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OFFICE WEST VIRG  
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# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2006

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# ENROLLED

## House Bill No. 4846

(By Delegates Michael, Leach, Kominar,  
Stalnaker, Varner, H. K. White, Williams,  
Hall, Evans and G. White)

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Passed March 11, 2006

In Effect Ninety Days from Passage

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**E N R O L L E D**

## **H. B. 4846**

(BY DELEGATES MICHAEL, LEACH, KOMINAR,  
STALNAKER, VARNER, H. K. WHITE, WILLIAMS,  
HALL, EVANS AND G. WHITE)

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[Passed March 11, 2006; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10-22i; to amend and reenact §5E-1-8 of said code; to amend said code by adding thereto a new section, designated §11-24-43; and to amend said code by adding thereto a new section, designated §18-7A-26t, all relating to providing one-time supplements to certain annuitants; dedication of corporate net income tax proceeds to pay for supplement; and supplying fiscal support for such supplements by increasing available general revenue through the expiration of certain tax credits.

*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 §5-10-22i; that §5E-1-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-24-43; and that said code be amended by adding thereto a new section, designated §18-7A-26t, 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.**

**§5-10-22i. One-time supplement for certain annuitants effective  
July 1, 2006.**

1       (a) A one-time supplement to retirement benefits of not less  
2 than three percent and not exceeding four and one-half percent,  
3 as determined by appropriation of the Legislature, shall be  
4 provided to all retirees that are age seventy or older and have  
5 been annuitants for at least five consecutive years as of the  
6 effective date of this section and beneficiaries of deceased  
7 members who would have been at least seventy years of age or  
8 older and have been annuitants for at least five consecutive  
9 years as of the effective date of this section.

10       (b) The one-time supplement provided for in this section  
11 applies only to members who have retired at least five years  
12 prior to the effective date of this section or, if applicable, to  
13 beneficiaries of deceased members who have been receiving  
14 benefits under the retirement system at least five years prior to  
15 the effective date of this section: *Provided*, That the supplement  
16 provided herein is subject to any applicable limitations thereon  
17 under Section 415 of the Internal Revenue Code of 1986, as  
18 amended.

**CHAPTER 5E. VENTURE CAPITAL COMPANY.**

**ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.**

**§5E-1-8. Tax credits.**

1       (a) The total amount of tax credits authorized for a single  
2 qualified company may not exceed two million dollars. The

3 total amount of tax credits authorized for a single economic  
4 development and technology advancement center may not  
5 exceed one million dollars. Capitalization of the company or  
6 center may be increased pursuant to rule of the authority.

7 (b) (1) The total credits authorized by the authority for all  
8 companies and centers may not exceed a total of ten million  
9 dollars each fiscal year: *Provided*, That for the fiscal year  
10 beginning on the first day of July, one thousand nine hundred  
11 ninety-nine, the total credits authorized for all companies may  
12 not exceed a total of six million dollars: *Provided, however*,  
13 That for the fiscal year beginning on the first day of July, two  
14 thousand, the total credits authorized for all companies may not  
15 exceed a total of four million dollars: *Provided further*, That for  
16 the fiscal year beginning on the first day of July, two thousand  
17 one, the total credits authorized for all companies may not  
18 exceed a total of four million dollars: *And provided further*,  
19 That for the fiscal year beginning on the first day of July, two  
20 thousand two, the total credits authorized for all companies may  
21 not exceed a total of three million dollars: *And provided further*,  
22 That for the fiscal year beginning on the first day of July, two  
23 thousand three, the total credits authorized for all companies  
24 may not exceed a total of three million dollars: *And provided*  
25 *further*, That for the fiscal year beginning on the first day of  
26 July, two thousand four, the total credits authorized for all  
27 companies may not exceed a total of one million dollars: *And*  
28 *provided further*, That for the fiscal year beginning on the first  
29 day of July, two thousand five, there shall be no credits  
30 authorized: *And provided further*, That for the fiscal year  
31 beginning on the first day of July, two thousand six, the total  
32 credits authorized for all companies may not exceed a total of  
33 one million dollars: *And provided further*, That for the fiscal  
34 years beginning on the first day of July, two thousand seven,  
35 and two thousand eight, there shall be no credits authorized:  
36 *And provided further*, That the capital base of any qualified  
37 company other than an economic development and technology

38 advancement center qualified under the provisions of article  
39 twelve-a, chapter eighteen-b of this code shall be invested in  
40 accordance with the provisions of this article. The authority  
41 shall allocate these credits to qualified companies and centers  
42 in the order that the companies are qualified.

