ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 1989
Extraordinary Session, 1989
FOREWORD

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

First Regular Session, 1989

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

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

There were 91 concurrent resolutions introduced during the session, 54 House and 37 Senate, of which 19 House and 7 Senate were adopted. Thirty-one House joint and 13 Senate joint resolutions were introduced, proposing amendments to the State Constitution. The Legislature adopted 1 Senate joint resolution and 2 House joint resolutions. The House had 24 house resolutions and the Senate had 39 senate resolutions, of which 10 House and 36 Senate were adopted.
The Senate failed to pass 51 House bills passed by the House, and 86 Senate bills failed passage by the House. Six Senate bills died in conference.

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

Extraordinary Session, 1989

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

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

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

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

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

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

Donald L. Kopp,
Clerk of the House and
Keeper of the Rolls.
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REGULAR SESSION, 1989  

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

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** Appointed to fill the vacancy created by the resignation of Howard L. Wellman.
MEMBERS OF THE SENATE
REGULAR SESSION, 1989

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

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<tr>
<th>District</th>
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<td>John G. Chernenko (D)</td>
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<td>Charlotte Jean Fritt (D)</td>
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† Appointed May 21, 1987, to fill the vacancy created by the resignation of Gerald W. Ash.

(D) Democrats ................................................. 30
(R) Republicans .............................................. 4
Total ......................................................... 34
STANDING

Agriculture and Natural Resources

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

Banking and Insurance

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

Constitutional Revision

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

Education

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

Finance

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

Government Organization

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

Health and Human Resources

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

Industry and Labor

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

Judiciary

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

Political Subdivisions

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

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

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

SPECIAL COMMITTEE
Corrections
Pitrolo (Chairman), Berry, Helmick, Martin, Minard, Murphy and Jones.

JOINT COMMITTEES
Enrolled Bills
Kelly (Chairman), Ryan (Vice Chairman), Sattes, Ashley and Jones.

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

Joint Rules
Chambers (CoChairman), Murensky and Burk.

Legislative Rule-Making Review
Humphreys (Chairman), Murphy, Roop, V. Starcher and Faircloth.
COMMITTEES OF THE SENATE
   Regular Session, 1989

STANDING

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

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

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

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

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

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

Government Organization
   Spears (Chairman), Wiedebusch (Vice Chairman), Bracken-
rich, Burdette, Chernenko, Craigo, Felton, Jackson, Jones, Loehr, Lucht, J. Manchin, Tomblin and Boley.

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

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

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

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

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

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

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

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

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

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

SELECT COMMITTEES
Corrections
Holliday (Chairman), Blatnik, Craigo, Spears, Wiedebusch and Harman.

Teachers Retirement
Parker (Chairman), Burdette, Felton, Lucht and Warner.

Workers' Compensation
Sharpe (Chairman), Holmes and J. Manchin.

JOINT COMMITTEES
Enrolled Bills
Parker (Chairman), Blatnik (Vice Chairman), Chernenko, Dittmar, Heck and Wolfe.

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

Legislative Rule-Making Review
Loehr (Chairman), Holmes, Jackson, Tomblin, Harman and Warner.

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.

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

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

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

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

(c) (1) The verdict of the jury shall include, but may not be limited to, damages for the following:

(A) Sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent;

(B) compensation for reasonably expected loss of (i) income of the decedent, and (ii) services, protection, care and assistance provided by the decedent; (C) expenses for the care, treatment and hospitalization of the
decedent incident to the injury resulting in death; and
(D) reasonable funeral expenses.

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

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

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

The personal representative of the deceased may compromise any claim to damages arising under section five of this article before or after action brought. What is received by the personal representative under the compromise shall be treated as if recovered by him in an action under the section last mentioned. When the judge acts in vacation, he shall return all the papers in the case, and orders made therein, to the clerk’s office of such court. The clerk shall file the papers in his office as soon as received, and forthwith enter the order in the order book on the law side of the court. Such orders, and all the proceedings in vacation, shall have the same force and effect as if made or had in term. Upon approval of the compromise, the court shall apportion and distribute such damages, or the compromise agreed upon, after making provisions for those expenditures, if any, specified in subdivision (2), subsection (c), section six of this article, in the same manner as in the cases tried without a jury.
AN ACT to amend and reenact section eight, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing that a pending action based upon a personal injury does not abate or change in substance when the injured person dies as a result of such injury; and providing that another action may also be prosecuted for wrongful death.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.

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

Where an action is brought by a person injured for damage caused by the wrongful act, neglect or default of any person or corporation, and the person injured dies as a result thereof, the action shall not abate by reason of his or her death but, his or her death being suggested, it may be revived in the name of his or her personal representative, and the complaint shall be amended so as to conform to an action under sections five and six of this article, and the case proceeded with as if the action had been brought under said sections. Additionally a separate and distinct cause of action may be brought, and if brought, shall be joined in the same proceeding for damages incurred between the time of injury and death where not otherwise provided for in said sections five and six. In either case there shall be but one recovery for each element of damages: Provided, That nothing in this section shall be construed in derogation of the provisions of section twelve of this article.
CHAPTER 3
(Com. Sub. for H. B. 2030—By Delegates Love and R. Burk)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT.

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

§55-14-1. Definitions.

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

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

A copy of any foreign judgment authenticated in accordance with an act of Congress or the statutes of this state may be filed in the office of the clerk of any circuit court of this state. The clerk shall treat the foreign
6 ACTIONS AND SUITS


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

(b) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

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

§55-14-4. Stay.

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

(b) If the judgment debtor shows the circuit court any
ground upon which enforcement of a judgment of any court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

§55-14-5. Fees.

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

§55-14-6. Optional procedure.

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


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

§55-14-8. Short title.

This article may be cited as the “Uniform Enforcement of Foreign Judgments Act.”

CHAPTER 4

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

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]
and emergency amendments on a section by section basis and to allow the tax department to provide copies of tax rules, charge a fee and deposit such fees into the tax commissioner’s office account.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

Article
1. Definitions and Application of Chapter.

ARTICLE 1. DEFINITIONS AND APPLICATION OF CHAPTER.

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

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

9. (b) Except as to requirements for filing in the state register, and with the Legislature or its rule-making review committee, provided in this chapter or other law, the provisions of this chapter do not apply in any respect whatever to the West Virginia board of probation and parole, the public service commission, the board of public works sitting as such and the West Virginia board of regents: Provided, That rules of such agencies shall be filed in the state register in the form prescribed by this chapter and be effective no sooner than sixty consecutive days after being so filed: Provided, however, That the rules promulgated by the state colleges and universities shall only be filed with the West Virginia board of regents: Provided further, That such agencies...
may promulgate emergency rules in conformity with section fifteen, article three of this chapter.

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

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

ARTICLE 3. RULE MAKING.

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

§29A-3-lb. Rules of the tax department.

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

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

(b) Rules promulgated to amend existing rules and filed as an emergency rule may be filed on a section by section basis without having to refile in the state register all of the other sections of an existing series numbered rule: Provided, That such filing shall list, by
§29A-3-1b. Rules of the tax department.

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

CHAPTER 5

(H. B. 2024—By Delegate Love)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

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

After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the rural resource division of the department of agriculture should be continued and reinstab-
lished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the rural resource division of the department of agriculture shall continue to exist until the first day of July, one thousand nine hundred ninety-one.

CHAPTER 6
(Com. Sub. for S. B. 68—By Senators Parker, Chernenko, Brackenrich and Hawse)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1A. DIVISION OF FORESTRY.

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

1 (a) The division of forestry of the department of commerce, labor and environmental resources shall have jurisdiction to regulate the digging, possession and sale of native, wild or cultivated ginseng: Provided, That the digging season for wild, native or cultivated ginseng shall begin on the fifteenth day of August and end on the thirtieth day of November of each year unless otherwise authorized by the director. Ginseng dealers shall: (1) Obtain a ginseng dealer’s permit from the director; (2) keep on forms provided by the director accurate records for all ginseng acquired showing the year harvested, the date acquired by the dealer, county
of origin, weight and whether wild or cultivated; and (3) have all records and all acquired ginseng inspected by the director at official ginseng inspection stations for the purpose of certifying the dealer's records and issuing a certificate documenting the inspection and the weight of the ginseng. All ginseng dug in West Virginia must be certified by the director before being transported or shipped out of the state. No person shall have in his possession uncertified green ginseng from the first day of April through the fourteenth day of August.

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

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

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

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

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

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

(ii) When the value of the ginseng exceeds two hundred dollars, the defendant shall be guilty of a misdemeanor and fined not less than six hundred dollars, nor more than one thousand dollars, and shall be imprisoned in the county jail for not less than sixty
days nor more than six months. At least thirty days shall be spent in confinement and not subject to probation.

(C) Third offense conviction.—Upon a third or subsequent conviction, regardless of the value of the ginseng, the defendant shall be guilty of a felony and shall be fined not less than six hundred dollars nor more than six thousand dollars, and shall be imprisoned in the penitentiary not less than one year nor more than two years, or, be confined in the county jail not more than one year.

CHAPTER 7
(S. B. 567—By Senator Harman)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. AGRICULTURAL AND FOREST SEEDS.

§19-16-1. Definitions.

When used in this article:

(a) “Commissioner” means the commissioner of agriculture of the state of West Virginia or his duly authorized representatives;

(b) The term “person” shall include any individual, partnership, corporation, company, society or association;

(c) The term “agricultural seeds” shall include the seeds of grass, forage, cereal, tobacco and fiber crops
and any other kinds of seeds commonly recognized within this state as agricultural or field seeds and mixtures of such seeds. Forest seeds shall include all deciduous and coniferous trees and shrubs and ornamentals;

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

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

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

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

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

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

(2) "Noxious weed seeds" are the seeds of such weeds as are very objectionable in fields, lawns or gardens of this state, but can be controlled by good cultural practice. "Noxious weed seeds" in this state are the seeds of wild onion (Allium vineale), hawk weed (Hieracum spp.), buckhorn (Plantago lanceolata), English charlock or wild mustard (Brassica arvensis), corn cockle
(Agrostemma gilthago), oxeye daisy (Chrysanthemum leucanthemum), Indian mustard (Brassica juncea), star thistle (Centurea solstitialis), wild carrot (Daucus carota), horse nettle (Solanum carolinensis), field pepper grass (Lepidium compestre), wild morning glory (Ipomea purpurea), bindweed (Convolvulus arvensis);

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

(i) The term "advertisement" means all representation, other than those on the label, disseminated in any manner or by any means, relative to seed within the scope of this article.

CHAPTER 8
(H. B. 2026—By Delegate Love)

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.


(a) There is hereby established, to serve as an agency of the state and to perform the functions conferred upon it in this article, the state soil conservation committee. The committee shall consist of seven members. The following shall serve, ex officio, as members of the committee: The director of the state cooperative exten-
sion service; the director of the state agricultural
experiment station; the director of the department of
natural resources; and the state commissioner of
agriculture, who shall be chairman of the committee.

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

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

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

(b) The state soil conservation committee may employ
an administrative officer and such technical experts and
such other agents and employees, permanent and
temporary, as it may require, and shall determine their
qualifications, duties and compensation. The committee
can call upon the attorney general of the state for such
legal services as it may require. It shall have authority
to delegate to its chairman, to one or more of its
members, or to one or more agents or employees, such
powers and duties as it may deem proper. The commit-
tee is empowered to secure necessary and suitable office
accommodations, and the necessary supplies and equip-
ment. Upon request of the committee, for the purpose
of carrying out any of its functions, the supervising
officer of any state agency, or of any state institution of
learning shall, insofar as may be possible, under
available appropriations, and having due regard to the
needs of the agency to which the request is directed,
assign or detail to the committee, members of the staff
or personnel of such agency or institution of learning,
and make such special reports, surveys or studies as the committee may request.

(c) A member of the committee shall hold office so long as he shall retain the office by virtue of which he shall be serving on the committee. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. The chairman and members of the committee shall receive no compensation for their services on the committee, but shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, regulations and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

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

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

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

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

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies
of this state, in the work of such districts;

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

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

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

After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the state soil conservation committee should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article
ten, chapter four of this code, the state soil conservation committee shall continue to exist until the first day of July, one thousand nine hundred ninety-one.

CHAPTER 9

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

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

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

Be it enacted by the Legislature of West Virginia:

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

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ARTICLE 23. HORSE AND DOG RACING.

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

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.
§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; stake races for dog tracks.

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

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

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

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

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

(1) The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing, except from thoroughbred horse racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning horses, shall not exceed seventeen and one-fourth percent of the total of such pari-mutuel pools for the day. Out of such commission, as is mentioned in this subdivision, the licensee (i) shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article, (ii) shall...
make a deposit into a special fund to be established by
the licensee and to be used for the payment of regular
purses offered for thoroughbred racing by the licensee,
which deposits out of pari-mutuel pools for each day
during the months of January, February, March,
October, November and December shall be seven and
three hundred seventy-five one-thousandths percent of
such pari-mutuel pools, and which, out of pari-mutuel
pools for each day during all other months, shall be six
and eight hundred seventy-five one-thousandths percent
of such pari-mutuel pools, which shall take effect
beginning fiscal year one thousand nine hundred ninety,
(iii) shall, after allowance for the exclusion given by
subsection (b), section ten of this article, make a deposit
into a special fund to be established by the racing
commission and to be used for the payment of breeders,
awards and capital improvements as authorized by
section thirteen-b of this article, which deposits out of
pari-mutuel pools shall from the effective date of this
section and for fiscal year one thousand nine hundred
eighty-five, be four-tenths percent; for fiscal year one
thousand nine hundred eighty-six, be seven-tenths
percent; for fiscal year one thousand nine hundred
eighty-seven, be one percent; for fiscal year one
thousand nine hundred eighty-eight, be one and one-half
percent; and for fiscal year one thousand nine hundred
eighty-nine, and each year thereafter, be two percent of
such pools, and (iv) shall pay one tenth of one percent
of such pari-mutuel pools into the general fund of the
county commission of the county in which the racetrack
is located, except if within a municipality, then to such
municipal general fund. The remainder of the commis-
sion shall be retained by the licensee.

The commission deducted by any licensee from the
pari-mutuel pools on thoroughbred horse racing involv-
ing what is known as multiple betting in which the
winning pari-mutuel ticket or tickets are determined by
a combination of two winning horses shall not exceed
nineteen percent and by a combination of three or more
winning horses shall not exceed twenty-five percent of
the total of such pari-mutuel pools for the day. Out of
such commission, as is mentioned in this paragraph, the
licensee (i) shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article, (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December for pools involving a combination of two winning horses shall be eight and twenty-five one-hundredths percent and out of pari-mutuel pools for each day during all other months shall be seven and seventy-five one-hundredths percent of such pari-mutuel pools; and involving a combination of three or more winning horses for the months of January, February, March, October, November and December the deposits out of such fund shall be eleven and twenty-five one-hundredths percent of such pari-mutuel pools; and which, out of pari-mutuel pools for each day during all other months, shall be ten and seventy-five one-hundredths percent of such pari-mutuel pools, (iii) shall, after allowance for the exclusion given by subsection (b), section ten of this article, make a deposit into a special fund to be established by the racing commission and to be used for the payment of breeders' awards and capital improvements as authorized by section thirteen-b of this article, which deposits out of pari-mutuel pools shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be four-tenths percent; for fiscal year one thousand nine hundred eighty-six, be seven-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be one percent; for fiscal year one thousand nine hundred eighty-eight, be one and one-half percent; and for fiscal year one thousand nine hundred eighty-nine, and each year thereafter, be two percent of such pools, and (iv) shall pay one tenth of one percent of such pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipal general fund. The remainder of the commission shall be retained by the licensee.

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

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

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

(3) The commission deducted by any licensee from the pari-mutuel pools on dog racing, except from dog racing
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pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning dogs, shall not exceed sixteen and thirty-one hundredths percent of the total of all pari-mutuel pools for the day. The commission deducted by any licensee from the pari-mutuel pools on dog racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning dogs shall not exceed nineteen percent, by a combination of three winning dogs shall not exceed twenty percent, and by a combination of four or more winning dogs shall not exceed twenty-one percent of the total of such pari-mutuel pools for the day. The foregoing commissions shall be in effect for the fiscal years one thousand nine hundred ninety and one thousand nine hundred ninety-one. Thereafter, the commission shall be at the percentages in effect prior to the effective date of this article unless the Legislature, after review, determines otherwise. Out of such commissions, the licensee shall pay the pari-mutuel pools tax provided for in subsection (d), section ten of this article, and one tenth of one percent of such pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located. In addition, out of such commissions, if the racetrack is located within a municipality, then the licensee shall also pay three tenths of one percent of the pari-mutuel pools into the general fund of the municipality; or, if the racetrack is located outside of a municipality, then the licensee shall also pay three tenths of one percent of the pari-mutuel pools into the state road fund for use by the department of highways in accordance with the provisions of this subdivision (3). The remainder of the commission shall be retained by the licensee.

For the purposes of this section, “municipality” shall mean and include any Class I, Class II and Class III city and any Class IV town or village, incorporated as a municipal corporation under the laws of this state prior to the first day of January, one thousand nine hundred eighty-seven.
Each dog racing licensee, when required by the provisions of this subdivision (3) to pay a percentage of its commissions to the state road fund for use by the department of highways, shall transmit the required funds, in such manner and at such times as the racing commission shall by procedural rule direct, to the state treasurer for deposit in the state treasury to the credit of the department of highways state road fund. All funds collected and received in the state road fund pursuant to the provisions of this subdivision shall be used by the department of highways in accordance with the provisions of article seventeen-a, chapter seventeen of this code for the acquisition of right-of-way for, the construction of, the reconstruction of and the improvement or repair of any interstate or other highway, secondary road, bridge and toll road in the state. If on the first day of July, one thousand nine hundred eighty-nine, any area encompassing a dog racetrack has incorporated as a Class I, Class II or Class III city or as a Class IV town or village, whereas such city, town or village was not incorporated as such on the first day of January, one thousand nine hundred eighty-seven, then on and after the first day of July, one thousand nine hundred eighty-nine, any balances in the state road fund existing as a result of payments made under the provisions of this subdivision may be used by the state road fund for any purpose for which other moneys in such fund may lawfully be used, and in lieu of further payments to the state road fund, the licensee of a racetrack which is located in such municipality shall thereafter pay three tenths of one percent of the pari-mutuel pools into the general fund of such municipality. If no such incorporation occurs before the first day of July, one thousand nine hundred eighty-nine, then payments to the state road fund shall thereafter continue as provided for under the provisions of this subdivision.

A dog racing licensee, before deducting the commissions authorized by this subdivision (3), shall give written notification to the racing commission not less than thirty days prior to any change in the percentage rates for such commissions. The racing commission shall
prescribe blank forms for filing such notification. Such notification shall disclose the following: (1) The revised commissions to be deducted from the pari-mutuel pools each day on win, place and show betting and on different forms of multiple betting; (2) the dates to be included in such revised betting; (3) such other information as may be required by the racing commission.

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

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

The licensee shall further establish a special fund to be used exclusively for marketing and promotion programs; such funds shall be in an amount equal to five percent over and above the applicable rates in effect as of the first day of January, one thousand nine hundred eighty-seven, of the total pari-mutuel pools for the day.
The racing commission shall prepare and transmit annually to the governor and the Legislature a report of the activities of the racing commission under this subdivision (3). The report shall include a statement of: The amount of commissions retained by licensees; the amount of taxes paid to the state; the amounts paid to municipalities, counties and the department of highways dog racing fund; the amounts deposited by licensees into special funds for capital improvements or long-term debt amortization, and a certified statement of the financial condition of any licensee depositing into such fund; the amounts paid by licensees into special funds and used for regular purses offered for dog racing; the amounts paid by licensees into special funds and used for marketing and promotion programs; and such other information as the racing commission may deem appropriate for review.

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

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

(d) The director of audit, and any other auditors employed by the racing commission who shall also be certified public accountants or experienced public accountants, shall have free access to the space or enclosure where the pari-mutuel system of wagering is
conducted or calculated at any horse or dog race
meeting for the purpose of ascertaining whether or not
the licensee is deducting and retaining only a commis-
sion as provided in this section and is otherwise
complying with the provisions of this section. They shall
also, for the same purposes only, have full and free
access to all records and papers pertaining to such pari-
mutuel system of wagering, and shall report to the
racing commission in writing, under oath, whether or
not the licensee has deducted and retained any commis-
sion in excess of that permitted under the provisions of
this section or has otherwise failed to comply with the
provisions of this section.

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

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

(g) Each kennel which provides or races dogs owned
or leased by others shall furnish to the commission a
surety bond in an amount to be determined by the
commission to secure the payment to the owners or
lessees of such dogs the portion of any purse owed to
§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of two hundred fifty dollars. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of one hundred fifty dollars. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of one hundred fifty dollars. In the event thoroughbred racing, harness racing, dog racing, or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one daily license tax in the amount of two hundred fifty dollars shall be paid for that day. Any such daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

(b) Any racing association licensed by the racing commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by such licensee from the pari-mutuel pools on thoroughbred racing a tax calculated on the total daily contribution of all such pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article, which tax, on the pari-mutuel pools conducted or made each day during the months of January, February, March, October, November and December shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be calculated at two and six-tenths percent; for fiscal year one thousand nine hundred eighty-six, be calculated at two and three-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be calculated at two and four-tenths percent; for fiscal year one thousand nine hundred eighty-eight, be calculated at two and five/tenths percent; for fiscal year one thousand nine hundred eighty-nine, be calculated at two and six-tenths percent; for fiscal year one thousand nine hundred eighty-
hundred eighty-seven, be calculated at two percent of such pool; for fiscal year one thousand nine hundred eighty-eight, be calculated at one and one-half percent; for fiscal year one thousand nine hundred eighty-nine, be calculated at one percent of such pool; for fiscal year one thousand nine hundred ninety, seven-tenths of one percent, and for fiscal year one thousand nine hundred ninety-one and each fiscal year thereafter be calculated at four-tenths of one percent of such pool; and, on the pari-mutuel pools conducted or made each day during all other months, shall from the effective date of this section and for fiscal year one thousand nine hundred eighty-five, be calculated at three and six-tenths percent; for fiscal year one thousand nine hundred eighty-six, be calculated at three and three-tenths percent; for fiscal year one thousand nine hundred eighty-seven, be calculated at three percent of such pool; for fiscal year one thousand nine hundred eighty-eight, be calculated at two and one-half percent; for fiscal year one thousand nine hundred eighty-nine, be calculated at two percent of such pool; for fiscal year one thousand nine hundred ninety, be calculated at one and seven-tenths percent of such pool; and for fiscal year one thousand nine hundred ninety-one and each fiscal year thereafter, be calculated at one and four-tenths percent of such pool: Provided, That out of the amount realized from the three-tenths of one percent decrease in such tax effective for fiscal year one thousand nine hundred ninety-one and thereafter, which decrease correspondingly increases the amount of commission retained by the licensee, the licensee shall annually expend or dedicate (i) one-half of such realized amount for capital improvements in its barn area at the track, subject to the racing commission's prior approval of the plans for such improvements, and (ii) the remaining one-half of such realized amount for capital improvements as the licensee may determine appropriate at the track. The term capital improvement shall be as defined by the Internal Revenue Code: Provided, however, That any such racing association operating a horse racetrack in this state having an average daily pari-mutuel pool on horse racing of two hundred eighty thousand dollars or
less per day for the race meetings of the preceding calendar year shall, in lieu of payment of the pari-mutuel pool tax, calculated as hereinbefore in this subsection provided, be permitted to conduct pari-mutuel wagering at such horse racetrack on the basis of a daily pari-mutuel pool tax fixed as follows: On the daily pari-mutuel pool not exceeding three hundred thousand dollars the daily pari-mutuel pool tax shall be one thousand dollars plus the otherwise applicable percentage rate imposed by this subsection of the daily pari-mutuel pool, if any, in excess of three hundred thousand dollars: Provided further, That upon the effective date of the reduction of such daily pari-mutuel pool tax to one thousand dollars from the former two thousand dollars, the association or licensee shall daily deposit five hundred dollars into the special fund for regular purses established by subdivision one, subsection (b), section nine of this article: And provided further, That if an association or licensee qualifying for the foregoing alternate tax conducts more than one racing performance, each consisting of up to ten races in a calendar day, such association or licensee shall pay both the daily license tax imposed in subsection (a) and the foregoing alternate tax for each such performance: And provided further, That a licensee qualifying for the foregoing alternate tax is excluded from participation in the fund established by section thirteen-b of this article.

(c) Any racing association licensed by the racing commission to conduct harness racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by the licensee from the pari-mutuel pools on harness racing, as a tax, three percent of the first one hundred thousand dollars wagered, or any part thereof; four percent of the next one hundred fifty thousand dollars; and five and three-fourths percent of all over that amount wagered each day in all such pari-mutuel pools conducted or made at any and every harness race meeting of the licensee licensed under the provisions of this article.
(d) Any racing association licensed by the racing commission to conduct dog racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by such licensee from the pari-mutuel pools on dog racing, as a tax, four percent of the first fifty thousand dollars or any part thereof of such pari-mutuel pools, five percent of the next fifty thousand dollars of such pari-mutuel pools, six percent of the next one hundred thousand dollars of such pari-mutuel pools, seven percent of the next one hundred fifty thousand dollars of such pari-mutuel pools, and eight percent of all over three hundred fifty thousand dollars wagered each day: Provided, That the licensee shall deduct daily from the pari-mutuel tax an amount equal to one-tenth of one percent of the daily pari-mutuel pools in dog racing in fiscal year one thousand nine hundred ninety; fifteen hundreds of one percent in fiscal year one thousand nine hundred ninety-one; two-tenths of one percent in fiscal year one thousand nine hundred ninety-two; one quarter of one percent in fiscal year one thousand nine hundred ninety-three; and three-tenths of one percent in fiscal year one thousand nine hundred ninety-four and every fiscal year thereafter. The amounts so deducted shall be paid to the racing commission to be deposited by the racing commission in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission-Special Account-West Virginia Greyhound Breeding Development Fund.” Such moneys shall be expended by the racing commission exclusively for purses for stake races involving West Virginia whelped dogs, under rules and regulations promulgated by the racing commission.

