prevention industry standards adopted by the secretary for aboveground storage tanks that includes the use of industry trained and certified:

(i) Protective coatings personnel to carry out surface preparation operations and coating application on any type of substrate and or surface, but especially concrete and steel;

(ii) Cathodic protection experts for all aspects of corrosion prevention projects requiring knowledge of the design, installation, monitoring or maintenance of a cathodic protection system; and

(iii) Inspectors to ensure best practices and standards are adhered to on a corrosion prevention and mitigation project;

(C) A plan to prevent environmental degradation that could occur as a result of carrying out corrosion prevention and mitigation including, but not limited to, the careful handling and containment of hazardous materials, not including the contaminant within, removed from the interior and or exterior of an aboveground storage tank; and

(D) Use of industry experts for consultation and direct to determine whether to approve a corrosion prevention and mitigation plan, or any part therein, the secretary shall consult, and interact directly with, corrosion industry experts specializing in the training and certification of personnel to carry out corrosion prevention and mitigation methods.

(10) The assessment of permit application and registration fees as determined by the secretary;
(11) Permit issuance only after the application and any other supporting documents have been submitted, reviewed and approved by the secretary, and that permits may be issued with certain conditions or contingencies;

(12) A requirement that any aboveground storage tank maintenance work shall commence within six months from the date the permit was issued and must be completed within one year of commencement. If the work has not started or is not completed during the stated time periods, the permit shall expire and a new permit shall be required unless a written extension is granted by the secretary. An extension may be granted only if the applicant can demonstrate that the delay was not deliberate and that the delay will not present harm to human health, safety, water resources or the environment;

(13) A procedure for the administrative resolution of violations including the assessment of administrative civil penalties;

(14) A procedure for any person adversely affected by a decision or order of the secretary relating to the aboveground storage tank program to appeal to the Environmental Quality Board, pursuant to the provisions of article one, chapter twenty-two-b of this code;

(15) In coordination and cooperation with the Bureau for Public Health and the Division of Homeland Security and Emergency Management, create a process and procedure for identifying any aboveground storage tanks which are located within a defined zone of critical concern for a public water system's surface water intake or within a defined source water protection area for a public water system’s groundwater intake, and determining whether additional permit requirements and inspections should be imposed on that tank or facility by requiring the issuance of any new permit pursuant to this article, or by amending any existing permit which may pertain to that
(16) Requirements for maintaining written or electronic records that log at least the following information for each aboveground storage tank: Tank numbers, additives, verifiable content levels, deliveries, amounts and quantities, dispensing, repairs and maintenance; and including the requirement that such logs be signed by the owner or a designated responsible supervisor, and be available for inspection upon request of the secretary; and

(17) Compliance with a nationally recognized tank standard as solely determined by the department shall be deemed compliance with the requirements that are developed in accordance with subsection (9) of this section.

§22-30-6. Annual inspection and certification.

(a) Every owner or operator of an aboveground storage tank regulated herein shall have an annual inspection of each tank performed by a qualified registered professional engineer or a qualified person working under the direct supervision of a registered professional engineer, regulated and licensed by the State Board of Registration for Professional Engineers, or by an individual certified to perform tank inspections by the American Petroleum Institute, or by a person holding certification under another program approved by the secretary. Every owner or operator shall submit, on a form prescribed by the secretary, a certification from the engineer that each tank, associated equipment, leak detection system and secondary containment structure meets the minimum standards established by this article or by the secretary by rule.

(b) The certification form shall be submitted to the secretary on or before January 1, 2015, and each year thereafter.
§22-30-7. Financial responsibility.

The secretary shall promulgate rules requiring owners and operators to provide evidence of adequate financial resources to undertake reasonable corrective action for releases of fluid from aboveground storage tanks. The means of demonstrating adequate financial responsibility may include, but not be limited to, providing evidence of current insurance, guarantee, surety bond, letter of credit, proof of assets, trust fund or qualification as a self insurer.


(a) Prior to the effective date of the emergency and legislative rules promulgated pursuant to the authority granted under this article, the secretary is authorized to:

(1) Require the owner or operator to develop a preliminary corrective action plan taking into consideration the types of fluids and types of tanks on the premises;

(2) Require the owner or operator of an aboveground storage tank to undertake prompt corrective action to protect human health, safety, water resources or the environment from contamination caused by a release; or

(3) Undertake immediate corrective action with respect to any release or threatened release of fluid from an aboveground storage tank when, in the judgment of the secretary, the action is necessary to protect human health, safety, water resources or the environment from contamination caused by a release.

(b) The corrective action undertaken or required by this section shall be what may be necessary to protect human health, water resources and the environment from contamination caused by a release, including the ordered cessation or closure of a source of contamination and the ordered remediation of a
contaminated site. The secretary shall use funds in the Protect
Our Water Fund established pursuant to this article for payment
of costs incurred for corrective action taken by the secretary in
accordance with this article. In undertaking corrective actions
under this section and in issuing orders requiring owners or
operators to undertake the actions, the secretary shall give
priority to releases or threatened releases of fluid from
aboveground storage tanks that pose the greatest threat to human
health, water resources or the environment.

(c) Following the effective date of rules promulgated
pursuant to this article, all actions or orders of the secretary shall
be in conformity with those rules. Following the effective date
of the rules, the secretary may undertake corrective action with
respect to any release or threatened release of fluid from an
aboveground storage tank only if, in the judgment of the
secretary, the action is necessary to protect human health, safety,
water resources or the environment from contamination, and one
or more of the following situations exists:

(1) If no person can be found within thirty days, or a shorter
period as may be necessary to protect human health, safety,
water resources and the environment, who is an owner or
operator of the aboveground storage tank at issue and who is
capable of carrying out the corrective action properly;

(2) A situation exists that requires immediate action by the
secretary under this section to protect human health, safety,
water resources or the environment;

(3) The cost of corrective action to be expended on an
aboveground storage tank exceeds the amount of resources that
the owner or operator can reasonably be expected to possess
based on the information required to be submitted pursuant to
this article and, considering the fluid being stored in the
aboveground storage tank in question, expenditures from the
(4) The owner or operator of the tank has failed or refused to comply with an order of the secretary under this article or of the Environmental Quality Board under article one, chapter twenty-two-b of this code to comply with appropriate corrective action measures ordered by the secretary or the Environmental Quality Board.

(d) The secretary may draw upon the Protect Our Water Fund in order to take action under subdivision (1) or (2), subsection (c) of this section if the secretary has made diligent good-faith efforts to determine the identity of the owner or operator responsible for the release or threatened release and:

(1) The secretary is unable to determine the identity of the owner or operator in a manner consistent with the need to take timely corrective action; or

(2) The owner or operator determined by the secretary to be responsible for the release or threatened release has been informed in writing of the secretary's determination and has been requested by the secretary to take appropriate corrective action but is unable or unwilling to take proper action in a timely manner.

(e) The written notice to the owner or operator must inform the owner or operator that if it is subsequently found liable for releases pursuant to this section, the owner or operator will be required to reimburse the Protect Our Water Fund for the costs of the investigation, information gathering and corrective action taken by the secretary.

(f) If the secretary determines that immediate response to an imminent threat to human health, safety, water resources or the environment is necessary to avoid substantial injury or damage
thereo, corrective action may be taken pursuant to this section without the prior written notice required by subdivision (2), subsection (d) of this section. In that case, the secretary must give subsequent written notice to the owner or operator within fifteen days after the action is taken describing the circumstances that required the action to be taken and setting forth the matters identified in subsection (e) of this section.


(a) Within one hundred eighty days of the effective date of this article, each owner or operator of an aboveground storage tank shall submit a spill prevention response plan for each aboveground storage tank. Owners and operators of aboveground storage tanks shall file updated plans required to be submitted by this section no less frequently than every three years. Each plan shall be site-specific, consistent with the requirements of this article, and developed in consultation with Bureau for Public Health, county and municipal emergency management agencies. The spill prevention response plan shall at a minimum:

(1) Identify and describe the activity that occurs at the site and identify applicable hazard and process information, including a specific listing and inventory of all types of fluids stored, amount of fluids stored and wastes generated that are stored in aboveground storage tanks at the facility. The plan shall include the material safety data sheets (MSDS) required by the Occupational Safety and Health Administration for all fluids in use or stored in aboveground storage tanks at the facility. The material safety data sheets must include the health hazard number identified by the National Fire Protection Association. The plan shall also include drawings of the aboveground storage tank facility, including the locations of all drainage pipes and water outlets;

(2) Identify all facility-related positions with duties and responsibilities for developing, implementing and maintaining
the facility's plan. The plan shall describe in detail the chain of
command at the aboveground storage tank facility and list all
facility emergency coordinators and all known emergency
response contractors;

(3) Provide a preventive maintenance program that includes
monitoring and inspection procedures, including identification
of stress points, employee training programs and security
systems. The plan shall include a description of potential sources
and areas where spills and leaks may occur by drawings and plot
plans and shall identify specific spill prevention measures for
those identified areas;

(4) Detail the specific response that the aboveground storage
tank facility and contract emergency personnel shall take upon
the occurrence of any release of fluids from an aboveground
storage tank at the facility;

(5) Provide contact information obtained by the owner or
operator of the aboveground storage tanks from the county and
municipal emergency management agencies and the nearest
downstream public water supply intake, and designate the person
or persons to be notified in the event of a release from an
aboveground storage tank; and

(6) Provide the secretary with all other requested
information.

(b) Each owner of an aboveground storage tank with an
approved spill prevention response plan shall submit to the
secretary a revised plan or addendum to the plan in accordance
with the requirements of this article if any of the following
occur:

(1) There is a substantial modification in design,
construction, operation or maintenance of any aboveground
storage tank or associated equipment, or there are other
circumstances that increase the potential for fires, explosions or releases of fluids;

(2) There is a substantial modification in emergency equipment at the facility;

(3) There are substantial changes in emergency response protocols at the aboveground storage tank facility;

(4) The plan fails in an emergency;

(5) The removal or the addition of any aboveground storage tank; or

(6) Other circumstances occur about which the secretary requests an update.

The secretary shall approve the spill prevention response plan or reject the plan and require modifications as may be necessary and reasonable to assure the protection of the source water of a public water system from a release of fluids from an aboveground storage tank. If rejected, the owner of the aboveground storage tank shall submit a revised plan to the secretary for approval within thirty days of receipt of notification of the secretary’s decision. Failure to comply with a plan approved by the secretary pursuant to this section is a violation of this article.

(d) Nothing contained in this section relieves the owner or operator of an aboveground storage tank from his or her obligation to report any release immediately to the department’s emergency notification telephone number.

§22-30-10. Notice to local governments and water companies.

The owner or operator of an aboveground storage tank facility shall provide as required by the secretary public notice to any public water system where the facility is located within
the system's identified groundwater supply's source water protection area or within the system's surface water supply's zone of critical protection, to the local municipality, if any, and to the county in which the facility is located. The notice shall provide a detailed inventory of the type and quantity of fluid stored in aboveground storage tanks at the facility and the material safety data sheets (MSDS) associated with the fluid in storage. The owner or operator shall also provide as required by the secretary a copy of the spill prevention response plan and any updates thereto, which have been approved by the secretary pursuant to this act, to the applicable public water systems and county and municipal emergency management agencies.

§22-30-11. Required signage.

Every aboveground storage tank shall display the signage, if any, required by the Occupational Safety and Health Administration; the tank registration number, when issued by the secretary; and the emergency contact number for the owner or operator of the tank and the emergency contact number for the Department of Environmental Protection's Spill Reporting Hotline. For the purposes of this section, the requirements for prominently posted signage shall be specified in the rules proposed for promulgation by the secretary pursuant to this article and article three, chapter twenty-nine-a of this code.


(a) The secretary shall collect annual registration fees from owners or operators of each aboveground storage tank in an amount to be promulgated in the legislative rules authorized by this article to be used by the secretary to defray the costs of administering this article. All registration and permit fees and the net proceeds of all fines, penalties and forfeitures collected under this article, including accrued interest, shall be paid into a special revenue account, hereby created within the State Treasury, designated the Aboveground Storage Tank Administrative Fund.
(b) At the end of each fiscal year, any unexpended balance, including accrued interest, on deposit in the Aboveground Storage Tank Administrative Fund shall not be transferred to the General Revenue Fund, but shall remain in the Aboveground Storage Tank Administrative Fund for expenditure pursuant to this section.


(a) Each owner or operator of an aboveground storage tank located in this state shall pay an annual fee to establish a fund to assure adequate response to leaking aboveground storage tanks. The amount of fees assessed pursuant to this section shall be set forth by rule. The fees must be sufficient to cover the regulatory oversight and services to be provided by designated agencies, including necessary technical and administrative personnel. The proceeds of the assessment shall be paid into a special revenue account, hereby created within the State Treasury, designated the Protect Our Water Fund. The fund shall be administered by the secretary. Expenditures from the fund shall be solely to respond to leaking aboveground storage tanks, 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 eleven-b of this code: Provided, That for the fiscal years ending June 30, 2014 and 2015, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature. At the end of each fiscal year, any unexpended balance, including accrued interest, on deposit in the Protect Our Water Fund shall not be transferred to the General Revenue Fund, but shall remain in the Protect Our Water Fund for expenditure pursuant to this section.

(b) Each owner or operator of an aboveground storage tank subject to a fee assessment under subsection (a) of this section
shall pay a fee based on the number of aboveground storage
tanks he or she owns or operates, as applicable. The secretary
shall vary the fees annually to a level necessary to produce a
sufficient fund at the beginning of each calendar year.

(c) At the end of each fiscal year, any unexpended balance,
including accrued interest, on deposit in the Protect Our Water
Fund shall not be transferred to the General Revenue fund, but
shall remain in the Protect Our Water Fund.

(d) The secretary may enter into agreements and contracts
and to expend the moneys in the fund for the following purposes:

(1) Responding to aboveground storage tank releases when,
based on readily available information, the secretary determines
that immediate action is necessary to prevent or mitigate
significant risk of harm to human health, safety, water resources
or the environment from contamination caused by a release of
fluid from aboveground storage tanks in situations for which no
federal funds are immediately available for the response, cleanup
or containment: Provided, That the secretary shall apply for and
diligently pursue all available federal funds at the earliest
possible time;

(2) Reimbursing any nonresponsible parties for reasonable
cleanup costs incurred with the authorization of the secretary in
responding to an aboveground storage tank release; or

(3) Reimbursing any nonresponsible parties for reasonable
costs incurred with the authorization of the secretary responding
to perceived, potential or threatened releases from aboveground
storage tanks.

(e) The secretary, through a cooperative agreement with
another state regulatory agency, in this or another state, may use
the fund to compensate the cooperating agency for expenses the
cooperating agency incurs in carrying out regulatory responsibilities that agency may have pursuant to this article.

§22-30-14. Public access to information.

(a) The public shall have access to all documents and information submitted to the agency, subject to the limitations contained in the state Freedom of Information Act, article one, chapter twenty-nine-b of this code. Records, reports or information obtained from any persons under this article may be disclosed to other officers, employees or authorized representatives of this state or federal agency implementing the provisions of this article or any other applicable law related to releases of fluid from aboveground storage tanks that impact the state’s water resources.

(b) A list of the potential sources of significant contamination contained within the zone of critical concern as provided by the Department of Environmental Protection, the Bureau for Public Health and the Division of Homeland Security and Emergency Management may be disclosed. The exact location of the contaminants within the zone of critical concern is not subject to public disclosure in response to a Freedom of Information Act request under article one, chapter twenty-nine-b of this code. However, the location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern shall be made known to one or more designees of the public water utility, and shall be maintained in a confidential manner by the public water utility. In the event of a chemical spill, release or related emergency, information pertaining to any spill or release of contaminant shall be immediately disseminated to any emergency responders responding to the site of a spill or release, and the general public shall be promptly notified in the event of a chemical spill, release or related emergency.
§22-30-15. Inspections, monitoring and testing.

(a) For the purposes of developing or assisting in the development of any rule, conducting any study, taking any corrective action or enforcing any provision of this article, any owner or operator of an aboveground storage tank shall, upon request of the secretary:

(1) Furnish information relating to the aboveground storage tanks, their associated equipment and contents;

(2) Conduct reasonable monitoring or testing;

(3) Permit the secretary, at all reasonable times, to inspect and copy records relating to aboveground storage tanks; and

(4) Permit the secretary to have access to the aboveground storage tanks for corrective action.

(b) For the purposes of developing or assisting in the development of any rule, conducting any study, taking corrective action or enforcing any provision of this article, the secretary may:

(1) Enter at any time any establishment or other place where an aboveground storage tank is located;

(2) Inspect and obtain samples of any fluid contained in an aboveground storage tank from any person;

(3) Conduct monitoring or testing of the aboveground storage tanks, associated equipment, contents or surrounding soils, surface water or groundwater; and

(4) Take corrective action as specified in this article.

(c) Each inspection shall be commenced and completed with reasonable promptness.
(d) To ensure protection of the water resources of the state and compliance with any provision of this article or rule promulgated thereunder, the secretary shall inspect at least annually any aboveground storage tank facility located within the zone of critical concern of a public water system with a public surface water supply source or a public surface water influenced groundwater supply source.

§22-30-16. Administrative orders; injunctive relief.

(a) When the secretary determines, on the basis of any information, that a person is in violation of any requirement of this article or the rules promulgated thereunder, the secretary may issue an order stating with reasonable specificity the nature of the violation and requiring compliance within a reasonable specified time period, or the secretary may commence a civil action in the circuit court of the county in which the violation occurred or in the circuit court of Kanawha County for appropriate relief, including a temporary or permanent injunction. The secretary may, except as provided in subsection (b) of this section, stay any order he or she issues upon application, until the order is reviewed by the Environmental Quality Board.

(b) In addition to the powers and authority granted to the secretary by this chapter to enter into consent agreements, settlements, and otherwise enforce this chapter, the secretary shall propose rules for legislative approval to establish a mechanism for the administrative resolution of violations set forth in this article through consent order or agreement as an alternative to instituting a civil action.

§22-30-17. Civil and criminal penalties.

(a) Any person who fails to comply with an order of the secretary issued under subsection (a), section sixteen of this article within the time specified in the order is liable for a civil
penalty of not more than $25,000 for each day of continued noncompliance.

(b) Any owner or operator of an aboveground storage tank who knowingly fails to register or obtain a permit required by this article for an aboveground storage tank or submits false information pursuant to this article is liable for a civil penalty not to exceed $10,000 for each aboveground storage tank that is not registered or permitted or for which false information is submitted.

(c) Any owner or operator of an aboveground storage tank who fails to comply with any requirement of this article or any standard promulgated by the secretary pursuant to this article is subject to a civil penalty not to exceed $10,000 for each day of violation.

(d) Any person who knowingly and intentionally violates any provision of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in a regional jail for a period of time not exceeding one year, and be fined an amount not to exceed $25,000.

(e) Any person convicted of a second or subsequent willful violation of subsection (d) of this section or knowingly and willfully violates any provision of any permit, rule or order issued under or subject to the provisions of this article is guilty of a felony and, upon conviction, shall be imprisoned in a correctional facility not less than one nor more than three years, or fined not more than $50,000 for each day of violation, or both fined and imprisoned.

(f) Any person may be prosecuted and convicted under the provisions of this section notwithstanding that none of the administrative remedies provided in this article have been pursued or invoked against said person and notwithstanding that civil action for the imposition and collection of a civil penalty or
an application for an injunction under the provisions of this article has not been filed against such person.

(g) Where a person holding a permit is carrying out a program of pollution abatement or remedial action in compliance with the conditions and terms of the permit, the person is not subject to criminal prosecution for pollution recognized and authorized by the permit.

(h) Civil penalties are payable to the secretary. All moneys collected under this section for civil fines collected under this article shall be deposited into a restricted account known as the Protect Our Water Fund. All money deposited into this account shall be used by the secretary solely to respond to leaking aboveground storage tanks.

§22-30-18. Appeal to Environmental Quality Board.

Any person aggrieved or adversely affected by an order of the secretary made and entered in accordance with the provisions of this article may appeal to the Environmental Quality Board, pursuant to the provisions of article one, chapter twenty-two-b of this code.


No enforcement proceeding brought pursuant to this article may be duplicated by an enforcement proceeding subsequently commenced under some other article of this code with respect to the same transaction or event, unless the subsequent proceeding involves the violation of a permit or permitting requirement of other article.

§22-30-20. Reporting and accountability.

(a) Every year, the secretary shall submit a report to the Joint Legislative Oversight Commission on State Water Resources and the Joint Committee on Government and Finance which
assesses the effectiveness of this article and provides other information as may be requested by the commission to allow it to assess the effectiveness of this article, including, without limitation, the secretary’s observations concerning all aspects of compliance with this article and any legislative rules promulgated pursuant hereto, the regulatory process, and any pertinent changes to federal rules or regulations.

(b) The secretary shall keep accurate accounts of all receipts and disbursements related to the administration of the Aboveground Storage Tank Administrative Fund and shall make a detailed annual report to the Joint Legislative Oversight Commission on State Water Resources and the Joint Committee on Government and Finance addressing the administration of the fund.

(c) The secretary shall keep accurate accounts of all receipts and disbursements related to the administration of the Protect Our Water Fund and shall make a specific annual report to the Joint Legislative Oversight Commission on State Water Resources and the Joint Committee on Government and Finance addressing the administration of the fund.

§22-30-21. Interagency cooperation.

(a) In implementation of this article, the secretary shall coordinate with the Department of Health and Human Resources, the West Virginia Public Service Commission, the Division of Homeland Security and Emergency Management and local health departments to ensure the successful planning and implementation of this act, including consideration of the role of those agencies in providing services to owners and operators of aboveground storage tanks and public water systems.

(b) The secretary shall also coordinate with state and local emergency response agencies to prepare and issue appropriate
emergency response plans to facilitate a coordinated emergency
response and incident command and communication between the
owner or operator of the aboveground storage tank, the state and
local emergency response agencies and the affected public water
system.

(c) The secretary shall also coordinate with the State Fire
Marshal in addressing the periodic inspection of local fire
departments to include a requirement for inspectors to examine
and identify the status of National Incident Management System
fire department personnel training.

§22-30-22. Imminent and substantial danger.

(a) Notwithstanding any other provision of this chapter to the
contrary, upon receipt of evidence that an aboveground storage
tank may present an imminent and substantial danger to human
health, water resources or the environment, the secretary may
bring suit on behalf of the State of West Virginia in the Circuit
Court of Kanawha County against any owner or operator of an
aboveground storage tank who has contributed or who is
contributing to imminent and substantial danger to public health,
safety, water resources or the environment to order the person to
take action as may be necessary to abate the situation and protect
human health, safety, water resources and the environment from
contamination caused by a release of fluid from an aboveground
storage tank.

(b) Upon receipt of information that there is any
aboveground storage tank that presents an imminent and
substantial danger to human health, safety, water resources or the
environment, the secretary shall provide immediate notice to the
appropriate state and local government agencies and any affected
public water system. In addition, the secretary shall require
notice of any danger to be promptly posted at the aboveground
storage tank facility containing the aboveground storage tank at
issue.
§22-30-23. Promulgation of rules.