43       (2) Not more than two million dollars of the credits allowed  
44 under subdivision (1) of this subsection may be allocated by the  
45 authority during each fiscal year to one or more small business  
46 investment companies described in this subdivision: *Provided,*  
47 That for the fiscal year beginning on the first day of July, two  
48 thousand four, and for the fiscal year beginning on the first day  
49 of July, two thousand five, no credits authorized by this section  
50 may be allocated by the authority to one or more small business  
51 investment companies: *Provided, however,* That for the fiscal  
52 year beginning on the first day of July, two thousand six, all of  
53 the credits allowed under subdivision (1) of this subsection  
54 shall be allocated only to one or more small business invest-  
55 ment companies described in this subdivision: *Provided,*  
56 *further,* That for the fiscal years beginning on the first day of  
57 July, two thousand seven and two thousand eight, no credits  
58 authorized by this section may be allocated by the authority to  
59 one or more small business investment companies. After a  
60 portion of the credits are allocated to small business investment  
61 companies as provided in this section, not more than one  
62 million dollars of the credits allowed under subdivision (1) of  
63 this subsection may be allocated by the authority during each  
64 fiscal year to one or more economic development and technol-  
65 ogy advancement centers qualified by the authority under  
66 article twelve-a, chapter eighteen-b of this code: *Provided,*  
67 *however,* That for the fiscal year beginning on the first day of  
68 July, two thousand four, all of the credits allowed under  
69 subdivision (1) of this subsection shall be allocated only to one  
70 or more qualified economic development and technology  
71 advancement centers: *Provided further,* That for the fiscal year  
72 beginning on the first day of July, two thousand five, no credits

73 allowed under subdivision (1) of this subsection shall be  
74 allocated to any qualified economic development and technol-  
75 ogy advancement center; *And provided further*, That for the  
76 fiscal years beginning on the first day of July, two thousand six,  
77 two thousand seven and two thousand eight, no credits allowed  
78 under subdivision (1) of this subsection shall be allocated to any  
79 qualified economic development and technology advancement  
80 center. The remainder of the tax credits allowed during the  
81 fiscal year shall be allocated by the authority under the provi-  
82 sions of section four, article two of this chapter: *Provided*, That  
83 for the fiscal year beginning on the first day of July, two  
84 thousand four, and for the fiscal year beginning on the first day  
85 of July, two thousand five, no credits authorized by this section  
86 may be allocated by the authority to a taxpayer pursuant to the  
87 provisions of section four, article two of this chapter: *Provided*,  
88 *however*, That for the fiscal year beginning on the first day of  
89 July, two thousand six, two thousand seven and two thousand  
90 eight, no credits authorized by this section may be allocated by  
91 the authority to a taxpayer pursuant to the provisions of section  
92 four, article two of this chapter. The portion of the tax credits  
93 allowed for small business investment companies described in  
94 this subdivision shall be allowed only if allocated by the  
95 authority during the first ninety days of the fiscal year and may  
96 only be allocated to companies that: (A) Were organized on or  
97 after the first day of January, one thousand nine hundred  
98 ninety-nine; (B) are licensed by the small business administra-  
99 tion as a small business investment company under the small  
100 business investment act; and (C) have certified in writing to the  
101 authority on the application for credits under this act that the  
102 company will diligently seek to obtain and thereafter diligently  
103 seek to invest leverage available to the small business invest-  
104 ment companies under the small business investment act. These  
105 credits shall be allocated by the authority in the order that the  
106 companies are qualified. The portion of the tax credits allowed  
107 for economic development and technology advancement centers

108 described in article twelve-a, chapter eighteen-b of this code  
109 shall be similarly allowed only if allocated by the authority  
110 during the first ninety days of the fiscal year: *And provided*  
111 *further*, That solely for the fiscal year beginning on the first day  
112 of July, two thousand four, the authority may allocate the tax  
113 credits allowed for economic development and technology  
114 advancement centers at any time during the fiscal year. Any  
115 credits which have not been allocated to qualified companies  
116 meeting the requirements of this subdivision relating to small  
117 business investment companies or to qualified economic  
118 development and technology advancement centers during the  
119 first ninety days of the fiscal year shall be made available and  
120 allocated by the authority under the provisions of section four,  
121 article two of this chapter: *Provided*, That for the fiscal year  
122 beginning on the first day of July, two thousand four, and for  
123 the fiscal year beginning on the first day of July, two thousand  
124 five, and for the fiscal years beginning on the first day of July,  
125 two thousand six, two thousand seven, and two thousand eight,  
126 no credits authorized by this section may be allocated by the  
127 authority to a taxpayer pursuant to the provisions of section  
128 four, article two of this chapter.

129 (3) Notwithstanding any provision of this code or legisla-  
130 tive rule promulgated thereunder to the contrary, for the fiscal  
131 year beginning on the first day of July, two thousand four, and  
132 for the fiscal year beginning on the first day of July, two  
133 thousand five, the authority has the sole discretion to allocate or  
134 refuse to allocate tax credits authorized under this section to  
135 any qualified economic development and technology advance-  
136 ment center upon its determination of the extent to which the  
137 center will fulfill the purposes of this article. The determination  
138 shall be based upon the application of the center, the extent to  
139 which the company or center fulfilled those purposes in prior  
140 years after receiving tax credits authorized under this section,  
141 the extent to which the center is expected to stimulate economic  
142 development and high technology research in the chemical

143 industry and such other similarly related criteria as the authority  
144 may establish by vote of the majority of authority.