(e) All daily license and pari-mutuel pools tax payments required under the provisions of this section shall be made to the racing commission or its agent after the last race of each day of each horse or dog race meeting, and the pari-mutuel pools tax payments shall be made from all contributions to all pari-mutuel pools to each and every race of the day.
(f) Every association or licensee subject to the provisions of this article, including the changed provisions of sections nine and ten hereof, shall annually submit to the racing commission and the Legislature financial statements, including a balance sheet, income statement, statement of change in financial position and an audit of any electronic data system used for pari-mutuel tickets and betting, prepared in accordance with generally accepted auditing standards, as certified by an experienced public accountant or a certified public accountant.

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

(a) All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety days after the close of the horse or dog race meeting in connection with which the tickets were issued, shall be turned over by the licensee to the racing commission within fifteen days after the expiration of such ninety-day period, and the licensee shall give such information as the racing commission may require concerning such outstanding and unredeemed tickets. All such moneys shall be deposited by the racing commission in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission Special Account—Unredeemed Pari-Mutuel Tickets.” Notice of the amount, date and place of such deposit shall be given by the racing commission, in writing, to the state treasurer. The racing commission shall then cause to be published a notice to the holders of such outstanding and unredeemed pari-mutuel tickets, notifying them to present such tickets for payment at the principal office of the racing commission within ninety days from the date of the publication of such notice. Such notice shall be published within fifteen days following the receipt of said moneys by the commission from the licensee as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be the county in which such horse or dog race meeting was held.

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

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

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

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

(4) When the moneys in the special account, known as the “West Virginia Racing Commission Special Account—Unredeemed Pari-Mutuel Tickets” will more than satisfy the requirements of subdivisions (1), (2) and (3), subsection (b) of this section, the West Virginia racing commission shall have the authority to expend
the excess moneys from unredeemed horse racing pari-mutuel tickets as purse money in any race conditioned exclusively for West Virginia bred or sired horses, and to expend the excess moneys from unredeemed dog racing pari-mutuel tickets in supplementing purses and establishing stake races and dog racing handicaps at the dog tracks: Provided, That beginning with the fiscal year one thousand nine hundred ninety, and subject to the availability of funds, the commission shall, after the requirements of subdivisions (1), (2) and (3), subsection (b) of this section have been satisfied, transfer annually three hundred thousand dollars of such excess moneys into a separate account to be used for promotional activities and purses for stake races for the West Virginia Thoroughbred Breeders Classic, which shall give equal consideration to all horses qualifying under the West Virginia breeders program for each stake race, based solely on the horses' sex, age and earnings.

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

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

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

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; non-restricted purse supplements.
The rac
ing commission shall deposit moneys required

to be withheld by an association or licensee in subsection
(b), section nine of this article in a banking institution
of its choice in a special account to be known as “West
Virginia Racing Commission Special Account—West
Virginia Thoroughbred Development Fund.” Notice of
the amount, date and place of such deposit shall be given
by the racing commission, in writing, to the state
treasurer. The purpose of the fund is to promote better
breeding and racing of thoroughbred horses in the state
through awards and purses for accredited breed-
ers/raisers, sire owners and thoroughbred race horse
owners. A further objective of the fund is to aid in the
rejuvenation and development of the present horse
tracks now operating in West Virginia for capital
improvements, operations or increased purses between
the first day of July, one thousand nine hundred eighty-
four, and the thirty-first day of October, one thousand
nine hundred ninety-two: Provided, That five percent of
the deposits required to be withheld by an association
or licensee in subsection (b), section nine of this article
shall be placed in a special revenue account hereby
created in the state treasury called the “administration
and promotion account.” The racing commission is
authorized to expend the moneys deposited in the
administration and promotion account at such times and
in such amounts as the commission determines to be
necessary for purposes of administering and promoting
the thoroughbred development program: Provided,
however, That during any fiscal year in which the
commission anticipates spending any money from such
account, the commission shall submit to the executive
department during the budget preparation period prior
to the Legislature convening before that fiscal year for
inclusion in the executive budget document and budget
bill, the recommended expenditures, as well as requests
of appropriations for the purpose of administration and
promotion of the program. The commission shall make
an annual report to the Legislature on the status of the
administration and promotion account, including the
previous year’s expenditures and projected expenditures
for the next year.
The fund shall be established forthwith and operate on an annual basis.

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

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

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

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

(iv) One hundred percent of the fund shall be available thereafter.

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

(i) The breeders/raisers of accredited thoroughbred horses that earn a purse at any West Virginia meet will receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for distribution in any one year. The total amount available for the breeders'/raisers' awards shall be distributed according to the ratio of purses earned by an accredited race horse to the total amount earned in such races by all accredited race horses for that year as a percentage of the fund dedicated to the breeders/raisers. However, no breeder/raiser may receive from the fund dedicated to breeders'/raisers' awards an amount in excess of the earnings of the accredited horse at West Virginia meets. In addition, should a horse's breeder and raiser qualify for the same award on the same horse, they will each be awarded one half of the
proceeds. Of the funds available for distribution in any
one year to breeders/raisers, neither the breeders as a
group nor the raisers as a group, shall, until January
first, one thousand nine hundred ninety-four, qualify for
more than sixty and one-tenth percent of such funds.

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

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

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

(v) Any balance in the breeders/raisers, sire owners
and purse supplement funds after yearly distributions
shall revert back into the general account of the fund for distribution in the next year.

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

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

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

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

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

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

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

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

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

CHAPTER 10

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

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

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

Be it enacted by the Legislature of West Virginia:
Title
I. General provisions.
II. Appropriations.
III. Administration.

TITLE I—GENERAL PROVISIONS.
§1. General policy.
§2. Definitions.
§3. Classification of appropriations.
§5. Maximum expenditures.

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

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

"Governor" shall mean the governor of the state of West Virginia.

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

"Spending unit" shall mean the department, agency or institution to which an appropriation is made.

The "fiscal year one thousand nine hundred ninety" shall mean the period from July first, one thousand nine hundred eighty-nine, through June thirtieth, one thousand nine hundred ninety.

"From collections" shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collections. If the amount collected exceeds the amount designated "from collections," the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by article two, chapter five-a of the code.

Sec. 3. Classification of appropriations.—An appropriation for:
“Personal services” shall mean salaries, wages and other compensation paid to full-time, part-time and temporary employees of the spending unit but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit.

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

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

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

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

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

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

Each spending unit shall be responsible for all contributions, payments or other costs related to coverage and claims of its employees for unemployment compensation. Such expenditures shall be considered a current expense.
Each spending unit shall be responsible for and charged monthly for all postage meter service and shall reimburse the appropriate revolving fund monthly for all such amounts. Such expenditures shall be considered a current expense.

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

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

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

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

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

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: Provided, That the secretary of each department shall have the authority to transfer within the department those funds appropriated to the various agencies of the department: Provided, however, That no more than twenty-five percent of the funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: Provided, further, That no funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or funds specifically exempted by the Legislature from transfer, except that the use of appropriations from the state road fund transferred to the office of the secretary of the department of transportation is not a use other than the
purpose for which such funds were dedicated and is permitted: And, provided, further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary may transfer the funds formerly appropriated to such agency, board or function in order to implement such consideration.

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

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

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

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   Revenue Bond Construction Fund—Acct. No. 8860
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   (Capital Improvement Renovation and Operation)—Acct. No. 8500
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**DEPARTMENT OF TRANSPORTATION**
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**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**
- Workers' Compensation Fund—Acct. No. 9000

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### §6. Supplemental and deficiency appropriations.

<table>
<thead>
<tr>
<th>Fund/Mission</th>
<th>Acct. No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consolidated Medical Services Fund</td>
<td>4190</td>
</tr>
<tr>
<td>Department of Energy</td>
<td>4775</td>
</tr>
<tr>
<td>Department of Human Services</td>
<td>4050</td>
</tr>
<tr>
<td>Governor's Office</td>
<td>1200</td>
</tr>
<tr>
<td>Governor's Office—Civil Contingent Fund</td>
<td>1240</td>
</tr>
<tr>
<td>Human Rights Commission</td>
<td>5980</td>
</tr>
<tr>
<td>State Board of Risk and Insurance Management</td>
<td>2250</td>
</tr>
<tr>
<td>State Department of Education</td>
<td>2560</td>
</tr>
<tr>
<td>Teachers Retirement System</td>
<td>2980</td>
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<tr>
<td>West Virginia Board of Regents</td>
<td>2600</td>
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<tr>
<td>West Virginia Board of Regents (Control)</td>
<td>2700</td>
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<tr>
<td>West Virginia Library Commission</td>
<td>3500</td>
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<tr>
<td>West Virginia Public Employees Insurance Agency</td>
<td>6150</td>
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<tr>
<td>West Virginia Public Employees Retirement System</td>
<td>6140</td>
</tr>
<tr>
<td>West Virginia Public Legal Services Council</td>
<td>5900</td>
</tr>
</tbody>
</table>

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**PAYABLE FROM LOTTERY NET PROFITS**

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  West Virginia Board of Directors of the State College System—Acct. No. 8825
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- State Department of Education—Acct. No. 8243

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- Division of Health—Preventive Health—Acct. No. 8506
- Division of Human Services—Energy Assistance—Acct. No. 9147
- Division of Human Services—Social Services—Acct. No. 9161
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§13. Specific funds and collection accounts.
§15. Sinking fund deficiencies.
§16. Appropriations to pay costs of publication of delinquent corporations.
§17. Appropriations for local governments.
§18. Total appropriations.
§19. General school fund.

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

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

LEGISLATIVE
1—Senate

Acct. No. 1010

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>1989-90</td>
<td>1989-90</td>
</tr>
<tr>
<td>Compensation of Members</td>
<td>$</td>
</tr>
</tbody>
</table>
The appropriations for the senate for the fiscal year 1988-89 are to remain in full force and effect and are hereby reappropriated to June 30, 1990. Any balances so reappropriated may be transferred and credited to the 1989-90 accounts.

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

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

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

For duties imposed by law and the senate, the clerk of the senate shall be paid a monthly salary as provided in the senate resolution adopted February 1989 and payable out of the amount appropriated for Compensation and Per Diem of Officers and Employees.

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

2—House of Delegates

Acct. No. 1020

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
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<tr>
<td>1</td>
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<td>3</td>
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<td>6</td>
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<td>8</td>
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<td>Compensation and Per Diem of Officers and Employees . . .</td>
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<td>9</td>
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<td>Compensation and Per Diem of Officers and Employees . . .</td>
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<td>Expenses of Members . . .</td>
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<td>Compensation and Per Diem of Officers and Employees . . .</td>
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<td>Expenses of Members . . .</td>
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<td>Compensation and Per Diem of Officers and Employees . . .</td>
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<td>Compensation and Per Diem of Officers and Employees . . .</td>
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<td>Compensation of Members . .</td>
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<td>Compensation and Per Diem of Officers and Employees . . .</td>
<td></td>
<td>Expenses of Members . . .</td>
</tr>
</tbody>
</table>

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

Upon the written request of the clerk of the house of delegates, the auditor shall transfer amounts between
items of that total appropriation in order to protect or
increase the efficiency of the service.

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

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

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

Acct. No. 1030

(WV Code Chapter 4)

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Joint Committee on Government and Finance</td>
<td>$4,454,223</td>
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<tr>
<td>Legislative Printing</td>
<td>$790,000</td>
</tr>
<tr>
<td>Legislative Rule-Making</td>
<td>$126,500</td>
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<tr>
<td>Review Committee</td>
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<tr>
<td>National Conference of State Legislatures</td>
<td>$0</td>
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<tr>
<td>Education Commission of the States</td>
<td>$0</td>
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<tr>
<td>National Association of State Auditors, Comptrollers</td>
<td></td>
</tr>
<tr>
<td>and Treasurers</td>
<td>$0</td>
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<tr>
<td>Governmental Accounting Standards Board</td>
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<tr>
<td>Council of State</td>
<td>$0</td>
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<tr>
<td>Governments</td>
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<tr>
<td>Total</td>
<td>$5,370,723</td>
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</tbody>
</table>

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

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

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$19,074,003</td>
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<tr>
<td>Annual Increment</td>
<td>$160,000</td>
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</tbody>
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### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Other Expenses</td>
<td>$2,850,000</td>
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<tr>
<td>Judges' Retirement System</td>
<td>$1,174,400</td>
</tr>
<tr>
<td>Other Court Costs</td>
<td>$2,200,000</td>
</tr>
<tr>
<td>Judicial Training Program</td>
<td>$250,000</td>
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<tr>
<td>Mental Hygiene Fund</td>
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<tr>
<td>Social Security Matching Program</td>
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<tr>
<td>Public Employees Retirement</td>
<td>$1,650,000</td>
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<tr>
<td>Public Employees Health Insurance</td>
<td>$1,520,000</td>
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<tr>
<td>Board of Risk and Insurance</td>
<td>$0</td>
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<tr>
<td>Total</td>
<td>$30,698,403</td>
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</tbody>
</table>

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

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

The appropriation for Judges' Retirement System is to be transferred to the judges' retirement fund, in accordance with the law relating thereto, upon requisition of the administrative director of the supreme court of appeals.

### EXECUTIVE

5—Governor's Office

(WV Code Chapter 5)

Acct. No. 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Salary of Governor</td>
<td>$72,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$1,280,696</td>
</tr>
<tr>
<td>Total</td>
<td>$1,352,696</td>
</tr>
</tbody>
</table>
6—Governor’s Office—Custodial Fund  
(WV Code Chapter 5)  
Acct. No. 1230

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

7—Governor’s Office—Civil Contingent Fund  
(WV Code Chapter 5)  
Acct. No. 1240

1 Humanities Foundation  
2 Grants.................. $    — $ 200,000  
3 Unclassified—............ $ — 712,500
4 Total.................... $ — $ 912,500
5 Any unexpended balance remaining in the appropriation (account no. 1240-06) at the close of the fiscal year 1988-89 is hereby reappropriated for expenditure during the fiscal year 1989-90.
6 From this appropriation there may be expended, at the discretion of the governor, an amount not to exceed $1,000 as West Virginia’s contribution to the Interstate Oil Compact Commission.

8—Governor’s Office—Debt Service  
(WV Code Chapter 5)  
Acct. No. 1250

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

9—Auditor’s Office—General Administration  
(WV Code Chapter 12)  
Acct. No. 1500

1 Salary of Auditor ......... $ — $ 46,800
56  

APPROPRIATIONS  

[Ch. 10  

2  Other Personal Services  
3  Annual Increment  
4  Employee Benefits  
5  Unclassified  
6  Total  

1,461,929  
28,440  
406,112  
584,175  
2,527,456  

10—Treasurer's Office  
(WV Code Chapter 12)  

Acct. No. 1600  

1  Salary of Treasurer  
2  Other Personal Services  
3  Annual Increment  
4  Employee Benefits  
5  Unclassified  
6  Total  

50,400  
496,510  
7,128  
144,465  
202,130  
900,633  

11—Treasurer's Office—  
School Building Sinking Fund  
(WV Code Chapter 12)  

Acct. No. 1650  

1  Total  

13,346,500  

Any unexpended balance remaining in the appropriation for Treasurer's Office—School Building Sinking Fund (account no. 1650-06) at the close of the fiscal year 1988-89 is hereby reappropriated for expenditure during the fiscal year 1989-90.  

12—Attorney General  
(WV Code Chapters 5, 14, 46 and 47)  

Acct. No. 2400  

1  Salary of Attorney  
2  General  
3  Other Personal Services  
4  Annual Increment  
5  Employee Benefits  
6  Asbestos Litigation Fund  
7  Unclassified  
8  Total  

50,400  
1,831,360  
15,480  
423,351  
360,000  
417,603  
3,098,194
Any unexpended balance remaining in the appropriation for Publication of Reports and Opinions (account no. 2400-05) at the close of the fiscal year 1988-89 is hereby reappropriated for expenditure during the fiscal year 1989-90.

When legal counsel or secretarial help is appointed by the attorney general for any state spending unit, this account shall be reimbursed from such unit's appropriated account.

13—Secretary of State

(WV Code Chapters 3, 5 and 59)

<table>
<thead>
<tr>
<th>Acct. No. 2500</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Secretary of State $43,200</td>
</tr>
<tr>
<td>2 Other Personal Services $441,526</td>
</tr>
<tr>
<td>3 Annual Increment $4,248</td>
</tr>
<tr>
<td>4 Employee Benefits $140,552</td>
</tr>
<tr>
<td>5 Unclassified $149,828</td>
</tr>
<tr>
<td>6 Special Election $1,184,994</td>
</tr>
<tr>
<td>7 Total $1,964,348</td>
</tr>
</tbody>
</table>

14—State Elections Commission

(WV Code Chapter 3)

<table>
<thead>
<tr>
<th>Acct. No. 2600</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total $11,400</td>
</tr>
</tbody>
</table>

15—Department of Agriculture

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Acct. No. 5100</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Commissioner $46,800</td>
</tr>
<tr>
<td>2 Other Personal Services $2,045,456</td>
</tr>
<tr>
<td>3 Annual Increment $46,476</td>
</tr>
<tr>
<td>4 Employee Benefits $597,519</td>
</tr>
<tr>
<td>5 Unclassified $1,699,588</td>
</tr>
<tr>
<td>6 Total $3,405,283</td>
</tr>
</tbody>
</table>
Out of the above general revenue funds a sum may be used to match federal funds for the eradication and control of pest and plant disease.

16—Farm Management Commission
(WV Code Chapter 19)

Acct. No. 5110

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$592,940</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$16,848</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$195,954</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$901,373</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,707,115</strong></td>
</tr>
</tbody>
</table>

17—Department of Agriculture— Soil Conservation Committee
(WV Code Chapter 19)

Acct. No. 5120

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$304,748</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$4,400</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$83,288</td>
</tr>
<tr>
<td>Construction, Maintenance</td>
<td>$1,259,919</td>
</tr>
<tr>
<td>and Emergency Repairs</td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>$88,393</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,740,748</strong></td>
</tr>
</tbody>
</table>

18—Department of Agriculture— Division of Rural Resources
(Matching Fund)
(WV Code Chapter 19)

Acct. No. 5130

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$449,585</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$11,952</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$147,511</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$226,825</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$835,873</strong></td>
</tr>
</tbody>
</table>

Any part or all of this appropriation from the general revenue may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.
19—Department of Agriculture—
Meat Inspection

(WV Code Chapter 19)

Acct. No. 5140

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$249,600</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$7,055</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$45,940</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$604,118</td>
</tr>
<tr>
<td>Total</td>
<td>$382,637</td>
</tr>
</tbody>
</table>

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

20—Department of Agriculture—
Agricultural Awards

(WV Code Chapter 19)

Acct. No. 5150

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural Awards</td>
<td>$66,500</td>
</tr>
<tr>
<td>Fairs and Festivals</td>
<td>$186,627</td>
</tr>
<tr>
<td>Total</td>
<td>$253,127</td>
</tr>
</tbody>
</table>

DEPARTMENT OF ADMINISTRATION

21—Department of Administration—
Office of the Secretary

(WV Code Chapter 5F)

Acct. No. 2050

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$187,500</td>
</tr>
</tbody>
</table>

22—Division of Finance and Administration

(WV Code Chapter 5A)

Acct. No. 2100

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,923,766</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$40,000</td>
</tr>
</tbody>
</table>
APPROPRIATIONS

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

Any unexpended balance remaining in the appropriation (1) Retrofit Elevator in Attorney General’s Section and (2) Retrofit Other Elevators in the Capitol Building (account no. 2100-28) at the close of the fiscal year 1988-89 is hereby reappropriated for expenditure during the fiscal year 1989-90.

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

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

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

23—Board of Risk and Insurance Management

(WV Code Chapter 29)

Acct. No. 2250

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

The Unclassified item of appropriation herein includes funding for the purpose of paying premiums, self-insurance losses, loss adjustment expenses and loss...
prevention engineering fees for property, casualty and fidelity insurance for the various state agencies, except those operating from special revenue funds, with such special revenue fund agencies to be billed by the state board of insurance and with such costs to be a proper charge against such spending units.

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

24—Commission on Uniform State Laws
(WV Code Chapter 29)

Acct. No. 2450

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

25—Teachers’ Retirement System
(WV Code Chapter 18)

Acct. No. 2980

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

26—Division of Personnel of the Civil Service System and the Civil Service Commission
(WV Code Chapter 29)

Acct. No. 5840

1 Personal Services ........ $ — $ 780,718
2 Annual Increment ........ — $ 15,012
3 Employee Benefits ........ — $ 224,895
4 Unclassified ............... — $ 166,676
5 Total ..................... $ — $ 1,187,301
The director shall maintain accurate records reflecting the cost of administering the provisions of this appropriation. At the close of each quarter-year period, the director shall summarize the cost and shall bill each department, commission, board or agency which receives support from any funds other than the general revenue fund for a prorata share of the administrative cost based on the relationship between the quarterly average number of employees in the service of such department, commission, board or agency and the quarterly average number of employees in the service of all the departments, commissions, boards and agencies of the state for the appropriate calendar quarter.

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

27—Public Legal Services Council

(WV Code Chapter 29)

Acct. No. 5900

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$234,585</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$2,556</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$54,130</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$6,170,267</td>
</tr>
<tr>
<td>Total</td>
<td>$6,461,538</td>
</tr>
</tbody>
</table>

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

28—Education and State Employees Grievance Board

(WV Code Chapter 18)

Acct. No. 6015

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$337,417</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$2,196</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$73,902</td>
</tr>
</tbody>
</table>
The division of highways, division of motor vehicles, workers' compensation commissioner, public service commission and other departments or divisions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

30—Public Employees Insurance Agency

(WV Code Chapter 5)

Acct. No. 6150

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

The above appropriation and any special revenue received are intended to cover employers' contribution as defined in article sixteen, chapter five of the code.

The division of highways, division of motor vehicles, workers' compensation commissioner, public service commission and other departments or divisions operating from special revenue funds and/or federal funds shall pay their proportionate share of the public employees health insurance cost for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.
31—Ethics Commission
   (WV Code Chapter 6B)
   Acct. No. 6155

1 Unclassified—Total ........ $ — $ 400,000

DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES

32—Department of Commerce, Labor and Environmental Resources—Office of the Secretary
   (WV Code Chapter 5F)
   Acct. No. 1205

1 Unclassified—Total ........ $ — $ 187,500

33—Office of Community and Industrial Development
   (WV Code Chapter 5B)
   Acct. No. 1210

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

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

34—Office of Community and Industrial Development—Emergency Employment, Training and Education
   (WV Code Chapter 5)
   Acct. No. 1220

1 Any unexpended balances remaining in the appropriations for Emergency Jobs Program—Public Service
3 Jobs (account no. 1220-05) at the close of the fiscal year 1988-89 is hereby reappropriated for expenditure during the fiscal year 1989-90.

35—Resource Recovery—
Solid Waste Disposal Authority
(WV Code Chapter 16)

Acct. No. 4020

<table>
<thead>
<tr>
<th>Item</th>
<th>1988-89</th>
<th>1989-90</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$71,124</td>
<td>$71,124</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$1,008</td>
<td>$1,008</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$16,955</td>
<td>$16,955</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$26,449</td>
<td>$26,449</td>
</tr>
<tr>
<td>Total</td>
<td>$115,536</td>
<td>$115,536</td>
</tr>
</tbody>
</table>

36—Division of Labor
(WV Code Chapters 21 and 47)

Acct. No. 4500

<table>
<thead>
<tr>
<th>Item</th>
<th>1988-89</th>
<th>1989-90</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$845,028</td>
<td>$845,028</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$10,008</td>
<td>$10,008</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$282,235</td>
<td>$282,235</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$158,857</td>
<td>$158,857</td>
</tr>
<tr>
<td>Total</td>
<td>$1,296,128</td>
<td>$1,296,128</td>
</tr>
</tbody>
</table>

37—Division of Commerce
(WV Code Chapter 5B)

Acct. No. 4625

<table>
<thead>
<tr>
<th>Item</th>
<th>1988-89</th>
<th>1989-90</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$6,773,716</td>
<td>$6,773,716</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$201,404</td>
<td>$201,404</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$2,366,094</td>
<td>$2,366,094</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$9,341,214</td>
<td>$9,341,214</td>
</tr>
<tr>
<td>Total</td>
<td>$9,341,214</td>
<td>$9,341,214</td>
</tr>
</tbody>
</table>

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

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

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

38—Board of Coal Mine
Health and Safety

(WV Code Chapter 22)

Acct. No. 4720

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$45,992</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$288</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$8,460</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$8,595</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$63,335</td>
</tr>
</tbody>
</table>

39—Interstate Commission on
Potomac River Basin

(WV Code Chapter 29)

Acct. No. 4730

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>West Virginia’s Contribution</td>
<td>$25,620</td>
</tr>
</tbody>
</table>

40—Ohio River Valley Water Sanitation Commission

(WV Code Chapter 29)

Acct. No. 4740

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>West Virginia’s Contribution</td>
<td>$85,725</td>
</tr>
</tbody>
</table>
### 41—Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Acct. No. 4750

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$7,680</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>$1,312</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>$63,307</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$72,299</td>
</tr>
</tbody>
</table>

### 42—Air Pollution Control Commission

(WV Code Chapter 16)

Acct. No. 4760

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$571,709</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$6,684</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$156,519</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$1,242,415</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$981,002</td>
</tr>
</tbody>
</table>

### 43—Division of Energy

(WV Code Chapter 22)

Acct. No. 4775

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$4,458,780</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$78,000</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$1,192,714</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$97,573,930</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$6,841,971</td>
</tr>
</tbody>
</table>

### 44—Division of Forestry

(WV Code Chapter 19)

Acct. No. 5160

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,993,795</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$42,768</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$363,933</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$320,610</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$2,927,255</td>
</tr>
</tbody>
</table>
Out of the above general revenue funds, a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

45—Geological and Economic Survey
(WV Code Chapter 29)
Acct. No. 5200

<table>
<thead>
<tr>
<th></th>
<th>1 Personal Services</th>
<th>2 Annual Increment</th>
<th>3 Employee Benefits</th>
<th>4 Unclassified</th>
<th>5 Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>1,186,339</td>
<td>19,404</td>
<td>316,589</td>
<td>627,000</td>
<td>1,685,891</td>
</tr>
</tbody>
</table>

The Unclassified appropriation includes funding to secure federal and other contracts and may be transferred to a special revenue account for the purpose of providing advance funding for such contracts.