The secretary shall promulgate emergency and legislative rules as necessary to implement the provisions of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code.


(a) In addition to the powers and duties prescribed in this chapter or otherwise provided by law, the secretary has the exclusive authority to perform all acts necessary to implement this article.

(b) The secretary may receive and expend money from the federal government or any other sources to implement this article.

(c) The secretary may revoke any registration, authorization or permit for a violation of this article or the rules promulgated hereunder.

(d) The secretary may issue orders, assess civil penalties, institute enforcement proceedings and prosecute violations of this article as necessary.

(e) The secretary, in accordance with this article, may order corrective action to be undertaken, take corrective action or authorize a third party to take corrective action.

(f) The secretary may recover the costs of taking corrective action, including costs associated with authorizing third parties to perform corrective action. Costs may not include routine inspection and administrative activities not associated with a release.

§22-30-25. Scope of article; waiving additional permitting requirements for certain categories of aboveground
storage tanks; establishing a process for granting waivers for additional categories of ground storage tanks, by legislative rule, upon verification that the category of tanks are regulated under comparable or more rigorous protective state or federal standards.

(a) While all aboveground storage tanks shall be required to participate in the inventory and registration process set forth in section four of this article, the following categories of containers and tanks shall not be required to be permitted under section five of this article, either because they do not represent a substantial threat of contamination, or they are currently regulated under standards which meet or exceed the protective standards and requirements set forth in this article:

(1) An aboveground storage tank containing drinking water, filtered surface water, demineralized water, noncontact cooling water or water stored for fire or emergency purposes;

(2) Any natural gas or propane tanks regulated under NFPA 58-30A or NFPA 58-30B;

(3) Septic tanks and home aeration systems;

(4) A pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline facility regulated by the West Virginia Public Service Commission or otherwise regulated under any state law comparable to the provisions of either the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;

(5) Equipment or machinery containing substances for operational purposes, including integral hydraulic lift tanks,
lubricating oil reservoirs for pumps and motors, electrical equipment and heating and cooling equipment;

(6) A mobile tank, truck or rail car that is located on a site for less than sixty consecutive calendar days;

(7) Liquid traps or associated gathering lines related to oil or gas production and gathering operations;

(8) A surface impoundment, pit, pond or lagoon;

(9) Aboveground storage tanks for which spill prevention, control, and countermeasure plans are required by the Environmental Protection Agency (EPA) under 40 CFR Part 112 (oil pollution prevention), unless located within a zone of critical protection.

(b) The Department of Environmental Protection may designate, by legislative rule, additional categories of aboveground storage tanks for which an individual aboveground storage tank permit may be waived, after confirming that the tank is regulated under an existing state or federal regulatory permit or enforceable standard which includes, but is not limited to, the following:

(1) Secondary containment with an impermeable base, which is sufficient to fully contain the contents of the tank or the contents of the largest tank in the group of tanks in the event of a leak from spilling out onto the ground or adjacent surface water;

(2) Spill prevention, leak detection and control and inspection requirements which meet or exceed the standards established by the article or by rules promulgated thereunder;

(3) Regular inspections and routine integrity testing requirements which are equally protective to the requirements
established pursuant to this article or any rules promulgated thereunder; and

(4) Emergency response and notification requirements which are at least as prompt and comprehensive as the emergency response and notification requirements established by this article or any rules promulgated thereunder.

(c) In lieu of requiring a separate permit issued under this section, the secretary may adopt rules that would allow the requirements of this article to be incorporated into, and enforced through, the state-only portion of a National Pollutant Discharge Elimination System (NPDES) permit or a permit under article six or six-a of this chapter.

(d) If the aboveground storage tank or tanks' location is to be regulated pursuant to a general NPDES permit or an individual NPDES permit, the secondary containment, spill prevention, leak detection and control requirements, inspection requirements, reporting requirements and routine integrity testing requirements for that tank or tanks are to be specifically set forth as enforceable permit conditions and requirements.

ARTICLE 31. THE PUBLIC WATER SUPPLY PROTECTION ACT.

§22-31-1. Short title.

This article may be known and cited as the Public Water Supply Protection Act.

§22-31-2. Legislative findings.

(a) The West Virginia Legislature finds that it is in the public policy of the State of West Virginia to protect and conserve the water resources which are relied upon by the state and its citizens. The state's water resources are vital natural
resources that are essential to maintain, preserve and promote human health, quality of life and economic vitality of the state.

(b) The West Virginia Legislature further finds that it is the public policy of the state that clean, uncontaminated water be available for its citizens who are dependent on clean water as a basic need for survival, and who rely on the assurances from public water systems and the government that the water is safe to consume.

(c) The West Virginia Legislature further finds that it is the public policy of the state that clean, uncontaminated water be available to its businesses and industries that rely on water for their economic survival, and the well-being of their employees. These include hospitals and the medical industry, schools and educational institutions, the food and hospitality industries, the tourism industry, manufacturing, coal, natural gas and other industries. Businesses and industries searching for places to locate or relocate consider the quality of life for their employees as well as the quality of the raw materials such as clean water.

(d) The Legislature further finds that large quantities of fluids are stored in aboveground storage tanks, below ground storage tanks, in impoundments and other locations which pose a threat of potential contamination to surface waters and groundwaters which are relied upon as primary sources of public water supplies in the state. Emergency situations involving these fluids can and will arise that may present a hazard to human health, safety, the water resources, the environment and the economy of the state.

(e) It is important that the public water systems, the responding emergency providers and regulatory inspectors and personnel require complete and accurate information regarding the volume, identity, characteristics and qualities of each potential source of significant contamination to efficiently and
accurately anticipate and respond to any associated threat to the public posed by a leak or spill event.

(f) The Legislature also finds it reasonable and appropriate to impose additional regulatory oversight and reporting requirements for potential contaminants which are in close proximity to a public water intake, due to the sudden and devastating impact that potential contaminants in that zone pose to a public water system’s critical source of supply.

§22-31-3. Definitions.

For the purposes of this article:

(1) “Potential source of significant contamination” means a facility or activity that stores, uses or produces compounds with potential for significant contaminating impact if released into the source water of a public water supply.

(2) “Public water system” means:

(A) Any water supply or system which regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include:

(i) Any collection, treatment, storage and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and

(ii) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(B) A public water system does not include a system which meets all of the following conditions:
(i) Consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(ii) Obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition;

(iii) Does not sell water to any person; and

(iv) Is not a carrier conveying passengers in interstate commerce.

(4) "Public groundwater supply source" means a primary source of water supply for a public water system which is directly drawn from a well, underground stream, underground reservoir, underground mine or other primary source of water supplies which is found underneath the surface of the state.

(5) "Public surface water supply source" means a primary source of water supply for a public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments or other primary sources of water supplies which are found on the surface of the state.

(6) "Public surface water influenced groundwater supply source" means a source of water supply from a public water system which is directly drawn from an underground well, underground river or stream, underground reservoir or underground mine, and the quantity and quality of the water in that underground supply source is heavily influenced, directly or indirectly, by the quantity and quality of surface water in the immediate area.

(7) "Zone of critical concern" for a public surface water supply is a corridor along streams within a watershed that warrant more detailed scrutiny due to its proximity to the surface water intake and the intake's susceptibility to potential
contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient and area topography. The length of the zone of critical concern is based on a five-hour time of travel of water in the streams to the water intake, plus an additional one-fourth mile below the water intake. The width of the zone of critical concern is one thousand feet measured horizontally from each bank of the principal stream and five hundred feet measured horizontally from each bank of the tributaries draining into the principal stream.

§22-31-4. Inventory of potential sources of significant contamination in a zone of critical concern; registration; permitting; notice.

(a) To assure protection of the water resources of the state, the secretary, working in collaboration with the Bureau for Public Health and the Division of Homeland Security and Emergency Management, shall compile an inventory of all potential sources of significant contamination contained within a public water system’s zone of critical concern for all public water systems whose source of supply is obtained from a surface water supply source or a surface water influenced groundwater supply source.

(b) If the secretary shall determine that a designated potential significant source of contamination is not currently permitted and subject to regulation by the secretary under one or more articles of this chapter, and the secretary determines that the public interest in protecting the public drinking waters of the state warrant additional regulation and inspection of the site to protect the public interests, the secretary may require the owner and operator of that facility to register and obtain a permit for its location pursuant to the provisions of this article.

(c) Within sixty days of the date receiving notice from the secretary of the facility’s obligation to register pursuant to this
article, the owner or operator shall register the location pursuant to the provisions of this section.

(d) The secretary shall prescribe a registration form for this purpose within thirty days of the effective date of the enactment of this article. Any potential significant sources of contamination within a public water system’s defined zone of critical concern which are required to register with the Department of Environmental Protection pursuant to this section shall do so within sixty days from the receiving notice of their obligation to register.

(e) Any potential source of significant contamination placed into service on and after the effective date of this section, but prior to the establishment of a permit program, may be required to register by the secretary at any time.

(f) The secretary may charge a reasonable fee to cover the cost of the registration and permitting program. The fee may be set by emergency and legislative rules proposed for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§22-31-5. Promulgation of rules.

The secretary shall promulgate emergency and legislative rules as necessary to implement the provisions of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§22-31-6. Powers and duties of secretary.

(a) In addition to the powers and duties prescribed in this chapter or otherwise provided by law, the secretary has the exclusive authority to perform all acts necessary to implement this article.
(b) The secretary is authorized to utilize his or her authority under the West Virginia Water Pollution Control Act to require appropriate permitting and any other conditions or limitations to assure protection of water intakes in zones of critical concern.

(c) The secretary may receive and expend money from the federal government or any other sources to implement this article.

(d) The secretary may revoke any registration, authorization or permit for a violation of this article or the rules promulgated hereunder.

(e) The secretary may issue orders, assess civil penalties, institute enforcement proceedings and prosecute violations of this article as necessary.

(f) The secretary, in accordance with this article, may order corrective action to be undertaken, take corrective action or authorize a third party to take corrective action.

(g) The secretary may recover the costs of taking corrective action, including costs associated with authorizing third parties to perform corrective action. Costs may not include routine inspection and administrative activities not associated with a release.

§22-31-7. Public access to information.

(a) Subject to the exemptions listed in section four, article one, chapter twenty-nine-b of this code, the public shall have access to all documents and information submitted to the agency in accordance with this section pursuant to the state Freedom of Information Act. Records, reports or information obtained from any persons under this article may be disclosed to other officers, employees or authorized representatives of this state or the United States Environmental Protection Agency or of this state
if the officers, employees or authorized representatives are implementing the provisions of this article or any other applicable law related to releases of contaminants tanks that impact the state’s water resources.

(b) In submitting data under this article, a person required to provide the data may designate the data that he or she believes is entitled to protection under this section and may submit the designated data separately from other data submitted under this article. A designation under this subsection shall be made in writing and in a manner as the secretary may prescribe.

(c) The Department of Environmental Protection shall provide a copy of the compiled list of contaminants in each zone of critical concern to the affected public water system, the Bureau for Public Health, the Department of Environmental Protection and the Division of Homeland Security and Emergency Management. This will enable those entities to possess a compiled list of the types, quantities, characteristics and locations of all of the known potential contaminants within the zone of critical concern for each public water supply. If any of the submitted information is requested to be kept confidential and good cause is found to grant the request, for reasons of security or other legitimate public interest concern, the protected information shall be redacted from public view and kept confidential, and it shall not be subject to public release in response to a Freedom of Information Act request made under chapter twenty-nine-b of this code.

§22-31-8. Inspections, monitoring and testing.

(a) For the purposes of developing or assisting in the development of any rule, conducting any study, taking any corrective action or enforcing any provision of this article, any owner or operator of designated site of potential contamination within a zone of critical concern shall, upon request of the secretary:
Furnish information relating to the site and potential contaminants on the site, their aboveground and underground storage tanks, their associated equipment and contents;

(2) Conduct reasonable monitoring or testing;

(3) Permit the secretary, at all reasonable times, to inspect and copy records relating to the facilities and equipment used to store or contain the potential contaminants; and

(4) Permit the secretary to have access to the site for corrective action.

(b) For the purposes of developing or assisting in the development of any rule, conducting any study, taking corrective action or enforcing any provision of this article, the secretary may:

(1) Enter at any time any establishment or other place where on the site or where the potential contaminant is located;

(2) Inspect and obtain samples of any fluid contained or stored on the site from any person;

(3) Conduct monitoring or testing of the site and any associated aboveground storage tanks, underground storage tanks, associated equipment, contents or surrounding soils, surface, water or groundwater; and

(4) Take corrective action as specified in this article.

(c) Each inspection shall be commenced and completed with reasonable promptness.

(d) To ensure protection of the water resources of the state and compliance with any provision of this article or rule promulgated thereunder, the secretary shall inspect at least annually any designated site of potential contamination which is
located within the zone of critical concern for a public water system’s surface water intake.

(e) Due to the potential impact of contaminants within a zone of critical concern on public drinking water supplies, whenever there is an apparent spill of a chemical or substance within a zone of critical concern for a public water system, the Director of the Bureau for Public Health, and his or her representatives or designees, shall have the same right to enter, inspect and conduct sampling and monitoring at any site that is extended by this article to the Department of Environmental Protection.

§22-31-9. Prohibition of general NPDES permits within a zone of critical concern for sites with aboveground storage tanks; and authorizing the Division of Environmental Protection to require individual NPDES permit for any other site when deemed appropriate.

Because of the potential public health impact of pollution to downstream public water intakes in a watershed basin designated in an area of critical concern, on and after September 1, 2014, any permittee which presently holds a National Pollutant Discharge Elimination System (NPDES) general permit pursuant to the West Virginia Water Pollution Control Act which has an aboveground storage tank as defined by article thirty of this chapter on a site which is located within any public water system’s zone of critical concern must apply for and hold an individual permit under that act. The secretary shall also have the authority to require other holders of a general NPDES permit to obtain an individual NPDES permit, when deemed appropriate to protect the public water supply. Any general NPDES permit held currently under that act shall remain in effect until the individual NPDES permit is either issued or denied.
§22-31-10. Civil and criminal penalties.

(a) Any person who fails to comply with an order of the secretary issued pursuant to this article in the time specified in the order is liable for a civil penalty of not more than $25,000 for each day of continued noncompliance.

(b) Any owner or operator of a site designated as a potential source of significant contamination within a zone of critical concern above a public water intake who knowingly fails to register or obtain a permit for an aboveground storage tank or submits false information pursuant to this article is liable for a civil penalty not to exceed $10,000 for each aboveground storage tank that is not registered or permitted or for which false information is submitted.

(c) Any owner or operator of a site designated as a potential source of significant contamination within a zone of critical concern above a public water intake who fails to comply with any requirement of this article or any standard promulgated by the secretary pursuant to this article is subject to a civil penalty not to exceed $10,000 for each day of violation.

(d) Any person who knowingly and intentionally violates any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in a regional jail for a period of time not exceeding one year and be fined an amount not to exceed $25,000.

(e) Any person convicted of a second or subsequent willful violation of subsection (b) or (c) of this section or knowingly and willfully violates any provision of any permit, rule or order issued under or subject to the provisions of this article is guilty of a felony and, upon conviction, shall be imprisoned in a correctional facility not less than one nor more than three years, or fined not more than $50,000 for each day of violation, or both fined and imprisoned.
(f) Any person may be prosecuted and convicted under the provisions of this section notwithstanding that none of the administrative remedies provided in this article have been pursued or invoked against said person and notwithstanding that civil action for the imposition and collection of a civil penalty or an application for an injunction under the provisions of this article has not been filed against such person.

(g) Where a person holding a permit is carrying out a program of pollution abatement or remedial action in compliance with the conditions and terms of the permit, the person is not subject to criminal prosecution for pollution recognized and authorized by the permit.

§22-31-11. Appeal to Environmental Quality Board.

A person aggrieved or adversely affected by an order of the secretary made and entered in accordance with the provisions of this article may appeal to the Environmental Quality Board, pursuant to the provisions of article one, chapter twenty-two-b of this code.


(a) There is hereby established the Public Water System Supply Study Commission which is created for the purpose of studying and reporting back to the Joint Committee on Government and Finance on the following subject matters:

(1) A review and assessment of the effectiveness and the quality of information contained in updated source water protection plans required for certain public water systems by the provisions of section nine-c, article one, chapter sixteen of this code;

(2) A review and assessment of the effectiveness of legislation enacted during the 2014 Regular Session of the West
Virginia Legislature, as it pertains to assisting public water systems in identifying and reacting or responding to identified potential sources of significant contamination, and increasing public awareness and public participation in the emergency planning and response process;

(3) The extent of available financing and funding alternatives which are available to existing public water systems to pursue projects which are designed to create alternate sources of supply or increased stability of supply in the event of a spill, release or contamination event which impairs the water system's primary source of supply;

(4) A review and consideration of the recommendations of the U.S. Chemical Safety and Hazard Investigation Board after its investigation of the Bayer CropScience incident of 2008; and

(5) Any recommendations or suggestions the study commission may offer to improve the infrastructure of existing public water systems, to provide safe and reliable sources of supplies, and to pursue other measures designed to protect the integrity of public water service.

(b) The study commission shall consist of the following twelve members, who shall be appointed and comprised as follows:

(1) Four members appointed by the Governor, one of whom shall be a professional engineer experienced in the design and construction of public water systems; one of whom shall be a hydrologist or other expert experienced in determining the flow characteristics of rivers and streams; one of whom shall be an environmental toxicologist or other public health expert who is familiar with the impact of contaminants on the human body; and one citizen representative;

(2) One representative designated by the Rural Water Association;
(3) One representative designated by the Municipal League;

(4) The Secretary of the Department of Environmental Protection or his or her designee;

(5) The Commissioner of the Bureau for Public Health or his or her designee;

(6) The Director of the Division of Homeland Security and Emergency Management or his or her designee;

(7) The Chairman of the Public Service Commission or his or her designee;

(8) One nonvoting member appointed by the President of the Senate; and

(9) One nonvoting member appointed by the Speaker of the House of Delegates.

(c) Reports by the commission shall be submitted to the Joint Committee on Government and Finance on or before December 15 of each year, beginning December 15, 2014.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2G. PUBLIC WATER UTILITIES MONITORING REQUIREMENTS.

§24-2G-1. Public water utilities required to install monitor for contaminants.

All public water utilities that provide water to more than one hundred thousand customers, including public service districts providing water service and municipally owned and operated utilities, subject to the requirements and limitations of this article, shall implement a regular monitoring system as specified to the same technical capabilities for detection as utilized by the Ohio River Valley Water Sanitation Commission.
§24-2G-2. Requirements.

(a) Each public water utility, public service district or municipal water system, as set forth in section one of this article, shall provide testing for contamination of its water supply by the following contaminants:

1. (1) Salts or ions;
2. (2) Metals, including heavy metals;
3. (3) Polar organic compounds;
4. (4) Nonpolar organic compounds;
5. (5) Volatile compounds, oils and other hydrocarbons;
6. (6) Pesticides; and
7. (7) Biotoxins.

(b) Each public water utility is empowered to determine at its discretion which of the contaminants listed in subsection (a) of this section are most likely to contaminate its water supply, and shall provide a monitoring system which shall detect the three of the listed contaminants deemed most likely to affect that water system: Provided, That each public water utility shall file its list with the commission: Provided, however, That any public water system serving over one hundred thousand customers from any one treatment plant is requested to test for all listed contaminants at each treatment plant: Provided further, That if technology to adequately detect contaminants as required by this section proves to be not feasible to implement, the public water utility shall report by January 1, 2015, such to the Joint Committee on Government and Finance with the reasons why such technology is not feasible to obtain or use, and suggest alternatives.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-8b; and to amend said code by adding thereto a new section, designated §61-4-9, all relating generally to the operation and oversight of certain benefit programs; granting certain subpoena power to the Investigations and Fraud Management Division within the Department of Health and Human Resources to investigate welfare fraud; authorizing the Investigations and Fraud Management Division to request search warrants, swear to complaints and seek relevant orders from circuit court in certain situations; providing access to out-of-state documents in certain circumstances; prohibiting disclosure of persons under investigation by the Investigations and Fraud Management Division; defining terms; creating misdemeanor and felony offenses for certain unlawful use of certain benefits or benefit access devices; stating certain presumptions and calculations permissible in prosecution of these offenses; providing an alternative to confinement for individuals convicted of the offenses associated with unlawful use of certain benefits; and precluding certain prosecution under multiple sections for conduct arising out of the same transaction or occurrence.

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 §9-5-8b; and that said code be amended by adding thereto a new section, designated §61-4-9, all to read as follows:
§9-5-8b. Authority of Investigations and Fraud Management Division to subpoena witnesses and documents.

(a) When the Investigations and Fraud Management Division of the Office of the Inspector General, which is charged with investigating welfare fraud and intra-agency employee misconduct, has credible information that indicates a person has engaged in an act or activity related to Department of Health and Human Resources programs, benefits or intra-agency employee misconduct which is subject to prosecution, it may conduct an investigation to determine if the act has been committed. To the extent necessary to the investigation, the secretary or an employee of the Office of the Inspector General designated by the secretary may administer oaths or affirmations and issue subpoenas for witnesses and documents relevant to the investigation, including information concerning the existence, description, nature, custody, condition and location of any book, record, documents or other tangible thing and the identity and location of persons having knowledge of relevant facts or any matter reasonably calculated to lead to the discovery of admissible evidence.

When the Investigations and Fraud Management Division has probable cause to believe that a person has engaged in an act or activity which is subject to prosecution relating to Department of Health and Human Resources programs, benefits or intra-agency employee misconduct, the secretary or an employee of the Office of the Inspector General designated by the secretary may request search warrants and present and swear or affirm criminal complaints.

(b) If documents necessary to an investigation of the Investigations and Fraud Management Division appear to be
located outside the state, the documents shall be made available
by the person or entity within the jurisdiction of the state having
control over such documents either at a convenient location
within the state or, upon payment of necessary expenses to the
division for transportation and inspection, at the place outside
the state where these documents are maintained.

(c) Upon failure of a person to comply with a subpoena or a
subpoena for the production of evidence or failure of a person to
give testimony without lawful excuse and upon reasonable notice
to all persons affected thereby, the Investigations and Fraud
Management Division may apply to the circuit court of the
county in which compliance is sought for appropriate orders to
compel obedience with the provisions of this section.

(d) The Investigations and Fraud Management Division may
not make public the name or identity of a person whose acts or
conduct is investigated pursuant to this section or the facts
disclosed in an investigation except as the same may be used in
any legal action or enforcement proceeding brought pursuant to
this code or federal law.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 4. FORGERY AND CRIMES AGAINST THE
CURRENCY.

§61-4-9. Unauthorized use, transfer, acquisition, alteration or
possession of certain benefits.