145 (c) Any investor, including an individual, partnership,  
146 limited liability company, corporation or other entity who  
147 makes a capital investment in a qualified West Virginia capital  
148 company, is entitled to a tax credit equal to fifty percent of the  
149 investment, except as otherwise provided in this section or in  
150 this article: *Provided*, That the tax credit available to investors  
151 who make a capital investment in an economic development  
152 and technology advancement center shall be one hundred  
153 percent of the investment. The credit allowed by this article  
154 shall be taken after all other credits allowed by chapter eleven  
155 of this code. It shall be taken against the same taxes and in the  
156 same order as set forth in subsections (c) through (i), inclusive,  
157 section five, article thirteen-c, chapter eleven of this code. The  
158 credit for investments by a partnership, limited liability  
159 company, a corporation electing to be treated as a subchapter S  
160 corporation or any other entity which is treated as a pass  
161 through entity under federal and state income tax laws may be  
162 divided pursuant to election of the entity's partners, members,  
163 shareholders or owners.

164 (d) The tax credit allowed under this section is to be  
165 credited against the taxpayer's tax liability for the taxable year  
166 in which the investment in a qualified West Virginia capital  
167 company or economic development and technology advance-  
168 ment center is made. If the amount of the tax credit exceeds the  
169 taxpayer's tax liability for the taxable year, the amount of the  
170 credit which exceeds the tax liability for the taxable year may  
171 be carried to succeeding taxable years until used in full or until  
172 forfeited: *Provided*, That: (i) Tax credits may not be carried  
173 forward beyond fifteen years; and (ii) tax credits may not be  
174 carried back to prior taxable years. Any tax credit remaining  
175 after the fifteenth taxable year is forfeited.

176 (e) The tax credit provided in this section is available only  
177 to those taxpayers whose investment in a qualified West  
178 Virginia capital company or economic development and  
179 technology advancement center occurs after the first day of  
180 July, one thousand nine hundred eighty-six.

181 (f) The tax credit allowed under this section may not be  
182 used against any liability the taxpayer may have for interest,  
183 penalties or additions to tax.

184 (g) Notwithstanding any provision in this code to the  
185 contrary, the tax commissioner shall publish in the state register  
186 the name and address of every taxpayer and the amount, by  
187 category, of any credit asserted under this article. The catego-  
188 ries by dollar amount of credit received are as follows:

189 (1) More than \$1.00, but not more than \$50,000;

190 (2) More than \$50,000, but not more than \$100,000;

191 (3) More than \$100,000, but not more than \$250,000;

192 (4) More than \$250,000, but not more than \$500,000;

193 (5) More than \$500,000, but not more than \$1,000,000; and

194 (6) More than \$1,000,000.

## CHAPTER 11. TAXATION.

### ARTICLE 24. CORPORATION NET INCOME TAX.

#### §11-24-43. Dedication of corporation net income tax proceeds.

1 (a) There is hereby dedicated for the fiscal years beginning  
2 on the first day of July, two thousand six, two thousand seven  
3 and two thousand eight, an annual amount of ten million dollars  
4 from annual collections of the tax imposed by this article for

5 payment of the unfunded liability created by the one-time  
6 supplement of certain annuitants as provided in section twenty-  
7 two-i, article ten, chapter five and section twenty-six-t, article  
8 seven-a, chapter eighteen of this code.

9 (b) Notwithstanding any other provision of this code to the  
10 contrary, on the first day of October of two thousand six, two  
11 thousand seven and two thousand eight, ten million dollars from  
12 collections of the tax imposed by this article shall be deposited  
13 with the reserves of the public employees retirement and state  
14 teachers retirement systems in such allocations as the consoli-  
15 dated public retirement board finds to be necessary and  
16 advantageous in funding the one-time supplements of certain  
17 annuitants as provided in section twenty-two-i, article ten,  
18 chapter five and section twenty-six-t, article seven-a, chapter  
19 eighteen of this code.

## CHAPTER 18. EDUCATION.

### ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

#### **§18-7A-26t. One-time supplement for certain annuitants effective July 1, 2006.**

1 (a) A one-time supplement to retirement benefits of three  
2 percent shall be provided to all retirees that are age seventy or  
3 older and have been annuitants for at least five consecutive  
4 years as of the effective date of this section and beneficiaries of  
5 deceased members who would have been at least seventy years  
6 of age or older and have been annuitants for at least five  
7 consecutive years as of the effective date of this section.

8 (b) The one-time supplement provided for in this section  
9 applies only to members who have retired at least five years  
10 prior to the effective date of this section or, if applicable, to  
11 beneficiaries of deceased members who have been receiving  
12 benefits under the retirement system at least five years prior to

13 the effective date of this section: *Provided*, That the supplement  
14 provided herein is subject to any applicable limitations thereon  
15 under Section 415 of the Internal Revenue Code of 1986, as  
16 amended.

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

*Clancy White*  
Chairman Senate Committee

*R. Beery*  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

*Daniel Ellsberg*  
Clerk of the Senate

*Bryce M. Sneyd*  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
President of the Senate

*Robert J. Wines*  
Speaker of the House of Delegates

The within *is approved* this the *5th*  
day of *April*, 2006.

*Joe Manchin*  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 29 2006

Time 10:30 am