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

46—Water Resources Board
(WV Code Chapter 20)
Acct. No. 5640

<table>
<thead>
<tr>
<th></th>
<th>1 Personal Services</th>
<th>2 Annual Increment</th>
<th>3 Employee Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>62,012</td>
<td>792</td>
<td>13,023</td>
</tr>
</tbody>
</table>

47—Division of Natural Resources
(WV Code Chapter 20)
Acct. No. 5650

<table>
<thead>
<tr>
<th></th>
<th>1 Personal Services</th>
<th>2 Annual Increment</th>
<th>3 Employee Benefits</th>
<th>4 Black Fly Control</th>
<th>5 Spraying Project</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>2,834,016</td>
<td>67,968</td>
<td>799,276</td>
<td>230,000</td>
<td></td>
</tr>
</tbody>
</table>
### Blennerhassett Historical Park Commission

(WV Code Chapter 29)

Acct. No. 5660

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$-0-</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$-0-</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$-0-</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$-0-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$-0-</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Blennerhassett Island (account no. 5660-07) and in the item in this account designated Unclassified at the close of the fiscal year 1988-89 is hereby reapportioned for expenditure during the fiscal year 1989-90.

### Water Development Authority

(WV Code Chapter 20)

Acct. No. 5670

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$18,919,200 $-0-</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Phase III Hardship Grants (account no. 5670-08), Hardship Grants (account no. 5670-10), Loan and Grant Program (account no. 5670-17) and Capital Outlay-Sewer (account no. 5670-20) at the close of the fiscal year 1988-89 are hereby reapportioned for expenditure during the fiscal year 1989-90.

### DEPARTMENT OF EDUCATION

50—State Department of Education

(WV Code Chapters 18 and 18A)

Acct. No. 2860

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,654,931</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>------------------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
</tr>
</tbody>
</table>

**52—State Board of Education—Vocational Division**

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$665,100</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$10,000</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$183,738</td>
</tr>
<tr>
<td>4</td>
<td>Vocational Program</td>
<td>$325,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$12,960,714</td>
</tr>
</tbody>
</table>

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

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Professional Educators</td>
<td>$481,692,211</td>
</tr>
</tbody>
</table>

The above appropriation includes the state board of education and their executive office.
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>3</td>
<td>Salary Equity</td>
<td>$11,274,055</td>
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<tr>
<td>4</td>
<td>Service Personnel</td>
<td>$174,086,119</td>
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<tr>
<td>5</td>
<td>Fixed Charges</td>
<td>$240,400,000</td>
</tr>
<tr>
<td>6</td>
<td>Transportation</td>
<td>$23,734,641</td>
</tr>
<tr>
<td>7</td>
<td>Administration</td>
<td>$6,179,454</td>
</tr>
<tr>
<td>8</td>
<td>Other Current Expenses</td>
<td>$83,796,821</td>
</tr>
<tr>
<td>9</td>
<td>Improve Instructional Programs</td>
<td>$45,952,893</td>
</tr>
<tr>
<td>10</td>
<td>Rural Loss Assistance</td>
<td>$305,976</td>
</tr>
<tr>
<td>11</td>
<td>Basic Foundation</td>
<td>$1,067,422,170</td>
</tr>
<tr>
<td>12</td>
<td>Allowances</td>
<td>$1,304,807</td>
</tr>
<tr>
<td>13</td>
<td>Less Local Share</td>
<td>$3,914,782</td>
</tr>
<tr>
<td>14</td>
<td>Total Basic State Aid</td>
<td>$924,108,093</td>
</tr>
<tr>
<td>15</td>
<td>Increased Enrollment</td>
<td>$400,000</td>
</tr>
<tr>
<td>16</td>
<td>Incentive for Administration</td>
<td>$9,876</td>
</tr>
<tr>
<td>17</td>
<td><strong>Total</strong></td>
<td><strong>$924,517,969</strong></td>
</tr>
</tbody>
</table>

#### 54—State Department of Education

**Aid for Exceptional Children**

(WV Code Chapters 18 and 18A)

Acct. No. 2960

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$24,133,000</td>
</tr>
</tbody>
</table>

#### 55—West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Acct. No. 3330

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$3,914,782</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$5,040</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$940,167</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$1,304,807</td>
</tr>
<tr>
<td>5</td>
<td><strong>Total</strong></td>
<td><strong>$6,164,796</strong></td>
</tr>
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</table>

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

(WV Code Chapters 18 and 18A)

Acct. No. 3360

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$131,996</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$2,989</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$24,727</td>
</tr>
<tr>
<td></td>
<td>Appropriations</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>----------------</td>
<td>---</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$68,175</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$227,887</td>
</tr>
</tbody>
</table>

**57—State Board of Rehabilitation—Division of Rehabilitation Services**  
(WV Code Chapter 18)  
Acct. No. 4405

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$4,413,458</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$276,480</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$2,189,455</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$26,911,000</td>
</tr>
<tr>
<td>5</td>
<td>Certification of the Rehabilitation Center</td>
<td>$500,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$11,231,372</td>
</tr>
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</table>

**DEPARTMENT OF EDUCATION AND THE ARTS**

**58—Department of Education and the Arts—Office of the Secretary**  
(WV Code Chapter 5F)  
Acct. No. 2755

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Underwood-Smith Scholarship Program</td>
<td>$400,000</td>
</tr>
<tr>
<td>3</td>
<td>Market Pay Adjustment</td>
<td>$225,000</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$187,500</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$812,500</td>
</tr>
</tbody>
</table>

**59—Board of Directors of State College System**  
Control Account  
(WV Code Chapter 18B)  
Acct. No. 2785

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$66,694,541</td>
</tr>
</tbody>
</table>

**60—Board of Regents (Control)**  
(WV Code Chapter 18)  
Acct. No. 2790

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$—</td>
</tr>
</tbody>
</table>


61—Board of Trustees of the University System of West Virginia
(Board of Regents)
Control Account
(WV Code Chapter 18B)
Acct. No. 2795

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

62—Board of Trustees of the University System of West Virginia Board of Directors of the State College System
(Board of Regents)
Consolidated Staff Account
(WV Code Chapter 18B)
Acct. No. 2800

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

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

63—School of Osteopathic Medicine
(WV Code Chapter 18)
Acct. No. 2810

1 Unclassified—Total ........... $ — $ —0—
64—Marshall University—Medical School
(WV Code Chapter 18)
Acct. No. 2840
1 Unclassified—Total .......... $ — $ —0—

65—West Virginia University—
Schools of Health Sciences
(WV Code Chapter 18)
Acct. No. 2850
1 Unclassified—Total .......... $ — $ —0—
2 May be transferred to West Virginia University—
3 medical school fund upon requisition of the governor.

66—Board of Trustees of the
University System of West Virginia
(Board of Regents)
Medical Schools and Health Science Center Account
(WV Code Chapter 18B)
Acct. No. 2855
1 Unclassified—Total .......... $ — $ 46,977,475

67—Educational Broadcasting Authority
(WV Code Chapter 10)
Acct. No. 2910
1 Personal Services .......... $ — $ 84,867
2 Annual Increment .......... — $ 648
3 Employee Benefits .......... — $ 649,948
4 Unclassified ............... 1,423,800 $ 4,886,010
5 Total ..................... $ 1,423,800 $ 5,621,473

The Unclassified appropriation includes funding for
the construction and operation of regional ETV and
radio stations. These funds may be transferred to special
revenue accounts for matching college, university, city,
county, federal and/or other generated revenue.
68—Library Commission
(WV Code Chapter 10)

Acct. No. 3500

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$944,951</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$22,536</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$257,861</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$1,137,593</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$1,137,593</td>
</tr>
</tbody>
</table>

69—Division of Culture and History
(WV Code Chapter 29)

Acct. No. 3510

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,107,990</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$13,806</td>
</tr>
<tr>
<td>3</td>
<td>Project 2021</td>
<td>$325,000</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>$379,177</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$1,946,250</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$1,946,250</td>
</tr>
</tbody>
</table>

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

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

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

70—Department of Health and Human Resources—Office of the Secretary
(WV Code Chapter 5F)

Acct. No. 3990

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$187,500</td>
</tr>
</tbody>
</table>

75
### Appropriations

#### 71—Division of Health—Central Office

(WV Code Chapter 16)

Acct. No. 4000

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$5,130,530</td>
</tr>
<tr>
<td>2</td>
<td>Minden-Shaffer Study</td>
<td>$25,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$100,000</td>
</tr>
<tr>
<td>4</td>
<td>Corporate Nonprofit</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Community Health Centers—F.M.H.A.</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Mortgage Finance</td>
<td>$105,913</td>
</tr>
<tr>
<td>7</td>
<td>Employee Benefits</td>
<td>$1,648,770</td>
</tr>
<tr>
<td>8</td>
<td>Unclassified</td>
<td>$4,511,924</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$11,522,137</td>
</tr>
</tbody>
</table>

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

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

(WV Code Chapter 9A)

Acct. No. 4010

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$787,169</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$18,504</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$260,479</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$422,400</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$1,066,152</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Repairs and Alterations (account no. 4010-02) and Equipment (account no. 4010-03) at the close of the fiscal year 1988-89 are hereby reappropriated for expenditure during the fiscal year 1989-90.
### 73—Division of Veterans’ Affairs

(WV Code Chapter 9A)

Acct. No. 4040

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$625,114</td>
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<tr>
<td>Annual Increment</td>
<td>$13,104</td>
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<tr>
<td>Employee Benefits</td>
<td>$206,958</td>
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<tr>
<td>Unclassified</td>
<td>$92,029</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$937,205</td>
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</table>

### 74—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Annual Increment</td>
<td>$478,400</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$3,042,782</td>
</tr>
<tr>
<td>Medical Services</td>
<td>$99,148,917</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$460,944,761</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$460,944,761</td>
</tr>
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</table>

### 75—Commission on Aging

(WV Code Chapter 29)

Acct. No. 4060

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Office Function</td>
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<tr>
<td>Personal Services</td>
<td>$2,268</td>
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<td>Annual Increment</td>
<td>$33,971</td>
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<td>Employee Benefits</td>
<td>$2,227,243</td>
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<tr>
<td>Unclassified</td>
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<tr>
<td><strong>Area Agencies on Aging</strong></td>
<td>$706,032</td>
</tr>
<tr>
<td>Administration</td>
<td>$262,908</td>
</tr>
<tr>
<td>Substate Ombudsman</td>
<td>$20,000</td>
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<tr>
<td><strong>Local Programs</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Service Delivery Costs</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Attorney General</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Silver Haired Legislature</strong></td>
<td></td>
</tr>
</tbody>
</table>
### Appropriations [Ch. 10]

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

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

#### 76—Developmental Disabilities Planning Council

Acct. No. 4080

| 1 | Unclassified—Total | $686,610 | — |

#### 77—Consolidated Medical Service Fund

Acct. No. 4190

| 1 | Foster Grandparents | — | $62,000 |
| 2 | Stipends/Travel | — | $47,068,946 |
| 3 | Institutional Facilities | — | $47,068,946 |
| 4 | Operations | — | 15,034,308 |
| 5 | Employee Benefits | — | 250,000 |
| 6 | Poison Control | — | 28,000 |
| 7 | Hotline | — | 6,700,000 |
| 8 | ICF/MR Match | — | 2,600,000 |
| 9 | Special Olympics | — | 850,000 |
| 10 | State Aid to Local Agencies | — | 2,705,000 |
| 11 | Maternal and Child Health Clinic | — | 250,000 |
| 12 | Clinicians & Medical Contracts and Fees | — | 1,725,000 |
| 13 | Continuum of Care | — | 28,027,000 |
| 14 | Primary Care | — | 28,027,000 |
| 15 | Contracts to Community Health Centers | — | 0 |
| 16 | Epidemiology Research | — | 24,182,962 |
| 17 | Grants to Counties and EMS Entities | — | 111,100,254 |
| 18 | Behavioral Health Program | — | 24,182,962 |
| 19 | Unclassified | — | 0 |
| 20 | Total | $24,182,962 | $111,100,254 |
Any unexpended balance remaining in the appropriation for Placement Programs for the Developmentally Disabled (account no. 4190-16) at the close of the fiscal year 1988-89 is hereby reappropriated for expenditure during the fiscal year 1989-90.

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

Includes funds for state match ICF-MR Group Homes.

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

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

### 78—Human Rights Commission
(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Acct. No. 5980</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ............... $</td>
</tr>
<tr>
<td>2 Annual Increment ............... —</td>
</tr>
<tr>
<td>3 Employee Benefits ............. —</td>
</tr>
<tr>
<td>4 Unclassified .................. 102,190</td>
</tr>
<tr>
<td>5 Total .......................... $ 102,190</td>
</tr>
</tbody>
</table>

### 79—Women's Commission
(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Acct. No. 6000</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ............... $</td>
</tr>
<tr>
<td>2 Annual Increment ............... —</td>
</tr>
</tbody>
</table>
### DEPARTMENT OF PUBLIC SAFETY

80—Department of Public Safety—
Office of the Secretary

(WV Code Chapter 5F)

Acct. No. 1255

<table>
<thead>
<tr>
<th>Description</th>
<th>Fiscal Year 2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>$187,500</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$5,868</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$57,722</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$805,527</td>
</tr>
<tr>
<td>5 Integrated Flood</td>
<td>$1,078,527</td>
</tr>
<tr>
<td>6 Observance Warning</td>
<td></td>
</tr>
<tr>
<td>7 System—Equipment</td>
<td>$273,000</td>
</tr>
<tr>
<td>8 Total</td>
<td>$277,976</td>
</tr>
</tbody>
</table>

81—Office of Emergency Services and Advisory Council—
Division of Emergency Services

(WV Code Chapter 15)

Acct. No. 1300

<table>
<thead>
<tr>
<th>Description</th>
<th>Fiscal Year 2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$203,214</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$5,868</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$57,722</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$805,527</td>
</tr>
<tr>
<td>5 Integrated Flood</td>
<td></td>
</tr>
<tr>
<td>6 Observance Warning</td>
<td></td>
</tr>
<tr>
<td>7 System—Equipment</td>
<td>$273,000</td>
</tr>
<tr>
<td>8 Total</td>
<td>$1,078,527</td>
</tr>
</tbody>
</table>

82—Board of Probation and Parole

(WV Code Chapter 62)

Acct. No. 3650

<table>
<thead>
<tr>
<th>Description</th>
<th>Fiscal Year 2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salaries of Members</td>
<td>$81,000</td>
</tr>
<tr>
<td>2 of Board of Probation</td>
<td></td>
</tr>
<tr>
<td>3 and Parole</td>
<td>$54,152</td>
</tr>
<tr>
<td>4 Other Personal Services</td>
<td></td>
</tr>
<tr>
<td>5 Annual Increment</td>
<td>$1,188</td>
</tr>
<tr>
<td>6 Employee Benefits</td>
<td>$28,930</td>
</tr>
<tr>
<td>7 Unclassified</td>
<td></td>
</tr>
<tr>
<td>8 Total</td>
<td>$186,393</td>
</tr>
</tbody>
</table>
83—Division of Corrections—
   Central Office

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

Acct. No. 3680

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

84—Division of Corrections—
   Correctional Units

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

Acct. No. 3770

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

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

The commissioner of corrections, prior to the beginning of the fiscal year, shall file with the legislative auditor an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation. He shall also, within fifteen days after the close of each six-month period of said fiscal year, file with the legislative auditor an itemized report of expenditures made during the preceding six-month period. Such report shall include the total of expenditures made for personal services, annual increment, current expenses (inmate medical expenses and other), repairs and alterations and equipment.
### 85—Division of Public Safety
(WV Code Chapter 15)

**Acct. No. 5700**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$15,797,532</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$91,944</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$3,928,188</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$372,025</td>
<td>$7,080,230</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$372,025</strong></td>
<td><strong>$26,897,894</strong></td>
</tr>
</tbody>
</table>

### 86—Adjutant General—State Militia
(WV Code Chapter 15)

**Acct. No. 5800**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$256,723</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$5,652</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$430,779</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$2,952,101</td>
<td>$3,413,666</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,952,101</strong></td>
<td><strong>$4,106,820</strong></td>
</tr>
</tbody>
</table>

### 87—Fire Commission
(WV Code Chapter 29)

**Acct. No. 6170**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$544,552</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$11,196</td>
<td></td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$165,242</td>
<td></td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$155,350</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$876,340</strong></td>
<td></td>
</tr>
</tbody>
</table>

### DEPARTMENT OF TAX AND REVENUE

#### 88—Department of Tax and Revenue
Office of the Secretary
(WV Code Chapter 5F)

**Acct. No. 1680**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>$187,500</td>
<td></td>
</tr>
</tbody>
</table>
### 89—Municipal Bond Commission

(WV Code Chapter 13)

Acct. No. 1700

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$74,570</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$1,044</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$20,702</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$18,697</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$115,013</strong></td>
</tr>
</tbody>
</table>

### 90—Tax Division

(WV Code Chapter 11)

Acct. No. 1800

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$8,838,180</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$145,000</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$2,472,404</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$4,212,756</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$15,668,340</strong></td>
</tr>
</tbody>
</table>

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

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

(WV Code Chapter 29)

Acct. No. 4790

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>$5,225</td>
</tr>
</tbody>
</table>

### 92—Office of Nonintoxicating Beer Commissioner

(WV Code Chapter 11)

Acct. No. 4900

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$313,581</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$4,250</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>$79,439</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>$86,773</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$484,043</strong></td>
</tr>
</tbody>
</table>
93—Racing Commission
(WV Code Chapter 19)
Acct. No. 4950

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

DEPARTMENT OF TRANSPORTATION

94—Department of Transportation—Office of the Secretary
(WV Code Chapter 5F)
Acct. No. 4825

1 Civil Air Patrol .................. $ — $ 85,000
2 Unclassified— .................. — 187,500
3 Total .......................... $ — $ 272,500
4 Any unexpended balance remaining in the appropriation for Aeronautics Commission—Airport Matching (account no. 1210-23) at the close of the fiscal year 1988-89 is hereby reappropriated for expenditure during the fiscal year 1989-90.

95—Railroad Maintenance Authority
(WV Code Chapter 29)
Acct. No. 5690

1 Personal Services ............... $ — $ 424,258
2 Annual Increment ............... — 5,364
3 Unclassified .................... — 450,000 386,561
4 Total .......................... $ 450,000 $ 816,183
1 Total Title II, Section 1—
2 General Revenue ............... — $ 1,740,210,436
3 Sec. 3. Appropriations from other funds.—From the funds designated there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code, the
following amounts, as itemized, for expenditure during
the fiscal year one thousand nine hundred ninety.

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

EXECUTIVE

96—Treasurer’s Office—
Abandoned and Unclaimed Property

(WV Code Chapters 12 and 36)

Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Federal Funds</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>1989-90</td>
<td>1989-90</td>
<td></td>
</tr>
<tr>
<td>Personal Services</td>
<td>$</td>
<td>$ 122,259</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
<td>468</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>—</td>
<td>21,525</td>
</tr>
<tr>
<td>Unclassified</td>
<td>—</td>
<td>34,238</td>
</tr>
<tr>
<td>Total</td>
<td>$</td>
<td>$ 178,490</td>
</tr>
</tbody>
</table>

97—Auditor’s Office—
Land Department Operating Fund

(WV Code Chapters 11A, 12 and 36)

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Federal Funds</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Year</td>
<td>Fiscal Year</td>
</tr>
<tr>
<td>1989-90</td>
<td>1989-90</td>
<td></td>
</tr>
<tr>
<td>Unclassified—Total</td>
<td>$</td>
<td>$ 11,400</td>
</tr>
</tbody>
</table>

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

**98—Department of Agriculture**  
(WV Code Chapter 19)  
Acct. No. 8180  

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$209,201</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>$37,614</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>$487,663</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$734,478</td>
</tr>
</tbody>
</table>

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

**99—General John McCausland Memorial Farm**  
(WV Code Chapter 19)  
Acct. No. 8194  

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$75,921</td>
</tr>
</tbody>
</table>

Funds for the above appropriation shall be expended in accordance with article twenty-six, chapter nineteen of the code.

**DEPARTMENT OF ADMINISTRATION**

**100—Division of Finance and Administration—Revolving Fund**  
(WV Code Chapter 5A)  
Acct. No. 8140  

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$700,509</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$15,768</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>$138,743</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>$633,560</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$1,488,580</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund as provided by article two, chapter five-a of the code.
9 The above appropriation includes salaries and operating expenses.

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

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

(WV Code Chapter 5A)

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th></th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$2,969,343</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>49,644</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>528,323</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>968,840</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>$4,516,150</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

10 There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the procurement of data processing equipment, telecommunications expenses and supplies for resale.

DEPARTMENT OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES

102—Division of Natural Resources

(WV Code Chapter 20)

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th></th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$4,356,331</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>93,960</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>1,306,922</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>2,303,769</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Land Purchase and Buildings ............... 756,800 859,650
Total ................................ $ 756,800 $ 8,920,632

Any unexpended balance remaining in the appropriation for Land Purchase and Buildings (account no. 8300-09) at the close of the fiscal year 1988-89 is hereby reappropriated for expenditure during the fiscal year 1989-90. Any unexpended balance remaining in the appropriation for Land Purchase and Building (account no. 8300-09) and Land Purchase and Building (account no. 8300-23) is reflected in the approved FY-88 Expenditure Schedule and the June 1989 Financial Statement of the Division of Natural Resources and available for capital improvement and land purchase purposes is hereby reappropriated for expenditure in the Fiscal Year 1989-90, all in accordance with Section Thirty-Four, Article Two, Chapter Twenty of the Code.

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

103—Division of Banking
(WV Code Chapter 31A)
Acct. No. 8395
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Personal Services</th>
<th></th>
<th>$722,737</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Annual Increment</td>
<td></td>
<td>5,580</td>
</tr>
<tr>
<td></td>
<td>Employee Benefits</td>
<td></td>
<td>127,350</td>
</tr>
<tr>
<td></td>
<td>Unclassified</td>
<td></td>
<td>435,969</td>
</tr>
<tr>
<td>---</td>
<td>------------------</td>
<td>-------</td>
<td>----------</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$1,291,636</td>
</tr>
</tbody>
</table>

104—Geological and Economic Survey
(WV Code Chapter 29)
Acct. No. 8589
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Unclassified</th>
<th></th>
<th>$142,629</th>
</tr>
</thead>
</table>
The above appropriation shall be used in accordance with section four, article two, chapter twenty-nine of the code.

DEPARTMENT OF EDUCATION

105—State Department of Education—Veterans' Education
(WV Code Chapter 18)
Acct. No. 7979

TO BE PAID FROM FEDERAL FUNDS

Unclassified—Total .... $ 101,336 $ —
Expenditures from this appropriation shall not exceed the amount to be reimbursed by the federal government.
Federal funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the state superintendent of schools and the approval of the governor for any emergency which might arise in the operation of this division during the fiscal year.

DEPARTMENT OF EDUCATION AND THE ARTS

106—Board of Regents—Special Capital Improvement Fund
(WV Code Chapter 18)
Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

Debt Service—Total .... $ — $ 476,000
The total amount of this appropriation shall be paid from the special capital improvement fund created in section four, article twenty-four, chapter eighteen of the code.

107—Board of Regents—State System Registration Fee—Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund)
(WV Code Chapter 18)
Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>Capital Building Repairs &amp; Alterations</td>
<td>$</td>
</tr>
<tr>
<td>3</td>
<td>(Supplements Operating Budgets of Colleges and Universities)</td>
<td>$</td>
</tr>
<tr>
<td>4</td>
<td>Miscellaneous Projects</td>
<td>$</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$</td>
</tr>
</tbody>
</table>

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

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

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

(WV Code Chapter 18)
Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Capital Outlay</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>Marshall University Science Building Renovation</td>
<td>$</td>
</tr>
<tr>
<td>3</td>
<td>Fairmont State College Academic Building</td>
<td>$</td>
</tr>
<tr>
<td>4</td>
<td>West Virginia University Facilities Renovation</td>
<td>$</td>
</tr>
<tr>
<td>5</td>
<td>West Virginia Science Hall Renovation</td>
<td>$</td>
</tr>
<tr>
<td>6</td>
<td>Institute of Technology</td>
<td>$</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$</td>
</tr>
<tr>
<td>14</td>
<td>West Virginia</td>
<td>15</td>
</tr>
<tr>
<td>18</td>
<td>Bluefield State</td>
<td>19</td>
</tr>
<tr>
<td>21</td>
<td>West Liberty</td>
<td>22</td>
</tr>
<tr>
<td>24</td>
<td>Concord College</td>
<td>25</td>
</tr>
<tr>
<td>28</td>
<td>West Virginia</td>
<td>29</td>
</tr>
<tr>
<td>32</td>
<td>West Virginia</td>
<td>33</td>
</tr>
<tr>
<td>36</td>
<td>State-Wide Computer</td>
<td>37</td>
</tr>
</tbody>
</table>

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

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

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

#### Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
<td>$11,150,000</td>
</tr>
<tr>
<td>2</td>
<td>Building and</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Campus Renewal</td>
<td>$7,000,000</td>
</tr>
<tr>
<td>4</td>
<td>Dental School</td>
<td>$1,200,000</td>
</tr>
<tr>
<td>5</td>
<td>WVU Computer</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>6</td>
<td>West Virginia</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Northern Community</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>College New</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Martinsville</td>
<td>$1,900,000</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td>$22,250,000</td>
</tr>
</tbody>
</table>

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

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

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

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

(WV Code Chapter 18)

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Any unexpended balances remaining in prior years' and 1988-89 appropriations are hereby reappropriated for expenditure during the fiscal year 1989-90.</td>
<td></td>
</tr>
</tbody>
</table>

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

(WV Code Chapter 18)

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$14,664,430</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Capital Outlay (account no. 9280-08) and in the 1988-89 appropriation for the West Virginia University—Medical Center at the close of the fiscal year 1988-89 are hereby reappropriated for expenditure during the fiscal year 1989-90.