(a) For the purposes of this section:

(1) "Benefits" means any payment, allotments, money,
goods or other things of value granted pursuant to a benefit
program;

(2) "Benefit access device" means any card, plate, account
number or other means of access that can be used, alone or in
conjunction with another access device, to obtain payments, allotments, benefits, money, goods or other things of value that can be used to initiate a transfer of funds;

(3) "Benefit program" includes the Federal Food Stamp Act, Supplemental Nutritional Assistance Program, Temporary Assistance to Needy Families or other similar state or federal financial assistance program; and

(4) "Terms of the benefit program" includes all statutes, rules, regulations or other requirements of that specific benefit program for use of the benefits.

(b) Any person who knowingly uses, transfers, acquires, alters or possesses benefits or one or more benefit access device contrary to the terms of the benefit program shall:

(1) If the benefits are of a value of less than $1,000, be guilty of a misdemeanor and, upon conviction thereof, shall for a first offense be fined not more than $1,000 or confined in a regional jail for not more than one year, or both fined and confined, and for a second and any subsequent offense shall be fined not more than $1,000 or confined in a regional jail for not less than thirty days and not more than one year;

(2) If the benefits are of a value of $1,000 or more, but less than $5,000, be guilty of a felony and, upon conviction, shall for a first offense be fined not more than $10,000 or imprisoned in a state correctional facility for not more than three years, or both fined and imprisoned, and for a second and any subsequent offense shall be fined not more than $10,000 or imprisoned for not less than six months nor more than five years, or both fined and imprisoned; and

(3) If the benefits are of a value of $5,000 or more, be guilty of a felony and, upon conviction, fined not more than $250,000 or imprisoned in a state correctional facility for not more than ten years, or both fined and imprisoned.
(c) Any person who presents, or causes to be presented, benefits or one or more benefit access device for payment, allotments, money, goods or other things of value knowing the same to have been received, transferred or used in any manner in violation of the terms of the benefit program is:

(1) If the benefits are of a value of less than $1,000, guilty of a misdemeanor and, upon conviction, shall for a first offense be fined not more than $1,000 or confined in a regional jail for not more than one year, or both fined and confined, and for a second and any subsequent conviction shall be fined not more than $1,000 or confined in a regional jail for not less than thirty days and not more than one year;

(2) If the benefits are of a value of $1,000 or more, guilty of a felony and, upon conviction, shall for a first offense be fined not more than $20,000 or imprisoned in a state correctional facility for not more than five years, or both fined and imprisoned, and for a second and any subsequent conviction shall be fined not more than $20,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(d) Notwithstanding the penalties contained in this section, in the case of any individual convicted of an offense under this section, the court may permit the individual to perform work approved by the court, in lieu of confinement, for the purpose of providing restitution for losses incurred by the United States and the state agency as a result of the offense for which the individual was convicted. If the court permits the individual to perform work and the individual agrees, the court shall withhold the imposition of the sentence on the condition that the individual perform the assigned work. Upon the successful completion of the assigned work the court shall waive any confinement from the sentence.
(e) For purposes of this section, possession of two or more benefit access devices without authorization is prima facie evidence that an individual has knowledge the possession of the benefit access devices is a violation of the terms of the benefit program.

(f) In determining the value in this section, it is permissible to cumulate amounts or values of benefits.

(g) Notwithstanding any provision of this code to the contrary, no person who knowingly acquires benefits or one or more benefit access device contrary to the terms of the benefit program may be subject to prosecution under both this section and section four, article five, chapter nine of this code for conduct arising out of the same transaction or occurrence.

CHAPTER 189

(S. B. 403 - By Senators Laird, Barnes, Edgell, Facemire, Prezioso, Snyder, Unger, Miller and Beach)

[Passed March 7, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2014.]

AN ACT to amend and reenact §20-2-64 of the Code of West Virginia, 1931, as amended, relating to regulating the importation and possession of certain injurious aquatic species.

Be it enacted by the Legislature of West Virginia:

That §20-2-64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 2. WILDLIFE RESOURCES.

§20-2-64. Regulating release of fish, water animal and other aquatic organisms; stocking permit.

(a) It is unlawful for any person to release any fish, water animal or other aquatic organism, alive or dead, or any part, nest or egg thereof into the waters of this state except as authorized by a stocking permit issued by the director: Provided, That nothing in this subsection shall be construed as restricting the release of fish, water animal or other aquatic organism into the waters of this state from which they were taken by lawful methods: Provided, however, That nothing in this subsection shall be construed as restricting the release of native or established species of fish in privately owned ponds.

(b) A stocking permit is not required for the stocking of trout in waters of the state provided that the trout originate from a source within the state or meet the disease-free certification requirements for imported salmonidae set forth in section thirteen of this article.

(c) A stocking permit is not required for the stocking of black bass provided that the Division of Natural Resources is notified prior to stocking and is provided a disease-free certification.

(d) It is unlawful for any person to possess, sell, offer for sale, import, bring or cause to be brought or imported into this state or release into the waters of this state, in a live state, any bighead carp (Hypophthalmichthys nobilis), silver carp (Hypophthalmichthys molitrix), black carp (Mylopharyngodon piceus), largescale silver carp (Hypophthalmichthys harmandi), diploid white amur (Ctenopharyngodon idella) or snakehead (Channa spp.), gametes or eggs of the same, or any hybrids of these species. The director may not issue a stocking permit to
any person for the species and their hybrids listed in this subsection, but may issue written authorization for the importation or possession of these species or their hybrids into this state if the importation or possession does not violate any federal law and if the use is limited to scientific research.

CHAPTER 190

(Com. Sub. for H. B. 4196 - By Delegates Marshall, Fleischauer and Cooper)

[Passed March 7, 2014; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2014.]

AN ACT to amend and reenact §5B-2B-4 of the Code of West Virginia, 1931, as amended, relating to requiring the Workforce Investment Council to provide information and guidance to local workforce investment boards that would enable them to better educate both women and men about higher paying jobs including jobs traditionally dominated by men or women.

Be it enacted by the Legislature of West Virginia:

That §5B-2B-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.


1 (a) The council shall assist the Governor in the:

2 (1) Development and revision of a strategic five-year state workforce investment plan, including the establishment of an
overall workforce investment public agenda with goals and benchmarks of success for the state, state agencies and for local workforce investment boards;

(2) Development and continuous improvement of a statewide system of workforce investment activities including:

(A) Development of linkages in order to assure coordination and nonduplication of services and activities of workforce investment programs conducted by various entities in the state; and

(B) The review of strategic plans created and submitted by local workforce investment boards;

(3) Commenting at least annually on the measures taken by the state pursuant to the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. §2323;

(4) Designation and revision of local workforce investment areas;

(5) Development and revision of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas;

(6) Development and continuous improvement of comprehensive state performance measures, including state-adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the State;

(7) Preparation of the annual report to the Secretary of Labor as required by the Workforce Investment Act, 29 U.S.C. §2871;

(8) Development and continued improvement of a statewide employment statistics system; and

(9) Development and revision of an application for workforce investment incentive grants.
(b) The council shall make a report to the Legislative Oversight Commission on Workforce Investment for Economic Development and the Legislative Oversight Commission on Education Accountability on or before November 1 of each year, detailing: (1) All the publicly funded workforce investment programs operating in the state, including the amount of federal and state funds expended by each program, how the funds are spent and the resulting improvement to the workforce; (2) the council's recommendations concerning future use of funds for workforce investment programs; (3) the council's analysis of operations of local workforce investment programs; (4) the council's recommendations for the establishment of an overall workforce investment public agenda with goals and benchmarks of success for the state, state agencies and for local workforce investment boards; (5) the status of one-stop system operations in the state, including all memoranda of understanding entered into by the one-stop partners and local workforce investment boards; (6) the status and outcome data regarding the council and local workforce investment boards' success in linking West Virginia PROMISE scholars to employment with a West Virginia employer; and (7) any other information the commission may require.

(c) To aid in the report required in subsection (b) of this section, each local workforce investment board shall report annually to the council on or before September 1 of each year on the status of one-stop centers within the region each board represents, attaching all memoranda of understanding entered into with one-stop partners.

(d) The council shall provide information and guidance to local workforce investment boards and staff, to enable them to better educate both women and men about higher paying jobs and careers including jobs traditionally dominated by men or women. Such guidance shall promote services provided by the local workforce investment boards for job seekers that includes:
(1) Current information about compensation for jobs and careers that offer high earning potential including jobs that are traditionally dominated by men or women;

(2) Counseling, skills development and training opportunities that encourage both women and men to seek employment in such jobs;

(3) Referral information to employers offering such jobs; or

(4) Information regarding the long-term consequences, including lower social security benefits or pensions, of choosing jobs that offer lower earnings potential and are traditionally dominated by women or men.

CHAPTER 191


[Passed March 7, 2014; in effect from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to authorize the Commissioner of the West Virginia Division of Highways to allow an increase of gross weight limitations on certain roads in Brooke County.

Be it enacted by the Legislature of West Virginia:

WEIGHT LIMITATIONS ON CERTAIN ROADS IN BROOKE COUNTY.
§1. Authority of the Commissioner of the West Virginia Division of Highways to increase weight limitations on certain highways within Brooke County.

(a) If the Commissioner of the West Virginia Division of Highways determines that the design, construction and safety of the highways in Brooke County described in subsection c of this section are such that gross weight limits may be increased without damage, the commissioner may establish new limitations applicable to the highways or portions thereof.

(b) The commissioner may not establish any weight limitation in excess or in conflict with any weight limitation prescribed by or pursuant to acts of Congress with respect to the National System of Interstate and Defense Highways.

(c) If the commissioner determines that those portions of Brooke County Route 2/20, north and southbound, from milepost 0.00 to milepost 0.44; WV 2 in Brooke County, north and southbound, from milepost 12.34 to milepost 15.61; and U.S. 22, east and westbound, from milepost 0.00 to milepost 0.3, and all connecting ramps are designed and constructed to allow the gross weight limitation to be increased without damage, the commissioner may increase the gross weight limitations up to 108,000 pounds, with no tolerance permitted, on those sections described above: Provided, That any person, organization or corporation exceeding the 80,000 pounds gross weight limitation while using these routes must first obtain a permit from the commissioner before proceeding: Provided, however, That the increased weight limitations are not barred by an act of the United States Congress.

(d) The commissioner shall create a permit that shall be obtained by any person, organization or corporation wishing to utilize the provisions of subsection c of this section.
(e) The commissioner shall develop procedures for the issuance of the permit and those procedures shall be consistent with the existing procedures for the issuance of similar permits. The permit issued shall be valid for one year from the date of issuance.

(f) The information required in the application for the permit shall include:

(1) Tractor and trailer information;
(2) Number of axles;
(3) Axle spacings;
(4) Overall dimensions;
(5) Load information;
(6) Load weight and gross weight; and
(7) Effective dates.

(g) Upon submission of this information the person, organization or corporation shall be provided an appropriate permit based on the information provided in subsection f.

(h) The commissioner shall charge a permit fee of five-hundred dollars for each vehicle.

(i) The Commissioner shall have the authority to immediately reduce the weight limit authorized by the permit should a bridge report be issued stating that the safe load weight limit is below 108,000 pounds.
CHAPTER 192

(S. B. 631 - By Senator Snyder)

[Passed March 8, 2014; in effect from passage.]
[Approved by the Governor on March 28, 2014.]

AN ACT to extend the time for the city council of the Town of Fayetteville, Fayette County, to meet as a levying body for the purpose of presenting to the voters of the city an election to supplement current funds for the laying, repair and maintenance of the streets and sidewalks, and for the purpose of paying all costs incurred in the laying of this additional levy from between March 7 and March 28 and the third Tuesday in April until May 31, 2014.

Be it enacted by the Legislature of West Virginia:

THE CITY COUNCIL OF THE TOWN OF FAYETTEVILLE MEETING AS A LEVYING BODY EXTENDED.

§1. Extending time for the city council for the Town of Fayetteville to meet as a levying body for an election to supplement current funds for the laying, repair and maintenance of the streets and sidewalks, and for the purpose of paying all costs incurred in the laying of the additional levy.

1 Notwithstanding the provisions of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, the city council of the Town of Fayetteville, Fayette County, is authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the State Auditor and the State Tax Commissioner from between March 7 and March 28 and the third Tuesday in April until May 31, 2014, for the purpose of submitting to the voters of the Town of
CHAPTER 193

(H. B. 4259 - By Delegate Romine)

[Passed March 4, 2014; in effect from passage,]
[Approved by the Governor on March 28, 2014.]

AN ACT to extend the time for the city council of the city of Sistersville, Tyler County, to meet as a levying body for the purpose of presenting to the voters of the city an election to supplement current funds for the operation of parks, the library, fire department and streets and for the purpose of paying all costs incurred in the laying of this additional levy from between the seventh and twenty-eighth days of March and the third Tuesday in April until May 31, 2014.

Be it enacted by the Legislature of West Virginia:

THE CITY COUNCIL OF THE CITY OF SISTERSVILLE MEETING AS A LEVYING BODY EXTENDED.

§1. Extending time for the city council for the city of Sistersville to meet as a levying body for an election to supplement current funds for the city park and pool operation and for the purpose of paying all costs incurred in the laying of the additional levy.

Notwithstanding the provisions of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, the city
council of the city of Sistersville, Tyler County, is authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the State Auditor and the State Tax Commissioner from between March 7 and March 28 and the third Tuesday in April until May 31, 2014, for the purpose of submitting to the voters of the city of Sistersville the question of supplementing current funds for the city park and pool operation and for the purpose of paying all costs incurred in the laying of this additional levy.
AN ACT to amend and reenact §19-12A-6a of the Code of West Virginia, 1931, as amended, relating to increasing the annual cap for collections into the Land Division special revenue account of the Department of Agriculture; and depositing half of any excess funds collected into the special revenue account and half into the General Revenue Fund.

Be it enacted by the Legislature of West Virginia:

That §19-12A-6a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12A. LAND DIVISION.

§19-12A-6a. Special revenue account.

(a) All funds collected by the commission pursuant to this article, whether from the sale of food, the disposition of assets other than land, the lease of land or minerals or any other source, shall be paid into a special revenue account to be used for the purposes of this article: Provided, That when the aggregate of said funds so collected and deposited in the special revenue
account in any fiscal year total $2,000,000, the commission shall
deposit half of any excess funds collected into the special
revenue account, and half into the General Revenue Fund of the
state.

CHAPTER 2

(Com. Sub. for S. B. 1002 - By Senators Kessler (Mr. President)
and M. Hall)
[By Request of the Executive]

[Passed March 14, 2014; in effect from passage.]
[Approved by the Governor on March 19, 2014.]

AN ACT expiring funds to the unappropriated balance in the State
Fund, General Revenue, for the fiscal year ending June 30, 2014,
in the amount of $10,000,000 from the Joint Expenses, fund 0175,
fiscal year 2006, organization 2300, activity 642, in the amount of
$10,000,000 from the Joint Expenses, fund 0175, fiscal year 2007,
organization 2300, activity 642, in the amount of $5,293,000 from
the Joint Expenses, fund 0175, fiscal year 2008, organization 2300,
activity 642, in the amount of $20,000,000 from Joint Expenses,
Joint Expense Lottery Fund, fund 1736, fiscal year 2014,
organization 2300, in the amount of $5,707,000 from Joint
Expenses, Tax Reduction and Federal Funding Increased
Compliance, fund 1732, fiscal year 2014, organization 2300, in the
amount of $9,000,000 from the Attorney General, Consumer
Protection Fund, fund 1509, fiscal year 2014, organization 1500,
and in the amount of $10,000,000 from the Department of
Revenue, Insurance Commissioner, Insurance Commission Fund,
fund 7152, fiscal year 2014, organization 0704, and making a
supplementary appropriation of public moneys out of the Treasury
from the balance of moneys remaining as an unappropriated
balance in the State Fund, General Revenue, to the Department of
Military Affairs and Public Safety, Division of Corrections - Correctional Units, and to the Department of Military Affairs and Public Safety, Division of Juvenile Services, by supplementing and amending the appropriations for the fiscal year ending June 30, 2014.

WHEREAS, The Governor finds that the account balances in Joint Expense, fund 0175, fiscal year 2006, organization 2300, activity 642, Joint Expenses, fund 0175, fiscal year 2007, organization 2300, activity 642, Joint Expenses, fund 0175, fiscal year 2008, organization 2300, activity 642, Joint Expenses, Joint Expense Lottery Fund, fund 1736, fiscal year 2014, organization 2300, Joint Expenses, Tax Reduction and Federal Funding Increased Compliance, fund 1732, fiscal year 2014, organization 2300, the Attorney General, Consumer Protection Fund, fund 1509, fiscal year 2014, organization 1500, and the Department of Revenue, Insurance Commissioner, Insurance Commission Fund, fund 7152, fiscal year 2014, organization 0704, exceed that which is necessary for the purposes for which the accounts were established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 8, 2014, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2013, and further included the estimate of revenues for fiscal year 2014, less net appropriation balances forwarded and regular appropriations for the fiscal year 2014; and

WHEREAS, The Secretary of the Department of Revenue has submitted a monthly General Revenue Fund Collections Report for the first seven months of fiscal year 2014 as prepared by the State Budget Office; and

WHEREAS, This report demonstrates that the State of West Virginia has experienced a revenue shortfall of approximately $73.1 million for the first seven months of fiscal year 2014, as compared to the monthly revenue estimates for the first seven months of the fiscal year 2014; and
WHEREAS, Current economic and fiscal trends will result in projected year-end revenue deficits, including projected shortfalls in Personal Income Tax, Consumers Sales and Use Tax, and Interest Income; and

WHEREAS, Projected year-end revenue surpluses in various other General Revenue sources will only offset a small portion of these deficits; and

WHEREAS, The total projected year-end revenue deficit for the General Revenue Fund is now projected to be higher than the previous estimated deficit of $60 million; and

WHEREAS, The Constitution of the State of West Virginia requires that there be a balance between the state’s revenues and expenditures for each fiscal year; and

WHEREAS, On December 17, 2013, the Governor issued a memorandum to cabinet secretaries implementing temporary restrictions on general revenue-funded hiring to help reduce expenditures and close the anticipated budget gap in fiscal year 2014; and

WHEREAS, On January 3, 2014, the Governor, after careful analysis of fiscal year 2014 spending trends to date, issued Executive Order 1-14 to effect a spending reduction of targeted appropriation to aid in the balancing of the fiscal year 2014 budget; and

WHEREAS, This spending reduction is expected to generate a savings of approximately $33 million; and

WHEREAS, There are other possible spending reductions available to the Governor should the need arise; and

WHEREAS, There is remaining an expected deficit in the budget that must be balanced; therefore
Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2014, to the Joint Expenses, fund 0175, fiscal year 2006, organization 2300, activity 642, be decreased by expiring the amount of $10,000,000, and to the Joint Expenses, fund 0175, fiscal year 2007, organization 2300, activity 642, be decreased by expiring the amount of $10,000,000, and to the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, activity 642, be decreased by expiring the amount of $5,293,000, and to the Joint Expenses, Joint Expense Lottery Fund, fund 1736, fiscal year 2014, organization 2300, be decreased by expiring the amount of $5,707,000, and to the Joint Expenses, Tax Reduction and Federal Funding Increased Compliance, fund 1732, fiscal year 2014, organization 2300, be decreased by expiring the amount of $9,000,000, and to the Attorney General, Consumer Protection Fund, fund 1509, fiscal year 2014, organization 1500, be decreased by expiring the amount of $9,000,000, and to the Department of Revenue, Insurance Commissioner, Insurance Commission Fund, fund 7152, fiscal year 2014, organization 0704, be decreased by expiring the amount of $10,000,000, all to the unappropriated balance of the State Fund, General Revenue, to be available during the fiscal year ending June 30, 2014.

And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0570, fiscal year 2014, organization 0621, be supplemented and amended by decreasing existing items of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

78-Division of Juvenile Services
And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0450, fiscal year 2014, organization 0608, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

74—Division of Corrections - Correctional Units

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

Fund 0450 FY 2014 Org 0608

1 18a Investigative Services .......... 716 $ 157,098

The purpose of this supplemental appropriation bill is to supplement, amend, decrease, add a new item, and expire items
AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2014, in the amount of $4,057,000 from the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, activity 642, and in the amount of $409,167.60 from the Department of Commerce, Division of Tourism, fund 0246, fiscal year 2005, organization 0304, activity 859, and in the amount of $261,246.01 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 075, and in the amount of $5,999.39 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2000, organization 0307, activity 131, and in the amount of $58,527.20 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 131, and in the amount of $154,061.74 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 131, and in the amount of $257,617.06 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 131, and in the amount of $209,609.04 from the Department of Commerce, West Virginia Development Office,
fund 0256, fiscal year 2004, organization 0307, activity 131, and in the amount of $145,560.18 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 131, and in the amount of $131,792.70 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 131, and in the amount of $198,809.53 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 266, and in the amount of $65,804.47 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 266, and in the amount of $26,183.53 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 266, and in the amount of $250,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 266, and in the amount of $11,758.05 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 480, and in the amount of $62,039.15 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 480, and in the amount of $25,265 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 480, and in the amount of $124,338.34 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 480, and in the amount of $123,100 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 480, and in the amount of $140,830.80 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 480, and in the amount of $47,113.16 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 819, and in the amount of $223,665.85 from the Department of Commerce, West Virginia
Development Office, fund 0256, fiscal year 2002, organization 0307, activity 819, and in the amount of $44,007.60 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 819, and in the amount of $123,230.47 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 819, and in the amount of $742,930.92 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 819, and in the amount of $539,290.37 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 819, and in the amount of $334,180.67 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2007, organization 0307, activity 900, and in the amount of $650,000 from the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, activity 941, and in the amount of $461.83 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2002, organization 0506, activity 803, and in the amount of $10,489.51 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2003, organization 0506, activity 803, and in the amount of $8,056.23 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2004, organization 0506, activity 803, and in the amount of $13,718.82 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2005, organization 0506, activity 803, and in the amount of $0.70 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2006, organization 0506, activity 803, and in the amount of $24,307.51 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2007, organization 0506, activity 803, and in the amount of $6,600.22 from the Department of Health and Human Resources, Consolidated
Medical Service Fund, fund 0525, fiscal year 2008, organization 0506, activity 803, and in the amount of $76,423.45 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2009, organization 0506, activity 803, and in the amount of $211,730.74 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2010, organization 0506, activity 803, and in the amount of $150,334.97 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2011, organization 0506, activity 803, and in the amount of $136,909.29 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2012, organization 0506, activity 803, and in the amount of $1,974.51 from the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2013, organization 0506, activity 803, and in the amount of $15,640.96 from the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2009, organization 0601, activity 953, and in the amount of $240,051.69 from the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2010, organization 0601, activity 953, and in the amount of $215,075.18 from the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2011, organization 0601, activity 953, and in the amount of $871,905.27 from the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2012, organization 0621, activity 818, and in the amount of $870,992.77 from the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2013, organization 0621, activity 818, and in the amount of $2,250,000 from the Auditor’s Office, Purchasing Card Administration Fund, fund 1234, fiscal year 2014, organization 1200, and in the amount of $3,000,000 from the Secretary of State, General Administrative Fees Account, fund 1617, fiscal year 2014, organization 1600, and in the amount of $200,000 from the Department of Administration,
Office of the Secretary, State Employee Sick Leave Fund, fund 2045, fiscal year 2014, organization 0201, and in the amount of $200,000 from the Department of Administration, Division of General Services, Capitol Complex Parking Garage Fund, fund 2461, fiscal year 2014, organization 0211, and in the amount of $4,737,257 from the Department of Administration, Board of Risk and Insurance, Premium Tax Savings Fund, fund 2367, fiscal year 2014, organization 0218, and in the amount of $500,000 from the Department of Administration, Surplus Property, Sale of State Surplus Property Fund, fund 2281, fiscal year 2014, organization 0214, and in the amount of $500,000 from the Department of Administration, Division of Purchasing, Purchasing Improvement Fund, fund 2264, fiscal year 2014, organization 0213, and in the amount of $2,000,000 from the Department of Administration, Division of Personnel, Division of Personnel Fund, fund 2440, fiscal year 2014, organization 0222, and in the amount of $45,607.91 from the Department of Military Affairs and Public Safety, Office of the Secretary, Secretary of Military Affairs and Public Safety Lottery Fund, fund 6005, fiscal year 2014, organization 0601, and in the amount of $200,000 from the Department of Revenue, Division of Financial Institutions, Assessment and Examination Fund, fund 3041, fiscal year 2014, organization 0303, and in the amount of $724,487.42 from the Department of Revenue, Lottery Commission, Revenue Center Construction Fund, fund 7209, fiscal year 2014, organization 0705, and in the amount of $7,500,000 from the Department of Revenue, Lottery Commission, Operating and Expense Fund, fund 7200, fiscal year 2014, organization 0705, and in the amount of $2,008,911.50 from the Department of Revenue, Racing Commission, Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account, fund 7307, fiscal year 2014, organization 0707, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Public
Defender Services, fund 0226, fiscal year 2014, organization 0221, to the Department of Commerce, Division of Natural Resources, fund 0265, fiscal year 2014, organization 0310, to the Department of Health and Human Resources, Division of Health, Central Office, fund 0407, fiscal year 2014, organization 0506, to the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2014, organization 0506, to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2014, organization 0511, to the Department of Military Affairs and Public Safety, West Virginia Parole Board, fund 0440, fiscal year 2014, organization 0605, to the Department of Military Affairs and Public Safety, Division of Homeland Security and Emergency Management, fund 0443, fiscal year 2014, organization 0606, to the Department of Military Affairs and Public Safety, Division of Corrections - Correctional Units, fund 0450, fiscal year 2014, organization 0608, to the Department of Revenue, State Budget Office, fund 0595, fiscal year 2014, organization 0703, to the Bureau of Senior Services, fund 0420, fiscal year 2014, organization 0508, and to the Higher Education Policy Commission, Administration - Control Account, fund 0589, fiscal year 2014, organization 0441, by supplementing and amending the appropriations for the fiscal year ending June 30, 2014.