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*112—Board of Barbers and Beauticians*

(WV Code Chapters 16 and 30)

Acct. No. 8220

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$126,327</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$3,492</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$22,705</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$90,041</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$242,565</strong></td>
</tr>
</tbody>
</table>

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

*113—Hospital Finance Authority*

(WV Code Chapter 16)

Acct. No. 8330

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$49,092</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$437</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$8,632</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$70,245</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$128,406</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections.
as provided by article twenty-nine-a, chapter sixteen of the code.

Special funds in excess of the amount herein appropriated may be made available by budget amendment upon request of the commissioner of finance and administration and the approval of the governor.

114—State Board of Rehabilitation
Division of Rehabilitation Services
West Virginia Rehabilitation Center—Special Account
(WV Code Chapter 18)
Acct. No. 8137
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Certification of the Rehabilitation Center</th>
<th>$ 200,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$ 200,000</td>
</tr>
</tbody>
</table>

115—Division of Health—
Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operation)
(WV Code Chapter 16)
Acct. No. 8500
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Unclassified</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$3,400,000</td>
</tr>
<tr>
<td>Institutional Facilities</td>
<td>$14,000,000</td>
</tr>
<tr>
<td>Operations</td>
<td>$4,600,000</td>
</tr>
<tr>
<td>Medley Placement</td>
<td>$22,000,000</td>
</tr>
<tr>
<td>Total</td>
<td>$22,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 1988-89 is hereby reappropriated for expenditure during the fiscal year 1989-90, except the following account numbers:

(Appropriation year '82): 8500-06, 8500-07, 8500-08, 8500-10, 8500-11, 8500-12 and 8500-13. (Appropriation
The total amount of this appropriation shall be paid from the hospital services revenue account special fund created by section fifteen-a, article one, chapter sixteen of the code, and shall be used only for operating expenses and for improvements in connection with existing facilities, Medley and bond payments.

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

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

116—Health Care Cost Review Authority

(WV Code Chapter 16)

Acct. No. 8564

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$548,081</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$5,544</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$96,607</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$365,817</td>
</tr>
<tr>
<td>Total</td>
<td>$1,016,049</td>
</tr>
</tbody>
</table>

The above appropriation is to be expended in accordance with and pursuant to the provisions of article twenty-nine-b, chapter sixteen of the code, and from the special revolving fund designated health care cost review fund.
# Appropriations

## 117—Workers’ Compensation Fund

(WV Code Chapter 23)

Acct. No. 9000

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$7,976,803</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$126,700</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$1,463,337</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$6,409,050</td>
</tr>
<tr>
<td>Employers’ Excess Liability Fund</td>
<td>$126,740</td>
</tr>
<tr>
<td>Total</td>
<td>$16,102,630</td>
</tr>
</tbody>
</table>

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

---

## DEPARTMENT OF PUBLIC SAFETY

### 118—Regional Jail and Prison Authority

(WV Code Chapter 31)

Acct. No. 8051

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$329,625</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$2,808</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>$62,563</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$194,864</td>
</tr>
<tr>
<td>Total</td>
<td>$589,860</td>
</tr>
</tbody>
</table>

---

### 119—Division of Public Safety—Inspection Fees

(WV Code Chapter 15)

Acct. No. 8350

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$468,226</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$1,404</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

120—Division of Public Safety—Drunk Driving Prevention Fund

(WV Code Chapter 15)
Acct. No. 8355
TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total $ 642,000

The total amount of this appropriation shall be paid from the special revenue fund out of receipts collected pursuant to sections nine-a and sixteen, article fifteen, chapter eleven of the code and paid into a revolving fund account in the state treasury.

121—Crime Victims Compensation Fund

(WV Code Chapter 14)
Acct. No. 8412
TO BE PAID FROM SPECIAL REVENUE FUND

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

These funds are intended to be expended for court costs and administrative costs and federal reimbursement for compensation paid to crime victims.

DEPARTMENT OF TAX AND REVENUE
122—Agency of Insurance Commissioner

(WV Code Chapter 33)
Acct. No. 8016
TO BE PAID FROM SPECIAL REVENUE FUND

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

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

123—Racing Commission
(WV Code Chapter 19)

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

1 Medical Expenses—Total ... $ — $ 114,000
2 The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.
3 No expenditures shall be made from this account except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

124—Office of Alcohol Beverage Control Commissioner
(WV Code Chapter 60)

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

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

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

The above appropriation includes the salary of the
commissioner, salaries of store personnel and store
inspectors, store operating expenses and equipment, and
salaries, expenses and equipment of administration
offices.

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

**DEPARTMENT OF TRANSPORTATION**

*125—Division of Highways*

*(WV Code Chapters 17 and 17C)*

**Acct. No. 6700**

**TO BE PAID FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance, Expressway,</td>
<td>$61,500,000</td>
</tr>
<tr>
<td>Trunkline and Feeder</td>
<td>—</td>
</tr>
<tr>
<td>Maintenance, State</td>
<td>84,500,000</td>
</tr>
<tr>
<td>Local Services</td>
<td>—</td>
</tr>
<tr>
<td>Maintenance, Contract</td>
<td>50,750,000</td>
</tr>
<tr>
<td>Paving and Secondary</td>
<td>—</td>
</tr>
<tr>
<td>Road Maintenance</td>
<td>—</td>
</tr>
<tr>
<td>Bridge Repair and Replacement</td>
<td>25,000,000</td>
</tr>
<tr>
<td>Industrial Access Road</td>
<td>1,899,000</td>
</tr>
<tr>
<td>Inventory Revolving</td>
<td>1,500,000</td>
</tr>
<tr>
<td>Equipment Revolving</td>
<td>17,514,000</td>
</tr>
<tr>
<td>General Operations</td>
<td>29,104,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>206,000</td>
</tr>
<tr>
<td>Debt Service</td>
<td>81,300,000</td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>50,000,000</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>140,000,000</td>
</tr>
<tr>
<td>Appalachian Program</td>
<td>38,000,000</td>
</tr>
<tr>
<td>Nonfederal Aid Construction</td>
<td>10,611,000</td>
</tr>
<tr>
<td>Highway Litter</td>
<td>1,930,000</td>
</tr>
<tr>
<td>Litter Control</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>$593,814,000</td>
</tr>
</tbody>
</table>

The above appropriations are to be expended in
accordance with the provisions of chapters seventeen
and seventeen-c of the code.
The commissioner of highways shall have the authority to operate revolving funds within the state road fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies. There is hereby appropriated within the above items sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with sections seventeen and eighteen, article two, chapter fourteen of the code.

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian Highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated be required for the purposes of Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the Commissioner and approval of the Governor. Further, for the purpose of Appalachian programs, funds appropriated to line items may be transferred to other line items upon recommendation of the Commissioner and approval of the Governor.

126—Division of Motor Vehicles
(WV Code Chapters 17, 17A, 17B, 17C, 20 and 24)

Acct. No. 6710
TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,371,460</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>46,312</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>651,208</td>
</tr>
<tr>
<td>Unclassified</td>
<td>100,000</td>
</tr>
<tr>
<td>Total</td>
<td>3,462,613</td>
</tr>
</tbody>
</table>

127—Real Estate Commission
(WV Code Chapter 47)

Acct. No. 8010
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$125,968</td>
</tr>
</tbody>
</table>
2 Annual Increment ............ $ 2,016
3 Employee Benefits ............ $ 22,422
4 Unclassified ................... $ 103,193
5 Total ........................... $ 253,599

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

MISCELLANEOUS BOARDS AND COMMISSIONS

128—Public Service Commission

(WV Code Chapter 24)

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

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

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

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

129—Public Service Commission—
Gas Pipeline Division

(WV Code Chapter 24B)

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ............. $ 123,363
2 Annual Increment ............. $ 1,296
3 Employee Benefits ........... $ 21,764
4 Unclassified ....................... 119,600 75,016
5 Total .............................. $ 119,600 $ 221,439
6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of receipts collected for
8 or by the public service commission pursuant to and in
9 the exercise of regulatory authority over pipeline
10 companies as provided by law.

130—Public Service Commission—
Motor Carrier Division

(WV Code Chapter 24A)

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

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

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

131—Public Service Commission—
Consumer Advocate

(WV Code Chapter 24)

Acct. No. 8295

TO BE PAID FROM SPECIAL REVENUE FUND

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

6 The total amount of this appropriation shall be paid
7 from a special revenue fund out of collections made by
8 the public service commission.
Sec. 5. Awards for claims against the state.—
There are hereby appropriated, for the remainder of the fiscal year 1988-89 and to remain in effect until June 30, 1990 from the funds as designated in the amount as specified and for the claimant as named in enrolled house bill no. 2408, acts, Legislature, regular session, 1989—crime victims compensation fund of $166,000.00 for payment of claims against the state.

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

There is hereby appropriated, for the remainder of the fiscal year 1988-89 and to remain in effect until June 30, 1990, from the fund as designated, in the amounts as specified and for the claimants as named in enrolled senate bill no. 615 and in enrolled house bill no. 2426, acts. Legislature, regular session, 1989—general revenue funds of $503,407.02.

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

Any unexpended balances remaining in the appropriations at the close of the fiscal year 1988-89 are hereby reapportioned for expenditure during the fiscal year 1989-90.

182—Governor's Office
Acct. No. 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Personal Services</td>
<td>$83,450</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$77,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>$6,350</td>
</tr>
<tr>
<td>Total</td>
<td>$167,300</td>
</tr>
</tbody>
</table>
### Appropriations

#### 133—Governor’s Office—Civil Contingent Fund

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$750,000</td>
</tr>
<tr>
<td>2</td>
<td>Buffalo Creek Claim</td>
<td>$1,789,922</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$2,539,922</td>
</tr>
</tbody>
</table>

#### 134—State Board of Risk and Insurance Management

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$3,000,000</td>
</tr>
</tbody>
</table>

#### 135—West Virginia Board of Regents (Control)

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$2,500,000</td>
</tr>
</tbody>
</table>

#### 136—West Virginia Board of Regents

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$165,000</td>
</tr>
</tbody>
</table>

#### 137—State Department of Education

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tuition Waiver—Total</td>
<td>$13,079</td>
</tr>
</tbody>
</table>

#### 138—Teachers Retirement System

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$-0-</td>
</tr>
</tbody>
</table>

#### 139—West Virginia Library Commission

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>$318,934</td>
</tr>
</tbody>
</table>

#### 140—Department of Human Services

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>2</td>
<td>Medical Services</td>
<td>$25,851,083</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$30,851,083</td>
</tr>
</tbody>
</table>
141—Consolidated Medical Services Fund

Acct. No. 4190

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

142—Department of Energy

Acct. No. 4775

1 Unclassified—Total ........ $ — $ 135,000

143—West Virginia Public
Legal Services Council

Acct. No. 5900

1 Unclassified—Total ........ $ — $ 1,800,000

144—Human Rights Commission

Acct. No. 5980

1 Unclassified—Total ........ $ — $ 74,850

145—West Virginia
Public Employees Retirement System

Acct. No. 6140

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

146—West Virginia Public
Employees Insurance Agency

Acct. No. 6150

1 Unclassified—Total ........ $ — $ 7,750,000

Sec. 7. Deposit of net profits of lottery. Net profits of the lottery, not to exceed eighteen million dollars, are to be deposited by the lottery director to the following accounts in the amounts indicated. The auditor shall prorate each deposit of net profits by the lottery director among the following accounts not to exceed the amounts indicated. Net profits in excess of eighteen million dollars are not subject to spending authorized by article two, chapter five-a of the code.
147—Board of Trustees of the
University System of West Virginia
Board of Directors of the
State College System
(Board of Regents)
(WV Code Chapter 18B)
Acct. No. 8825
TO BE PAID FROM LOTTERY NET PROFITS

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

148—State Department of Education
(WV Code Chapters 18 and 18A)
Acct. No. 8243
TO BE PAID FROM LOTTERY NET PROFITS

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

149—Department of Health and Human Resources
(WV Code Chapters 9, 48 and 49)
Acct. No. 9132
TO BE PAID FROM LOTTERY NET PROFITS

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

150—Division of Commerce
(WV Code Chapter 5B)
Acct. No. 8546
TO BE PAID FROM LOTTERY NET PROFITS

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

Sec. 8. Appropriations and reappropriations—
sharing trust fund at the close of the fiscal year 1988-89 are hereby reappropriated for expenditure during the fiscal year 1989-90.

151—West Virginia Department of Highways

Acct. No. 9705

Chief Mingo Recreation
Park Capital Outlay $ 50,000

Sec. 9. Appropriations from federal block grants.—The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 1989-90.

152—Office of Community and Industrial Development—Community Development

Acct. No. 8029

TO BE PAID FROM FEDERAL FUNDS

Unclassified—Total $ 15,288,000

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

Acct. No. 8030

TO BE PAID FROM FEDERAL FUNDS

Unclassified—Total $ 45,954,217

154—Office of Community and Industrial Development—Community Service

Acct. No. 8031

TO BE PAID FROM FEDERAL FUNDS

Unclassified—Total $ 6,323,664

155—Office of Community and Industrial Development—Justice Assistance

Acct. No. 8032

TO BE PAID FROM FEDERAL FUNDS

To Local Entities—Total $ 320,000
### Appropriations

#### 156—State Department of Education—Education Grant
Acct. No. 8242
TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>$ 44,834,122</th>
</tr>
</thead>
</table>

#### 157—Division of Health—Maternal and Child Health
Acct. No. 8502
TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>$ 7,350,340</th>
</tr>
</thead>
</table>

#### 158—Division of Health—Alcohol, Drug Abuse and Mental Health
Acct. No. 8503
TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>$ 7,500,000</th>
</tr>
</thead>
</table>

#### 159—Division of Health—Preventive Health
Acct. No. 8506
TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>$ 1,499,572</th>
</tr>
</thead>
</table>

#### 160—Division of Health—Mental Health Services for the Homeless
Acct. No. 8508
TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>$ 400,000</th>
</tr>
</thead>
</table>

#### 161—Division of Health—Alcohol and Drug Abuse Treatment and Rehabilitation
Acct. No. 8510
TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th>Unclassified—Total</th>
<th>$ 750,000</th>
</tr>
</thead>
</table>
162—Division of Human Services—
Energy Assistance
Acct. No. 9147
TO BE PAID FROM FEDERAL FUNDS

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

163—Division of Human Services—
Social Services
Acct. No. 9161
TO BE PAID FROM FEDERAL FUNDS

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

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

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

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

164—Division of Finance and Administration
Acct. No. 2100

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

165—Governor’s Office-Debt Service
Acct. No. 1250

1 Loan Payback to Consolidated
2 Investment Fund ......................... $ 8,000,000
Sec. 11. Special revenue appropriations.—There are hereby appropriated for expenditure during the fiscal year one thousand nine hundred ninety appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve of the code: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve, and article two, chapter five-a of the code, unless the spending unit has filed with the director of the budget, the auditor and the legislative auditor prior to the beginning of each fiscal year:

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

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

Sec. 12. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year one thousand nine hundred ninety, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year one thousand nine hundred ninety to be expended as authorized by the governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in
the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 13. Specific funds and collection accounts.—A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of article three, chapter twelve of the code.

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

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

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

The municipal bond commission shall reimburse the state of West Virginia through the governor from the first remittance collected from the West Virginia
housing development fund or from any state agency or local taxing district for which the governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

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

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

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

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

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

TITLE III. ADMINISTRATION.
§1. Appropriations conditional.
§2. Constitutionality.

Section 1. Appropriations conditional.—The ex-
penditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of article two, chapter five-a of the code.

Where spending units or parts of spending units have been absorbed by or combined with other spending units, it is the intent of this act that appropriations and reappropriations shall be to the succeeding or later spending unit created unless otherwise indicated.

Sec. 2. Constitutionality.—If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

CHAPTER 11
(H. B. 2586—By Delegates M. Burke and Murphy)

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

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

Be it enacted by the Legislature of West Virginia:

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

Section 1. Appropriations From General Revenue.

BUSINESS AND INDUSTRIAL RELATIONS

61—West Virginia Racing Commission

(WV Code Chapter 19)

Account No. 4950

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,193,412</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>6,588</td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>100,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,300,000</strong></td>
</tr>
</tbody>
</table>

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

CHAPTER 12

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

[Passed April 4, 1988; in effect from passage. Approved by the Governor.]

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

WHEREAS, The Governor has established the receipt and availability of federal funds for the extension of a continuing program, now available for expenditure in the current fiscal
year of 1988-89, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

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

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

1. **TITLE 2. APPROPRIATIONS.**
2. **Section 2. Appropriation of federal funds.**
3. **CONSERVATION AND DEVELOPMENT**
4. 69—Geological and Economic Survey
5. (WV Code Chapter 29)
6. Account No. 5200
7. 3 Unclassified ........................................... $50,000
8. The purpose of this supplementary appropriation bill is to supplement this account in the budget bill for fiscal year 1988-89 by adding to this existing line item an amount to be used for the continuation of the coal availability program in cooperation with the U.S. Department of the Interior.

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**CHAPTER 13**

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

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

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-nine, to the West Virginia Department of Highways, Account No. 6700, supplementing chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill.
WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated February 13, 1989, wherein on page XIV thereof are set forth the revenues and expenditures of the State Road Fund, including fiscal year 1988-1989; and

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

Be it enacted by the Legislature of West Virginia:

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

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Year 1988-89</td>
<td>Fiscal Year 1988-89</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Maintenance, Expressway</td>
<td></td>
</tr>
<tr>
<td>2 Trunkline and Feeder</td>
<td>$56,100,000</td>
</tr>
<tr>
<td>3 Maintenance, State</td>
<td></td>
</tr>
<tr>
<td>4 Local Services</td>
<td>$79,080,000</td>
</tr>
<tr>
<td>5 Maintenance, Contract</td>
<td></td>
</tr>
<tr>
<td>6 Paving and Secondary Road</td>
<td></td>
</tr>
<tr>
<td>7 Maintenance</td>
<td>$41,268,000</td>
</tr>
<tr>
<td>#</td>
<td>Appropriation</td>
</tr>
<tr>
<td>----</td>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>22</td>
<td>Bridge Repair and Replacement</td>
</tr>
<tr>
<td>23</td>
<td>Inventory Revolving</td>
</tr>
<tr>
<td>24</td>
<td>Equipment Revolving</td>
</tr>
<tr>
<td>25</td>
<td>General Operations</td>
</tr>
<tr>
<td>26</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>27</td>
<td>Debt Service</td>
</tr>
<tr>
<td>28</td>
<td>Interstate Construction</td>
</tr>
<tr>
<td>29</td>
<td>Other Federal</td>
</tr>
<tr>
<td>30</td>
<td>Aid Programs</td>
</tr>
<tr>
<td>31</td>
<td>Appalachian Program</td>
</tr>
<tr>
<td>32</td>
<td>Nonfederal Aid</td>
</tr>
<tr>
<td>33</td>
<td>Construction</td>
</tr>
<tr>
<td>34</td>
<td>Highway Litter</td>
</tr>
<tr>
<td>35</td>
<td>Early Retirement</td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
</tr>
</tbody>
</table>

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

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

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**CHAPTER 14**

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

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

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

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

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

CHAPTER 15
(H. B. 2869—By Delegates Farley and Murphy)

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

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

Be it enacted by the Legislature of West Virginia:

1 That the sum of two hundred thirty-eight thousand three hundred fourteen dollars of the balance in Account No. 8280-99, Public Service Commission; the sum of thirty thousand six hundred seventeen dollars of the
balance in Account No. 8285-99, Public Service Commission-Gas Pipeline Division; and the sum of two hundred seventy-seven thousand seven hundred sixty-six dollars of the balance in Account No. 8290-99, Public Service Commission-Motor Carrier Division, including balances in each of these accounts carried forward on the first day of July, one thousand nine hundred eighty-eight, available for expenditure in the current fiscal year 1988-1989, as appropriated by chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred eighty-eight, known as the budget bill, be supplemented, amended, reduced and caused to expire, and that said sums be transferred to Account No. 9155-67, medical services program, Department of Human Services and be available for expenditure for payment of medical services upon the effective date of this bill.

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

_____

CHAPTER 16
(S. B. 188—Originating in the Committee on Finance)

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

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

Be it enacted by the Legislature of West Virginia:

That section twelve, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.

§12-3-12. Expiration of unexpended appropriations.

Every appropriation which is payable out of the general revenue, or so much thereof as may remain undrawn at the end of the year for which made, shall be deemed to have expired at the end of the year for which it is made, and no warrant shall thereafter be issued upon it: Provided, That warrants may be drawn through the thirty-first day of July after the end of the year for which the appropriation is made if the warrants are in payment of bills for such year and have been encumbered by the budget office prior to July first; but appropriations for buildings and land or capital outlay shall remain in effect, and shall not be deemed to have expired until the end of three years after the passage of the act by which such appropriations are made: Provided, however, That if such thirty-first day of July is on Saturday, then warrants may only be drawn through the Friday immediately preceding such Saturday, but if such thirty-first day of July is on Sunday, the warrants may be drawn through the Monday immediately following such Sunday.

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

CHAPTER 17

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ASSESSORS.


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

CHAPTER 18
(H. B. 2674—By Delegates Metheney and Criss)

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

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

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 31A. BANKS AND BANKING.
ARTICLE 8A. ACQUISITION OF BANK SHARES.

§31A-8A-1. Legislative findings and purpose.

1 After a review of the structure of banking organizations in the state of West Virginia and after full consideration of the complex issues involved, the Legislature hereby finds and determines that:

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

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

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

(d) The deposits of the citizens of this state are a substantial and valuable resource which should serve the economic and industrial growth and development needs, and the consumer needs of the citizens of this state; and since the board could not effectively make a determination that the control of deposits of the citizens of this state by bank holding companies with any banking subsidiaries located outside this state would be used for the above enumerated local needs of this state's citizenry, a bank holding company with any bank subsidiary located outside this state shall be prohibited from acquiring, directly or indirectly, five percent or more of the interest in, or assets of, any bank or bank
35 holding company located in this state, unless acquired
36 pursuant to section seven of this article.

ARTICLE 8B. COMMUNITY REINVESTMENT ACT.

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

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

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

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

CHAPTER 19
(H. B. 2015—By Delegate M. Burke)

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

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

Be it enacted by the Legislature of West Virginia:

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

1 That article two-f, chapter nineteen of the code of
2 West Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.
CHAPTER 20

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

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

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

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 8. BLENNERHASSETT HISTORICAL PARK COMMISSION.

§29-8-1. Legislative findings.

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

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

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

§29-8-5. Cooperation of state agencies and local government with Blennerhassett historical state park commission and division of commerce; powers of local government with respect to development.
§29-8-1. Legislative findings.
1 The Legislature hereby finds and declares that:
2 (1) Blennerhassett Island, situate in the Ohio River
3 near the city of Parkersburg, is a significant historical,
4 natural and archaeological resource of importance to
5 this state and the nation;
6 (2) A well-planned and executed program for the
7 development of educational, cultural and recreational
8 attractions related to events known and believed to have
9 occurred on and near scenic Blennerhassett Island will
10 be of great benefit to all the people of this state and
11 constitutes a most worthy public undertaking; and
12 (3) The primary responsibility for the planning and
13 execution of such a program rests upon the state of West
14 Virginia, while the secondary responsibility for develop-
15 ment rests upon private and other public resources.

§29-8-2. Blennerhassett historical state park commission
established; members; terms; meeting; quo-
rum; compensation; expenses.
1 As of the first day of July, one thousand nine hundred
2 eighty-nine, there is established within the division of
3 commerce the Blennerhassett historical state park
4 commission. As of said date, all assets, real and personal
5 property, debts, liabilities, duties, powers and authority
6 of the Blennerhassett historical park commission are
7 hereby transferred to the division of commerce. The
8 Blennerhassett historical state park commission shall be
9 maintained as an advisory commission as hereinafter
10 provided. The commission shall be composed of ten
11 members who shall be citizens and residents of this
12 state, appointed by the governor for terms of four years,
13 by and with the advice and consent of the Senate:
14 Provided, That the terms of all members previously
15 appointed to the Blennerhassett historical park commis-
16 sion prior to the amendment and reenactment of this
17 section shall continue for the periods originally speci-
18 fied, and no such member serving as of the effective date
19 of such amendment and reenactment need be reapp-
20 pointed.
Each member shall be qualified to carry out the functions of the commission under this article by reason of his special interest, training, education or experience.

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

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

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

For the purpose of carrying out its powers, duties and responsibilities under this article, six members of the commission shall constitute a quorum for the transaction of business. Each member shall be entitled to one vote. The commission shall meet at a time and place designated by the chairman at least four times each fiscal year. Additional meetings may be held when called by the chairman or when requested by five members of the commission or by the governor. All meetings of the commission shall be open to the public. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties under this article.

The commission shall advise the division of commerce
in all matters relating to the development, establishment and maintenance of the Blennerhassett historical state park.

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

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

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

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

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

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

(4) Own or operate, or both, individually or in
conjunction with any other public agency or any private
person, firm or corporation, such facilities and equip-
ment as he considers necessary or convenient for the
implementation of his duties under this article. Without
limiting the generality of the foregoing, such facilities
and equipment may include boats, docks, an amphithea-
tre, parking facilities, the reconstructed Blennerhassett
mansion and other buildings; and

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

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

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

(1) Plan and execute a program for the development
of educational, cultural and recreational attractions
related to events known or believed to have occurred on
and near Blennerhassett Island; and

(2) Plan and execute a program for the development
of Blennerhassett Island and related locations in the
county of Wood so as to preserve and enhance the island
and related locations as a significant historical, natural
and archaeological resource of importance to this state
and the nation.