WHEREAS, The Legislature finds that the account balances in the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, activity 642, the Department of Commerce, Division of Tourism, fund 0246, fiscal year 2005, organization 0304, activity 859, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 075, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2000, organization 0307, activity 131, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 131, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 131, the Department of Commerce, West
Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 819, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 819, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 900, the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, activity 941, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2002, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2003, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2004, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2005, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2006, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2007, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2008, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2009, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2010, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2011, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2012, organization 0506, activity 803, the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2013, organization 0506, activity 803, the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2009, organization 0601, activity 953, the Department of Military Affairs and
Public Safety, Office of the Secretary, fund 0430, fiscal year 2010, organization 0601, activity 953, the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2011, organization 0601, activity 953, the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2012, organization 0621, activity 818, the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2013, organization 0621, activity 818, the Auditor's Office, Purchasing Card Administration Fund, fund 1234, fiscal year 2014, organization 1200, the Secretary of State, General Administrative Fees Account, fund 1617, fiscal year 2014, organization 1600, the Department of Administration, Office of the Secretary, State Employee Sick Leave Fund, fund 2045, fiscal year 2014, organization 0201, the Department of Administration, Division of General Services, Capitol Complex Parking Garage Fund, fund 2461, fiscal year 2014, organization 0211, the Department of Administration, Board of Risk and Insurance Management, Premium Tax Savings Fund, fund 2367, fiscal year 2014, organization 0218, the Department of Administration, Surplus Property, Sale of State Surplus Property Fund, fund 2281, fiscal year 2014, organization 0214, the Department of Administration, Division of Purchasing, Purchasing Improvement Fund, fund 2264, fiscal year 2014, organization 0213, the Department of Administration, Division of Personnel, Division of Personnel Fund, fund 2440, fiscal year 2014, organization 0222, the Department of Military Affairs and Public Safety, Office of the Secretary, Secretary of Military Affairs and Public Safety Lottery Fund, fund 6005, fiscal year 2014, organization 0601, the Department of Revenue, Division of Financial Institutions, Assessment and Examination Fund, fund 3041, fiscal year 2014, organization 0303, the Department of Revenue, Lottery Commission, Revenue Center Construction Fund, fund 7209, fiscal year 2014, organization 0705, the Department of Revenue, Lottery Commission, Operating and Expense Fund, fund 7200, fiscal year 2014, organization 0705, the Department of Revenue, Racing Commission, Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account, fund 7307, fiscal year 2014, organization 0707, exceed that
which is necessary for the purposes for which the accounts were established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 8, 2014, which included a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2013, and further included the estimate of revenues for the fiscal year 2014, less net appropriation balances forwarded and regular appropriations for the fiscal year 2014; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2014; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2014, in the Joint Expenses, fund 0175, fiscal year 2008, organization 2300, activity 642, be decreased by expiring the amount of $4,057,000, and in the Department of Commerce, Division of Tourism, fund 0246, fiscal year 2005, organization 0304, activity 859, be decreased by expiring the amount of $409,167.60, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 075, be decreased by expiring the amount of $261,246.01, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2000, organization 0307, activity 131, be decreased by expiring the amount of $5,999.39, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 131, be decreased by expiring the amount of $58,527.20, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 131, be decreased by expiring the amount of $154,061.74, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 131, be
decreased by expiring the amount of $257,617.06, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 131, be decreased by expiring the amount of $209,609.04, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 131, be decreased by expiring the amount of $145,560.18, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 131, be decreased by expiring the amount of $131,792.70, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 480, be decreased by expiring the amount of $11,758.05, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 480, be decreased by expiring the amount of $62,039.15, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 480, be decreased by expiring the amount of $25,265, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 480, be decreased by expiring the amount of $124,338.34, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 480, be decreased by expiring the amount of $123,100, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307,
activity 480, be decreased by expiring the amount of $140,830.80, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2001, organization 0307, activity 819, be decreased by expiring the amount of $47,113.16, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0307, activity 819, be decreased by expiring the amount of $223,665.85, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2003, organization 0307, activity 819, be decreased by expiring the amount of $44,007.60, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2004, organization 0307, activity 819, be decreased by expiring the amount of $123,230.47, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, activity 819, be decreased by expiring the amount of $742,930.92, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, activity 819, be decreased by expiring the amount of $539,290.37, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2011, organization 0307, activity 900, be decreased by expiring the amount of $334,180.67, and in the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2002, organization 0506, activity 803, be decreased by expiring the amount of $461.83, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2002, organization 0506, activity 803, be decreased by expiring the amount of $461.83, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2003, organization 0506, activity 803, be decreased by expiring the amount of $10,489.51, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2004, organization 0506, activity 803, be decreased by expiring the amount of $8,056.23, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2005, organization 0506, activity 803, be decreased by expiring the amount of $13,718.82, and in the Department of Health and Human
Ch. 3] APPROPRIATIONS 1619

Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2006, organization 0506, activity 803, be decreased by expiring the amount of $0.70, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2007, organization 0506, activity 803, be decreased by expiring the amount of $24,307.51, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2008, organization 0506, activity 803, be decreased by expiring the amount of $6,600.22, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2009, organization 0506, activity 803, be decreased by expiring the amount of $76,423.45, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2010, organization 0506, activity 803, be decreased by expiring the amount of $211,730.74, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2011, organization 0506, activity 803, be decreased by expiring the amount of $150,334.97, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2012, organization 0506, activity 803, be decreased by expiring the amount of $136,909.29, and in the Department of Health and Human Resources, Consolidated Medical Service Fund, fund 0525, fiscal year 2013, organization 0506, activity 803, be decreased by expiring the amount of $1,974.51, and in the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2009, organization 0601, activity 953, be decreased by expiring the amount of $15,640.96, and in the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2010, organization 0601, activity 953, be decreased by expiring the amount of $240,051.69, and in the Department of Military Affairs and Public Safety, Office of the Secretary, fund 0430, fiscal year 2011, organization 0601, activity 953, be decreased by expiring the amount of $215,075.18, and in the Department of Military Affairs and Public Safety, Division of Juvenile Services, fund 0570, fiscal year 2012, organization 0621, activity 818, be decreased by expiring the amount of $871,905.27, and in the Department of Military Affairs and Public
Safety, Division of Juvenile Services, fund 0570, fiscal year 2013, organization 0621, activity 818, be decreased by expiring the amount of $870,992.77, and in the Auditor’s Office, Purchasing Card Administration Fund, fund 1234, fiscal year 2014, organization 1200, be decreased by expiring the amount of $2,250,000, and in the Secretary of State, General Administrative Fees Account, fund 1617, fiscal year 2014, organization 1600, be decreased by expiring the amount of $3,000,000, and in the Department of Administration, Office of the Secretary, State Employee Sick Leave Fund, fund 2045, fiscal year 2014, organization 0201, be decreased by expiring the amount of $200,000, and in the Department of Administration, Division of General Services, Capitol Complex Parking Garage Fund, fund 2461, fiscal year 2014, organization 0211, be decreased by expiring the amount of $200,000, and in the Department of Administration, Board of Risk and Insurance Management, Premium Tax Savings Fund, fund 2367, fiscal year 2014, organization 0218, be decreased by expiring the amount of $4,737,257, and in the Department of Administration, Surplus Property, Sale of State Surplus Property Fund, fund 2281, fiscal year 2014, organization 0214, be decreased by expiring the amount of $500,000, and in the Department of Administration, Division of Purchasing, Purchasing Improvement Fund, fund 2264, fiscal year 2014, organization 0213, be decreased by expiring the amount of $500,000, and in the Department of Administration, Division of Personnel, Division of Personnel Fund, fund 2440, fiscal year 2014, organization 0222, be decreased by expiring the amount of $2,000,000, and in the Department of Military Affairs and Public Safety, Office of the Secretary, Secretary of Military Affairs and Public Safety Lottery Fund, fund 6005, fiscal year 2014, organization 0601, be decreased by expiring the amount of $45,607.91, and in the Department of Revenue, Division of Financial Institutions, Assessment and Examination Fund, fund 3041, fiscal year 2014, organization 0303, be decreased by expiring the amount of $200,000, and in the Department of Revenue, Lottery Commission, Revenue Center Construction Fund, fund 7209, fiscal year 2014, organization 0705, be decreased by expiring the amount of $724,487.42, and in the Department of Revenue, Lottery Commission, Operating and Expense
Fund, fund 7200, fiscal year 2014, organization 0705, be decreased by expiring the amount of $7,500,000, and in the Department of Revenue, Racing Commission, Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account, fund 7307, fiscal year 2014, organization 0707, be decreased by expiring the amount of $2,008,911.50, all to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2014.

And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0226, fiscal year 2014, organization 0221, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II - APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**DEPARTMENT OF ADMINISTRATION**

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2014 Org 0221

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 Appointed Counsel Fees -</td>
<td>$ 12,000,000</td>
</tr>
</tbody>
</table>
| 3 And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0265, fiscal year 2014, organization 0310, be supplemented and amended by adding a new item of appropriation as follows:
TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

39-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2014 Org 0310

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>11a State Park Improvements -</td>
<td></td>
</tr>
<tr>
<td>2  Surplus (R) .......... 763</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for State Park Improvements - Surplus (fund 0265, activity 763) at the close of the fiscal year 2014 is hereby reappropriated for expenditure during the fiscal year 2015.

And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0407, fiscal year 2014, organization 0506, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

63-Division of Health - Central Office

(WV Code Chapter 16)
And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0525, fiscal year 2014, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

*64-Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 0525 FY 2014 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Behavioral Health Program - Surplus (R)</td>
<td>$4,718,630</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Behavioral Health Program - Surplus (fund 0525, activity 631) at the close of the fiscal year 2014 is hereby reappropriated for expenditure during the fiscal year 2015.
And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0403, fiscal year 2014, organization 0511, be supplemented and amended by increasing existing items and adding a new item of appropriation as follows:

**TITLE II - APPROPRIATIONS.**

Section 1. Appropriations from general revenue.

DEPARTMENT HEALTH AND HUMAN RESOURCES

67-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2014 Org 0511

<table>
<thead>
<tr>
<th>Activity Description</th>
<th>Activity Code</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Services - Surplus (R)</td>
<td>633</td>
<td>$7,400,000</td>
</tr>
<tr>
<td>Social Services - Surplus</td>
<td>082</td>
<td>6,793,446</td>
</tr>
<tr>
<td>Technology Improvements - Surplus</td>
<td>725</td>
<td>3,016,766</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriations for Medical Services - Surplus (fund 0403, activity 633) and Technology Improvements - Surplus (fund 0403, activity 725) at the close of the fiscal year 2014 are hereby reappropriated for expenditure during the fiscal year 2015.

And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0440, fiscal year 2014, organization 0605, be supplemented and amended by increasing existing items and adding a new item of appropriation as follows:
TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

71-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2014 Org 0605

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 1 Personal Services - Surplus</td>
<td>$45,928</td>
</tr>
<tr>
<td>2 2 Employee Benefits - Surplus</td>
<td>22,358</td>
</tr>
<tr>
<td>3 6a Operating Expenses - Surplus</td>
<td>38,000</td>
</tr>
</tbody>
</table>

4 And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0443, fiscal year 2014, organization 0606, be supplemented by increasing an existing item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

72-Division of Homeland Security and Emergency Management

(WV Code Chapter 15)
1 13 WVU Charleston Poison Control
2 14 Hotline - Surplus (R) ........ 720 $ 57,000

Any unexpended balance remaining in the above appropriation for WVU Charleston Poison Control Hotline - Surplus (fund 0443, activity 720) at the close of the fiscal year 2014 is hereby reapportioned for expenditure during the fiscal year 2015. And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0450, fiscal year 2014, organization 0608, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

74-Division of Corrections- Correctional Units

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

Fund 0450 FY 2014 Org 0608

1 20a Operating Expenses -
2 Surplus (R) .................. 779 $ 6,235,205
Any unexpended balance remaining in the above appropriation for Operating Expenses - Surplus (fund 0450, activity 779) at the close of the fiscal year 2014 is hereby reappropriated for expenditure during the fiscal year 2015.

And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0595, fiscal year 2014, organization 0703, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF REVENUE

82-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2014 Org 0703

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>4a</td>
<td>Revenue Shortfall Reserve Fund - Transfer - Surplus (R) 718 $3,000,000</td>
</tr>
</tbody>
</table>

The above appropriation for Revenue Shortfall Reserve Fund - Transfer - Surplus (activity 718) shall be transferred to the Revenue Shortfall Reserve Fund (fund 7005).

And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0420, fiscal year 2014, organization 0508, be supplemented and amended by increasing an existing item of appropriation as follows:
TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BUREAU OF SENIOR SERVICES

91-Bureau of Senior Services -
(WV Code Chapter 29)

Fund 0420 FY 2014 Org 0508

<table>
<thead>
<tr>
<th>Activity</th>
<th>Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>765</td>
<td>1,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens - Surplus (fund 0420, activity 765) at the close of the fiscal year 2014 is hereby reappropriated for expenditure during the fiscal year 2015.

And, That the total appropriation for the fiscal year ending June 30, 2014, to fund 0589, fiscal year 2014, organization 0441, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II - APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

103-Higher Education Policy Commission- Administration- Control Account
Ch. 4] COUNTY COMMISSIONERS 1629
(WV Code Chapter 18B)
Fund 0589 FY 2014 Org 0441

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 14</td>
<td>Higher Education - Special</td>
</tr>
<tr>
<td>2 14a</td>
<td>Projects - Surplus (R) ... 946</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the above appropriation for Higher Education - Special Projects - Surplus (fund 0589, activity 946) at the close of the fiscal year 2014 is hereby reappropriated for expenditure during the fiscal year 2015.

The purpose of this supplemental appropriation bill is to expire, supplement, amend, increase, and add items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2014.

CHAPTER 4

(S. B. 1005 - By Senators Kessler (Mr. President) and M. Hall)
[By Request of the Executive]

[Passed March 4, 2014; in effect from its passage.]
[Approved by the Governor on March 21, 2014.]

AN ACT to amend and reenact §7-7-1 and §7-7-4 of the Code of West Virginia, 1931, as amended, all relating to authorizing an increase in the salaries of county commissioners and elected county officials; revising legislative findings; requiring the State Auditor to consider certain factors when certifying whether a county has an
amount sufficient for payment of the salary increases; providing
that the State Auditor may not be held liable for relying upon
information and data provided by a county commission in
assessing a county’s fiscal condition or annual budget; requiring
submission of a written request for a salary increase; providing
salary ranges for county commissioners and other county officials
for the time period beginning July 1, 2014; and requiring certain
prosecuting attorneys to be devoted full time to public duties.

Be it enacted by the Legislature of West Virginia:

That §7-7-1 and §7-7-4 of the Code of West Virginia, 1931, as
amended, be amended and reenacted, all to read as follows:

ARTICLE 7. COMPENSATION OF ELECTED COUNTY
OFFICIALS.

§7-7-1. Legislative findings and purpose.

(a) The Legislature finds that it has, since January 1, 2007,
consistently and annually imposed upon the county
commissioners, sheriffs, county and circuit clerks, assessors and
prosecuting attorneys in each county new and additional duties
by the enactment of new provisions and amendments to this
code. The new and additional duties imposed upon the aforesaid
county officials by these enactments are such that they would
justify the increases in compensation as provided in section four
of this article, without violating the provisions of section
thirty-eight, article VI of the Constitution of West Virginia.

(b) The Legislature further finds that there are, from time to
time, additional duties imposed upon all county officials through
the acts of the Congress of the United States and that such acts
constitute new and additional duties for county officials and, as
such, justify the increases in compensation as provided by
section four of this article, without violating the provisions of
section thirty-eight, article VI of the Constitution of West
Virginia.
(c) The Legislature further finds that there is a direct correlation between the total assessed property valuations of a county on which the salary levels of the county commissioners, sheriffs, county and circuit clerks, assessors and prosecuting attorneys are based, and the new and additional duties that each of these officials is required to perform as they serve the best interests of their respective counties. Inasmuch as the reappraisal of the property valuations in each county has now been accomplished, the Legislature finds that a change in classification of counties by virtue of increased property valuations will occur on an infrequent basis. However, it is the further finding of the Legislature that when such change in classification of counties does occur, that new and additional programs, economic developments, requirements of public safety and the need for new services provided by county officials all increase, that the same constitute new and additional duties for county officials as their respective counties reach greater heights of economic development, as exemplified by the substantial increases in property valuations and, as such, justify the increases in compensation provided in section four of this article, without violating the provisions of section thirty-eight, article VI of the Constitution of West Virginia.

(d) The Legislature further finds and declares that the amendments enacted to this article are intended to modify the provisions of this article so as to cause the same to be in full compliance with the provisions of the Constitution of West Virginia and to be in full compliance with the decisions of the Supreme Court of Appeals of West Virginia.

§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.

(1) The increased salaries to be paid to the county commissioners and the other elected county officials described in this section on and after July 1, 2014, are set out in subsections (5) and (7) of this section. Every county
commissioner and elected county official in each county, whose
term of office commenced prior to or on or after July 1, 2014,
shall receive the same annual salary by virtue of legislative
findings of extra duties as set forth in section one of this article.

(2) Before the increased salaries, as set out in subsections (5)
and (7) of this section, are paid to the county commissioners and
the elected county officials, the following requirements must be
met:

(A) The Auditor has certified that the fiscal condition of the
county, considering costs, revenues, liabilities and significant
trends of the same; maintenance standards; and the commitment
to the provision of county services has sufficiently improved
over the previous fiscal years so that there exists an amount
sufficient for the payment of the increase in the salaries set out
in subsections (5) and (7) of this section and the related
employment taxes: Provided, That the Auditor may not provide
the certification for the payment of the increase in the salaries
where any proposed annual county budget contains anticipated
receipts which are unreasonably greater or lesser than that of the
previous year. For purposes of this subsection, the term
“receipts” does not include unencumbered fund balance or
federal or state grants: Provided, however, That the Auditor shall
not be held liable for relying upon information and data provided
by a county commission in assessing the county’s fiscal
condition or a proposed annual county budget; and

(B) Each county commissioner or other elected official
described in this section in office on the effective date of the
increased salaries provided by this section who desires to receive
the increased salary shall have prior to that date filed in the
office of the clerk of the county commission his or her written
request for the salary increase. The salary for the person who
holds the office of county commissioner or other elected official
described in this section who fails to file the written request as
required by this paragraph shall be the salary for that office in effect immediately prior to the effective date of the increased salaries provided by this section until the person vacates the office or his or her term of office expires, whichever first occurs.

Any request for a salary increase shall use the following language:

I, [name of office holder], the duly elected [name of office] in and for the County of [name of county], West Virginia, do hereby request a salary increase pursuant to W. Va. Code §7-7-4, as amended. This salary increase is effective July 1, 2014.

[Signature of office holder]

[Date]

(3) If the Auditor has failed to certify that there is an amount sufficient for the payment of the increase in the salaries and the related employment taxes pursuant to this section, then the salaries of that county’s elected officials and commissioners shall remain at the level in effect at the time certification was sought.

(4) In any county having a tribunal in lieu of a county commission, the county commissioners of that county may be paid less than the minimum salary limits of the county commission for that particular class of the county.

(5) Prior to July 1, 2014:

<table>
<thead>
<tr>
<th>Class</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$36,960</td>
</tr>
<tr>
<td>Class II</td>
<td>$36,300</td>
</tr>
<tr>
<td>Class III</td>
<td>$35,640</td>
</tr>
<tr>
<td>Class IV</td>
<td>$34,980</td>
</tr>
</tbody>
</table>
COUNTY COMMISSIONERS

<table>
<thead>
<tr>
<th>Class</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>V</td>
<td>$34,320</td>
</tr>
<tr>
<td>VI</td>
<td>$28,380</td>
</tr>
<tr>
<td>VII</td>
<td>$27,720</td>
</tr>
<tr>
<td>VIII</td>
<td>$25,080</td>
</tr>
<tr>
<td>IX</td>
<td>$24,420</td>
</tr>
<tr>
<td>X</td>
<td>$19,800</td>
</tr>
</tbody>
</table>

After June 30, 2014:

<table>
<thead>
<tr>
<th>Class</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
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<tr>
<td>II</td>
<td>$40,656</td>
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<tr>
<td>III</td>
<td>$39,917</td>
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<tr>
<td>IV</td>
<td>$39,178</td>
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<tr>
<td>V</td>
<td>$38,438</td>
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<tr>
<td>VI</td>
<td>$31,786</td>
</tr>
<tr>
<td>VII</td>
<td>$31,046</td>
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<tr>
<td>VIII</td>
<td>$28,090</td>
</tr>
<tr>
<td>IX</td>
<td>$27,350</td>
</tr>
<tr>
<td>X</td>
<td>$22,176</td>
</tr>
</tbody>
</table>

(6) For the purpose of determining the salaries to be paid to the elected county officials of each county, the salaries for each county office by class, set out in subdivision (7) of this subsection, are established and shall be used by each county commission in determining the salaries of each of their county officials other than salaries of members of the county commission.

(7) Prior to July 1, 2014:

OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>County Sheriff</th>
<th>Circuit Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$44,880</td>
<td>$55,440</td>
<td>$55,440</td>
<td>$44,880</td>
<td>$ 96,600</td>
</tr>
<tr>
<td>Class</td>
<td>County Commissioners</td>
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<tr>
<td>96</td>
<td>Class II $44,220</td>
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<tr>
<td></td>
<td>$54,780</td>
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<td></td>
<td>$94,400</td>
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<tr>
<td>97</td>
<td>Class III $43,890</td>
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<td></td>
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<td>$43,890</td>
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<td></td>
<td>$92,200</td>
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<td>98</td>
<td>Class IV $43,560</td>
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<td></td>
<td>$53,154</td>
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<td>$90,000</td>
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<td>99</td>
<td>Class V $43,230</td>
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<td>$87,800</td>
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<tr>
<td>100</td>
<td>Class VI $42,900</td>
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<td></td>
<td>$49,500</td>
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<td>$42,900</td>
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<td></td>
<td>$59,400</td>
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<tr>
<td>101</td>
<td>Class VII $42,570</td>
<td></td>
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<tr>
<td></td>
<td>$48,840</td>
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<td></td>
<td>$56,760</td>
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<tr>
<td>102</td>
<td>Class VIII $42,240</td>
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<tr>
<td></td>
<td>$48,180</td>
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<td>$54,120</td>
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<tr>
<td>103</td>
<td>Class IX $41,910</td>
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<tr>
<td></td>
<td>$47,520</td>
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<td>$41,910</td>
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<td></td>
<td>$50,160</td>
<td></td>
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</tr>
<tr>
<td>104</td>
<td>Class X $38,280</td>
<td></td>
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<td></td>
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<tr>
<td></td>
<td>$42,240</td>
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<td>$42,240</td>
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<td>$38,280</td>
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<td></td>
<td>$46,200</td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Class</th>
<th>After June 30, 2014:</th>
</tr>
</thead>
<tbody>
<tr>
<td>105</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Class</th>
<th>Other Elected Officials</th>
</tr>
</thead>
<tbody>
<tr>
<td>107</td>
<td>Sheriff</td>
</tr>
<tr>
<td>108</td>
<td>County Clerk</td>
</tr>
<tr>
<td>109</td>
<td>Circuit Clerk</td>
</tr>
<tr>
<td>110</td>
<td>Assessor</td>
</tr>
<tr>
<td>111</td>
<td>Prosecuting</td>
</tr>
<tr>
<td>112</td>
<td>Attorney</td>
</tr>
<tr>
<td>113</td>
<td></td>
</tr>
<tr>
<td>114</td>
<td></td>
</tr>
<tr>
<td>115</td>
<td></td>
</tr>
<tr>
<td>116</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting</th>
</tr>
</thead>
<tbody>
<tr>
<td>109</td>
<td>$50,266</td>
<td>$62,093</td>
<td>$62,093</td>
<td>$50,266</td>
<td>$108,192</td>
</tr>
<tr>
<td>110</td>
<td>$49,526</td>
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<td>$61,354</td>
<td>$49,526</td>
<td>$105,728</td>
</tr>
<tr>
<td>111</td>
<td>$49,157</td>
<td>$59,875</td>
<td>$59,875</td>
<td>$49,157</td>
<td>$103,264</td>
</tr>
<tr>
<td>112</td>
<td>$48,787</td>
<td>$59,532</td>
<td>$59,532</td>
<td>$48,787</td>
<td>$100,800</td>
</tr>
<tr>
<td>113</td>
<td>$48,418</td>
<td>$59,136</td>
<td>$59,136</td>
<td>$48,418</td>
<td>$98,336</td>
</tr>
<tr>
<td>114</td>
<td>$48,048</td>
<td>$55,440</td>
<td>$55,440</td>
<td>$48,048</td>
<td>$66,528</td>
</tr>
<tr>
<td>115</td>
<td>$47,678</td>
<td>$54,701</td>
<td>$54,701</td>
<td>$47,678</td>
<td>$63,571</td>
</tr>
<tr>
<td>116</td>
<td>$47,309</td>
<td>$53,962</td>
<td>$53,962</td>
<td>$47,309</td>
<td>$60,614</td>
</tr>
</tbody>
</table>
(8) Any county clerk, circuit clerk, county assessor, prosecuting attorney or sheriff of a Class I through Class V county, inclusive, any assessor or any sheriff of a Class VI through Class IX county, inclusive, shall devote full time to his or her public duties to the exclusion of any other employment: Provided, That any public official whose term of office begins when his or her county's classification imposes no restriction on his or her outside activities may not be restricted on his or her outside activities during the remainder of the term for which he or she is elected.

CHAPTER 5

(S. B. 1009 - By Senators Kessler (Mr. President) and M. Hall)
[By Request of the Executive]

[Passed March 14, 2014; in effect from passage.]
[Approved by the Governor on March 31, 2014.]

AN ACT to repeal §11-1C-5b of the Code of West Virginia, 1931, as amended; to repeal §18-9A-2a of said code; to amend and reenact §11-3-1 of said code; and to amend and reenact §18-9A-2 and §18-9A-11 of said code, all relating to the computation of local share for public school support purposes; repealing, retrospectively to June 30, 2013, provisions requiring the use of assumed assessed real property values that are based upon an assessment ratio study instead of actual real property values for the purpose of the computation of local share for public school support purposes; repealing, retrospectively to June 30, 2013, provisions that require
that the annual amount of local share for which a county board of education is responsible be increased where, during the prior year, the real property assessments in that county were not at least fifty-four percent of market value as indicated by the assessment ratio study; requiring the Tax Commissioner to appoint special assessors to appraise and assess property in any county whenever property in that county is found to be assessed at less than sixty percent of its fair market value for two consecutive years; providing that appointment of special assessors is not required where a county meets certain criteria prescribed by rule; requiring Tax Commissioner to promulgate rules; providing that the county bear the expense of such special assessors; revising definitions; specifying that for fiscal years beginning after June 30, 2014, the State Board of Education shall use ninety-six percent of total assessed public utility valuation in the calculation of local share; specifying a four percent loss deduction in computation of local share for the fiscal year beginning on July 1, 2014, and for each fiscal year thereafter; expressing legislative intent to continue the computation of local share for public school support based upon actual real property values rather than assumed assessed real property values; expressing legislative intent that the annual amount of local share for which a county board of education is responsible continue to be computed without reference to whether the real property assessments in that county were at least fifty-four percent of market value in the prior year; and removing provisions requiring county school boards to provide funding for public libraries from discretionary retainage.

Be it enacted by the Legislature of West Virginia:

That §11-1C-5b of the Code of West Virginia, 1931, as amended, be repealed; that §18-9A-2a of said code be repealed; that §11-3-1 of said code be amended and reenacted; and that §18-9A-2 and §18-9A-11 of said code be amended and reenacted, all to read as follows:
CHAPTER 11. TAXATION.

ARTICLE 3. PROPERTY TAX ASSESSMENTS GENERALLY.

§11-3-1. Time and basis of assessments; true and actual value; default; reassessment; special assessors; criminal penalty.

(a) All property, except public service businesses assessed pursuant to article six of this chapter, shall be assessed annually as of July 1 at sixty percent of its true and actual value; that is to say, at the price for which the property would sell if voluntarily offered for sale by the owner thereof, upon the terms as the property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if the property were sold at a forced sale.

(b) Any conflicting provisions of subsection (a) of this section notwithstanding, the true and actual value of all property owned, used and occupied by the owner thereof exclusively for residential purposes shall be arrived at by also giving consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented: Provided, That the true and actual value of all farms used, occupied and cultivated by their owners or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose; and that the true and actual value shall be arrived at by giving consideration to the fair and reasonable income which the same might be expected to earn under normal conditions in the locality wherein situated, if rented: Provided, however, That nothing herein shall alter the method of assessment of lands or minerals owned by domestic or foreign corporations.
(c) The taxes upon all property shall be paid by those who are the owners thereof on the assessment date whether it be assessed to them or others.

(d) If at any time after the beginning of the assessment year it be ascertained by the Tax Commissioner that the assessor, or any of his or her deputies, is not complying with this provision or that they have failed, neglected or refused, or is failing, neglecting or refusing after five days' notice to list and assess all property therein at sixty percent of its true and actual value as determined under this chapter, the Tax Commissioner shall order and direct a reassessment of any or all of the property in any county, district or municipality where any assessor or deputy fails, neglects or refuses to assess the property in the manner herein provided. And, if the Tax Commissioner has determined that the assessor has not complied or has so failed, neglected or refused to list and assess property as aforesaid for two or more consecutive years, for the purpose of making assessment and correction of values, the Tax Commissioner shall appoint one or more special assessors, unless the Tax Commissioner determines that such appointment should be made earlier, as necessity may require, to make assessment in any county and any such special assessor or assessors, as the case may be, has the power and authority now vested by law in assessors, and the work of such special assessor or assessors shall be accepted and treated for all purposes by the county boards of review and equalization and the levying bodies, subject to any revisions of value on appeal, as the true and lawful assessment of that year as to all property valued by him or her or them. The Tax Commissioner shall fix the compensation of all special assessors appointed, which, together with their actual expenses, shall be paid out of the county fund by the county commission of the county in which any such assessment is ordered, upon the receipt of a certificate of the Tax Commissioner filed with the clerk of the county commission showing the amounts due and to whom payable,
after such expenses have been audited by the county commission. All of this subsection is subject to the following:

(1) Notwithstanding any other provision of this subsection to the contrary, if the Tax Commissioner has determined that the assessor has not complied or has so failed, neglected or refused to list and assess property as aforesaid for two consecutive years, but the assessor can show that the criteria established by rule pursuant to this subsection are met, the Tax Commissioner is not required to appoint one or more special assessors pursuant to this section, and in lieu of appointing one or more special assessors, may again order and direct a reassessment of any or all of the property pursuant to this subsection;

(2) For any third or succeeding consecutive year or years that the Tax Commissioner determines that the assessor has not complied or has so failed, neglected or refused to list and assess property as aforesaid, the Tax Commissioner shall appoint one or more special assessors pursuant to the provisions of this subsection regardless of whether or not the assessor can show that he or she will list and assess property as aforesaid the next year; and

(3) For the purposes of determining consecutive years pursuant to this subsection, only tax years beginning on and after the July 1, 2013, assessment date may be considered a first year.

(4) For purposes of subdivision (1) of this subsection, criteria for determining whether the assessor has made a satisfactory showing that he or she will list and assess property as aforesaid for the year next succeeding the two assessment years specified in subdivision (1) of this subsection, the Tax Commissioner shall apply criteria based on: (A) Sales validity; (B) appraisal uniformity; (C) appraisal evaluation; and (D) such other criteria as the Tax Commissioner may prescribe. The Tax Commissioner shall promulgate a legislative rule to specify
criteria for the treatment authorized herein for any such third
year or succeeding consecutive year or years, and such
administrative and procedural requirements and criteria as the
Tax Commissioner may prescribe.

(e) Any assessor who knowingly fails, neglects or refuses to
assess all the property of his or her county, as herein provided,
shall be guilty of malfeasance in office and, upon conviction
thereof, shall be fined not less than $100 nor more than $500, or
imprisoned not less than three nor more than six months, or both,
in the discretion of the court, and upon conviction, shall be
removed from office.

(f) For purposes of this chapter and chapter eleven-a of this
code, the following terms have the meanings ascribed to them in
this section unless the context in which the term is used clearly
indicates that a different meaning is intended by the Legislature:

(1) “Assessment date” means July 1 of the year preceding
the tax year.

(2) “Assessment year” means the twelve-month period that
begins on the assessment date.

(3) “Tax year” or “property tax year” means the next
calendar year that begins after the assessment date.

(4) “Taxpayer” means the owner and any other person in
whose name the taxes on the subject property are lawfully
assessed.

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


For the purpose of this article:
(a) "State board" means the West Virginia Board of Education.

(b) "County board" or "board" means a county board of education.

(c) "Professional salaries" means the state legally mandated salaries of the professional educators as provided in article four, chapter eighteen-a of this code.

(d) "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in section one, article one of this chapter, and includes technology integration specialists.

(e) "Professional instructional personnel" means a professional educator whose regular duty is as that of a classroom teacher, librarian, attendance director or school psychologist. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he or she is assigned and serves on a regular full-time basis in appropriate instruction, library, attendance or psychologist duties.

(f) "Professional student support personnel" means a "teacher" as defined in section one, article one of this chapter who is assigned and serves on a regular full-time basis as a counselor or as a school nurse with a bachelor's degree and who is licensed by the West Virginia Board of Examiners for Registered Professional Nurses. For all purposes except for the determination of the allowance for professional educators pursuant to section four of this article, professional student support personnel are professional educators.

(g) "Service personnel salaries" means the state legally mandated salaries for service personnel as provided in section eight-a, article four, chapter eighteen-a of this code.
(h) "Service personnel" means all personnel as provided in section eight, article four, chapter eighteen-a of this code. For the purpose of computations under this article of ratios of service personnel to net enrollment, a service employee shall be counted as that number found by dividing his or her number of employment days in a fiscal year by two hundred: Provided, that the computation for any service person employed for three and one-half hours or less per day as provided in section eight-a, article four, chapter eighteen-a of this code shall be calculated as one half an employment day.

(i) "Net enrollment" means the number of pupils enrolled in special education programs, kindergarten programs and grades one to twelve, inclusive, of the public schools of the county. Net enrollment further shall include:

1. Adults enrolled in regular secondary vocational programs existing as of the effective date of this section, subject to the following:
   A. Net enrollment includes no more than one thousand of those adults counted on the basis of full-time equivalency and apportioned annually to each county in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency; and
   B. Net enrollment does not include any adult charged tuition or special fees beyond that required of the regular secondary vocational student;

2. Students enrolled in early childhood education programs as provided in section forty-four, article five of this chapter, counted on the basis of full-time equivalency;

3. No pupil shall be counted more than once by reason of transfer within the county or from another county within the
state, and no pupil shall be counted who attends school in this state from another state;

(4) The enrollment shall be modified to the equivalent of the instructional term and in accordance with the eligibility requirements and rules established by the state board; and

(5) For the purposes of determining the county’s basic foundation program only, for any county whose net enrollment as determined under all other provisions of this definition is less than one thousand four hundred, the net enrollment of the county shall be increased by an amount to be determined in accordance with the following:

(A) Divide the state’s lowest county student population density by the county’s actual student population density;

(B) Multiply the amount derived from the calculation in paragraph (A) of this subdivision by the difference between one thousand four hundred and the county’s actual net enrollment;

(C) If the increase in net enrollment as determined under this subdivision plus the county’s net enrollment as determined under all other provisions of this subsection is greater than one thousand four hundred, the increase in net enrollment shall be reduced so that the total does not exceed one thousand four hundred; and

(D) During the 2008-2009 interim period and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review this subdivision to determine whether or not these provisions properly address the needs of counties with low enrollment and a sparse population density.

(j) “Sparse-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of
94 counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of “net enrollment”, to the square miles of the county is less than five.

97 (k) “Low-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than five but less than ten.

102 (l) “Medium-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than ten but less than twenty.

107 (m) “High-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than twenty.

112 (n) “Levies for general current expense purposes” means ninety percent of the levy rate for county boards of education calculated or set by the Legislature pursuant to section six-f, article eight, chapter eleven of this code.

116 (o) “Technology integration specialist” means a professional educator who has expertise in the technology field and is assigned as a resource teacher to provide information and guidance to classroom teachers on the integration of technology into the curriculum.

121 (p) “State aid eligible personnel” means all professional educators and service personnel employed by a county board in positions that are eligible to be funded under this article and whose salaries are not funded by a specific funding source such
§18-9A-11. Computation of local share; appraisal and assessment of property; valuations for tax increment financing purposes; computations in growth counties; public library support.

(a) On the basis of each county's certificates of valuation as to all classes of property as determined and published by the assessors pursuant to section six, article three, chapter eleven of this code for the next ensuing fiscal year in reliance upon the assessed values annually developed by each county assessor pursuant to articles one-c and three of that chapter, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two of this article, the amount of revenue which the levies would produce if levied upon one hundred percent of the assessed value of each of the several classes of property contained in the report or revised report of the value made to it by the Tax Commissioner as follows:

(1) For each fiscal year beginning before July 1, 2014, the state board shall first take ninety-five percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county. For each fiscal year beginning after June 30, 2014, the state board shall first take ninety-six percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county; and

(2) For each fiscal year beginning before July 1, 2014, the state board shall then apply these rates to the assessed taxable value of other property in each classification in the county as determined by the Tax Commissioner and shall deduct therefrom
five percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. For each fiscal year beginning after June 30, 2014, the state board shall then apply these rates to the assessed taxable value of other property in each classification in the county as determined by the Tax Commissioner and shall deduct therefrom four percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. All of the amount so determined shall be added to the ninety-five or ninety-six percent, as applicable, of public utility taxes computed as provided in subdivision (1) of this subsection and this total shall be further reduced by the amount due each county assessor’s office pursuant to section eight, article one-c, chapter eleven of this code and this amount shall be the local share of the particular county.

As to any estimations or preliminary computations of local share required prior to the report to the Legislature by the Tax Commissioner, the state shall use the most recent projections or estimations that may be available from the Tax Department for that purpose.

(b) It is the intent of the Legislature that the computation of local share for public school support continue to be based upon actual real property values rather than assumed assessed real property values that are based upon an assessment ratio study, and that the annual amount of local share for which a county board of education is responsible continue to be computed without reference to whether the real property assessments in that county were at least fifty-four percent of market value in the prior year as indicated by the assessment ratio study. Accordingly, the effective date of the operation of this section as amended and reenacted during 2014, and the effective date of the operation of the repeal of section two-a of this article and the operation of the repeal of section five-b, article one-c, chapter
eleven of this code, all as provided under this enactment, are expressly made retrospective to June 30, 2013.

(c) Whenever in any year a county assessor or a county commission fails or refuses to comply with this section in setting the valuations of property for assessment purposes in any class or classes of property in the county, the State Tax Commissioner shall review the valuations for assessment purposes made by the county assessor and the county commission and shall direct the county assessor and the county commission to make corrections in the valuations as necessary so that they comply with the requirements of chapter eleven of this code and this section and the Tax Commissioner may enter the county and fix the assessments at the required ratios. Refusal of the assessor or the county commission to make the corrections constitutes grounds for removal from office.

(d) For the purposes of any computation made in accordance with this section, in any taxing unit in which tax increment financing is in effect pursuant to article eleven-b, chapter seven of this code, the assessed value of a related private project shall be the base-assessed value as defined in section two of said article.

(e) For purposes of any computation made in accordance with this section, in any county where the county board of education has adopted a resolution choosing to use the Growth County School Facilities Act set forth in section six-f, article eight, chapter eleven of this code, estimated school board revenues generated from application of the regular school board levy rate to new property values, as that term is designated in said section, may not be considered local share funds and shall be subtracted before the computations in subdivisions (1) and (2), subsection (a) of this section are made.

(f) The Legislature finds that public school systems throughout the state provide support in varying degrees to public
libraries through a variety of means including budgeted allocations, excess levy funds and portions of their regular school board levies. A number of public libraries are situated on the campuses of public schools and several are within public school buildings serving both the students and public patrons. To the extent that public schools recognize and choose to avail the resources of public libraries toward developing within their students such legally recognized elements of a thorough and efficient education as literacy, interests in literature, knowledge of government and the world around them and preparation for advanced academic training, work and citizenship, public libraries serve a legitimate school purpose and may do so economically. Therefore, county boards are encouraged to support public libraries within their counties.

CHAPTER 6

(H. B. 106 - By Mr. Speaker (Mr. Miley) and Delegate Armstead)
[By Request of the Executive]

[Passed March 14, 2014; in effect from passage.]
[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §29-22-18e of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29-22-18f; to amend and reenact §31-15-16b of said code; and to amend and reenact §31-15A-17b of said code, all relating to debt service on bonds secured by the State Excess Lottery Revenue Fund; clarifying the timing of debt service payments to the Cacapon and Beech Fork State Park Lottery Revenue Debt Service Fund; providing a backup pledge of bonds supported by the State Lottery Fund and State Excess
Lottery Revenue Fund; clarifying priority and method of payment of debt service; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §29-22-18e 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 §29-22-18f; that §31-15-16b of said code be amended and reenacted; and that §31-15A-17b of said code be amended and reenacted, all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND COMMISSIONS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18e. Increase in allocation to State Park Improvement Fund from State Excess Lottery Revenue Fund to permit the issuance of bonds for improvements to Cacapon Resort State Park and Beech Fork State Park.

1 Notwithstanding any provision of subsection (d), section eighteen-a of this article to the contrary, the deposit of $5 million into the State Park Improvement Fund set forth in section eighteen-a of this article is for the fiscal year beginning July 1, 2012, only. For the fiscal year beginning July 1, 2013, and each fiscal year thereafter, in lieu of the deposits required under subdivision (7), subsection (d), section eighteen-a of this article, the commission shall first deposit an amount equal to the certified debt service requirement, not to exceed $3 million in any one fiscal year, into the Cacapon and Beech Fork State Park Lottery Revenue Debt Service Fund created in section sixteen-b, article fifteen, chapter thirty-one of this code, to be used in accordance with the provisions of that section, and second, deposit $5 million into the State Park Improvement Fund,
15 established in subsection (d), section eighteen-a of this article, to
16 be used in accordance with the provisions of that section.

§29-22-18f. Backup pledge of bonds supported by the State
Lottery Fund and the State Excess Lottery
Revenue Fund; payment of bond debt service.

1 (a) Any and all remaining funds in the State Excess Lottery
2 Revenue Fund after payment of debt service pursuant to sections
3 eighteen-a, eighteen-d, and eighteen-e of this article shall be
4 made available to pay debt service in connection with any
5 revenue bonds issued pursuant to section eighteen of this article,
6 if and to the extent needed for such purpose from time to time.