In carrying out his duties under subdivisions (1) and
(2) of this section, he shall, as near as practicable, adhere
to the recommendations and plans for development
contained in the documents prepared for the Blenner-
hassett historical commission, submitted to the Blenner-
hassett historical park commission on the eighteenth day
of February, one thousand nine hundred seventy-five,
and titled as follows: (a) Summary report for the
development of Blennerhassett Island, (b) physical
master plan, (c) interpretive master plan, (d) environ-
mental impact and (e) market and economic impact.

§29-8-5. Cooperation of state agencies and local govern-
ment with Blennerhassett historical state park
commission and division of commerce; powers
of local government with respect to
development.

(a) All other state and local governmental personnel
and agencies shall cooperate to the fullest possible
extent with the commission and the division to accomp-
lish the proper and effective development of Blennerhas-
ssett Island and related locations in the county of Wood
into a major educational, cultural and recreational
attraction.

(b) The county of Wood, the city of Parkersburg, any
other municipality in the county and any board,
commission, authority, agency or other office created
under authority thereof may, in its discretion, engage in
any activity or undertaking designed to assist the
commission and the division in the proper and effective
development of Blennerhassett Island and related
locations in the county of Wood into a major educational,
cultural and recreational attraction.

CHAPTER 21
(H. B. 2700—By Delegate Farley)

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

AN ACT to amend and reenact section twenty-one, article two-
c, chapter thirteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to the allocation of the state ceiling for private activity
bonds; declaring public policy of the state to include the
construction of facilities for the generation of power
through the utilization of coal waste; clarifying that
issuers of private activity bonds shall include the West
Virginia public energy authority; facilitating the
allocation of the state ceiling for certain projects producing energy from coal waste; and expanding the period for reservation of the state ceiling for certain projects producing energy from coal waste.

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

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

**ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.**

**§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carryovers.**

(a) Private activity bonds (as defined in section 141(a) of the United States Internal Revenue Code of 1986, other than those described in section 146(g) of the Internal Revenue Code) issued pursuant to this article, including bonds issued by the West Virginia public energy authority pursuant to subsection (8), section five, article one, chapter five-d of this code, or under article eighteen, chapter thirty-one of this code, during any calendar year shall not exceed the ceiling established by section 146(d) of the United States Internal Revenue Code. It is hereby determined and declared as a matter of legislative finding (i) that the production of bituminous coal in this state has resulted in coal waste, which coal waste is stored in areas generally referred to as gob piles; (ii) that such gob piles are unsightly and have the potential to pollute the environment in this state; (iii) that the utilization of the materials in such gob piles to produce alternative forms of energy needs to be encouraged; (iv) that section 142(a)(6) of the United States Internal Revenue Code of 1986 permits the financing of solid waste disposal facilities through the issuance of such private activity bonds; (v) that it is in the best interest of this state and the citizens thereof to facilitate the construction of facilities for the generation of power through the utilization of coal waste by
providing an orderly mechanism for the commitment of
the annual ceiling for private activity bonds for such
projects.

(b) On or before the first day of each calendar year,
the director of the governor’s office of community and
industrial development shall determine the state ceiling
for such year based on the criteria of the United States
Internal Revenue Code, which annual ceiling shall be
allocated among the several issuers of bonds under this
article or under article eighteen, chapter thirty-one of
this code, as follows:

(1) Fifty million dollars shall be allocated to the West
Virginia housing development fund for the purpose of
issuing qualified mortgage bonds, qualified mortgage
certificates or bonds for qualified residential rental
projects.

(2) One half the total state ceiling for each year
remaining after the allocation to the West Virginia
housing development fund described in subdivision
(1) shall be allocated to the counties on a per capita
basis and, unless the context in which used requires
otherwise, shall be hereinafter in this section referred
to as the “county allocation.”

(3) One half of the total state ceiling for each year
remaining after the allocation to the West Virginia
housing development fund described in subdivision
(1) shall be retained by the state of West Virginia by
the governor’s office of community and industrial
development and, unless the context in which used
requires otherwise, shall be hereinafter in this section
referred to as the “state allocation.”

(c) The director of the governor’s office of community
and industrial development shall notify each clerk of the
county commission of that county’s apportionment from
the county allocation. All apportionments made to any
county from the county allocation shall be for issues of
the county commission of that county and for issues of
all municipalities or other governmental bodies within
that county.
(d) Notwithstanding the foregoing, in the event the state allocation is fully distributed prior to the first day of July of each calendar year, the governor's office of community and industrial development may reallocate all or any portion of the then remaining county allocation to the state upon the director's notification of such action to the clerk of the several county commissions. Any reallocations of less than all of the then remaining county allocation shall be made proportionately from each county's apportionment then remaining.

(e) Distribution of both the county and state allocations to lessees, purchasers or owners of proposed commercial or industrial projects shall be on a first come, first serve basis and shall not be distributed or allocated for any project until the governmental body, seeking the same shall submit an application for reservation of funds as provided in subsection (f) of this section. The governmental body must first adopt an inducement resolution approving the prospective issuance of bonds and setting forth the amount of bonds to be issued. Each governmental body, which includes the West Virginia public energy authority, seeking an allocation of the state ceiling following the adoption of such inducement resolution shall submit a notice of inducement signed by its clerk, secretary or recorder or other appropriate official to the governor's office of community and industrial development. Such notice shall include such information as may be required by the governor's office of community and industrial development by rule or regulation. Notwithstanding the foregoing, when an issuer described in this section proposes to issue bonds for the purpose of constructing an energy producing project which relies, in whole or in part, upon coal waste as fuel, to the extent such project qualifies as a solid waste facility under section 142(a)(6) of the United States Internal Revenue Code of 1986, such project may be given an allocation from the state ceiling available for any year subsequent to the year in which application is made (other than the amount to be allocated pursuant to subdivision (1) of subsection (b) of this section), at the discretion of the director of the governor's office of community and
industrial development: Provided, That no such discretionary allocation may be made to any single project in an amount in excess of forty percent of the state ceiling available for such year subsequent to the year in which the request is made (exclusive of the amount to be allocated pursuant to subdivision (1) of subsection (b) of this section for such year). A discretionary allocation of the state ceiling for a project described in the preceding sentence shall not be granted by the director of the governor's office of community and industrial development unless the project for which the request is made has received a certification from the Federal Energy Regulatory Commission as a qualifying facility or a cogeneration project.

(f) Currently with or following the submission of its notice of inducement, the governmental body at any time deemed expedient by it may submit its notice of reservation of funds which shall include the following information:

(1) The date of the notice of reservation of funds;

(2) The identity of the governmental body issuing the bonds;

(3) The date of inducement and the prospective date of issuance;

(4) The name of the entity for which the bonds are to be issued;

(5) The amount of the bond issue, or, if the amount of the bond issue for which a reservation of funds has been made has been increased, the amount of the increase;

(6) The type of issue; and

(7) A description of the project for which the bonds are to be issued.

(g) (1) Upon receipt of the notice of reservation of funds by the governor's office of community and industrial development, such office shall immediately note upon the face of such notice the date and time the same was so received and shall within ten days certify
to the governmental body submitting the same (A) that
the statewide ceiling has not been exceeded, if such be
the case, and (B) that the amount of the bond issue has
been allocated and reserved in the name of such
governmental body for the project for which the bonds
are to be issued and, thereafter, the amount of such bond
issue shall be so allocated and reserved.

(2) In the event the amount required in the notifica-
tion of reservation of funds, as provided for in subdivi-
sion (1) of this subsection, exceeds the apportionment
available to that county from the county allocation, the
governor's office of community and industrial develop-
ment shall immediately notify the governmental body
proposing to issue such bonds of that fact and such body
may apply to such office for an apportionment to the
extent of such excess from the state allocation.

(h) The governmental body shall submit a new notice
of reservation of funds pursuant to subsections (f) and
(g) above for any increase in the amount of a bond issue
for which a reservation of funds has been made. Such
notice shall be treated as a new request for a reservation
of funds to the extent of such increase.

(i) If the bond issue for which a reservation has been
made has not been finally closed within one hundred
twenty days of the date of the certification of reservation
to be made by the governor's office of community and
industrial development, as required by the provisions of
subsection (g) of this section, or the thirty-first day of
December following such date of certification if sooner
and a statement of bond closure which has been
executed by the clerk, secretary, recorder or other
appropriate official of the governmental body reserving
the same has not been received by such office within
that time, then such reservation shall expire and be
deemed to have been forfeited and the funds so reserved
shall be released and revert to the county and/or state
allocation, as the case may be, from which the funds
were originally reserved and allocation will then be
made available for other qualified issues in accordance
with this section and the Internal Revenue Code:

Provided, That, as to any notice of reservation of funds
received by the governor's office of community and industrial development during the month of December in any calendar year with respect to any project qualifying as an elective carry forward pursuant to section 146(f)(5) of the Internal Revenue Code, such reservation of funds and the allocation to which the same relates shall not expire or be subject to forfeiture: Provided, however, That any unused state ceiling as of the thirty-first day of December in any year not otherwise subject to a carry forward pursuant to section 146(f) of the Internal Revenue Code shall be allocated to the West Virginia housing development fund, which shall be deemed to have elected to carry forward the unused state ceiling for the purpose of issuing qualified mortgage bonds, qualified mortgage credit certificates or bonds for qualified residential rental projects, each as defined in the Internal Revenue Code. All requests for subsequent reservation of funds and reallocation upon loss of a reservation pursuant to this section will be treated in the same manner as a new notice of reservation of funds in accordance with subsections (f) and (g) above.

(j) Once a reservation of an allocation has been made to an energy producing project which relies, in whole or in part, upon coal waste as fuel and otherwise qualifies as a solid waste facility under section 142(a)(6) of the United States Internal Revenue Code of 1986, notwithstanding the language of subsection (i) of this section, such reservation shall remain fully available with respect to such project until the first day of October in the year from which the reservation of allocation was made at which time, if the bond issue has not been finally closed, the reservation shall expire and be deemed forfeited and the funds so reserved shall be released as provided in subsection (i) of this section.

(k) Any amount of the county allocation remaining unreserved on the first day of October in any calendar year (which amount shall be determined by the director of the governor's office of community and industrial development) shall revert to the state allocation for the remainder of that year, and all notification of reserva-
tion of funds by either the state or any county submitted on or after such date shall be treated on a first come, first serve basis.

(l) The amendments to this section adopted by the Legislature at the regular session thereof, held in the year one thousand nine hundred eighty-nine, shall apply and be effective with respect to such year and to all subsequent years.

CHAPTER 22
(Com. Sub. for S. B. 572—By Senator Tucker, Mr. President)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the exemption of certain charitable organizations from filing annual registration statements with the secretary of state provided that each such charitable organization does not employ professional solicitors or fund-raisers or does not intend to solicit and receive and does not actually raise or receive contributions in excess of ten thousand dollars; and changing the statement printed on solicitation materials relating to the source for documents.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-6. Certain persons and organizations exempt from registration.

(a) The following charitable organizations shall not be required to file an annual registration statement with the secretary of state:

(1) Educational institutions, the curriculums of which
in whole or in part are registered or approved by the
state board of education, either directly or by acceptance
of accreditation by an accrediting body recognized by
the state board of education; and any auxiliary associ-
atations, foundations and support groups which are
directly responsible to any such educational institutions;

(2) Persons requesting contributions for the relief of
any individual specified by name at the time of the
solicitation when all of the contributions collected
without any deductions whatsoever are turned over to
the named beneficiary for his or her use;

(3) Hospitals which are nonprofit and charitable;

(4) Organizations which solicit only within the mem-
bership of the organization by the members thereof:
Provided, That the term "membership" shall not include
those persons who are granted a membership upon
making a contribution as the result of solicitation. For
the purpose of this section, "member" means a person
having membership in a nonprofit corporation, or other
organization, in accordance with the provisions of its
articles of incorporation, bylaws or other instruments
creating its form and organization; and, having bona
fide rights and privileges in the organization, such as
the right to vote, to elect officers, directors and issues,
to hold office or otherwise as ordinarily conferred on
members of such organizations;

(5) Religious organizations, churches or any group
affiliated with and forming an integral part of these
organizations of which no part of the net income inures
to the direct benefits of any individual and which have
received a declaration of current tax-exempt status from
the government of the United States.

(b) The following charitable organizations are exempt
from filing an annual registration statement with the
secretary of state if they do not employ a professional
solicitor or fund-raiser or do not intend to solicit and
receive and do not actually raise or receive contributions
from the public in excess of ten thousand dollars during
a calendar year:
(1) Local youth athletic organizations: Provided, That such organizations may solicit and receive contributions from the public in excess of ten thousand dollars during a calendar year and still be exempt from filing an annual registration statement;

(2) Community civic clubs;

(3) Community service clubs;

(4) Fraternal organizations;

(5) Labor unions;

(6) Local posts, camps, chapters or similarly designated elements or county units of such elements of bona fide veterans organizations or auxiliaries which issue charters to such local elements throughout the state;

(7) Bona fide organizations of volunteer firemen or auxiliaries;

(8) Bona fide ambulance associations or auxiliaries;

(9) Bona fide rescue squad associations or auxiliaries.

Charitable organizations which do not intend to solicit and receive in excess of ten thousand dollars, but do receive in excess of that amount from the public, shall file the annual registration statement within thirty days after contributions are in excess of ten thousand dollars.

(c) Every printed solicitation shall include the following statement: “West Virginia residents may obtain a summary of the registration and financial documents from the secretary of state, state capitol, Charleston, West Virginia 25305. Registration does not imply endorsement.”

CHAPTER 23
(H. B. 2031—By Delegates Love and Leggett)

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

AN ACT to amend article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section,
designated section sixteen, relating to continuation of the commission on charitable organizations.

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

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

**ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.**

**§29-19-16. Continuation of commission.**

1 After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the commission on charitable organizations should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the commission on charitable organizations shall continue to exist until the first day of July, one thousand nine hundred ninety-five.
That section eight, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.


(a) The director of the child advocate office shall, by legislative rule, establish guidelines for child support award amounts so as to ensure greater uniformity by those persons who make child support recommendations and enter child support orders, and to increase predictability for parents, children and other persons who are directly affected by child support orders. There shall be a rebuttable presumption, in any proceeding before a family law master or circuit court judge for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case. The guidelines shall not be followed:

(1) When the child support award proposed to be made pursuant to the guidelines has been disclosed to the parties and each party has made a knowing and intelligent waiver of said amount, and the support obligors have entered into an agreement which provides for the custody and support of the child or children of the parties; or

(2) When the child support award proposed to be made pursuant to the guidelines would be contrary to the best interests of the child or children, or contrary to the best interests of the parties.

(b) The Legislature, by the enactment of this article, recognizes that children have a right to share in their natural parents' level of living. Accordingly, guidelines promulgated under the provisions of this section shall not be based upon any schedule of minimum costs for rearing children based upon subsistence level amounts set forth by various agencies of government. The
Legislature recognizes that expenditures in families are not made in accordance with subsistence level standards, but are rather made in proportion to household income, and as parental incomes increase or decrease, the actual dollar expenditures for children also increase or decrease correspondingly. In order to ensure that children properly share in their parents' resources, regardless of family structure, the guidelines shall be structured so as to provide that after a consideration of respective parental incomes, that child support will be related, to the extent practicable, to the level of living which such children would enjoy if they were living in a household with both parents present.

(c) The guidelines promulgated under the provisions of this section shall take into consideration the financial contributions of both parents. The Legislature recognizes that expenditures in households are made in aggregate form and that total family income is pooled to determine the level at which the family can live. The guidelines shall provide for examining the financial contributions of both parents in relationship to total income, so as to establish and equitably apportion the child support obligation. Under the guidelines, the child support obligation of each parent will vary proportionately according to their individual incomes.

(d) The guidelines shall be structured so as to take into consideration any preexisting support orders which impose additional duties of support upon an obligor outside of the instant case, and shall provide direction in cases involving split or shared custody.

(e) The guidelines shall have application to cases of divorce, paternity, actions for support, and modifications thereof.

(f) In promulgating the legislative rule provided for under the provisions of this section, the director shall be directed by the following legislative findings:

(1) That amounts to be fixed as child support should not include awards for alimony, notwithstanding the fact that any amount fixed as child support will impact upon the living conditions of custodial parents;
(2) That parental expenditures on children represent a relatively constant percentage of family consumption as family consumption increases, so that as family income increases, the family's level of consumption increases, and the children should share in and benefit from this increase;

(3) That parental expenditures on children represent a declining proportion of family income as the gross income of the family increases, so that while total dollar outlays for children have a positive relationship to the family's gross income, the proportion of gross family income allotted for the children has a negative relationship to gross income;

(4) That expenditures on children vary according to the number of children in the family, and as the number of children in the family increase, the expenditures for the children as a group increase, and the expenditures on each individual child decrease; so that due to increasing economies of scale and the increased sharing of resources among family members, spending will not increase in direct proportion to the number of children;

(5) That as children grow older, expenditures on children increase, particularly during the teenage years.

(g) The director of the child advocate office shall review the guidelines at least once every four years to ensure that their application results in the determination of appropriate child support awards. Such four-year period shall begin on the first day of July, one thousand nine hundred eighty-nine.

CHAPTER 25

(S. B. 380—By Senators Tucker, Mr. President, and Harman, By Request of the Executive)

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

AN ACT to amend article three, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new section, designated section three-a; and to amend and reenact sections twelve, eighteen, thirty-six and thirty-seven, article seven of said chapter, all relating to whom the children's advocate represents.

Be it enacted by the Legislature of West Virginia:

That article three, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-a; and that sections twelve, eighteen, thirty-six and thirty-seven, article seven of said chapter, be amended and reenacted, all to read as follows:

Article
3. Children's Advocate.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-3a. Representation by the children's advocate.

1 Unless otherwise specifically provided, the children's advocate shall represent only the child when participating in any civil action pursuant to the duties of the children's advocate under the provisions of this chapter or chapter forty-eight of this code. The pleadings shall indicate that the children's advocate represents only the child.

ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.

§48A-7-12. Children's advocate to represent child.
§48A-7-18. Duty of court and officials of this state as responding state.
§48A-7-36. Children's advocate to represent child.
§48A-7-37. Registration procedure; notice; children's advocate to enforce order.

§48A-7-12. Children's advocate to represent child.

1 If this state is acting as an initiating state, the children's advocate shall represent the child in any proceedings under this article.

§48A-7-18. Duty of court and officials of this state as responding state.

1 (a) After a circuit court of this state, acting as the
responding court, receives copies of the petition or complaint, certificate and act from the initiating court of another state, the clerk of the circuit court shall docket the case and notify the children’s advocate of such action.

(b) The children’s advocate shall prosecute the case diligently in the best interests of the child. He or she shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

§48A-7-36. Children’s advocate to represent child.

If this state is acting either as a rendering or a registering state, the children’s advocate shall represent the child in proceedings under sections thirty-three through thirty-eight of this article.

§48A-7-37. Registration procedure; notice; children’s advocate to enforce order.

(a) An obligee seeking to register a foreign support order in a circuit court of this state shall transmit to the clerk of the court (1) three certified copies of the order with all modifications thereof, (2) one copy of the reciprocal enforcement of support law of the state in which the order was made, and (3) a statement verified and signed by the obligee, showing the post-office address of the obligee, the last known place of residence and post-office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this article.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a
copy of the registered support order and the post-office
address of the obligee. He shall also docket the case and
notify the children's advocate of his action. The children's
advocate shall proceed diligently to enforce the
order in the best interests of the child.

CHAPTER 26
(S. B. 310—By Senator Lucht)

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

AN ACT to amend and reenact sections one, two, three, four, five, six, eight, nine, ten, eleven and fourteen, article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section sixteen, all relating to the registration of family day care homes by the commissioner of human services; general requirements for registration; and penalties and injunctions.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, eight, nine, ten, eleven and fourteen, article two-b, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section sixteen, all to read as follows:

ARTICLE 2B. DUTIES OF COMMISSIONER OF HUMAN SERVICES FOR CHILD WELFARE.

§49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.
§49-2B-3. License, approval and registration requirements.
§49-2B-5. Penalties; injunctions.
§49-2B-6. Conditions of licensure, approval and registration.
§49-2B-8. Application for license or approval.
§49-2B-10. Investigating authority.
§49-2B-11. Revocation; provisional licenses and approval.
§49-2B-14. Annual reports; directory; licensing reports and recommendations.


§49-2B-1. Policy and purpose; transfer of powers of child welfare licensing board.

It is the policy of the state to assist a child and the child’s family as the basic unit of society through efforts to strengthen and preserve the family unit. In the event of a temporary or permanent absence of parents or the separation of a child from the family unit for care or treatment purposes, it is the policy of the state to assure that a child receives care and nurturing as close as possible to society’s expectations of a family’s care and nurturing of its child. The state has a duty to assure that proper and appropriate care is given and maintained.

Through licensing, approving and registering child care facilities and child welfare agencies, the state exercises its benevolent police power to protect the user of a service from risks against which he or she would have little or no competence for self protection. Licensing, approval and registration processes must therefore continually balance the child’s rights and need for protection with the interests, rights and responsibility of the service providers.

In order to carry out the above policy, the Legislature enacts this article to protect and prevent harm to children separated from their families and to enhance their continued growth and well-being while in care.

The purposes of this article are:

(i) To protect the health, safety and well-being of children in substitute care by preventing improper and harmful care; (ii) to establish statewide rules for regulating programs as defined in this article; and (iii) to encourage and assist in the improvement of child care programs. In order to carry out these purposes, the powers of the child welfare licensing board created by chapter nineteen, acts of the Legislature, one thousand nine hundred forty-five, are hereby transferred to the commissioner of human services, along with the other powers granted by this article.

1 As used in this article, unless the context otherwise requires:

2 "Approval" means a finding by the commissioner that a facility operated by the state has met the requirements set forth in the rules promulgated pursuant to this article.

3 "Certificate of approval" means a statement of the commissioner that a facility operated by the state has met the requirements set forth in the rules promulgated pursuant to this article.

4 "Certificate of license" means a statement issued by the commissioner authorizing an individual, corporation, partnership, voluntary association, municipality or county, or any agency thereof, to provide specified services for a limited period of time in accordance with the terms of the certificate.

5 "Certificate of registration" means a statement issued by the commissioner to a family day care home upon receipt of a self-certification statement of compliance with the rules promulgated pursuant to the provisions of this article.

6 "Child" means any person under eighteen years of age.

7 "Child care" means responsibilities assumed and services performed in relation to a child's physical, emotional, psychological, social and personal needs and the consideration of the child's rights and entitlements.

8 "Child placing agency" means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children who are sixteen or seventeen years old and living in unlicensed residences.

9 "Commissioner" means the commissioner of human services.
“Day care center” means a facility operated by a child welfare agency for the care of seven or more children on a nonresidential basis.

“Department” means the state department of human services.

“Facility” means a place or residence, including personnel, structures, grounds and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose.

“Family day care” means nonresidential child care provided for compensation in a home other than the child’s own home. The provider may care for four to six children, including children who are living in the household, who are under six years of age. No more than two of the total number of children may be under twenty-four months of age.

“Foster family group home” means a private residence which is used for the care on a residential basis of six, seven or eight children who are unrelated by blood, marriage, or adoption to any adult member of the household.

“Foster family home” means a private residence which is used for the care on a residential basis of no more than five children who are unrelated by blood, marriage, or adoption to any adult member of the household.

“Group home” means any facility, public or private, which is used to provide residential care for ten or fewer children.

“Group home facility” means any facility, public or private, which is used to provide residential care for eleven or more children.

“License” means the grant of official permission to a facility to engage in an activity which would otherwise be prohibited.

“Registration” means the process by which a family
day care home self-certifies compliance with the rules promulgated pursuant to this article.

"Residential child care" or "child care on a residential basis" means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians or other persons or entities on a continuing or temporary basis.

"Rule" means a statement issued by the commissioner of the standard to be applied in the various areas of child care.

"Variance" means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

"Waiver" means a declaration that a certain rule is inapplicable in a particular circumstance.

§49-2B-3. License, approval and registration requirements.

(a) Any person, corporation, or child welfare agency other than a state agency, which operates a residential child care facility, a child placing agency or a day care center shall have a license.

(b) Any residential child care facility, day care center or any child placing agency operated by the state shall obtain approval of its operations from the commissioner. Such facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

(c) Every family day care home shall have a certificate of registration. Family day care homes approved by the department of human services for receipt of funding shall automatically receive a certificate of registration.

(d) This section does not apply to:

(1) A kindergarten, preschool or school education program which is operated by a public school or which is accredited by the state department of education, or any other kindergarten, preschool or school programs
which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding thirty days;

(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing; or

(5) Persons providing family day care solely for children related to them.


The commissioner shall promulgate rules for the purpose of carrying out the provisions of this article, to include the family day care registration program, within one hundred eighty days of the effective date hereof pursuant to the provisions of chapter twenty-nine-a of this code: Provided, That any rule promulgated as a result of the enactment of this section in the year one thousand nine hundred eighty-one need not be repromulgated.

The commissioner shall review the rules promulgated pursuant to the provisions of this article at least once every five years, making revisions when necessary or convenient.

§49-2B-5. Penalties; injunctions.

(a) Any individual or corporation which operates a child welfare agency, residential child care facility or day care center without a license when a license is required is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in jail not exceeding one year, or a fine of not more than five hundred dollars, or both fined and imprisoned.

(b) Where a violation of this article or a rule or
regulation promulgated by the commissioner may result in serious harm to children under care, the commis-

11 sioner may seek injunctive relief against any person, corporation, child welfare agency, child placing agency,

day care center, family day care home or governmental

14 official through proceedings instituted by the attorney
general, or the appropriate county prosecuting attorney,
in the circuit court of Kanawha County or in the circuit
court of any county where the children are residing or
may be found.

§49-2B-6. Conditions of licensure, approval and registration.

(a) A license or approval is effective for a period of two years from the date of issuance, unless revoked or modified to provisional status based on evidence of a failure to comply with the provisions of this article or any rules and regulations promulgated pursuant to this article. The license or approval shall be reinstated upon application to the commissioner and a determination of compliance.

A certificate of registration is effective for a period of two years from the date of issuance, unless revoked based on evidence of a failure to comply with the provisions of this article or any rules and regulations promulgated pursuant to this article. The certificate of registration shall be reinstated upon application to the commissioner, including a statement of assurance of continued compliance with the rules and regulations promulgated pursuant to this article.