7 (b) Notwithstanding any other provision of this code to the
8 contrary, after first satisfying the requirements for funds
9 dedicated to pay debt service in accordance with bonds payable
10 from the State Lottery Fund pursuant to section eighteen of this
11 article, any and all remaining funds in the State Lottery Fund
12 shall be made available to pay debt service in connection with
13 revenue bonds issued pursuant to sections eighteen-a, eighteen-d,
14 and eighteen-e, of this article, if and to the extent needed for
15 such purpose from time to time.

16 (c) Notwithstanding the provisions of subsection (h), section
17 eighteen-a of this article, when bonds are issued for projects
18 under subsection (d) or (e) of section eighteen-a of this article,
19 or for the School Building Authority, infrastructure pursuant to
20 section eighteen-d of this article, higher education, or state park
21 improvements pursuant to section eighteen-e of this article that
22 are secured by profits from lotteries deposited in the State
23 Excess Lottery Revenue Fund, the Lottery Director shall allocate
24 first to the Economic Development Project Fund an amount
25 equal to one tenth of the projected annual principal, interest and
26 coverage requirements on any and all revenue bonds issued, or
27 to be issued as certified to the Lottery Director; and second, to
the fund or funds from which debt service is paid on bonds issued under section eighteen-a of this article for the School Building Authority, infrastructure pursuant to section eighteen-d of this article, higher education, and state park improvements pursuant to section eighteen-e of this article an amount equal to one tenth of the projected annual principal, interest and coverage requirements on any and all revenue bonds issued, or to be issued as certified to the Lottery Director. In the event there are insufficient funds available in any month to transfer the amounts required pursuant to this subsection, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.


(a)(1) The economic development authority shall, in accordance with the provisions of this article, issue revenue bonds, in one or more series, from time to time, to pay for all or 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 principal amount of $52.5 million. 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 Cacapon and Beech Fork State Parks Lottery Revenue Debt Service Fund established in this section.
(2) There is hereby created in the State Treasury a special revenue fund named the "Cacapon and Beech Fork State Parks Lottery Revenue Service Fund" into which shall be deposited those amounts specified in section eighteen-e, article twenty-two, chapter twenty-nine of this code. 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 Cacapon and Beech Fork State Parks Lottery Revenue 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. The Cacapon and Beech Fork State Parks Lottery Revenue Debt Service Fund shall be pledged solely for the repayment of bonds issued pursuant to this section. On or prior to May 1 of each year, commencing, upon issuance of the bonds, 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 or refunding revenue bonds issued pursuant to this section, and for which moneys deposited in the Cacapon and Beech Fork State Parks Lottery Revenue Debt Service Fund have been pledged, or will be pledged, for repayment pursuant to this section.

(3) After the authority has issued bonds authorized by this section, 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 section, any balance remaining in the Cacapon and Beech Fork State Parks Lottery Revenue Debt Service Fund may be used for the redemption of any of the outstanding bonds issued under this section 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.

(b) The authority shall expend the bond proceeds, net of issuance costs, reserve funds and refunding costs, for certified capital improvement projects at Cacapon Resort State Park and Beech Fork State Park. The Division of Natural Resources shall submit a proposed list of capital improvement projects to the Governor on or before January 1, 2013. Thereafter, the Governor shall certify to the authority on or before February 1, 2013, a list of those capital improvement projects at Cacapon Resort State Park and Beech Fork State Park that will receive funds from the proceeds of bonds issued 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 Cacapon Resort State Park and Beech Fork State Park that will receive funds from the proceeds of bonds issued pursuant to this section. The Governor shall consult with the Division of Natural Resources prior to certifying a revised list of capital improvement projects to the authority.

(c) Except as may otherwise be expressly provided by the authority, every issue of its notes or bonds shall be special obligations of the authority, payable solely from the property, revenues or other sources of or available to the authority pledged therefor.

(d) The bonds and the notes shall be authorized by the authority pursuant to this section, and shall be secured, be in such denominations, may bear interest at such rate or rates, taxable or tax-exempt, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment and at such place or places and such time or times and be subject to such terms of redemption as the authority may authorize. The bonds and notes of the authority may be sold by the authority, at public or private sale, at or not less than the
price the authority determines. The bonds and notes shall be
executed by manual or facsimile signature by the chairman of
the board, and the official seal of the authority or a facsimile
thereof shall be affixed to or printed on each bond and note and
attested, manually or by facsimile signature, by the secretary of
the board, and any coupons attached to any bond or note shall
bear the manual or facsimile signature of the chairman of the
board. In case any officer whose signature, or a facsimile of
whose signature, appears on any bonds, notes or coupons ceases
to be such officer before delivery of such bonds or notes, such
signature or facsimile is nevertheless sufficient for all purposes
the same as if he or she had remained in office until such
delivery; and, in case the seal of the authority has been changed
after a facsimile has been imprinted on such bonds or notes, such
facsimile seal will continue to be sufficient for all purposes.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND
JOBS DEVELOPMENT COUNCIL.

§31-15A-17b. Infrastructure lottery revenue bonds for watershed
compliance projects.

(a)(1) The Chesapeake Bay has been identified as an
impaired water body due to excessive nutrients entering the bay
from various sources in six states, including wastewater facilities
in West Virginia. To restore the Chesapeake Bay, the states have
agreed to reduce their respective nutrient contributions to the
Chesapeake Bay.

(2) The Greenbrier River Watershed in southeastern West
Virginia which encompasses approximately 1,646 square miles,
the majority of which lies within Pocahontas, Greenbrier,
Monroe and Summers counties, has been identified as an
impaired water body due to excessive levels of fecal coliform
and phosphorus entering the watershed from various sources,
including wastewater facilities in West Virginia. To restore the
Greenbrier River Watershed, the state agrees to reduce the fecal coliform and phosphorus contributions to the Greenbrier River Watershed.

(b) Notwithstanding any other provision of this code to the contrary, the Water Development Authority may issue, in accordance with the provisions of section seventeen of this article, infrastructure lottery revenue bonds payable from the West Virginia Infrastructure Lottery Revenue Debt Service Fund created by section nine of this article and such other sources as may be legally pledged for such purposes other than the West Virginia Infrastructure Revenue Debt Service Fund created by section seventeen of this article.

(c) The council shall direct the Water Development Authority to issue bonds in one or more series when it has approved Chesapeake Bay watershed compliance projects and Greenbrier River watershed compliance projects with an authorized permitted flow of four hundred thousand gallons per day or more. The proceeds of the bonds shall be used solely to pay costs of issuance, fund a debt service reserve account, capitalize interest, pay for security instruments necessary to market the bonds and to make grants to governmental instrumentalities of the state for the construction of approved Chesapeake Bay watershed compliance projects and Greenbrier River watershed compliance projects. To the extent funds are available in the West Virginia Infrastructure Lottery Revenue Debt Service Fund that are not needed for debt service, the council may direct the Water Development Authority to make grants to project sponsors for the design or construction of approved Chesapeake Bay watershed compliance projects and Greenbrier River watershed compliance projects: Provided, That the council shall direct the Water Development Authority to provide from moneys in the Lottery Revenue Debt Service Fund not needed to pay debt service in fiscal year 2013 a grant of $6 million to a Chesapeake Bay watershed compliance project.
which opened bids on December 28, 2011, and further provided that such Chesapeake Bay watershed compliance project shall receive no further grant funding under this section after receipt of the $6 million grant.

(d) No later than June 30, 2012, each publicly owned facility with an authorized permitted flow of four hundred thousand gallons per day or more that is subject to meeting Chesapeake Bay compliance standards or Greenbrier River watershed compliance standards shall submit to the council a ten-year projected capital funding plan for Chesapeake Bay watershed compliance projects or Greenbrier River watershed compliance projects, as the case may be, including a general project description, cost estimate and estimated or actual project start date and project completion date, if any. The council shall timely review the submitted capital funding plans and forward approved plans to the Water Development Authority for further processing and implementation pursuant to this article. If the council finds a plan to be incomplete, inadequate or otherwise problematic, it shall return the plan to the applicant with comment on the plan shortcomings. The applicant may then resubmit to council an amended capital funding plan for further consideration pursuant to the terms of this subsection.

(e) Upon approval, each proposed Chesapeake Bay watershed compliance project or Greenbrier River watershed compliance project, or portion of a larger project, which portion is dedicated to compliance with nutrient standards, or fecal coliform and phosphorus standards, established for the protection and restoration of the Chesapeake Bay or the Greenbrier River watershed, as the case may be, shall be eligible for grant funding by funds generated by the infrastructure lottery revenue bonds described in subsection (b) of this section. At the request of the applicant, the remaining percentage of project funding not otherwise funded by grant under the provisions of this article may be reviewed as a standard project funding application.
(f) No later than December 1, 2012, the Water Development Authority shall report to the Joint Committee on Government and Finance the total cost of Chesapeake Bay watershed compliance projects and the Greenbrier River watershed compliance projects and the proposed grant awards for each eligible project. From the proceeds of bonds issued under subsection (b) of this section, the council shall direct the Water Development Authority to make grants to eligible projects ready to proceed to construction and those grant awards shall be prorated to an equal percentage of total eligible costs among all applicants for each eligible project as certified by the Water Development Authority in its report to the Joint Committee on Government and Finance dated November 26, 2012: Provided, That the final project, and its financing, is consistent with the scope of the eligible project included in the council’s approval on December 5, 2012.

(g) Eligible projects that have obtained project financing prior to December 31, 2012, may apply to the council for funding under the provisions of this section. These applications shall be processed and considered as all other eligible projects, and a grant funding awarded shall, to the extent allowed by law, be dedicated to prepay all or a portion of debt previously incurred by governmental instrumentalities of the state for required Chesapeake Bay nutrient removal projects or Greenbrier River watershed fecal coliform and phosphorus removal projects, subject to the bond covenants and contractual obligations of the borrowing governmental entity. However, any private portion of funding provided by agreement between a political subdivision and one or more private entities, either by direct capital investment or debt service obligation, shall not be eligible for grant funding under the provisions of this article.
AN ACT to amend and reenact §29-22-18d of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §29-22A-10d, §29-22A-10e and §29-22A-10f; to amend said code by adding thereto a new section, designated §29-22C-27a; and to amend said code by adding thereto a new section, designated §29-25-22b, all relating to the transfer of certain revenues derived from lottery activities generally; reducing the distributions to the West Virginia Infrastructure Fund to $20 million for fiscal year 2015 and increasing the percentage of funds available for grants therefrom; reducing the amount that may be transferred to the Racetrack Modernization Fund to $9 million; transferring certain revenues derived from racetrack video lottery, lottery racetrack table games and lottery historic resort hotel gaming activities to the State Excess Lottery Revenue Fund for appropriation; reducing statutory distributions to capital reinvestment, purse funds and development funds by ten percent; and authorizing distributions to be paid on a pro rata basis.

Be it enacted by the Legislature of West Virginia:

That §29-22-18d of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto three new sections, designated §29-22A-10d, §29-22A-10e and §29-22A-10f; that said code be amended by adding thereto a new section, designated §29-22C-27a; and that
said code be amended by adding thereto a new section, designated §29-25-22b, all to read as follows:

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18d. Increase in allocation to West Virginia Infrastructure Fund from State Excess Lottery Revenue Fund.

Notwithstanding any provision of subsection (d), section eighteen-a of this article to the contrary, the deposit of $40 million into the West Virginia Infrastructure Fund set forth above is for the fiscal year beginning July 1, 2010, only. For the fiscal year beginning July 1, 2011, and each fiscal year thereafter, in lieu of the deposits required under subdivision (5), subsection (d), section eighteen-a of this article, the commission shall, first, deposit $6 million into the West Virginia Infrastructure Lottery Revenue Debt Service Fund created in subsection (h), section nine, article fifteen-a, chapter thirty-one of this code, to be spent in accordance with the provisions of that subsection, and, second deposit $40 million into the West Virginia Infrastructure Fund created in subsection (a), section nine, article fifteen-a, chapter thirty-one of this code, to be spent in accordance with the provisions of that article: Provided, That for the fiscal year beginning July 1, 2014, the deposit to the West Virginia Infrastructure Fund shall be $20 million: Provided however, That notwithstanding the provisions of subsection (a), section ten, article fifteen-a, chapter thirty-one of this code, for the fiscal year beginning July 1, 2014, any moneys disbursed from the West Virginia Infrastructure Fund in the form of grants shall not exceed fifty percent of the total funds available for the funding of projects.

ARTICLE 22A. RACETRACK VIDEO LOTTERY ACT.

§29-22A-10d. Changes in distribution of net terminal income; distributions from excess lottery fund.
(a) Notwithstanding any provision of subsection (b), section ten of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, the commission may transfer up to $9 million as actual costs and expenses to the Licensed Racetrack Modernization Fund.

(b) Notwithstanding any provision of subsection (c), section ten of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution, except those distributions to be made pursuant to subdivisions (1), (2), (3), (4), (5) and (7), subsection (c), section ten of this article, shall be reduced by one hundred percent. Payments shall not be made pursuant to section ten of this article, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

(c) The total amount of reductions resulting from subsection (b) of this section shall be paid into the State Excess Lottery Revenue Fund, created by section eighteen-a, article twenty-two of this chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made pursuant to subdivisions (2) and (5), subsection (c), section ten of this article shall be reduced by ten percent, and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue Fund.

(d) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(e) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the
provisions of sections eighteen-a, eighteen-d and eighteen-e, 
article twenty-two of this chapter and in the priority as defined 
by subsection (c), section eighteen-f, article twenty-two of this 
Chapter.

(f) Notwithstanding any other provision of this code to the 
contrary, after payment of debt service from the State Excess 
Lottery Revenue Fund, all other distributions required by section 
eighteen-a, article twenty-two of this chapter and the 
distributions appropriated pursuant to this section shall be paid 
on a pro rata basis.

(g) Notwithstanding the provisions of paragraph (B), 
subdivision (9), subsection (c), section ten of this article, upon 
certification of the Governor to the Legislature that an 
independent actuary has determined that the unfunded liability 
of the Old Fund, as defined in chapter twenty-three of this code, 
has been paid or provided for in its entirety, the transfers made 
to the Workers' Compensation Debt Reduction Fund pursuant to 
paragraph (A), subdivision (9), subsection (c), section ten of this 
article shall expire and those funds shall remain in the State 
Excess Lottery Revenue Fund subject to appropriation.

§29-22A-10e. Changes in distribution of excess net terminal 
income; distributions from excess lottery fund.

(a) Notwithstanding any provision of subsection (a), section 
ten-b of this article to the contrary, for the fiscal year beginning 
July 1, 2014, and each fiscal year thereafter, each distribution, 
except those distributions to be made pursuant to subdivisions 
(1), (2), (3), (4), (5) and (7), subsection (a), section ten-b of this 
article, shall be reduced by one hundred percent. Payments shall 
not be made pursuant to section ten-b of this article, other than 
those excepted by this subsection, and are made in lieu thereof 
in an amount to be determined by appropriation from the State 
Excess Lottery Revenue Fund.
(b) The total amount of reductions resulting from subsection (a) of this section shall be paid into the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made pursuant to subdivisions (2) and (5), subsection (a), section ten-b of this article shall be reduced by ten percent, and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue Fund.

(c) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(d) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of sections eighteen-a, eighteen-d, and eighteen-e, article twenty-two of this chapter and in the priority as defined by subsection (c), section eighteen-f, article twenty-two of this chapter.

(e) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by section eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

(f) Notwithstanding the provisions of paragraph (B), subdivision (9), subsection (a), section ten-b of this article, upon certification of the Governor to the Legislature that an independent actuary has determined that the unfunded liability of the Old Fund, as defined in chapter twenty-three of this code,

(a) Notwithstanding any provision of subsection (b), section ten-c of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, each distribution made pursuant to section ten-c of this article shall be reduced by ten percent.

(b) The total amount of reductions resulting from subsection (a) of this section shall be paid into the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter.

ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.

§29-22C-27a. Changes in distribution of adjusted gross receipts; distributions from excess lottery fund.

(a) Notwithstanding any provision of section twenty-seven of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, the distribution directed pursuant to subdivision (1), subsection (d) of that section shall be reduced by one hundred percent.

(b) The total amount of reductions resulting from subsection (a) of this section shall be paid into the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter. For the fiscal year beginning July 1, 2014, and each fiscal year thereafter, distributions to be made pursuant to subdivisions (2) and (3), subsection (c), section twenty-seven of
this article shall be reduced by ten percent, and the amounts resulting from the reduction shall be paid into the State Excess Lottery Revenue Fund.

(c) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(d) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of sections eighteen-a, eighteen-d and eighteen-e, article twenty-two of this chapter and in the priority as defined by subsection (c), section eighteen-f, article twenty-two of this chapter.

(e) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by section eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.

ARTICLE 25. AUTHORIZED GAMING FACILITY.

§29-25-22b. Changes in distribution of adjusted gross receipts and additional income; distributions from excess lottery fund.

(a) Notwithstanding any provision of section twenty-two of this article to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, after payment of the commission’s expenses pursuant to subsection (b), section twenty-two of this article, each distribution made in subsection
(c), section twenty-two of this article from gross terminal income, and each distribution of the balance of the Historic Resort Hotel Fund made in subsection (d), section twenty-two of this article, except subdivisions (4), (5), (6), (7) and (8) of that subsection, shall be reduced by one hundred percent. Payments shall not be made pursuant to section twenty-two of this article, other than those excepted by this subsection, and are made in lieu thereof in an amount to be determined by appropriation from the State Excess Lottery Revenue Fund.

(b) The total amount of reductions resulting from subsection (a) of this section shall be paid into the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter.

(c) Notwithstanding any other provision of this code to the contrary, for the fiscal year beginning July 1, 2014, and each fiscal year thereafter, moneys deposited to the State Excess Lottery Revenue Fund pursuant to this section shall be expended by the Lottery in accordance with appropriations.

(d) Prior to payment of any appropriation made pursuant to this section, debt service payments payable from the State Excess Lottery Fund shall first be paid in accordance with the provisions of section eighteen-a, eighteen-d and eighteen-e, article twenty-two of this chapter and in the priority as defined by subsection (c), section eighteen-f, article twenty-two of this chapter.

(e) Notwithstanding any other provision of this code to the contrary, after payment of debt service from the State Excess Lottery Revenue Fund, all other distributions required by section eighteen-a, article twenty-two of this chapter and the distributions appropriated pursuant to this section shall be paid on a pro rata basis.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-9B-1, §15-9B-2 and §15-9B-3, all relating to establishing a regulatory system for sexual assault forensic examinations; creating the Sexual Assault Forensic Examination Commission; setting forth its membership; authorizing certain additional members; requiring the commission to establish mandatory statewide protocols for conducting sexual assault forensic examinations; setting forth other powers and responsibilities of the commission; authorizing rule-making; requiring county prosecutors to convene and chair local Sexual Assault Forensic Examination Boards; authorizing counties to combine to form regional boards; and setting forth minimum requirements for local plans developed by county or regional boards.

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 §15-9B-1, §15-9B-2 and §15-9B-3, all to read as follows:

ARTICLE 9B. SEXUAL ASSAULT EXAMINATION NETWORK.

§15-9B-1. Sexual Assault Forensic Examination Commission.
There is hereby created within the Governor's Committee on Crime, Delinquency and Correction the Sexual Assault Forensic Examination Commission. The purpose of the commission is to establish, manage and monitor a statewide system to facilitate the timely and efficient collection of forensic evidence in sexual assault cases. As used in this article, the word "commission" means the Sexual Assault Forensic Examination Commission.

(b) The commission shall be chaired by the director of the Division of Justice and Community Service. Membership on the commission shall consist of the following:

1. A representative chosen from the membership of the West Virginia Prosecuting Attorneys Association;
2. A representative chosen from the membership of the West Virginia Association of Counties;
3. The Commissioner of the Bureau for Public Health, or his or her designee;
4. A representative from the State Police Forensic Laboratory;
5. A representative from the membership of the West Virginia Child Advocacy Network;
6. The President of the West Virginia Hospital Association, or his or her designee;
7. A representative from the membership of the West Virginia Foundation for Rape and Information Services;
8. A representative of the West Virginia University Forensic and Investigative Sciences Program; and
Chapter 8] SEXUAL ASSAULT EXAMINATION NETWORK

(9) A representative of the Marshall University Forensic Science Center.

(c) If any of the representative organizations listed in subsection b) of this section cease to exist, the director may select a person from a similar organization.

(d) The director may appoint the following additional members of the commission, as needed:

(1) An emergency room physician;

(2) A victim advocate from a rape crisis center;

(3) A sexual assault nurse examiner;

(4) A law-enforcement officer with experience in sexual assault investigations;

(5) A health care provider with pediatric and child abuse expertise; and

(6) A director of a child advocacy center.

(e) The commission shall establish mandatory statewide protocols for conducting sexual assault forensic examinations, including designating locations and providers to perform forensic examinations, establishing minimum qualifications and procedures for performing forensic examinations and establishing protocols to assure the proper collection of evidence.


(a) The commission shall facilitate the recruitment and retention of qualified health care providers that are properly qualified to conduct forensic examinations. The commission shall work with county and regional officials to identify areas of
greatest need and develop and implement recruitment and
retention programs to help facilitate the effective collection of
evidence.

(b) The commission shall authorize minimum training
requirements for providers conducting exams and establish a
basic standard of care for victims of sexual assault. The
commission may adopt necessary and reasonable requirements
relating to establishment of a statewide training and forensic
examination system, including, but not limited to, developing a
data collection system to monitor adherence to established
standards, assisting exam providers to receive training and
support services, advocating the fair and reasonable
reimbursement to exam providers and facilitating transportation
services for victims to get to and from designated exam
locations.

(c) The commission shall approve local plans for each area
of the state on a county or regional basis. If the commission
deems it necessary, it may add or remove a county or portion
thereof from a region to assure that all areas of the state are
included in an appropriate local plan. Upon the failure of any
county or local region to propose a plan, the commission may
implement a plan for that county or region.

(d) Once a plan is approved by the commission, it can only
be amended or otherwise altered as provided by the rules
authorized pursuant to subsection (e) of this section. Designated
facilities and organizations providing services shall give the
commission thirty days advance notice of their intent to
withdraw from the plan. If there is a change of circumstances
that would require a change in a county or regional plan, the
members of the local board and the state commission shall be
notified.
(e) The commission may propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, as are necessary to implement this article.

§15-9B-3. Local Sexual Assault Forensic Examination Boards.

(a) Each county prosecutor, or his or her designee, shall convene a Sexual Assault Forensic Examination Board, or may, as an alternative, convene and chair the sexual assault response team in the county to act as the Sexual Assault Forensic Examination Board. If a regional board is authorized, all county prosecutors from the designated area shall be members of the board. The prosecutors shall assure that each board be proportionally representative of the designated region. Each board may vary in membership, but should include representatives from local health care facilities, local law enforcement, multidisciplinary investigative teams, county and municipal governments and victims advocates. Each county or regional board shall develop a local plan and protocols for the area, which will address, at a minimum, the following:

(1) Identifying facilities that are appropriate for receipt and treatment of sexual assault victims;

(2) Evaluating the needs and available resources of the area, including the number of qualified physicians or nurses, or both, to facilitate and encourage 24-hour, seven-day-a-week coverage; and

(3) Developing an alternative plan in case there is a change in circumstances to ensure continuity of service.

(b) If availability of services are limited, or the remoteness of the region causes lack of adequate examination facilities or personnel, the local boards may designate local government or other resources to provide appropriate transport of victims to
facilities where the victim can receive a timely and appropriate forensic examination.

CHAPTER 9

(H. B. 107 - By Mr. Speaker (Mr. Miley) and Delegate Armstead)
[By Request of the Executive]

[Passed March 14, 2014; in effect from passage.]
[Approved by the Governor on March 31, 2014.]

AN ACT to amend and reenact §22-15-8 and §22-15-11 of the Code of West Virginia, 1931, as amended, all relating to the disposal of drill cuttings and associated drilling waste generated from well sites at commercial solid waste facilities; allowing for the receipt of additional drilling waste at certain commercial solid waste facilities above the facility’s existing tonnage limit if certain conditions are met; recognizing the facility’s continuing obligation to receive municipal solid waste while exceeding its permitted tonnage caps; requiring radiation and leachate monitoring at all facilities receiving drill cuttings and drilling waste; establishing minimum requirements for the monitoring program; requiring the investigation and report by the department of environmental protection to the legislature on specified issues associated with the disposal of drill cuttings and drilling wastes at landfills; required scope of study; establishing deadlines, effective dates; creating a special revenue fund in the state treasury; limiting use of funds for specified purposes; establishing an additional solid waste fee; and requiring the promulgation of emergency and legislative rules.
Be it enacted by the Legislature of West Virginia:

That §22-15-8 and §22-15-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.


(a) On and after October 1, 1991, it is unlawful to operate any commercial solid waste facility that handles between ten thousand and thirty thousand tons of solid waste per month, except as provided in section nine of this article and sections twenty-six, twenty-seven and twenty-eight, articles four and four-a, chapter twenty-two-c of this code.

(b) Except as provided in section nine of this article, the maximum quantity of solid waste which may lawfully be received or disposed of at any commercial solid waste facility is thirty thousand tons per month.

(c) The secretary shall, within the limits contained in this article, place a limit on the amount of solid waste received or disposed of per month in commercial solid waste facilities. The secretary shall consider at a minimum the following criteria in determining a commercial solid waste facility’s monthly tonnage limit:

1. The proximity and potential impact of the solid waste facility upon groundwater, surface water and potable water;

2. The projected life and design capacity of the solid waste facility;

3. The available air space, lined acreage, equipment type and size, adequate personnel and wastewater treatment capabilities; and
(4) Other factors related to the environmentally safe and efficient disposal of solid waste.

(d) Within the limits established in this article, the secretary shall determine the amount of sewage sludge which may be safely treated, stored, processed, composted, dumped or placed in a solid waste facility.

(e) The secretary shall promulgate emergency rules and propose for legislative promulgation, legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code, to effectuate the requirements of this section. When developing the rules, the secretary shall consider at a minimum the potential impact of the treatment, storage, processing, composting, dumping or placing sewage sludge at a solid waste facility:

(1) On the groundwater, surface waters and potable waters in the area;

(2) On the air quality in the area;

(3) On the projected life and design capacity of the solid waste facility;

(4) On the available air space, lined acreage, equipment type and size, personnel and wastewater treatment capabilities;

(5) The facility’s ability to adequately develop markets and market the product which results from the proper treatment of sewage sludge; and

(6) Other factors related to the environmentally safe and efficient treatment, storage, processing, composting, dumping or placing of sewage sludge at a solid waste facility.

(f) Sewage sludge disposed of at a landfill must contain at least twenty percent solid by weight. This requirement may be
met by adding or blending sand, sawdust, lime, leaves, soil or other materials that have been approved by the secretary prior to disposal. Alternative sewage sludge disposal methods can be utilized upon obtaining written approval from the secretary. No facility may accept for land filling in any month sewage sludge in excess of twenty-five percent of the total tons of solid waste accepted at the facility for land filling in the preceding month.

(g) Notwithstanding any other provision of this code to the contrary, a commercial solid waste facility that is not located in a county that is, in whole or in part, within a karst region as determined by the West Virginia Geologic and Economic Survey may lawfully receive drill cuttings and drilling waste generated from horizontal well sites above the monthly tonnage limits of the commercial solid waste facility under the following conditions and limitations:

(1)(A) The drill cuttings and associated drilling waste are placed in a separate cell dedicated solely to the disposal of drill cuttings and drilling waste;

(B) The separate cell dedicated to drill cuttings and associated drilling waste is constructed and maintained pursuant to the standards set out in this article and legislative rules promulgated thereunder; and

(C) On or before March 8, 2014, the facility has either obtained a certificate of need, or amended certificate of need, or has a pending application for a certificate or amended certificate of need, authorizing such separate cell as may be required by the Public Service Commission in accordance with section one-c, article two, chapter twenty-four of this code.

(2) The secretary may only allow those solid waste facilities that applied by December 31, 2013 for a permit modification to construct a separate cell for drill cuttings and associated drilling
waste, to accept drill cuttings and associated drilling waste at its commercial solid waste facility without counting the deposited drill cuttings and associated drilling waste towards the landfill's permitted monthly tonnage limits.

(3) No solid waste facility may exclude or refuse to take municipal solid waste in the quantity up to and including its permitted tonnage limit while the facility is allowed to lawfully receive drill cuttings or drilling waste above its permitted tonnage limits.

(h) Any solid waste facility taking drill cuttings and drilling waste must install radiation monitors by January 1, 2015. The secretary shall promulgate emergency and legislative rules to establish limits for unique toxins associated with drill cuttings and drilling waste including, but not limited to heavy metals, petroleum-related chemicals, (benzene, toluene, xylene, barium, chlorides, radium and radon) and establish the procedures the facility must follow if that limit is exceeded: Provided, That said rules shall establish and set forth a procedure to provide that any detected radiation readings above any established radiation limits will require that the solid waste landfill immediately cease accepting all affected drill cuttings and drilling waste until the secretary has inspected said landfill and certified pursuant to established rules and regulations that radiation levels have returned to below the established radiation limits. Any truck load of drill cuttings or drilling waste which exceeds the radiation reading limits shall not be allowed to enter the landfill until inspected and approved by the Department of Environmental Protection.

(i) Except for facilities which meet the requirements of (g)(1) of this section, the total amount of waste received at a commercial solid waste landfill that continues to mix said waste with its municipal solid waste may not exceed the total volume of its permitted capacity for that facility in any month, and the
quantities of drill cuttings and drilling waste received at that facility shall be counted and applied toward the facility’s established tonnage cap.

(j) On or before July 1, 2015, the secretary shall submit an investigation and report to the Joint Legislative Oversight Commission on Water Resources and the Legislature’s Joint Committee on Government and Finance which examines: (1) The hazardous characteristics of leachate collected from solid waste facilities receiving drill cuttings and drilling waste, including, but not limited to, the presence of heavy metals, petroleum related chemicals (benzene, toluene, xylene, etc.) barium, chlorides, radium and radon; (2) the potential negative impacts on the surface water or groundwater resources of this state associated with the collection, treatment and disposal of leachate from such landfills; (3) the technical and economic feasibility and benefits of establishing additional and/or separate disposal locations which are funded, constructed, owned and/or operated by the oil and gas industry; and (4) viable alternatives for the handling, treatment and disposal of drill cuttings, including the potential for processing, reusing and reapplying a portion of the collected drill cuttings as suitable fill material for roads, brownfield development or other projects, instead of disposing of all collected material into landfills.

(k) The secretary shall submit any proposed contract for conducting the studies set forth in subsection (j) of this section for review and preapproval by the Legislature’s Joint Committee on Government and Finance.


(a) Imposition. — A solid waste assessment fee is hereby imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of $1.75 per ton or part thereof of solid waste. The fee imposed by this section is in
addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

(b) Collection, return, payment and records. — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not such person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the Tax Commissioner.

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fee imposed by this section to the Tax Commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator is required to file returns on forms and in the manner as prescribed by the Tax Commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until remitted to the Tax Commissioner.

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the Tax Commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner and to keep the
amount of such fees in such account until remitted to the Tax
Commissioner. Such notice remains in effect until a notice of
cancellation is served on the operator or owner by the Tax
Commissioner.

(6) Whenever the owner of a solid waste disposal facility
leases the solid waste facility to an operator, the operator is
primarily liable for collection and remittance of the fee imposed
by this section and the owner is secondarily liable for remittance
of the fee imposed by this section. However, if the operator fails,
in whole or in part, to discharge his or her obligations under this
section, the owner and the operator of the solid waste facility are
jointly and severally responsible and liable for compliance with
the provisions of this section.

(7) If the operator or owner responsible for collecting the fee
imposed by this section is an association or corporation, the
officers thereof are liable, jointly and severally, for any default
on the part of the association or corporation, and payment of the
fee and any additions to tax, penalties and interest imposed by
article ten, chapter eleven of this code may be enforced against
them as against the association or corporation which they
represent.

(8) Each person disposing of solid waste at a solid waste
disposal facility and each person required to collect the fee
imposed by this section shall keep complete and accurate records
in such form as the Tax Commissioner may require in
accordance with the rules of the Tax Commissioner.

(c) Regulated motor carriers. — The fee imposed by this
section and section twenty-two, article five, chapter seven of this
code is considered a necessary and reasonable cost for motor
carriers of solid waste subject to the jurisdiction of the Public
Service Commission under chapter twenty-four-a of this code.
Notwithstanding any provision of law to the contrary, upon the
filing of a petition by an affected motor carrier, the Public
Service Commission shall, within fourteen days, reflect the cost
of said fee in said motor carrier’s rates for solid waste removal
service. In calculating the amount of said fee to said motor
carrier, the commission shall use the national average of pounds
of waste generated per person per day as determined by the
United States Environmental Protection Agency.

(d) Definition of solid waste disposal facility. — For
purposes of this section, the term “solid waste disposal facility”
means any approved solid waste facility or open dump in this
state, and includes a transfer station when the solid waste
collected at the transfer station is not finally disposed of at a
solid waste disposal facility within this state that collects the fee
imposed by this section. Nothing herein authorizes in any way
the creation or operation of or contribution to an open dump.

(e) Exemptions. — The following transactions are exempt
from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste disposal facility
by the person who owns, operates or leases the solid waste
disposal facility if the facility is used exclusively to dispose of
waste originally produced by such person in such person’s
regular business or personal activities or by persons utilizing the
facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual not
in the business of hauling or disposing of solid waste on such
days and times as designated by the secretary is exempt from the
solid waste assessment fee; and

(4) Disposal of solid waste at a solid waste disposal facility
by a commercial recycler which disposes of thirty percent or less
of the total waste it processes for recycling. In order to qualify
for this exemption each commercial recycler must keep accurate records of incoming and outgoing waste by weight. Such records must be made available to the appropriate inspectors from the division, upon request.

(f) Procedure and administration. — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten, chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) Criminal penalties. — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said sections were applicable only to the fee imposed by this section and were set forth in extenso herein.

(h) Dedication of proceeds. — The net proceeds of the fee collected by the Tax Commissioner pursuant to this section shall be deposited at least monthly in an account designated by the secretary. The secretary shall allocate $0.25 for each ton of solid waste disposed of in this state upon which the fee imposed by this section is collected and shall deposit the total amount so allocated into the "Solid Waste Reclamation and Environmental Response Fund" to be expended for the purposes hereinafter specified. The first $1 million dollars of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the "Solid Waste Enforcement Fund" and expended for the purposes hereinafter specified. The next $250,000 of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the "Solid Waste Management Board Reserve Fund", and expended for the purposes hereinafter specified: Provided, That in any year in which the Water
Development Authority determines that the Solid Waste Management Board Reserve Fund is adequate to defer any contingent liability of the fund, the Water Development Authority shall so certify to the secretary and the secretary shall then cause no less than $50,000 nor more than $250,000 to be deposited to the fund: Provided, however, That in any year in which the water development authority determines that the Solid Waste Management Board Reserve Fund is inadequate to defer any contingent liability of the fund, the Water Development Authority shall so certify to the secretary and the secretary shall then cause not less than $250,000 nor more than $500,000 to be deposited in the fund: Provided further, That if a facility owned or operated by the state of West Virginia is denied site approval by a county or regional solid waste authority, and if such denial contributes, in whole or in part, to a default, or drawing upon a reserve fund, on any indebtedness issued or approved by the Solid Waste Management Board, then in that event the Solid Waste Management Board or its fiscal agent may withhold all or any part of any funds which would otherwise be directed to such county or regional authority and shall deposit such withheld funds in the appropriate reserve fund. The secretary shall allocate the remainder, if any, of said net proceeds among the following three special revenue accounts for the purpose of maintaining a reasonable balance in each special revenue account, which are hereby continued in the State Treasury:

(1) The "Solid Waste Enforcement Fund" which shall be expended by the secretary for administration, inspection, enforcement and permitting activities established pursuant to this article;

(2) The "Solid Waste Management Board Reserve Fund" which shall be exclusively dedicated to providing a reserve fund for the issuance and security of solid waste disposal revenue bonds issued by the solid waste management board pursuant to article three, chapter twenty-two-c of this code;
The "Solid Waste Reclamation and Environmental Response Fund" which may be expended by the secretary for the purposes of reclamation, cleanup and remedial actions intended to minimize or mitigate damage to the environment, natural resources, public water supplies, water resources and the public health, safety and welfare which may result from open dumps or solid waste not disposed of in a proper or lawful manner.

(i) Findings. — In addition to the purposes and legislative findings set forth in section one of this article, the Legislature finds as follows:

(1) In-state and out-of-state locations producing solid waste should bear the responsibility of disposing of said solid waste or compensate other localities for costs associated with accepting such solid waste;

(2) The costs of maintaining and policing the streets and highways of the state and its communities are increased by long distance transportation of large volumes of solid waste; and

(3) Local approved solid waste facilities are being prematurely depleted by solid waste originating from other locations.

(j) The "Gas Field Highway Repair and Horizontal Drilling Waste Study Fund" is hereby created as a special revenue fund in the State Treasury to be administered by the West Virginia Division of Highways and to be expended only on the improvement, maintenance, and repair of public roads of three lanes or less located in the watershed from which the revenue was received that are identified by the Commissioner of Highways as having been damaged by trucks and other traffic associated with horizontal well drilling sites or the disposal of waste generated by such sites, and that experience congestion caused, in whole or in part, by such trucks and traffic that
interferes with the use of said roads by residents in the vicinity of such roads: *Provided, That* up to $750,000 from such fund shall be made available to the Department of Environmental Protection from the same fund to offset contracted costs incurred by the Department of Environmental Protection while undertaking the horizontal drilling waste disposal studies mandated by the provisions of subsection (j), section eight of this article. Any balance remaining in the special revenue account at the end of any fiscal year shall not revert to the General Revenue Fund but shall remain in the special revenue account and shall be used solely in a manner consistent with this section. The fund shall consist of the fee provided for in subsection (k) of this section.

(k) Horizontal drilling waste assessment fee — An additional solid waste assessment fee is hereby imposed upon the disposal of drill cuttings and drilling waste generated by horizontal well sites in the amount of $1 per ton, which fee is in addition to all other fees and taxes levied by this section or otherwise and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility: *Provided, That* the horizontal drilling waste assessment fee shall be collected and administered in the same manner as the solid waste assessment fee imposed by this section, but shall be imposed only upon the disposal of drill cuttings and drilling waste generated by horizontal well sites.
AN ACT making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, by supplementing and amending chapter thirteen, Acts of the Legislature, regular session, 2014, known as the Budget Bill, by supplementing and amending Title II, section five.

WHEREAS, The passage of House Bill No. 101 during the 2014 First Extraordinary Session increased the revenues available for appropriation from the State Excess Lottery Revenue Fund during the fiscal year ending June 30, 2015; and

WHEREAS, The Governor submitted to the Legislature an Executive Message on May 19, 2014, which included a revised Statement of the State Excess Lottery Revenue Fund, setting forth therein the estimated unappropriated cash balance as of July 1, 2014, and further included the revised estimate of revenue for the fiscal year 2015, less regular appropriations and other adjustments for the fiscal year 2015; and

WHEREAS, It appears from the Governor’s Statement of the State Excess Lottery Revenue Fund there now remains an unappropriated
balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2015; therefore

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, Acts of the Legislature, regular session, 2014, known as the Budget Bill, be supplemented and amended by amending Title II, section five, to read as follows:

TITLE II—APPROPRIATIONS.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund. — In accordance with W.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, 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.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, 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 fund 7208, appropriation 70011 of this section; next, to provide the funds necessary for fund 3517, appropriation 09500 of this section; next, to provide the funds necessary for fund 5365, appropriation 18900. Allocation of the funds for each appropriation shall be allocated in succession before any funds are provided for the next subsequent appropriation.

298—Lottery Commission—Refundable Credit

Fund 7207 FY 2015 Org 0705
Ch. 1] APPROPRIATIONS 1687

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<th>Appropriation</th>
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<tr>
<td>Directed Transfer</td>
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The above appropriation shall be transferred to the General Revenue Fund to provide reimbursement for the refundable credit allowable under W.Va. Code §11-21-21. The amount of the required transfer shall be determined solely by the State Tax Commissioner and shall be completed by the Director of the Lottery upon the commissioner’s request.

299–Lottery Commission-
General Purpose Account

Fund 7206 FY 2015 Org 0705

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The above appropriation shall be transferred to the General Revenue Fund as determined by the Director of the Lottery in accordance with W.Va. Code §29-22-18a.

300–Higher Education Policy Commission-
Education Improvement Fund

Fund 4295 FY 2015 Org 0441

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</thead>
</table>

The above appropriation shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.
The Legislature has explicitly set a finite amount of available appropriations and directed the administrators of the program to provide for the award of scholarships within the limits of available appropriations.

301-Economic Development Authority-
Economic Development Project Fund

Fund 9065 FY 2015 Org 0944

1 Debt Service - Total ............... 31000 $ 19,000,000

Pursuant to W.Va. Code §29-22-18a, subsection (f), excess lottery revenues are authorized to be transferred to the lottery fund as reimbursement of amounts transferred to the Economic Development Project Fund pursuant to section four of this title and W.Va. Code §29-22-18, subsection (f).

302-Economic Development Authority-
Cacapon and Beech Fork State Parks
Lottery Revenue Debt Service Fund

Fund 9067 FY 2015 Org 0944

1 Debt Service ......................... 04000 $ 0

303-School Building Authority

Fund 3514 FY 2015 Org 0402

1 Debt Service - Total ............... 31000 $ 19,000,000

304-West Virginia Infrastructure Council

Fund 3390 FY 2015 Org 0316

1 Directed Transfer ................. 70000 $ 26,000,000

305-Higher Education Policy Commission-
Higher Education Improvement Fund

Fund 4297 FY 2015 Org 0441

1 Directed Transfer .............. 70000 $ 15,000,000

The above appropriation shall be transferred to fund 4903, org 0442 as authorized by Senate Concurrent Resolution No. 41.

306-Division of Natural Resources
State Park Improvement Fund

Fund 3277 FY 2015 Org 0310

1 Current Expenses (R) ............ 13000 $ 2,438,300
2 Repairs and Alterations (R) ...... 06400 2,161,200
3 Equipment (R) .................. 07000 200,000
4 Buildings (R) ................... 25800 100,000
5 Other Assets (R) ................. 69000 100,500
6 Total ......................... $ 5,000,000

Any unexpended balances remaining in the above appropriations for Repairs and Alterations (fund 3277, appropriation 06400), Equipment (fund 3277, appropriation 07000), Unclassified – Total (fund 3277, appropriation 09600), Unclassified (fund 3277, appropriation 09900), Current Expenses (fund 3277, appropriation 13000), Buildings (fund 3277, appropriation 25800), and Other Assets (fund 3277, appropriation 69000) at the close of the fiscal year 2014 are hereby reappropriated for expenditure during the fiscal year 2015.
## Appropriations

### 307-Racing Commission

**Fund 7308 FY 2015 Org 0707**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Special Breeders Compensation</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>2</td>
<td>(WVC §29-22-18a, subsection (l))</td>
<td>$21800</td>
</tr>
</tbody>
</table>

### 307a-Lottery Commission-Distributions to Statutory Funds and Purposes

**Fund FY 2015 Org 0705**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Parking Garage Fund -</td>
<td>$500,000</td>
</tr>
<tr>
<td>2</td>
<td>Transfer</td>
<td>$500,000</td>
</tr>
<tr>
<td>3</td>
<td>2004 Capitol Complex Parking Garage Fund - Transfer</td>
<td>$279,461</td>
</tr>
<tr>
<td>4</td>
<td>Capitol Dome and Improvement Fund - Transfer</td>
<td>$2,471,387</td>
</tr>
<tr>
<td>5</td>
<td>Capitol Renovation and Improvement Fund - Transfer</td>
<td>$3,074,079</td>
</tr>
<tr>
<td>6</td>
<td>Development Office Promotion Fund - Transfer</td>
<td>$1,676,770</td>
</tr>
<tr>
<td>7</td>
<td>Research Challenge Fund - Transfer</td>
<td>$2,235,694</td>
</tr>
<tr>
<td>8</td>
<td>Tourism Promotion Fund - Transfer</td>
<td>$6,232,286</td>
</tr>
<tr>
<td>9</td>
<td>Cultural Facilities and Capitol Resources Matching Grant Program Fund - Transfer</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>10</td>
<td>Workers’ Compensation Debt Reduction Fund - Transfer</td>
<td>$11,000,000</td>
</tr>
<tr>
<td>11</td>
<td>State Debt Reduction Fund - Transfer</td>
<td>$20,119,104</td>
</tr>
<tr>
<td>12</td>
<td>General Revenue Fund - Transfer</td>
<td>$1,794,761</td>
</tr>
</tbody>
</table>
Ch. 1] APPROPRIATIONS 1691

<table>
<thead>
<tr>
<th></th>
<th>24 West Virginia Racing Commission</th>
<th>25 Racetrack Video Lottery</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>26 Account. ........................ 70012</td>
<td>4,471,387</td>
</tr>
<tr>
<td></td>
<td>27 Historic Resort Hotel Fund. .... 70013</td>
<td>34,200</td>
</tr>
<tr>
<td></td>
<td>28 Licensed Racetrack Regular Purse Fund. 70014</td>
<td>14,581,522</td>
</tr>
<tr>
<td></td>
<td>30 Total. ............................</td>
<td>$ 69,970,651</td>
</tr>
</tbody>
</table>

308-Lottery Commission-
Excess Lottery Revenue Fund Surplus

Fund 7208 FY 2015 Org 0705

<table>
<thead>
<tr>
<th></th>
<th>1 General Revenue Fund -</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2 Transfer ........................ 70011</td>
</tr>
</tbody>
</table>

3 The above appropriation for General Revenue Fund - Transfer (fund 7208, appropriation 70011) shall be transferred to the General Revenue Fund.