The license, approval or registration issued under this article is not transferable and applies only to the facility and its location stated in the application. The license or approval shall be publicly displayed, except family day care homes, foster family homes, foster family group homes and group homes shall be required to display licenses or registration certificates upon request rather than by posting.

(b) A provisional license or approval may be issued as:

(i) An initial license or approval to a new facility
which has been unable to demonstrate full compliance because the facility is not fully operational; or

(ii) A temporary license or approval to an established licensed facility which is temporarily unable to conform to the provisions of this article or the rules and regulations promulgated hereunder.

A provisional license or approval shall expire six months from the date of issuance and may be reinstated no more than two times. The issuance of a provisional license or approval shall be contingent upon the submission to the commissioner of an acceptable plan to overcome identified deficiencies within the period of the provisional license or approval. Provisional certificates of registration shall be issued to family day care homes.

(c) The commissioner, as a condition of issuing a license, registration or approval, may:

(i) Limit the age, sex or type of problems of children allowed admission to a particular facility;

(ii) Prohibit intake of any children; or

(iii) Reduce the number of children which the agency or facility operated by the agency is licensed, approved or registered to receive.

§49-2B-8. Application for license or approval.

Any person or corporation, or any governmental agency intending to act as a child welfare agency shall apply for a license, approval or registration certificate to operate child care facilities regulated by this article. Applications for license, approval or registration shall be made separately for each child care facility to be licensed, approved or registered.

The commissioner may prescribe forms and reasonable application procedures.

(a) Before issuing a license or approval, the commissioner shall investigate the facility, program and persons responsible for the care of children. The investigation shall include, but not be limited to, review of resource need, reputation, character and purposes of applicants, a check of personnel criminal records, if any, and personnel medical records, the financial records of
applicants, and consideration of the proposed plan for child care from intake to discharge.

(b) Before a family day care home registration is granted, the commissioner shall make inquiry as to the facility, program and persons responsible for the care of children. The inquiry shall include self-certification by the prospective family day care home of compliance with standards including, but not limited to:

(i) Physical and mental health of persons present in the home while children are in care;
(ii) Criminal and child abuse or neglect history of persons present in the home while children are in care;
(iii) Discipline;
(iv) Fire and environmental safety;
(v) Equipment and program for the children in care;
(vi) Health, sanitation and nutrition.

Further inquiry and investigation may be made as the commissioner may direct.

The commissioner shall make a decision on each application within sixty days of its receipt and shall provide to unsuccessful applicants written reasons for the decision.


The commissioner shall provide supervision to ascertain compliance with the rules and regulations promulgated pursuant to this article through regular monitoring, visits to facilities, documentation, evaluation and reporting. The commissioner shall be responsible for training and education, within fiscal limitations, specifically for the improvement of care in family day care homes. The commissioner shall consult with applicants, the personnel of child welfare agencies, and children under care to assure the highest quality child care possible. The director of the department of health and the state fire marshal shall cooperate with the commissioner in the administration of the provisions of
§49-2B-10. Investigating authority.

1 The commissioner shall enforce the provisions of this article. An on-site evaluation of every facility regulated pursuant to this article, except registered family day care homes, shall be conducted no less than once per year by announced or unannounced visits. A random sample of not less than five percent of registered family day care homes shall be monitored annually through on-site evaluations. The commissioner shall have access to the premises, personnel, children in care and records of the facility, including, but not limited to, case records, corporate and financial records and board minutes. Applicants for licenses, approvals and certificates of registration shall consent to reasonable on-site administrative inspections, made with or without prior notice, as a condition of licensing, approval or registration. When a complaint is received by the commissioner alleging violations of licensure, approval or registration requirements, the commissioner shall investigate the allegations. The commissioner may notify the facility's director before or after a complaint is investigated and shall cause a written report of the results of the investigation to be made.

The commissioner may enter any unlicensed, or unapproved child care facility or personal residence for which there is probable cause to believe that the facility or residence is operating in violation of this article. Such entries shall be made with a law-enforcement officer present. The commissioner may enter upon the premises of any unregistered family day care facility after two attempts by the commissioner to bring this facility into compliance.


(a) The commissioner may revoke or make provisional the license of any facility or child welfare agency regulated pursuant to this article, except family day care homes, if a certificate holder materially violates...
any provision of this article, or any terms or conditions
of the license or approval issued, or fails to maintain
established requirements of child care.

(b) The commissioner may revoke the certificate of
registration of any family day care home if a certificate
holder materially violates any provision of this article,
or any terms or conditions of the registration certificate
issued, or fails to maintain established requirements of
child care.

§49-2B-14. Annual reports; directory; licensing reports
and recommendations.

The commissioner shall submit on or before the first
day of January of each year a report to the governor,
and upon request to members of the Legislature,
concerning the regulation of child welfare agencies,
child placing agencies, day care centers, family day care
homes and child care facilities during the year. The
report shall include, but not be limited to, data on the
number of children and staff at each facility (except
family day care homes), applications received, types of
licenses, approvals and registrations granted, denied,
made provisional or revoked and any injunctions
obtained or facility closures ordered.

The commissioner also shall compile annually a
directory of licensed and approved child care providers
including a brief description of their program and
facilities, the program's capacity and a general profile
of children served. A listing of family day care homes
shall also be compiled annually.

Licensing reports and recommendations for licensure
which are a part of the yearly review of each licensed
facility shall be sent to the facility director. Copies shall
be available to the public upon written request to the
commissioner.


The commissioner shall provide ongoing education of
the public in regard to the requirements of this article
through the use of mass media and other methods as are
deemed appropriate.
CHAPTER 27

(Com. Sub. for H. B. 2130—By Delegate Hatfield)

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

AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-d, relating to providing services to dysfunctional families in order to prevent outside placement of the children thereof; findings and purpose; definitions; requiring a judicial determination of whether or not reasonable efforts have been made before children may be placed outside the home; caseload limits; situational criteria requiring service; service delivery through purchase of service contracts; and provision of special services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2D. HOME-BASED FAMILY PRESERVATION ACT.

§49-2D-1. Findings and purpose.
§49-2D-2. Definitions.
§49-2D-3. Hearing required to determine "reasonable efforts."
§49-2D-4. When family preservation services required.
§49-2D-5. Caseload limits for home-based preservation services.
§49-2D-6. Situational criteria requiring service.
§49-2D-7. Service delivery through service contracts; accountability.
§49-2D-8. Provision of special services.

§49-2D-1. Findings and purpose.

The Legislature finds that there exists a need in this state to assist dysfunctional families by providing nurture and care to such families’ children as an alternative to removing children from such families.

The Legislature also finds that the family is the primary social institution responsible for meeting the
needs of children and that the state has an obligation to assist families in this regard.

The Legislature further finds that children have significant emotional and social ties to the natural or surrogate family beyond basic care and nurture for which the family is responsible.

The purpose of this article is to establish a pilot program to evaluate the utility of providing intensive intervention with the families of children that are at risk of being removed from the home. For these limited purposes, the department is authorized to use available appropriate funds for such intervention service, but only to the extent that such moneys would normally be available for the removal and placement of the particular child at risk.

§49-2D-2. Definitions.

As used in this article, the following terms have the meanings indicated:

(a) "Dysfunctional family" means a parent or parents or an adult or adults and a child or children living together and functioning in an impaired or abnormal manner so as to cause substantial physical or emotional danger, injury or harm to one or more children thereof regardless of whether such children are natural offspring, adopted children, step children or unrelated children to such parents.

(b) "Home-based family preservation services" means services dispensed by the department of human services or by another person, association or group who has contracted with the department of human services to dispense such services when such services are intended to stabilize and maintain the natural or surrogate family in order to prevent the placement of children in substitute care. There are two types of home-based family preservation services and they are as follows:

(1) Intensive, short term intervention of four to six weeks; and
§49-2D-3. Hearing required to determine “reasonable efforts.”

A hearing by a circuit court of competent jurisdiction is required to determine whether or not “reasonable efforts” have been made to stabilize and maintain the family situation before any child may be placed outside the home: Provided, That in the event any child appears in imminent danger of serious bodily or emotional injury or death in any home, a post-removal hearing shall be substituted for the pre-removal hearing.

§49-2D-4. When family preservation services required.

Home-based family preservation services are required in all cases where the removal of a child or children is seriously being considered, whether from a natural home or a surrogate home, wherein a child or children have lived for a substantial period of time: Provided, That such services are not required when the child appears in imminent danger of serious bodily or serious emotional injury.

§49-2D-5. Caseload limits for home-based preservation services.

For purposes of this article, no contractor employee of the department of human services may exceed three families during any period of time when such contractor employee is engaged in providing intensive, short term home-based family preservation intervention. In addition, no caseload may exceed six families during any period of time when home-based aftercare is provided pursuant to this article.

When providing either type of home-based family preservation services to any family, the department of human services or contractor shall provide trained personnel who shall be available during nonworking hours to assist families on an emergency basis.

§49-2D-6. Situational criteria requiring service.

Services required by this article shall be made
available to any dysfunctional family in which there exists an imminent risk of placement of at least one child outside the home as the result of abuse, neglect, dependency or delinquency or any emotional and behavioral problems.

Payment for contractual services shall be on a cost per family basis. Any renewal of any such contract shall be based on performance.

§49-2D-7. Service delivery through service contracts; accountability.

Services required by this article which are not practically deliverable directly from the department of human services may be subcontracted to professionally qualified private individuals, associations, agencies, corporations, partnerships or groups. The service provider shall be required to submit monthly activity reports as to any services rendered to the department of human services. Such activity reports shall include project evaluation in relation to individual families being served as well as statistical data concerning families that are referred for services which are not served due to unavailability of resources. Costs of program evaluation are an allowable cost consideration in any service contract negotiated in accordance with this article. The department shall conduct a thorough investigation of the contractors utilized by the department pursuant to this article. The department shall further include the results of this investigation in its report to the Legislature required by section nine of this article.

§49-2D-8. Provision of special services.

Costs of providing special services to families receiving regular services in accordance with this article are allowable to the extent such goods and services are justified pursuant to carrying out the purposes of this article. Such special services may include, but are not limited to, homemaker assistance, food, clothing, educational materials, respite care and recreational or social activities.

The department is authorized to use appropriate state, federal, and/or private funds within its budget for the provision of family preservation and reunification services. Appropriated state funding made available through capture of additional federal funds shall be utilized to provide family preservation and reunification services as described in this article. Costs of providing home-based services described in this article shall not exceed the costs of out-of-home care which would be incurred otherwise. Notwithstanding the other provisions of this article to the contrary, it is the intent of this legislation to permit the department to establish a pilot program in FY90 to serve two hundred families. The department is vested with discretion to select target populations using geographical or other criteria it deems appropriate.

The department shall report back to the Legislature by the thirty-first day of December, one thousand nine hundred ninety, on the feasibility of using funds currently earmarked for the placement of children for the intervention and what additional amounts may be needed to fully implement this article.

CHAPTER 28

(Com. Sub. for S. B. 308—By Senators Tucker, Mr. President, and Harman, By Request of the Executive)

[Passed March 23, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section four, article four, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to an advisory board of physicians for the handicapped children’s board.

Be it enacted by the Legislature of West Virginia:

That section four, article four, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed as follows:
ARTICLE 4. HANDICAPPED CHILDREN.

§49-4-4. Repeal of section relating to an advisory board of physicians for the handicapped children's board.

Section four, article four, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 29

(Com. Sub. for H. B. 2665—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

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

AN ACT to repeal sections four-a, thirteen, fifteen and eighteen, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article two, chapter five-f; to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fourteen, sixteen, seventeen, seventeen-a, seventeen-b, twenty, twenty-one and twenty-three, article six, chapter twenty-nine; and to further amend article six by adding thereto two new sections, designated sections nine-a and twenty-five, all relating to the civil service system; modification of layoff and bumping rights of classified employees; definition of terms; classified service; classified-exempt service; exemptions; creation of division of personnel; sections; creation of personnel board; members; terms; quorum; vacancies; powers and duties; director of division of personnel appointed; qualifications; powers and duties; civil service commission abolished; transfer of duties and responsibilities; rule of construction; transfer of employees, equipment, and records; continuation of programs, protections and rules; state personnel advisory council; rules of division; eligible lists; duties of state officers and employees; legal proceedings; certification of payrolls; wrongfully withholding certification of payroll; repeal of archaic
provisions and provisions relating to functions formerly transferred to the education and state employees grievance board; records of state personnel division; services to political subdivisions; apprenticeship program; advisory board for the apprenticeship program; favoritism or discrimination; acts prohibited; appropriations, cost of administering article; acceptance of grant or contribution; implementation; and report to governor and Legislature.

Be it enacted by the Legislature of West Virginia:

That sections four-a, thirteen, fifteen and eighteen, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two, article two, chapter five-f be amended and reenacted; that sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fourteen, sixteen, seventeen, seventeen-a, seventeen-b, twenty, twenty-one and twenty-three, article six, chapter twenty-nine be amended and reenacted; and that article six be further amended by adding thereto two new sections, designated sections nine-a and twenty-five, all to read as follows:

Chapter
5F. Reorganization of the Executive Branch of State Government.
29. Miscellaneous Boards and Officers.

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

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

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

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

(1) Employ and discharge within the office of the secretary such employees as may be necessary to carry out the functions of the secretary, which employees shall serve at the will and pleasure of the secretary;
(2) Cause the various agencies and boards to be operated effectively, efficiently and economically, and develop goals, objectives, policies and plans that are necessary or desirable for the effective, efficient and economical operation of the department;

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

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

(5) Reorganize internal functions or operations;

(6) Formulate comprehensive budgets for consideration by the governor, and transfer within the department funds appropriated to the various agencies of the department which are not expended due to cost savings resulting from the implementation of the provisions of this chapter: Provided, That no more than twenty-five percent of the funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: Provided, however, That no funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or funds specifically exempted by the Legislature from transfer, except that the use of appropriations from the state road fund transferred to the office of the secretary of the department of transportation is not a use other than the purpose for which such funds were dedicated and is permitted: Provided further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary may transfer the funds formerly appropriated to such agency, board or function in order to implement such consolidation. The authority to transfer funds under this section shall expire on the thirtieth day of June, one thousand nine hundred eighty-nine;

(7) Enter into contracts or agreements requiring the expenditure of public funds, and authorize the expenditure or obligating of public funds as authorized by
Provided, That the powers granted to the secretary to enter into contracts or agreements and to make expenditures or obligations of public funds under this provision shall not exceed or be interpreted as authority to exceed the powers heretofore granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department under this chapter;

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

(9) Conduct internal audits;

(10) Supervise internal management;

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

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

(13) Delegate to administrators such duties of the secretary as the secretary may deem appropriate from time to time to facilitate execution of the powers, authority and duties delegated to the secretary; and

(14) Take any other action involving or relating to internal management not otherwise prohibited by law.
(b) The secretaries of the departments hereby created shall engage in a comprehensive review of the practices, policies and operations of the agencies and boards within their departments to determine the feasibility of cost reductions and increased efficiency which may be achieved therein, including, but not limited to, the following:

1. The elimination, reduction and restrictions in the use of the state's vehicle or other transportation fleet;
2. The elimination, reduction and restrictions in the preparation of state government publications, including annual reports, informational materials and promotional materials;
3. The termination or renegotiation of terms contained in lease agreements between the state and private sector for offices, equipment and services;
4. The adoption of appropriate systems for accounting, including consideration of an accrual basis financial accounting and reporting system;
5. The adoption of revised procurement practices to facilitate cost effective purchasing procedures, including consideration of means by which domestic businesses may be assisted to compete for state government purchases; and
6. The computerization of the functions of the state agencies and boards.

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

(d) The layoff and recall rights of employees within the classified service of the state as provided in subsections five and six, section ten, article six, chapter
twelve-nine of this code shall be limited to the organ-
izational unit within the agency or board and within the
occupational group established by the classification and
compensation plan for the classified service of the
agency or board in which the employee was employed
prior to the agency or board’s transfer or incorporation
into the department: Provided. That the employee shall
possess the qualifications established for the job class.
The duration of recall rights provided in this subsection
shall be limited to two years or the length of tenure,
whichever is less. Except as provided in this subsection,
nothing contained in this section shall be construed to
abridge the rights of employees within the classified
service of the state as provided in sections ten and ten-
a, article six, chapter twenty-nine of this code or the
right of classified employees of the board of regents to
the procedures and protections set forth in article
twenty-six-b, chapter eighteen of this code.

CHAPTER 29. MISCELLANEOUS BOARDS
AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

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§29-6-2. Definition of terms.

1 As used in this article, unless the context indicates otherwise, the term:

2 (a) "Administrator" means any person who fills a statutorily created position within or related to an agency or board (other than a board member) and who is designated by statute as commissioner, deputy commissioner, assistant commissioner, director, chancellor, chief, executive director, executive secretary, superintendent, deputy superintendent or other administrative title, however designated;

3 (b) "Agency" means any administrative unit of state government, including any authority, board, bureau, commission, committee, council, division, section or office;

4 (c) "Appointing authority" means a person or group of persons authorized by an agency to make appointments to positions in the classified or classified-exempt service;

5 (d) "Board" means the state personnel board created by section six of this article;

6 (e) "Class" or "class of positions" means a group of positions sufficiently similar in duties, training, experience and responsibilities, as determined by specifications, that the same qualifications, the same title and the same schedule of compensation and benefits may be equitably applied to each position in the group;

7 (f) "Classification plan" means the plan by which positions in the classified service and classified-exempt service have been allocated by class;
(g) "Classified-exempt service" means an employee whose position satisfies the definitions for "class" and "classify" but who is not covered under the civil service system or employed by the board of regents;

(h) "Classified service" means an employee whose job satisfies the definitions for "class" and "classify" and who is covered under the civil service system;

(i) "Classify" means to group all positions in classes and to allocate every position to the appropriate class in the classification plan;

(j) "Director" means the head of the division of personnel as appointed by section seven of this article;

(k) "Council" means the state personnel advisory council created in section nine-a of this article;

(l) "Division" means the division of personnel herein created;

(m) "Policymaking position" means a position in which the person occupying it (1) acts as an advisor to, or formulates plans for the implementation of broad goals for an administrator or the governor, (2) is in charge of major administrative component of the agency and (3) reports directly and is directly accountable to an administrator or the governor;

(n) "Position" means a particular job which has been classified based on specifications;

(o) "Secretary" means the secretary of the department of administration created in section two, article one, chapter five-f of this code;

(p) "Specification" means a description of a class of position which defines the class, provides examples of work performed and the minimum qualifications required for employment;

(q) "Veteran" means any person who has served in the armed forces of the United States of America during World War I (April 6, 1917-November 11, 1918), World War II (December 7, 1941-December 31, 1946), the Korean Conflict (June 27, 1950-January 31, 1955), or the
Vietnam Conflict (August 5, 1964-May 7, 1975), and who has received a discharge under honorable conditions from such service.

§29-6-3. Classified service.

The classified service includes all positions covered by the civil service system as of the effective date of this article, except as otherwise provided in this article. Positions may be added to the classified service as provided in section four of this article.

§29-6-4. Classified-exempt service; additions to classified service; exemptions.

(a) The classified-exempt service includes all positions included in the classified-exempt service on the effective date of this article.

(b) Except for the period commencing on the first day of July, one thousand nine hundred ninety-two, and ending on the first Monday after the second Wednesday of the following January and except for the same periods commencing in the year one thousand nine hundred ninety-six, and in each fourth year thereafter, the governor may, by executive order, with the written consent of the state personnel board and the appointing authority concerned, add to the list of positions in the classified service, but such additions shall not include any positions specifically exempted from coverage as provided in this section.

(c) The following offices and positions are exempt from coverage under the classified service:

(1) All judges, officers and employees of the judiciary;

(2) All members, officers and employees of the Legislature;

(3) All officers elected by popular vote and employees of the officer;

(4) All secretaries of departments and employees within the office of a secretary;

(5) Members of boards and commissions and heads of departments appointed by the governor or such heads
of departments selected by commissions or boards when expressly exempt by law or board order;

(6) Excluding the policymaking positions in an agency, one principal assistant or deputy and one private secretary for each board or commission or head of a department elected or appointed by the governor or Legislature;

(7) All policymaking positions;

(8) Patients or inmates employed in state institutions;

(9) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation or examination on behalf of the Legislature or a committee thereof, an executive department or by authority of the governor;

(10) All employees of the office of the governor, including all employees assigned to the executive mansion;

(11) County road supervisors employed by the department of highways or their successors;

(12) Part-time professional personnel engaged in professional services without administrative duties and personnel employed for ninety days or less during a working year;

(13) Members and employees of the board of regents or its successor agencies;

(14) Uniformed personnel of the division of public safety; and

(15) Seasonal employees in the state forests, parks, and recreational areas working less than 1040 hours per calendar year.

(d) The Legislature finds that the holding of political beliefs and party commitments consistent or compatible with those of the governor contributes in an essential way to the effective performance of and is an appropriate requirement for occupying certain offices or positions in state government, such as the secretaries of
departments and the employees within their offices, the
heads of agencies appointed by the governor and, for
each such head of agency, a private secretary and one
principal assistant or deputy, all employees of the office
of the governor including all employees assigned to the
executive mansion, as well as any persons appointed by
the governor to fill policymaking positions and county
road supervisors or their successors, in that such offices
or positions are confidential in character and/or require
their holders to act as advisors to the governor or his
appointees, to formulate and implement the policies and
goals of the governor of his appointees, or to help the
governor or his appointees communicate with and
explain their policies and views to the public, the
Legislature and the press.

§29-6-5. Creation of division of personnel; sections.

1. (a) Effective the first day of July, one thousand nine
hundred eighty-nine, there is hereby created a division
of personnel within the executive branch.

2. (b) The division of personnel shall consist of the
following sections:

   (1) Applicant services;
   (2) Classification and compensation;
   (3) Management development and training;
   (4) Program evaluation and payroll;
   (5) Employee services;
   (6) Employee relations; and
   (7) Administrative and staff services.

Each section shall be under the control of a section
chief to be appointed by the director who shall be
qualified by reason of exceptional training and expe-
rience in the field of activities of the respective section.
The director has authority to establish such additional
sections as may be determined necessary to carry out the
purpose of this article.
§29-6-6. State personnel board created; members; term; quorum; vacancies; powers and duties.

(a) There is hereby created within the division a state personnel board which shall consist of five members appointed by the governor with the advice and consent of the Senate for terms of four years and until the appointment of their successors: Provided, That of the members first appointed, one shall be appointed for a term of one year, one for two years, one for three years, and one for four years. No more than three members may be of the same political party. Three members of the board constitute a quorum.

(b) A member of the board may not be removed from office except for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance, and then only in the manner prescribed in article six, chapter six of this code for the removal by the governor of state elected officers.

(c) Citizen members of the board shall each be paid one hundred dollars for each day devoted to the work of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the state.

(d) The board shall elect one of its members as chairperson and shall meet at such time and place as shall be specified by the call of the chairman. At least one meeting shall be held in each month. All meetings shall be open to the public. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting period.

(e) In addition to other powers and duties invested in it by this article or by any other law, the board shall:

(1) Promulgate rules in accordance with chapter twenty-nine-a of this code to implement the provisions of this article;
(2) Interpret the application of this article to any public body or entity;

(3) Authorize and conduct such studies, inquiries, investigations or hearings in the operation of this article as it deems necessary.

(f) The director or the board may subpoena and require the attendance of witnesses in the production of evidence or documents relevant to any proceeding under this article.

§29-6-7. Director of personnel; appointment; qualifications; powers and duties.

(a) The governor shall appoint, by and with the advice and consent of the Senate, the director who shall serve at the will and pleasure of the governor and who shall be paid an annual salary and be governed by the provisions of section three, article two, chapter five-f of this code. The director shall be a person knowledgeable of the application of the merit principles in public employment as evidenced by the obtainment of a degree in business administration, personnel administration, public administration or the equivalent and at least five years of administrative experience in public personnel administration.

(b) The director shall:

(1) Consistent with the provisions of this article administer the operations of the division, allocating the functions and activities of the division among sections as the director may establish;

(2) Maintain a personnel management information system necessary to carry out the provisions of this article;

(3) Supervise payrolls and audit payrolls, reports or transactions for conformity with the provisions of this article;

(4) Plan, evaluate, administer and implement person-
nel programs and policies in state government and to political subdivisions after agreement by the parties;

(5) Supervise the employee selection process and employ performance evaluation procedures;

(6) Develop programs to improve efficiency and effectiveness of the public service, including, but not limited to, employee training, development, assistance and incentives;

(7) Establish pilot programs and other projects for a maximum of one year outside of the provisions of this article, subject to approval by the board, to be included in the annual report;

(8) Establish and provide for a public employee interchange program and may provide for a voluntary employee interchange program between public and private sector employees;

(9) Establish an internship program;

(10) Assist the governor and secretary of the department of administration in general work force planning and other personnel matters;

(11) Make an annual report to the governor and Legislature and all other special or periodic reports as may be required;

(12) Assess cost for special or other services;

(13) Recommend rules to the board for implementation of this article; and

(14) Conduct schools, seminars or classes regarding handling of complaints, disciplinarianal matters and operation of the state personnel board for supervisory employees of the state.

§29-6-8. Duties of board generally.

In addition to the duties expressly set forth elsewhere in this article, the board shall:
(1) Represent the public interest in the improvement of personnel administration in the classified service.

(2) Advise the governor, the secretary, and the director on problems concerning personnel administration.

(3) Foster the interest of institutions of learning and of industrial, civic, professional and employee organizations in the improvement of personnel standards in the classified service.

(4) Make any investigation which it may consider desirable concerning the administration of personnel in the classified service and make recommendations to the director with respect thereto.

(5) Approve the budget as prepared by the director for administration of this article before submission to the division of finance and administration.

§29-6-9. Civil service commission abolished; transfer of duties and responsibilities; rule of construction; transfer of employees, equipment, and records; continuation of programs, protections and rules.