309-Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2015 Org 0100

|   | 1 Any unexpended balance remaining in the appropriation for Publication of Papers and Transition Expenses – Lottery Surplus (fund 1046, appropriation 06600) at the close of the fiscal year 2014 is hereby reappropriated for expenditure during the fiscal year 2015. |

310-West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2015 Org 0307

|   | 1 Any unexpended balances remaining in the appropriations for Unclassified – Total (fund 3170, appropriation 09600), |
Recreational Grants or Economic Development Loans (fund 3170, appropriation 25300), and Connectivity Research and Development – Lottery Surplus (fund 3170, appropriation 92300) at the close of the fiscal year 2014 are hereby reappropriated for expenditure during the fiscal year 2015.

311-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3517 FY 2015 Org 0402

1 Teachers' Retirement Savings
2 Realized .................. 09500 $ 4,051,000
3 Retirement Systems - Unfunded
4 Liability .................. 77500 0
5 Total .................... $ 4,051,000

The above appropriation for Teachers' Retirement Savings Realized (fund 7208, appropriation 09500) shall be transferred to the Employee Pension and Health Care Benefit Fund (fund 2044).

312-Higher Education Policy Commission-
   Administration-
   Control Account

(WV Code Chapter 18B)

Fund 4932 FY 2015 Org 0441

1 Any unexpended balance remaining in the appropriation for
2 Advanced Technology Centers (fund 4932, appropriation 02800)
3 at the close of the fiscal year 2014 is hereby reappropriated for
4 expenditure during the fiscal year 2015.
Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 5219, appropriation 75500) at the close of the fiscal year 2014 is hereby reappropriated for expenditure during the fiscal year 2015.

313a-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 5365 FY 2015 Org 0511

1 Medical Services. 18900 $26,228,418
2 Family Resource Networks. 27400 150,464
3 Domestic Violence Legal Services Fund. 38400 30,000
4 In-Home Family Education. 68800 250,000
5 Grants for Licensed Domestic Violence Programs and Statewide Prevention. 75000 357,900
6 Children’s Trust Fund -
7 Transfer. 95100 80,000
8 Total. $27,096,782

The above appropriation for Domestic Violence Legal Services Fund (fund 5365, appropriation 38400) shall be transferred to the Domestic Violence Legal Services Fund (fund 5455). From the above appropriation for the Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 5365, appropriation 75000), fifty percent of the total shall be divided equally and distributed among the fourteen (14)
19 licensed programs and the West Virginia Coalition Against Domestic Violence (WVCADV). The balance remaining in the appropriation for Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 5365, appropriation 75000), shall be distributed according to the formula established by the Family Protection Services Board.

25 The above appropriation for Children's Trust Fund - Transfer (fund 5365, appropriation 95100), shall be transferred to the Children's Fund (fund 5469, org 0511).

314-Division of Corrections-
Correctional Units

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

Fund 6238 FY 2015 Org 0608

1 Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 6283, appropriation 75500) at the close of the fiscal year 2014 is hereby reappropriated for expenditure during the fiscal year 2015.

314a-Division of Justice and Community Services-

(WV Code Chapter 15)

Fund FY 2015 Org 0620

1 Child Advocacy Centers. ........ 45800 $ 200,000
2 Total TITLE II, Section 5 –
3 Excess Lottery Funds. ................. $ 318,918,433

4 The purpose of this supplementary appropriation bill is to supplement and amend Title II, section five, chapter thirteen, Acts of the Legislature, regular session, 2014, known as the Budget Bill, for the appropriations ending June 30, 2015.
CHAPTER 2

(H. B. 203 - By Mr. Speaker (Mr. Miley) and Delegate Armstead)
[By Request of the Executive]

[Passed May 21, 2014; in effect from passage.]
[Approved by the Governor on May 29, 2014.]

AN ACT to amend and reenact §20-9-3 and §20-9-4 of the Code of West Virginia, 1931, as amended, all relating to boat dock and marina safety; extending the deadline for electrical inspection, and extending the deadline for compliance with this article.

Be it enacted by the Legislature of West Virginia:

That §20-9-3 and §20-9-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9. BOAT DOCK AND MARINA SAFETY REQUIREMENTS — THE MICHAEL CUNNINGHAM ACT.


1 All boat dock or marina owners or operators shall comply with the following requirements to prevent electrical shock, electrocution or injury to users of their facilities and the surrounding areas:

2 (1) All electrical wiring involving 110 AC or 220 AC shall be installed by and maintained by a holder of a valid West Virginia journeyman electrician license or master electrician license in accordance with the most recently adopted versions of
the National Fire Protection Association’s Standards for Marinas and Boatyards (NFPA 303) and the National Electric Code (NFPA 70);

(2) Install ground fault circuit interrupters on all boat dock and marina electrical wiring circuits; and

(3) Cause an inspection before January 1, 2015, and at least once every three years thereafter by a West Virginia licensed electrical inspector of all sources of electrical supply, including ship-to-shore power pedestals, submersible pumps, and sewage pump-out facilities, that could result in unsafe electrical current in the water.

§20-9-4. Compliance date and enforcement.

Each boat dock and marina shall be in full compliance with this article by January 1, 2015. The penalties contained in section seven of this article apply only to conduct on or after January 1, 2015. Enforcement of sections three and four of this article regarding the work of electricians shall be conducted by the State Fire Marshal.

CHAPTER 3

(Com. Sub. for S. B. 2004 - By Senators Kessler (Mr. President) and M. Hall, By Request of the Executive)

[Passed May 21, 2014; in effect from passage.]
[Approved by the Governor on May 29, 2014.]

AN ACT to amend and reenact §5B-2-12 of the Code of West Virginia, 1931, as amended, relating to the distribution of funds
from the Tourism Promotion Fund; authorizing the transfer of up to $4,700,000 of moneys from the Tourism Promotion Fund to the Courtesy Patrol Fund; and designating the Secretary of Commerce as the approving authority for the expenditure of certain funds to effectively promote and market the state’s parks, state forests, state recreation areas and wildlife recreational resources.

Be it enacted by the Legislature of West Virginia:

That §5B-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-12. Tourism Promotion Fund created; use of funds.

There is hereby continued in the State Treasury the special revenue fund known as the Tourism Promotion Fund created under prior enactment of section nine, article one of this chapter.

(a) The Legislature finds that a courtesy patrol program providing assistance to motorists on the state’s highways is one of the most beneficial methods to introduce a tourist visiting the state to the state’s hospitality and good will. For that reason, up to $4,700,000 of the moneys deposited in the fund each year shall be transferred to a special revenue account in the State Treasury known as the Courtesy Patrol Fund. Expenditures from the fund shall be used solely to fund the courtesy patrol program providing assistance to motorists on the state’s highways. Amounts collected in the fund which are found, from time to time, to exceed funds needed for the purposes set forth in this subdivision may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(b) If there are funds remaining after the transfers required in subdivision (a) of this section, a minimum of five percent of the moneys deposited remaining in the fund each year shall be
used solely for direct advertising for West Virginia travel and tourism: *Provided,* That no less than twenty percent of these funds be expended, with the approval of the Secretary of Commerce, to effectively promote and market the state’s parks, state forests, state recreation areas and wildlife recreational resources. “Direct advertising” means advertising which is limited to television, radio, mailings, newspaper, magazines, the Internet and outdoor billboards or any combination thereof.

(c) The balance of the moneys deposited in the fund shall be used for direct advertising within the state’s travel regions as defined by the commission. The funds shall be made available to these districts beginning July 1, 1995, according to legislative rules authorized for promulgation by the Tourism Commission.

(d) All advertising expenditures over $25,000 from the Tourism Promotion Fund require prior approval by recorded vote of the commission. No member of the commission or of any committee created by the commission to evaluate applications for advertising or other grants may participate in the discussion of, or action upon, an application for or an award of any grant in which the member has a direct financial interest.

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**CHAPTER 4**

*(H. B. 202 - By Mr. Speaker (Mr. Miley) and Delegate Armstead)*

*[By Request of the Executive]*

[Passed May 21, 2014; in effect from passage.]

[Approved by the Governor on May 29, 2014.]

AN ACT to amend and reenact §38-2-21 and §38-2-34 of the Code of West Virginia, 1931, as amended, as contained in chapter one
hundred fifteen, Acts of the Legislature, regular session, 2014, all relating to delaying the effective date of the affirmative defense to an action to enforce a mechanic's lien.

Be it enacted by the Legislature of West Virginia:

That §38-2-21 and §38-2-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. MECHANICS' LIENS.

§38-2-21. Effect of payment by owner to contractor or subcontractor.

(a) No payment by the owner to any contractor or subcontractor of any part or all of the contract price for the erection and construction of any building, structure or improvement appurtenant to a building, structure or improvement or for any part or section of a work may affect, impair or limit the lien of the subcontractor, laborer, or materialman or furnisher of machinery or other necessary material or equipment, as provided in this article, except as otherwise provided in this article.

(b) Notwithstanding any provisions of this code to the contrary, beginning on July 1, 2015, it is an affirmative defense, or an affirmative partial defense, as the case may be, in any action to enforce a lien pursuant to this article that the owner is not indebted to the contractor or is indebted to the contractor for less than the amount of the lien sought to be perfected, when:

(1) The property is an existing single-family dwelling;

(2) The property is a residence constructed by the owner or under a contract entered into by the owner prior to its occupancy as the owner’s primary residence; or
§38-2-34. Time within which suit to enforce lien may be brought; right of other lienors to intervene.

(a) Unless an action to enforce any lien authorized by this article is commenced in a circuit court within six months after the person desiring to avail himself or herself of the court has filed his or her notice in the clerk's office, as provided in this article, the lien shall be discharged; but an action commenced by any person having a lien shall, for the purpose of preserving the same, inure to the benefit of all other persons having a lien under this article on the same property, and persons may intervene in the action for the purpose of enforcing their liens.

(b) Notwithstanding any provisions of this code to the contrary, beginning on July 1, 2015, it is an affirmative defense, or an affirmative partial defense, as the case may be, in any action to enforce a lien pursuant to this article that the owner is not indebted to the contractor or is indebted to the contractor for less than the amount of the lien sought to be perfected, when:

(1) The property is an existing single-family dwelling;

(2) The property is a residence constructed by the owner or under a contract entered into by the owner prior to its occupancy as his or her primary residence; or

(3) The property is a single-family, owner-occupied dwelling, including a residence constructed and sold for occupancy as a primary residence. This subdivision does not apply to a developer or builder of multiple residences except for
(c) As used in subsection (b):

1. ‘Dwelling’ or ‘residence’ means any building or structure intended for habitation, in whole or part, and includes, but is not limited to, any house, apartment, mobile home, house trailer, modular home, factory-built home and any adjacent outbuildings.

2. ‘Outbuilding’ means any building or structure which adjoins, is part of, belongs to, or is used in connection with a dwelling, and shall include, but not be limited to, any garage, shop, shed, barn or stable.
Be it enacted by the Legislature of West Virginia:

That §21-5C-1, §21-5C-2 and §21-5C-4 of the Code of West Virginia, 1931, as amended, as contained in chapter one hundred twenty-four, Acts of the Legislature, regular session, 2014, be amended and reenacted, and that §21-5C-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-1. Definitions.

As used in this article:

(a) “Commissioner” means the Commissioner of Labor or his or her duly authorized representatives.

(b) “Wage and hour director” means the wage and hour director appointed by the Commissioner of Labor as chief of the Wage and Hour Division.

(c) “Wage” means compensation due an employee by reason of his or her employment.

(d) “Employ” means to hire or permit to work.

(e) “Employer” includes the State of West Virginia, its agencies, departments and all its political subdivisions, any individual, partnership, association, public or private corporation, or any person or group of persons acting directly or indirectly in the interest of any employer in relation to an employee; and who employs during any calendar week six or more employees as herein defined in any one separate, distinct and permanent location or business establishment: Provided, That prior to January 1, 2015, the term “employer” does not include any individual, partnership, association, corporation,
person or group of persons or similar unit if eighty percent of the persons employed by him or her are subject to any federal act relating to minimum wage, maximum hours and overtime compensation: Provided, however, That after December 31, 2014, for the purposes of section three of this article, the term "employer" does not include any individual, partnership, association, corporation, person or group of persons or similar unit if eighty percent of the persons employed by him or her are subject to any federal act relating to maximum hours and overtime compensation.

(f) "Employee" includes any individual employed by an employer but shall not include: (1) Any individual employed by the United States; (2) any individual engaged in the activities of an educational, charitable, religious, fraternal or nonprofit organization where the employer-employee relationship does not in fact exist, or where the services rendered to such organizations are on a voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pinboys and pin chasers in bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an individual in the employ of his or her parent, son, daughter or spouse; (6) any individual employed in a bona fide professional, executive or administrative capacity; (7) any person whose employment is for the purpose of on-the-job training; (8) any person having a physical or mental handicap so severe as to prevent his or her employment or employment training in any training or employment facility other than a nonprofit sheltered workshop; (9) any individual employed in a boys or girls summer camp; (10) any person sixty-two years of age or over who receives old-age or survivors benefits from the Social Security Administration; (11) any individual employed in agriculture as the word agriculture is defined in the Fair Labor Standards Act of 1938, as amended; (12) any individual employed as a firefighter by the state or agency thereof; (13) ushers in theaters; (14) any individual employed on a part-time basis who is a student in any recognized school or college; (15)
any individual employed by a local or interurban motorbus
carrier; (16) so far as the maximum hours and overtime
compensation provisions of this article are concerned, any
salesman, parts man or mechanic primarily engaged in selling or
servicing automobiles, trailers, trucks, farm implements, aircraft
if employed by a nonmanufacturing establishment primarily
engaged in the business of selling such vehicles to ultimate
purchasers; (17) any employee with respect to whom the United
States Department of Transportation has statutory authority to
establish qualifications and maximum hours of service; (18) any
person employed on a per diem basis by the Senate, the House
of Delegates, or the Joint Committee on Government and
Finance of the Legislature of West Virginia, other employees of
the Senate or House of Delegates designated by the presiding
officer thereof, and additional employees of the Joint Committee
on Government and Finance designated by such joint committee;
or (19) any person employed as a seasonal employee of a
commercial whitewater outfitter where the seasonal employee
works less than seven months in any one calendar year and, in
such case, only for the limited purpose of exempting the seasonal
employee from the maximum wage provisions of section three
of this article.

(g) "Workweek" means a regularly recurring period of one
hundred sixty-eight hours in the form of seven consecutive
twenty-four hour periods, need not coincide with the calendar
week, and may begin any day of the calendar week and any hour
of the day.

(h) "Hours worked" means the hours for which an employee
is employed: Provided, That in determining hours worked for the
purposes of sections two and three of this article, there shall be
excluded any time spent in changing clothes or washing at the
beginning or end of each workday, time spent in walking, riding
or traveling to and from the actual place of performance of the
principal activity or activities which such employee is employed
to perform and activities which are preliminary to or postliminary to said principal activity or activities, subject to such exceptions as the commissioner may by rules and regulations define.


(a) Minimum wage:

(1) After June 30, 2006, every employer shall pay to each of his or her employees wages at a rate not less than $5.85 per hour.

(2) After June 30, 2007, every employer shall pay to each of his or her employees wages at a rate not less than $6.55 per hour.

(3) After June 30, 2008, every employer shall pay to each of his or her employees wages at a rate not less than $7.25 per hour.

(4) After December 31, 2014, every employer shall pay to each of his or her employees wages at a rate not less than $8.00 per hour.

(5) After December 31, 2015, every employer shall pay to each of his or her employees wages at a rate not less than $8.75 per hour.

(6) When the federal minimum hourly wage as prescribed by 29 U.S.C. §206 (a) (1) is equal to or greater than the wage rate prescribed in the applicable provision of this subsection, every employer shall pay to each of his or her employees wages at a rate of not less than the federal minimum hourly wage as prescribed by 29 U.S.C. §206 (a) (1). The minimum wage rates required under this subsection shall be thereafter adjusted in accordance with adjustments made in the federal minimum hourly rate. The adoption of the federal minimum wage provided by this subsection includes only the federal minimum hourly rate prescribed in 29 U.S.C. §206 (a) (1) and does not include other
wage rates, or conditions, exclusions, or exceptions to the federal minimum hourly wage rate. In addition, adoption of the federal minimum hourly wage rate does not extend or modify the scope or coverage of the minimum wage rate required under this subsection.

(b) *Training wage:*

(1) Notwithstanding the provisions set forth in subsection (a) of this section to the contrary, an employer may pay an employee first hired after June 30, 2006, a subminimum training wage not less than $5.15 per hour: *Provided,* That an employer may pay an employee first hired after December 31, 2014, a subminimum training wage not less than $6.40 per hour.

(2) An employer may not pay the subminimum training wage set forth in subdivision (1) of this subsection to any individual:

(A) Who has attained or attains while an employee of the employer, the age of twenty years; or

(B) For a cumulative period of not more than ninety days per employee: *Provided,* That if any business has not been in operation for more than ninety days at the time the employer hired the employee, the employer may pay the employee the subminimum training wage set forth in subdivision (1) of this subsection for an additional period not to exceed ninety days.

(3) When the federal subminimum training wage as prescribed by 29 U.S.C. §206 (g) (1) is equal to or greater than the wage rate prescribed in subdivision (1) of this subsection, every employer shall pay to each of his or her employees wages at a rate of not less than the federal subminimum training wage as prescribed by 29 U.S.C. §206 (g) (1). The subminimum training wage rates required under this subsection shall be thereafter adjusted in accordance with adjustments made in the
federal subminimum training wage rate. The adoption of the federal subminimum training wage provided by this subsection includes only the federal subminimum training wage rate prescribed in 29 U.S.C. §206 (g) (1) and does not include other wage rates, or conditions, exclusions, or exceptions to the federal subminimum training wage rate. In addition, adoption of the federal subminimum training wage rate does not extend or modify the scope or coverage of the subminimum training wage rate required under this subsection.

(c) Notwithstanding any provision or definition to the contrary, the wages established pursuant to this section are applicable to all individuals employed by the State of West Virginia, its agencies and departments, regardless if the employee or employer are subject to any federal act relating to minimum wage: Provided, That at no time may the minimum wage established pursuant to this section fall below the federal minimum hourly wage as prescribed by 29 U.S.C. §206(a)(1), and at no time may the subminimum training wage established pursuant to this section fall below the federal subminimum training wage rate as prescribed by 29 U.S.C. §206 (g) (1).

§21-5C-4. Credits.

Prior to January 1, 2015, in determining whether an employer is paying an employee wages and overtime compensation as provided in sections two and three of this article, there shall be provided in accordance with the regulations which shall be promulgated by the commissioner a credit to the employer of twenty percent of the hourly rate of the amount paid an employee customarily receiving gratuities, and a reasonable credit for board and lodging furnished to an employee: Provided, That after December 31, 2014, in determining whether an employer is paying an employee wages and overtime compensation as provided in sections two and three of this article, there shall be provided in accordance with the legislative
rules proposed for promulgation by the commissioner a credit to
the employer of seventy percent of the hourly rate of the amount
paid an employee customarily receiving gratuities, and a
reasonable credit for board and lodging furnished to an
employee. The commissioner shall propose legislative rules for
promulgation relating to maximum allowances to employers for
room and board furnished to employees: Provided, however,
That the employer shall be required to furnish to the
commissioner upon request, documentary evidence that the
employee is receiving at least seventy percent of the minimum
wage in gratuities or is receiving room and lodging in
accordance with the rules and regulations promulgated by the
commissioner.

§21-5C-6. Duties and powers of commissioner of labor.

(a) It shall be the duty of the commissioner to enforce and
administer the provisions of this article and rules promulgated
thereunder, and to promulgate such rules and regulations, in
accordance with chapter twenty-nine-a of the Code of West
Virginia, 1931, as amended, as shall be needful to give effect to
the provisions of this article. The commissioner is authorized to
promulgate emergency rules prior to January 1, 2015, to
implement and administer the amendments made to this article
in 2014. If the commissioner makes a finding that a conflict
exists between state and federal standards defining employee
exemptions, the commissioner is further authorized to
promulgate emergency rules prior to January 1, 2015, for the
purpose of revising the state standards to conform with federal
law.

(b) The commissioner is authorized at reasonable times to
enter the place of business of an employer subject to the
provisions of this article, for purposes of: (1) Inspecting and
examining, and copying, photographing or otherwise
reproducing all payroll records of the employer directly relating
to wages and hours of employment of persons employed by him
or her; (2) questioning or otherwise examining persons
employed by the employer on the subject of wages and hours of
their employment, and gratuities received or earned in such
employment.

(c) The commissioner is authorized and empowered to make
investigations to determine whether there is reasonable cause to
believe that any person is an employer as defined in section one
of this article, or whether there is reasonable cause to believe
that any provision of this article is being or has been violated.

(d) The commissioner is authorized and empowered to file
criminal complaints against persons whom the commissioner has
reasonable cause to believe have committed any offense created
or defined by the provisions of this article.

(e) The commissioner is authorized and empowered to
institute civil actions seeking appropriate injunctive relief to
compel an employer subject to this article to comply with the
provisions of this article.

(f) The commissioner shall enforce and administer the
provisions of this article in accordance with chapter twenty-nine-
a of this code. The commissioner or his or her authorized
representatives are empowered to enter and inspect such places,
question such employees and investigate such facts, conditions,
or matters as they may deem appropriate, to determine whether
any person, firm or corporation has violated any provision of this
article, or any rule or regulation issued hereunder or which may
aid in the enforcement of the provisions of this article.
AN ACT to extend the time for the Common Council of the City of Richwood, Nicholas County, to meet as a levying body for the purpose of presenting to the voters of the city an election supplementing the city's budget; setting the levy rate; certifying actions to State Auditor and State Tax Commissioner; and paying all costs incurred in the laying of this additional levy.

Be it enacted by the Legislature of West Virginia:

THE COMMON COUNCIL OF THE CITY OF RICHWOOD MEETING AS A LEVYING BODY EXTENDED.

§1. Extending time for the Common Council for the City of Richwood to meet as a levying body for an election supplementing the city's budget; setting levy rate; certifying actions to the state; and for the purpose of paying all costs incurred in the laying of the additional levy.

Notwithstanding the provisions of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, the Common Council of the City of Richwood, Nicholas County, is authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the State Auditor and the State Tax Commissioner by June 30, 2014, for the purpose of submitting to the voters of the City of Richwood the question of supplementing the city's budget and for the purpose of paying all costs incurred in the laying of this additional levy.
### Disposition of Bills Enacted

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**Regular Session, 2014**

**House Bills**

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**DISPOSITION OF BILLS**

**DISPOSITION OF BILLS ENACTED**

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**Regular Session, 2014**

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### Regular Session, 2014

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Senate Bills = 2, 3 Digits

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