(a) The civil service commission is hereby abolished. All duties and responsibilities heretofore imposed upon the civil service commission are hereby imposed upon the state personnel board, and all duties and responsibilities heretofore imposed upon the director of the civil service system are hereby imposed upon the director of the division of personnel. Except as used in this section, the words "civil service commission" or "commission," when used in this article, shall refer to and mean the state personnel board. Whenever reference is made to the director of the civil service commission, the power or duty prescribed shall apply to the director of the division of personnel.

(b) Persons employed on the effective date of this article by the civil service commission, the duties and functions of which have been transferred to the division
of personnel, are hereby assigned and transferred to the
division of personnel. It is the intent of this article to
consolidate into the division of personnel those agencies
and employees performing personnel functions which
will be facilitated by their consolidation, except as
excluded in section four of this article. On the effective
date of this article, all personnel payroll positions and
employees occupying those positions necessary to
effectuate the purposes of this article shall be trans-
ferred to the division of personnel: Provided, That in
order to provide for a smooth transition, the governor
may, by executive order, determine those positions and
employees that shall be transferred and provide that the
transfers provided for in this subsection take effect no
later than the last day of September, one thousand nine
hundred eighty-nine.

(c) Upon the transfer, if any, of any personnel payroll
positions as provided in subsection (b) of this section
from the division of highways, the division of motor
vehicles, the workers' compensation fund, the public
service commission, or any other department or division
operating from special revenue funds or federal funds,
such department or division shall pay to the division of
personnel the costs of personnel services, as determined
by the secretary of the department of administration,
provided to their respective divisions. When no specific
appropriation is made for this purpose, such payments
shall be made from personal services, annual increment,
and employee benefit appropriations to the department
or division. Upon the transfer of any personnel payroll
positions to the division of personnel from any depart-
ment or division funded from general revenues of the
state, the governor is authorized and empowered to
order the transfer of funds for those positions.

(d) The abolishment of the civil service commission
and the creation of the division of personnel shall in no
way hinder any ongoing programs, benefits, litigation,
or grievance procedures. Employees in the classified
service who have gained permanent status as of the
effective date of this article will not be subject to further
qualifying examination by reason of any transfer
required by the provisions of this section, except when they wish to qualify for promotion. Nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state to the procedures and protections set forth in sections ten and ten-a of this article, except as provided in subsection (d), section two, article two, chapter five-f of this code.

(e) On the effective date of this article, all equipment and records necessary to effectuate the purposes of this article shall be transferred to the division of personnel: Provided, That in order to provide for a smooth transition, the governor may, by executive order, determine the equipment and records to be transferred and provide that the transfers provided for in this subsection take effect no later than the last day of September, one thousand nine hundred eighty-nine.

(f) The rules of the civil service commission shall remain in force and effect until promulgation of new or additional rules by the state personnel board.

(g) Nothing contained in this article shall be construed to preclude the reclassification or reallocation of positions in accordance with procedures set forth in section ten of this article.

§29-6-9a. State personnel advisory council.

(a) There is hereby created the state personnel advisory council, which consists of eleven members appointed by the governor. Six members shall be classified employees and two, classified-exempt employees. Of the remaining three members, one shall be appointed from a list of three persons recommended by the American federation of state, county, and municipal employees; one, from a list of three persons recommended by the communication workers of America; and one, from a list of three persons recommended by district 1199, national union of hospital and health care employees, AFL-CIO. Members of the council shall serve for a term concurrent with that of the governor.

(b) The state personnel advisory council shall:
(1) Advise the director and the board in the development of comprehensive policies and programs for the improvement of personnel administration in the state;

(2) Assist in the formulation of rules and standards relating to the state system of personnel administration;

(3) Assist in the promotion of public understanding of the purposes, policies and practices of the state system of personnel administration.

(c) Members of the council shall receive no compensation, but shall be reimbursed for their actual and necessary expenses.

§29-6-10. Rules of division.

The board shall have the authority to promulgate, amend or repeal rules, in accordance with chapter twenty-nine-a of this code, to implement the provisions of this article.

(1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service and a position classification plan for all positions in the classified-exempt service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. The position classification plan for classified-exempt service shall become effective not later than the first day of July, one thousand nine hundred seventy-nine. Except for persons employed by the board of regents, all persons receiving compensation in the form of a wage or salary, funded either in part or in whole by the state, shall be included in either the position classification plan for classified service or classified-exempt service. After each such classification plan has been approved by the board, the director shall allocate the position of every employee in the classified service to one of the classes in the classified plan and the position of every employee in the classified-exempt service to one of the positions in the classified-exempt plan. Any employee
affected by the allocation of a position to a class shall,
after filing with the director of personnel a written
request for reconsideration thereof in such manner and
form as the director may prescribe, be given a reason-
able opportunity to be heard thereon by the director.
The interested appointing authority shall be given like
opportunity to be heard.

(2) For a pay plan for all employees in the classified
service, after consultation with appointing authorities
and the state fiscal officers, and after a public hearing
held by the board. Such pay plan shall become effective
only after it has been approved by the governor after
submission to him by the board. Amendments to the pay
plan may be made in the same manner. Each employee
shall be paid at one of the rates set forth in the pay plan
for the class of position in which he is employed. The
principle of equal pay for equal work in the several
agencies of the state government shall be followed in the
pay plan as established hereby.

(3) For open competitive examinations to test the
relative fitness of applicants for the respective positions
in the classified service. Such examinations need not be
held until after the rules have been adopted, the service
classified and a pay plan established, but shall be held
not later than one year after this article takes effect.
Such examinations shall be announced publicly at least
fifteen days in advance of the date fixed for the filing
of applications therefor, and may be advertised through
the press, radio and other media. The director may,
however, in his discretion, continue to receive applica-
tions and examine candidates long enough to assure a
sufficient number of eligibles to meet the needs of the
service; and may add the names of successful candidates
to existing eligible lists in accordance with their
respective ratings.

An additional five points shall be awarded to the score
of any examination successfully completed by a veteran.
A disabled veteran shall be entitled to an additional ten
points, rather than five points as aforesaid, upon
successful completion of any examination.
(4) For promotions within the classified service which shall give appropriate consideration to the applicant’s qualifications, record of performance and his score on a written examination, when such examination is practicable. In filling vacancies an effort should be made to achieve a balance between promotion from within the service and the introduction into the service of qualified new employees. An advancement in rank or grade or an increase in salary beyond the maximum fixed for the class shall constitute a promotion.

(5) For layoffs by classification for reason of lack of funds or work, or abolition of a position, or material changes in duties or organization, or any loss of position because of the provisions of this subdivision and for recall of employees so laid off, consideration shall be given to an employee’s seniority as measured by permanent employment in the classified service or a state agency. In the event that the agency wishes to lay off a more senior employee, the agency must demonstrate that the senior employee cannot perform any other job duties held by less senior employees within that agency in the job class, or any other equivalent or lower job class for which the senior employee is qualified: Provided, That if an employee refuses to accept a position in a lower job class, such employee shall retain all rights of recall as hereinafter provided.

(6) For recall of employees, recall shall be by reverse order of layoff to any job class that the employee has previously held or a lower class in the series within the agency as that job class becomes vacant. An employee will retain his place on the recall list for the same period of time as his seniority on the date of his layoff, or for a period of two years, whichever is less. No new employees shall be hired for any vacancy in his or her job class or in a lower job class in the series until all eligible employees on layoff are given the opportunity to refuse that job class. An employee shall be recalled onto jobs within the county wherein his last place of employment is located or within a county contiguous thereto. Any laid-off employee who is eligible for a vacant position shall be notified by certified mail of the
vacancy. It shall be the responsibility of the employee
to notify the agency of any change in his address.

(7) For the establishment of eligible lists for appoint-
ment and promotion within the classified service, upon
which lists shall be placed the names of successful
candidates in the order of their relative excellence in the
respective examinations. Eligibility for appointment
from any such list shall continue not longer than three
years. An appointing authority shall make his selection
from the top ten names on the appropriate lists of
eligibles, or may choose any person scoring at or above
the ninetieth percentile on the examination.

(8) For the rejection of candidates or eligibles within
the classified service who fail to comply with reasonable
requirements in regard to such factors as age, physical
condition, character, training and experience, who are
addicted to alcohol or narcotics, or who have attempted
any deception or fraud in connection with an examina-
tion, or where in the judgment of the board there is
reasonable doubt of the loyalty of the candidate or
allegiance to the nation.

(9) For a period of probation not to exceed one year
before appointment or promotion may be made complete
within the classified service.

(10) For provisional employment without competitive
examination within the classified service when there is
no appropriate eligible list available. No such provi-
sional employment may continue longer than six
months, nor shall successive provisional appointments
be allowed, except during the first year after the
effective date of this article, in order to avoid stoppage
of orderly conduct of the business of the state.

(11) For keeping records of performance of all
employees in the classified service, which service
records may be considered in determining salary
increases and decreases provided in the pay plan; as a
factor in promotion tests; as a factor in determining the
order of layoffs because of lack of funds or work and
in reinstatement; and as a factor in demotions, dis-
charges and transfers.
(12) For discharge or reduction in rank or grade only for cause of employees in the classified service. Discharge or reduction of these employees shall take place only after the person to be discharged or reduced has been presented with the reasons for such discharge or reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the appointing authority or his deputy. The statement of reasons and the reply shall be filed as a public record with the director. Notwithstanding the foregoing provisions of this subdivision, no permanent employee shall be discharged from the classified service for absenteeism upon using all entitlement to annual leave and sick leave when such use has been due to illness or injury as verified by a physician's certification or for other extenuating circumstances beyond the employee's control unless his disability is of such a nature as to permanently incapacitate him from the performance of the duties of his position. Upon exhaustion of annual leave and sick leave credits for the reasons specified herein and with certification by a physician that the employee is unable to perform his duties, a permanent employee shall be granted a leave of absence without pay for a period not to exceed six months if such employee is not permanently unable to satisfactorily perform the duties of his position.

(13) For such other rules and administrative regulations, not inconsistent with this article, as may be proper and necessary for its enforcement.

(14) The board shall review and approve by rules and regulations the establishment of all classified-exempt positions to assure consistent interpretation of the provisions of this article.

The provisions of this section are subject to any modifications contained in chapter five-f of this code. The board may include in the rules provided for in this article such provisions as are necessary to conform to
§29-6-11. Duty to furnish facilities for division's use.

1 All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the division the reasonable use of public buildings under their control, and furnish heat, light and furniture, for any examination, hearing or investigation authorized by this article. The division shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it.

§29-6-12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.

1 All officers and employees of the state shall comply with and aid in all proper ways in carrying out the provisions of this article and the rules and orders thereunder. All officers and employees shall furnish any records or information which the director may request for any purpose of this article. The director may institute and maintain any action or proceeding at law or in equity that he considers necessary or appropriate to secure compliance with this article and the rules and orders thereunder.

§29-6-14. Certification of payrolls; wrongfully withholding certification of payroll.

1 (a) No state disbursing or auditing officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the classified service unless the payroll voucher or account of such pay bears the certification of the director, or of his authorized agent, that the persons named therein have been appointed and employed in accordance with the provisions of this article.
and the rules, regulations and orders thereunder. The director may for proper cause withhold certification from an entire payroll or from any specific item or items thereon. The director may, however, provide that certification of payrolls may be made once every six months, and such certification shall remain in effect except in the case of any officer or employee whose status has changed after the last certification of his payroll. In the latter case no voucher for payment of salary to such employee shall be issued or payment of salary made without further certification by the director.

(b) If the director wrongfully withholds certification of the payroll voucher or account of any employee, such employee may maintain a proceeding in the courts to compel the director to certify such payroll voucher or account.

§29-6-16. Records of division.

The records of the division, except such records as the rules may properly require to be held confidential for reasons of public policy, shall be public records and shall be open to public inspection, subject to reasonable regulations as to the time and manner of inspection which may be prescribed by the director.

§29-6-17. Services to political subdivisions; cooperation with agencies for other jurisdictions.

(a) Subject to the approval of the board the director may enter into agreements with any municipality or other political subdivision of the state to furnish services and facilities of the division to such municipality or political subdivision in the administration of its personnel on merit principles. Any such agreements shall provide for the reimbursement to the state of the reasonable cost of the services and facilities furnished, as determined by the director. All municipalities and political subdivisions of the state are hereby authorized to enter into such agreements. Subject to the approval of the board, the director may enter into an agreement with the state department of health for the inclusion of
personnel of local health departments under the classified service system established by this article.

(b) The director may cooperate with governmental agencies for other jurisdictions charged with personnel administration in conducting joint tests and establishing joint lists from which eligibles shall be certified for appointment in accordance with the provisions of this article.

§29-6-17a. Apprenticeship program.

(a) The division of personnel shall develop and monitor apprenticeship programs for all state agencies that have employees working in apprenticeable trades which are, or may be recognized by, the United States department of labor, bureau of apprenticeship and training.

(b) These apprenticeship programs will be developed and conducted in a manner that will assure meeting the national minimum requirements of quality and be registered with the United States department of labor, bureau of apprenticeship and training.

(c) The director or his designee, in cooperation with the participating appointing authorities within each agency, shall develop and annually revise by the thirty-first day of December a list of employment classifications appropriate for apprenticeship training, which may include, but not be limited to, the following classifications: Computer service technicians; legal assistants; computer systems analysts; computer programmers; computer operators; office machine repairers; physical therapy assistants; electrical engineers; civil engineering technicians; peripheral edp equipment operators; insurance clerks, medical, electrical and electronic technicians; occupational therapists; surveyor helpers; credit clerks, banking and insurance; physical therapists; employment interviewers; mechanical engineers; mechanical engineering technicians; and compression and injection mold machine operators.

(d) The chief administrative officer of each agency in
cooperation with the director or his designee shall establish procedures for the coordination of apprenticeship programs developed in accordance with this section.

(e) Subject to the approval of the director and the procedures established, each participating agency shall determine the location and positions in which apprenticeships are to be established.

(f) The director, or his designee, shall make an annual report to the Legislature and shall include in such report the following:

1. A review of the development and operation of apprenticeship programs;

2. The current list of apprenticeable classifications;

3. A summary of the agencies and types of positions involved;

4. A summary of registered apprenticeships;

5. The number of persons who applied for apprenticeship positions under this section;

6. The number of persons accepted into the apprenticeship programs established in accordance with this section;

7. The number of persons who successfully completed and received a certificate of completion from the United States department of labor, bureau of apprenticeship and training;

8. The number of persons who failed to complete apprenticeships in accordance with this section;

9. The number of persons who remain employed after successfully completing apprenticeships; and

10. A summary of characteristics of applicants and participants in the program deemed pertinent to the director.
(g) The recruitment, selection and training of apprentices during their apprenticeship shall be without discrimination because of race, color, religion, national origin or sex. The division will take affirmative action to provide equal opportunity in apprenticeship programs and will operate the program to assure equal employment in apprenticeship.

(h) No contract between the state and a vendor, whereby persons who have participated in the apprenticeship program are to be hired, may be approved by the attorney general unless and until said contract contains a statement that the vendor will not discriminate in employment or public accommodation because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap of any individual.

§29-6-17b. Advisory board for the apprenticeship program.

In order to better accomplish the goals of this program the apprenticeship advisory board is continued and reestablished. Its members shall include the commissioner of labor or a designee, the commissioner of finance and administration or a designee, the state superintendent of the department of education or a designee, two employees of the state who are covered under the civil service system, and one private citizen, with the employee and citizen members to be appointed by the governor. The employees and the private citizen members shall serve without compensation for two years, after which they may be reappointed. The chairman of the board shall be elected by the board as a whole.

The apprenticeship advisory board shall meet at least semiannually, at the call of the chairman, for the purpose of receiving, reviewing and evaluating reports from the director on the achievements and deficiencies of the program. The apprenticeship advisory board may seek the advice and counsel from appropriate members of the United States department of labor who may be knowledgeable about such apprenticeship programs,
and may also prepare written recommendations to the
director, secretary, or governor on ways to improve the
apprenticeship program.

§29-6-20. Favoritism or discrimination because of politi-
cal or religious opinions, affiliations or race;
political activities prohibited.

(a) No person shall be appointed or promoted to or
demoted or dismissed from any position in the classified
service or in any way favored or discriminated against
with respect to such employment because of his political
or religious opinions or affiliations or race; but nothing
herein shall be construed as precluding the dismissal of
any employee who may be engaged in subversive
activities or found disloyal to the nation.

(b) No person shall seek or attempt to use any political
endorsement in connection with any appointment in the
classified service.

(c) No person shall use or promise to use, directly or
indirectly, any official authority or influence, whether
possessed or anticipated, to secure or attempt to secure
for any person an appointment or advantage in appoint-
ment to a position in the classified service, or an increase
in pay or other advantage in employment in any such
position, for the purpose of influencing the vote or
political action of any person or for any consideration.

(d) No employee in the classified service or member
of the board or the director shall, directly or indirectly,
solicit or receive any assessment, subscription or
contribution, or perform any service for any political
party, committee or candidate for compensation, other
than for expenses actually incurred, or in any manner
take part in soliciting any such assessment, subscription,
contribution or service of any employee in the classified
service.

(e) Notwithstanding any other provision of this code,
no employee in the classified service shall:

(1) Use his official authority or influence for the
(2) Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

(3) Be a candidate for any national or state paid public office or court of record; or hold any paid public office; or be a candidate or delegate to any state or national political party convention, a member of any national, state or local committee of a political party, or a financial agent or treasurer within the meaning of the provisions of section three, four or five-e, article eight, chapter three of this code. Other types of partisan or nonpartisan political campaigning and management not inconsistent with the provisions of this subdivision and with the provisions of subsection (d) of this section shall be permitted.

(f) Political participation pertaining to constitutional amendments, referendums, approval of municipal ordinances or activities shall not be deemed to be prohibited by the foregoing provisions of this section.

(g) Any classified employee who becomes a candidate for any paid public office as permitted by this section shall be placed on a leave of absence without pay for the period of such candidacy, commencing upon the filing of the certificate of candidacy.


(a) No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment made under any provisions of this article or in any manner commit or attempt to commit any fraud preventing the impartial execution of this article and the rules.

(b) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, or other
valuable consideration for or on account of any certification, appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the classified service.

(c) No employee of the division, examiner, or other person shall defeat, deceive or obstruct any person in his right to examination, eligibility, certification or appointment under this article, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.

§29-6-23. Appropriations; cost of administering article; acceptance of grants or contribution.

(a) Appropriations shall be made from the general fund to the division of personnel to meet the cost of administering the provisions of this article.

(b) The director shall maintain accurate records reflecting the cost of administering the provisions of this article.

(c) The division is authorized and directed to accept on behalf of the state any grant or contribution, federal or otherwise, made to assist in meeting the cost of carrying out the purposes of this article.

§29-6-25. Implementation; report to governor and Legislature.

(a) General implementation is to be completed no later than twelve months following the effective date of this article.

(b) There is hereby created an implementation task force to assist in the general implementation of this article and the establishment of the division. The task force shall consist of twelve members and the director of personnel. Task force members shall be appointed by the governor.

(c) The director shall provide a report to the secretary of the department of administration, who shall then,
12 within one year from the effective date of this article,
13 report to the governor and Legislature on the progress
14 of the implementation of this article.

CHAPTER 30
(S. B. 615—Originating in the Committee on Finance)

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

AN ACT finding and declaring certain claims against the
state and its agencies to be moral obligations of the state
and directing the auditor to issue warrants for the
payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the
alcohol beverage control commissioner; attorney
general; nonintoxicating beer commission; depart-
ment of corrections; department of culture and
history; department of education; educational
broadcasting authority; department of finance and
administration; governor's office; department of
health; department of health-office of the chief
medical examiner; department of highways;
human rights commission; department of human
services; department of motor vehicles; department
of natural resources; board of probation and
parole; public employees insurance agency; depart-
ment of public safety; public service commission;
board of regents; state board of rehabilitation;
secretary of state; state tax department; treasurer's
office; water resources board; and workers' compen-
sation fund, to be moral obligations of the state
and directing payment thereof; and finding and
declaring a claim against the state for unjust arrest
and imprisonment to be a moral obligation of the
state and directing payment thereof.

The Legislature has considered the findings of fact
and recommendations reported to it by the court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Alcohol Beverage Control Commissioner:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) The City of Charleston ................ $ 292.65
(2) Riley's Department Store, Inc. ....... $ 235.22

(b) Claims against the Attorney General:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Paul T. Camilletti .................... $ 5,600.50
(2) Career Track, Inc. ................... $  85.00
(3) West Publishing Company ............ $ 7,282.69

(c) Claims against the Nonintoxicating Beer Commission:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT & T Communications, Inc. ....... $  3.22
(2) Atomic Distributing Company ....... $  53.46

(d) Claims against the Department of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT & T Communications, Inc. ....... $ 174.48
(2) Sanford Clegg, III ................. $ 4,691.20
(3) Davis Memorial Hospital .......... $  560.45
(4) John XXIII, Pastoral Center ...... $  298.00
(5) Levin Auto Parts, Inc. ............ $  752.79
(6) National Laboratories ............. $  946.09
(7) Samuel K. Roberts ................ $  260.00
(8) Lee E. Smith, M.D. and
   Robert M. Jones, M.D., P.C. ....... $ 2,045.00
Ch. 30] CLAIMS 193

40 (9) Thoracic and Cardiovascular Surgery, Inc. .................... $ 764.79
41 (10) Tincher Dental Laboratory .................. $ 216.77
42 (11) Wheeling Clinic ......................... $ 2,025.00
43 (12) Williams Generics, Inc. .................. $ 588.19
44 (13) Xerox Corporation ....................... $ 699.35
45 (14) Youth Services System, Inc. ............ $ 290.22

46 (e) Claim against the
Department of Culture and History:

(TO BE PAID FROM GENERAL REVENUE FUND)

47 (1) AT & T Communications, Inc. ........ $ 324.06

48 (f) Claims against the
Department of Education:

(TO BE PAID FROM GENERAL REVENUE FUND)

49 (1) Bell Atlanticom Systems, Inc. .... $ 3,141.12
50 (2) Sherry Lynne Perkey .................. $ 199.00
51 (3) Mary Pheasant ....................... $ 204.00
52 (4) Stephanie R. Short .................. $ 210.00
53 (5) Lucy Snyder ......................... $ 2,032.00
54 (6) Rodney C. Stansberry ............ $ 504.00

55 (g) Claims against the
Educational Broadcasting Authority:

(TO BE PAID FROM GENERAL REVENUE FUND)

56 (1) Myra Lowery ......................... $ 700.00
57 (2) Wesco Equipment, Inc. ........... $ 6,973.50

58 (h) Claim against the
Department of Finance and Administration:

(TO BE PAID FROM GENERAL REVENUE FUND)

59 (1) Xerox Corporation .................... $ 5,050.57

60 (i) Claims against the Governor’s Office:

(TO BE PAID FROM GENERAL REVENUE FUND)

61 (1) John P. Bailey ....................... $ 2,036.25
62 (2) Frederick E. Gardner ............. $ 1,532.50
63 (3) Robert W. Kagler ................. $ 5,615.00
64 (4) Michael E. Kelly ................. $ 7,599.50
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<td>139</td>
<td>Virgie Mae Varney</td>
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(20) William Ernest Varney ............ $ 5,000.00

(m) Claims against the
Human Rights Commission:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AAA Court Reporting ............ $ 115.05
(2) Phyllis H. Edens, CCR, Inc. .... $ 519.70
(3) Sheriff-Treasurer/Marion Count .... ........ $ 5.00
(4) Paul R. Stone ................. $ 1,306.23

(n) Claims against the
Department of Human Services:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Rolando Ugalde Layos ........ $ 32,000.00
(2) Olympic Center-Preston .... $ 1,100.00

(o) Claim against the
Department of Motor Vehicles:

(TO BE PAID FROM STATE ROAD FUND)

(1) Harold Casto .............. $ 400.00

(p) Claim against the
Department of Natural Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Motorola C & E, Inc. ........ $ 1,773.99

(q) Claim against the
Board of Probation and Parole:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) AT & T Communications, Inc. ... $ 2.67

(r) Claim against the Public
Employees Insurance Agency:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) West Virginia University Hospitals, Inc. ........ $ 15,445.72
Claims against the Department of Public Safety:
(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Beaver Family Care Associates  $ 97.60
(2) Chesapeake and Potomac Telephone Company
    of West Virginia  $ 200.00
(3) St. Francis Hospital  $ 227.20

Claim against the Public Service Commission:
(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) R. L. Banks & Associates, Inc.  $ 4,799.00

Claims against the Board of Regents:
(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Casto Technical Services, Inc.  $ 1,604.00
(2) Bernard Dickter  $ 92.74
(3) Cecil Watson  $ 1,205.55
(4) Xerox Corporation  $ 3,553.04

(Claim against the State Board of Rehabilitation:
(TO BE PAID FROM FEDERAL FUNDS)

from Acct. No. 7873

(1) C. Lee Dunnavant, Jr.  $ 2,180.00
(2) Michael P. King  $ 2,616.50
(3) Process-Strategies Institute  $ 899.00

Claim against the Secretary of State:
(TO BE PAID FROM GENERAL REVENUE FUND)
(1) Moore Business Forms, Inc. &
    Systems Division .................. $ 1,290.20
(2) Xerox Corporation .................. $ 578.49

(x) Claims against the
    State Tax Department:
    (TO BE PAID FROM GENERAL REVENUE FUND)
(1) Bell Atlanticom Systems, Inc. ... $ 1,022.94
(2) Joe L. Smith, Jr.,
    Inc./BJW Printers Div. ........... $ 6,880.00
(3) Pentree, Inc. .................... $ 182,100.00

(y) Claim against the State Treasurer:
    (TO BE PAID FROM GENERAL REVENUE FUND)
(1) H. John Rogers ................... $ 2,937.00

(z) Claim against the
    Water Resources Board:
    (TO BE PAID FROM GENERAL REVENUE FUND)
(1) AT & T Communications, Inc. ... $ 5.20

(aa) Claims against the
    Workers' Compensation Fund:
    (TO BE PAID FROM WORKERS' COMPENSATION FUND)
(1) Executone/Mountain State
    Communications, Inc. .......... $ 1,872.30
(2) Xerox Corporation ............... $ 837.00

The Legislature finds the following claim to be a
moral obligation of the State of West Virginia for unjust
arrest and imprisonment or conviction and impris­
onment.

(bb) Claim against the
    State of West Virginia:
    (TO BE PAID FROM GENERAL REVENUE FUND)
(1) William C. Edens, Jr. ............. $ 20,000.00

The Legislature finds that the above moral obligations
and the appropriations made in satisfaction thereof shall
be the full compensation for all claimants, and that prior
to the payments to any claimant provided for in this bill, the court of claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The court of claims shall deliver all releases obtained from claimants to the department against which the claim was allowed: Provided, That the claim of the Board of Education of the County of McDowell against the West Virginia State Board of Education for $2,305,816.60 shall be recertified by the clerk of the court of claims to the Legislature next year.

CHAPTER 31
(H. B. 2408—By Delegates Seacrist and Stemple)

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

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

The Legislature has duly considered the findings of fact and recommendations for awards reported to it by the court of claims in respect to the following named claimants who were innocent victims of crime within this state and entitled to compensation; and in respect to each of such named claimants the Legislature adopts those findings of fact as its own, hereby declares it to be the moral obligation of the state to pay each such claimant in the amount specified below, and directs the
auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

Claims for crime victims compensation awards:

<table>
<thead>
<tr>
<th>(TO BE PAID FROM CRIME VICTIMS COMPENSATION FUND)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Browning, Peggy Lynn ................................ $ 15,000.00</td>
</tr>
<tr>
<td>(2) Carroll, Robert E., as guardian of Timothy E. Carroll ........................................... $ 10,000.00</td>
</tr>
<tr>
<td>(3) Chapman, Karl Dean ................................ $ 2,500.00</td>
</tr>
<tr>
<td>(4) Chapman, Sylvia, administratrix of the estate of Hinton Richmond ................................ $ 5,000.00</td>
</tr>
<tr>
<td>(5) Duty, Steve A. ................................ $ 10,000.00</td>
</tr>
<tr>
<td>(6) Duty, Steve A., as guardian of Jared Duty ................................................................. $ 5,000.00</td>
</tr>
<tr>
<td>(7) Ellis, Tammy, as guardian of Tabitha Graham ................................................................. $ 10,000.00</td>
</tr>
<tr>
<td>(8) Gandy, Bonnie ........................................ $ 10,000.00</td>
</tr>
<tr>
<td>(9) Gandy, John E. ........................................ $ 2,500.00</td>
</tr>
<tr>
<td>(10) Gandy, Keith Edward ........................................ $ 10,000.00</td>
</tr>
<tr>
<td>(11) Harris, Kenneth R., as guardian of Larry Ray Harris ................................................. $ 5,000.00</td>
</tr>
<tr>
<td>(12) Harris, Kenneth R., as guardian of Timothy M. Harris .................................................. $ 5,000.00</td>
</tr>
<tr>
<td>(13) Hemingway, Debra A., as guardian of Shasta A. Hemingway .............................................. $ 5,000.00</td>
</tr>
<tr>
<td>(14) Pennington, Tammy M. ........................................ $ 5,000.00</td>
</tr>
<tr>
<td>(15) Robinson, Brian K. ........................................ $ 1,000.00</td>
</tr>
<tr>
<td>(16) Smith, Sandra, as guardian of Dawn Christine Smith ..................................................... $ 10,000.00</td>
</tr>
<tr>
<td>(17) Smith, Sandra, as guardian of Richard Wayne Smith ..................................................... $ 10,000.00</td>
</tr>
<tr>
<td>(18) Taylor, Marcella ........................................ $ 5,000.00</td>
</tr>
<tr>
<td>(19) Taylor, Marcella, as guardian of Eleesha K. Taylor ..................................................... $ 5,000.00</td>
</tr>
<tr>
<td>(20) Taylor, Marcella, as guardian of Ellis Taylor, III .................................................... $ 5,000.00</td>
</tr>
<tr>
<td>(21) Thompson, Gregg ........................................ $ 10,000.00</td>
</tr>
<tr>
<td>(22) Woods, Donald ........................................ $ 10,000.00</td>
</tr>
</tbody>
</table>
CLAIM AGAINST THE STATE.

§1. Finding and declaring a certain claim against the department of education to be a moral obligation of the state and directing payment thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the services rendered by a certain claimant herein and has considered this claim against the state agency thereof, which has arisen due to an over-expenditure of the departmental appropriations by officers of such state spending unit, such claim having been previously considered by the court of claims which also found that the state has received the benefit of the services rendered by the claimant, but was denied by the court of claims on the purely statutory grounds that to allow such claim would be condoning illegal acts contrary to the laws of the state. The Legislature pursuant to its findings of fact and also by the adoption of the findings of fact by
court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay this claim in the amount specified below, and directs the auditor to issue a warrant upon receipt of a properly executed requisition supported by an itemized invoice, statement or other satisfactory document as required by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payment thereof out of any fund appropriated and available for the purpose.

Claim against the Department of Education:

(TO BE PAID FROM GENERAL REVENUE FUND)

Lester R. Lucas, Jr. ..................... $ 4,911.47

CHAPTER 33

(Com. Sub. for S. B. 455—By Senator Tucker, Mr. President, By Request)

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

AN ACT to amend and reenact section three, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying the term claimant when granting awards to minors; compensating West Virginia citizens who are victimized in states without compensation programs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.


1 As used in this article, the term:

2 (a) “Claimant” means any of the following persons, whether residents or nonresidents of this state, who
claim an award of compensation under this article:

(1) A victim: Provided, That the term victim does not include a nonresident of this state where the criminally injurious act did not occur in this state;

(2) A dependent, spouse or minor child of a deceased victim; or in the event that the deceased victim is a minor, the parents, legal guardians and siblings of the victim;

(3) A third person other than a collateral source who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim;

(4) A person who is authorized to act on behalf of a victim, dependent or a third person who is not a collateral source; and, in the event that the victim, dependent or third person who is not a collateral source is a minor or other legally incompetent person, the duly qualified fiduciary of such minor.

(b) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received, or that is readily available to him, from any of the following sources:

(1) The offender, except any restitution received from the offender pursuant to an order by a court of law sentencing the offender or placing him on probation following a conviction in a criminal case arising from the criminally injurious act for which a claim for compensation is made;

(2) The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states;

(3) Social security, medicare and medicaid;

(4) State-required, temporary, nonoccupational disability insurance; other disability insurance;

(5) Workers' compensation;
(6) Wage continuation programs of any employer;

(7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services or benefits for disability;

(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim which exceeds twenty-five thousand dollars.

(c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state or in any state not having a victim compensation program which by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except when the person engaging in the conduct intended to cause personal injury or death, or except when the person engaging in the conduct committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, or reckless driving.

(d) "Dependent" means an individual who received over half of his support from the victim. For the purpose of determining whether an individual received over half of his support from the victim, there shall be taken into account the amount of support received from the victim as compared to the entire amount of support which the individual received from all sources, including support which the individual himself supplied. The term "support" includes, but is not limited to, food, shelter, clothing, medical and dental care and education. The term "dependent" includes a child of the victim born after his death.

(e) "Economic loss" means economic detriment con-
sisting only of allowable expense, work loss and
replacement services loss. If criminally injurious
conduct causes death, economic loss includes a depend-
ent’s economic loss and a dependent’s replacement
services loss. Noneconomic detriment is not economic
loss; however, economic loss may be caused by pain and
suffering or physical impairment.

(f) “Allowable expense” means reasonable charges
incurred or to be incurred for reasonably needed
products, services and accommodations, including those
for medical care, prosthetic devices, eye glasses,
dentures, rehabilitation and other remedial treatment
and care.

Allowable expense includes a total charge not in
excess of three thousand dollars for expenses in any way
related to funeral, cremation and burial. It does not
include that portion of a charge for a room in a hospital,
clinic, convalescent home, nursing home or any other
institution engaged in providing nursing care and
related services in excess of a reasonable and customary
charge for semiprivate accommodations, unless accom-
modations other than semiprivate accommodations are
medically required.

(g) “Work loss” means loss of income from work that
the injured person would have performed if he had not
been injured and expenses reasonably incurred or to be
incurred by him to obtain services in lieu of those he
would have performed for income, reduced by any
income from substitute work actually performed or to
be performed by him, or by income he would have
earned in available appropriate substitute work that he
was capable of performing but unreasonably failed to
undertake.

(h) “Replacement services loss” means expenses
reasonably incurred or to be incurred in obtaining
ordinary and necessary services in lieu of those the
injured person would have performed, not for income
but for the benefit of himself or his family, if he had
not been injured.

(i) “Dependent’s economic loss” means loss after a
120 victim’s death of contributions or things of economic
121 value to his dependents, not including services they
122 would have received from the victim if he had not
123 suffered the fatal injury, less expenses of the dependents
124 avoided by reason of the victim’s death.

125 (j) “Dependent’s replacement service loss” means loss
126 reasonably incurred or to be incurred by dependents
127 after a victim’s death in obtaining ordinary and
128 necessary services in lieu of those the victim would have
129 performed for their benefit if he had not suffered the
130 fatal injury, less expenses of the dependents avoided by
131 reason of the victim’s death and not subtracted in
132 calculating dependent’s economic loss.

133 (k) “Noneconomic detriment” means sorrow, mental
134 anguish, and solace which may include society, compan-
135 ionship, comfort, guidance, kindly offices and advice.

136 (l) “Victim” means a person who suffers personal
137 injury or death as a result of any one of the following:
138 (1) Criminally injurious conduct; (2) the good faith effort
139 of the person to prevent criminally injurious conduct; or
140 (3) the good faith effort of the person to apprehend a
141 person that the injured person has observed engaging
142 in criminally injurious conduct, or who such injured
143 person has reasonable cause to believe has engaged in
144 such criminally injurious conduct immediately prior to
145 the attempted apprehension.

146 (m) “Contributory misconduct” means any conduct of
147 the claimant, or of the victim through whom the
148 claimant claims an award, that is unlawful or intention-
149 ally tortious and that, without regard to the conduct’s
150 proximity in time or space to the criminally injurious
151 conduct has causal relationship to the criminally
152 injurious conduct that is the basis of the claim and shall
153 also include the voluntary intoxication of the claimant,
154 either by the consumption of alcohol or the use of any
155 controlled substance when such intoxication has a causal
156 connection or relationship to the injury sustained. The
157 voluntary intoxication of a victim shall not be a defense
158 against the estate of a deceased victim.
AN ACT to amend and reenact section seven, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to office of community and industrial development; low-interest loans to private companies processing West Virginia mined coal to coke; changing requirement for using West Virginia coal to not less than seventy-five percent.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. OFFICE OF COMMUNITY AND INDUSTRIAL DEVELOPMENT.

§5B-2-7. Authority of director to provide low-interest loans to private companies entering into the process of converting West Virginia coal to coke; funding.

1 Effective the first day of July, one thousand nine hundred eighty-seven, the director, with the approval of the governor, is hereby empowered to provide reduced rate loans to private companies for the building of coal processing facilities for the making of coke for steel production. Funds for such loans shall be provided from moneys borrowed from any fund administered by the state. The loans will be repaid through the governor’s office of community and industrial development to the fund from which they were borrowed. The rate of interest charged shall be two percent below the current prime lending rate for funds available from private sources in projects of a similar nature. The state shall fund no more than eighty percent of the total cost of the project. The private company sponsoring the project must provide the other twenty percent of the project’s funds from its own capital or from moneys borrowed
from nonpublic sources. The moneys borrowed are to be used for the construction of coal coking facilities and related buildings and other structures: Provided, That not less than seventy-five percent of coal processed at this facility during the time when loan moneys are being utilized must be coal mined exclusively in West Virginia. For the five years following the repayment of the loan, not less than seventy-five percent of coal processed at this facility must also be coal mined exclusively in West Virginia, provided there is sufficient quantity of coal mined exclusively in West Virginia meeting environmental regulatory standards. A private company applying to the governor's office of community and industrial development for a loan pursuant to this section shall certify on its loan application that the reduced rate loan will be used exclusively for constructing coal coking facilities and that those facilities will be used for the process of converting West Virginia coal to coke.

The director is authorized to promulgate rules and regulations consistent with the provisions of this section to aid in administration of the provisions of this section: Provided, That the rules and regulations promulgated by the director shall contain equal requirements for the provision of low interest loans, for in-state and out-of-state private companies.

CHAPTER 35
(H. B. 2824—By Delegates Farmer and Johnson)

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

AN ACT to amend article six-a, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to consumer protection—new motor vehicle warranties; dealer's written disclosure of repairs to consumers.

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

ARTICLE 6A. CONSUMER PROTECTION—NEW MOTOR VEHICLE WARRANTIES.

§46A-6A-3a. Dealer’s duty to disclose repairs to consumer.

1 Beginning the first day of July, one thousand nine hundred eighty-nine, all authorized dealers of new motor vehicles purchased in this state shall provide to any consumer a written disclosure of any repairs to a new motor vehicle which repairs have a retail value of five hundred dollars or more and were performed after shipment from the manufacturer to the dealer, including damage to the new motor vehicle while in transit.

2 This disclosure requirement does not apply to identical replacement of stolen or damaged accessories or their components, tires or antennae.

3 For purposes of this section, a motor vehicle is not a new motor vehicle when it has been previously titled or the motor vehicle has been damaged in such a manner that, were the damage not repaired, the value and usability of the motor vehicle would be substantially impaired.

CHAPTER 36

(Com. Sub. for H. B. 2138—By Mr. Speaker, Mr. Chambers, and Delegate Rollins)

[Passed April 5, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fifty-three and fifty-four, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to corporations generally; abolishing the requirement that foreign corporations have to submit certified copies of their articles of incorporation and amendments as part of their application for a
certificate of authority; and abolishing the requirement that foreign corporations record copies of their articles of incorporation and amendments in county clerks' offices.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-53. Application for certificate of authority by foreign corporation; contents; churches or religious denominations in corporate capacity prohibited.

§31-1-54. Application for certificate of authority; filing; issuance of certificate; recordation; penalty for failure to record.

§31-1-53. Application for certificate of authority by foreign corporation; contents; churches or religious denominations in corporate capacity prohibited.

(a) A foreign corporation, in order to procure a certificate of authority to conduct affairs, or do or transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.

2. If the name of the corporation does not contain the word "corporation," "company," "incorporated" or "limited," or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state.

3. The date of incorporation and the period of duration of the corporation.

4. The address of the principal office of the corporation.

5. The name and address of the person to whom shall be sent notice or process served upon, or service of which
is accepted by, the secretary of state, if one has been designated.

(6) The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs or doing or transacting its business in this state.

(7) The names and respective addresses of the directors and officers of the corporation.

(8) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct its affairs or do or transact business in this state and to determine and assess the fees payable as prescribed by law.

(9) The county wherein the corporation intends to record its certificate of authority.

(b) In the case of a business corporation, in addition to those matters required to be set forth under the provisions of subsection (a) of this section, such application shall set forth:

(1) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(2) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(3) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this article.

(4) An estimate, expressed in dollars, of the value of all property to be owned by the corporation, for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this state during such year, and an estimate, expressed in dollars, of the gross amount of business which will be done or transacted by the corporation during such year, and an estimate of the gross amount thereof which will be done or transacted by the
corporation at or from places of business in this state during such year.

(c) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such application.

(d) No church, religious sect or denomination incorporated by the laws of any other state or territory of the United States, the District of Columbia or of any foreign country shall be qualified to conduct affairs or do or transact business in this state in a corporate capacity.

§31-1-54. Application for certificate of authority; filing; issuance of certificate; recordation; penalty for failure to record.

(a) Duplicate originals of the application of a foreign corporation for a certificate of authority shall be delivered to the secretary of state together with a statement or certificate from the proper officer of the state or country under the laws of which it is incorporated that the corporation is in good standing with the state or country under the laws of which it is incorporated.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as prescribed by law, (i) endorse on each of such originals the word "Filed," and the month, day and year of the filing thereof; (ii) file one of such duplicate originals of the application and (iii) issue a certificate of authority to conduct affairs or to do or transact business in this state, to which he shall affix the other duplicate original application.

(b) The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(c) The certificate of authority, shall be recorded in the office of the county commission of the county where
the principal office of the corporation in this state is located. If such corporation does not maintain a principal office in this state, such recordation may be completed in any county in which it is conducting its affairs or doing or transacting business. A failure to comply with the provisions of this subsection within six months from the date of issuance of a certificate of authority shall subject such corporation to a fine of not more than one thousand dollars.

CHAPTER 37
(H. B. 2258—By Delegates Warner and Jones)

[Passed April 5, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventy-three, article one, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to actions by shareholders, members or directors of a corporation without a meeting; allowing same to conference by telephone or other electronic equipment; allowing action by electronic conference when action is later reduced to writing; and the manner of approval of such action.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-73. Action by shareholders, members or directors without a meeting.

(a) Whenever the vote of shareholders or members at a meeting thereof is required or permitted to be taken in connection with any corporate action, the meeting and vote of the shareholders or members may be dispensed with if all of the shareholders or members who would have been entitled to vote upon the action agree in writing to the corporate action being taken. The
agreement shall have like effect and validity as though
the action were duly taken by the unanimous action of
all shareholders or members entitled to vote at a
meeting of the shareholders or members duly called and
legally held.

(b) Unless otherwise provided in the articles of
incorporation or the bylaws, whenever the vote of
directors at a meeting thereof is required or permitted
to be taken in connection with any corporate action, the
meeting and vote of the directors may be dispensed with
if all the directors agree in writing to the corporate
action being taken. The agreement shall have like effect
and validity as though the action were duly taken by the
unanimous action of all directors at a meeting of the
directors duly called and legally held.

(c) If the articles of incorporation or the bylaws so
provide, one or more directors or shareholders may
participate in a meeting of the board, a committee of
the board or of the shareholders by means of conference
telephone or similar electronic communications equip-
ment by means of which all persons participating in the
meeting can hear each other.

Whenever a vote of the shareholders or directors is
required or permitted in connection with any corporate
action this vote may be taken orally during this
electronic conference. The agreement thus reached shall
have like effect and validity as though the action were
duly taken by the action of the shareholders or directors
at a meeting of shareholders or directors if the agree-
ment is reduced to writing and approved by the
shareholders or directors at the next regular meeting of
the shareholders or directors after the conference.

(d) In the event that the action which is agreed to, as
provided for in subsection (a), (b) or (c) of this section,
is an action which would have required the filing of any
articles, documents or certificates with the secretary of
state under any provision of this article if the action had
been voted upon by the shareholders or members or by
the directors at a meeting, the articles, documents or
certificates so filed shall state that a written agreement
has been executed in lieu of stating that the shareholders, members or directors voted upon the corporate action in question. The articles, documents or certificates shall have the same force and effect under all provisions of law as if the action had been taken by the unanimous vote of all shareholders or members entitled to vote, or of all the directors, at a meeting duly called and legally held.

CHAPTER 38
(S. B. 439—By Senators Tucker, Mr. President, and Jackson)
[Passed April 8, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, six, twenty-a, twenty-one and twenty-four, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article eighteen by adding thereto two new sections, designated sections twenty-six and twenty-seven, all relating to the West Virginia housing development fund; providing additional legislative findings; adding, amending and clarifying certain definitions; expanding and clarifying the powers of the fund; providing additional purposes for the fund; authorizing fund to finance or otherwise participate in certain nonresidential projects under certain conditions; adding certain provisions relating to conflict of interest involving officers or directors of the fund; prohibiting certain transactions involving such officers and directors except in certain circumstances; permitting annual audits to be performed by a nonresident as well as resident independent certified public accountant; declaring that projects shall not be deemed public improvements; and providing for confidentiality of documentary materials and other data received or made by fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-2. Legislative findings and purpose.
§31-18-6. Corporate powers.
§31-18-20a. Land development fund.
§31-18-21. Prohibition on funds inuring to the benefit of or being distributable to directors, officers or private persons; transactions between the housing development fund and directors or officers having certain interests in such transactions.
§31-18-24. Annual audit; reports to joint committee on government and finance; information to joint committee or legislative auditor.
§31-18-26. Projects not to be deemed public improvements.
§31-18-27. Documentary materials concerning trade secrets; commercial, financial or personal information; confidentiality.

§31-18-2. Legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that as a result of public actions involving highways, public facilities, flood-control projects and urban renewal activities, and as a result of the spread of slum conditions and blight to formerly sound urban and rural neighborhoods, there exists in the state of West Virginia a serious shortage of sanitary, decent and safe residential housing available at low prices or rentals to persons and families of low and moderate income. This shortage is severe in certain urban areas of the state, is especially critical in the rural areas of West Virginia, and is inimical to the health, welfare and prosperity of all residents of the state and to the sound growth of West Virginia communities.

(b) The Legislature hereby finds and declares further that private enterprise and investment have not been able to produce, without assistance, the needed construction of sanitary, decent and safe residential housing at low prices or rentals which persons and families of low and moderate income can afford, to provide sufficient long-term mortgage financing for residential housing
for occupancy by persons and families of low and moderate income or to achieve the urgently needed rehabilitation of much of the present low and moderate income housing stock. It is imperative that the supply of residential housing for persons and families displaced by public actions or natural disaster be increased; that private enterprise and investment be encouraged both to sponsor land development for residential housing for such persons and families and to sponsor, build and rehabilitate residential housing for such persons and families; and that private financing be supplemented by financing as in this article provided, to help prevent the recurrence of slum conditions and blight and assist in their permanent elimination throughout West Virginia.

(c) The Legislature hereby finds and declares further that experience has demonstrated that concentration in residential housing developments, or residential housing areas, of only persons and families who, without some form of private or public assistance, do not have incomes sufficient to afford sanitary, decent and safe residential housing, frequently does not eliminate, or avoid, undesirable social conditions and frequently does not permanently eliminate, or avoid, slum conditions, and that in such instances occupancy of some of the residential housing units in such residential housing developments, or residential housing areas, by persons and families of higher income is desirable and beneficial in achieving the stated public purposes for enacting this legislation.

(d) The Legislature hereby finds and declares further that depressed economic conditions in this state and a related lack of employment and business opportunities caused thousands of people to leave this state to find employment elsewhere; that such depressed economic conditions and related exodus of population adversely affected the property tax base of this state, adversely affected the excise tax base of this state, diminished the manpower resources of this state necessary for modern mining, industrial and commercial operations and development in this state, caused the population of this state to include a disproportionately high number of
elderly, disabled and economically disadvantaged persons, resulted in the spread of slum conditions and blight to formerly sound urban and rural neighborhoods, retarded, and continue to retard, the repair and improvement of existing residential housing and the construction of new residential housing, adversely affected, and continue to adversely affect, land development, including the extension and construction of water systems, nonpolluting sewer systems, other utility facilities and off-highway streets and roads essential to new industrial, commercial and residential housing development, critically restricted, and continue to critically restrict, the construction of public housing for occupancy by persons and families at the lowest level of the low and moderate income segment of the population of this state, critically restricted, and continue to critically restrict, the opportunities of persons and families at all levels of the low and moderate income segment of the population of this state for improved residential housing, either newly constructed or which would normally become available to them when vacated by persons and families of higher income occupying newly constructed residential housing, and critically restricted, and continue to critically restrict, the construction of new residential housing, including, but not limited to, nursing homes and intermediate care facilities, of design and location suitable for occupancy by disabled and by elderly persons; that as a result of public actions involving highways, public facilities, flood-control projects and urban-renewal activities undertaken as a part of the programs of this state to improve economic conditions and increase employment opportunities in this state with a view to improving the health, welfare and prosperity of residents of this state and reversing the outward movement of population in this state, extensive areas which are suitable for industrial, commercial and residential housing uses have been, or in the near future will be, opened up for development for such purposes but in many instances will be without the land development, including water and nonpolluting sewer systems, other utility facilities and off-highway street and road improvements essential
to use of the same for such purposes; that as a result
of the unique physical, economic, demographic and
other characteristics of this state, including its rugged
mountainous terrain, scarcity of land at low or moderate
cost suitable for residential housing, low population
density and cultural preferences which are not suited
for the denser, larger-scale housing projects typical of
more urban areas and high costs of land development
and housing construction, the difficulties of providing
land development, including water and nonpolluting
sewer systems, other utility facilities and off-highway
streets and roads, and of providing residential housing,
are unusually severe within this state and have res-
stricted and continue to restrict, land development and
housing construction needed for the people of the state;
that as a direct consequence of the foregoing there exists
in this state a serious shortage of sanitary, decent and
safe residential housing available for occupancy by
persons and families of all but the highest income levels
and there exists in this state a serious shortage of water
and nonpolluting sewer systems, other utility facilities
and off-highway street and road developments essential
to utilization of land for industrial, commercial and
residential housing purposes which, due to public
actions involving highways, public facilities, flood-
control projects and urban-renewal activities, is, or will
soon become, available for needed industrial, commer-
cial and residential housing purposes; that these
shortages are severe in certain urban areas of this state,
are especially critical in rural areas of this state and are
inimical to the present and future health, welfare and
prosperity of all residents of this state and to the sound
growth and development of communities in this state;
and that unless promptly remedied these shortages will
continue to seriously retard the sound economic growth
and development of this state, the related property tax
and excise tax bases of this state and the availability in
this state of manpower resources essential to modern
mining, industrial and commercial operations and
development which are essential to the health, welfare
and prosperity of this state and its residents.

(e) The Legislature hereby finds and declares further
that private enterprise and investment have not been able to produce, or provide mortgage financing for, sufficient new sanitary, decent and safe residential housing at prices or rentals low enough to enable sufficient persons and families having incomes at or immediately above the higher level of the low and moderate income segment of the population of this state to occupy the same and thereby provide opportunities for persons and families of lesser income to occupy existing sanitary, decent and safe residential housing thereby vacated, have not been able to produce, or provide mortgage financing for, sufficient new residential housing essential to retain and attract qualified manpower resources in and to many areas of this state where such resources are, or shortly will be, critically needed for existing, expanding and new mining, industrial and commercial operations and development, have not been able to produce, or provide mortgage financing for, sufficient new residential housing, including, but not limited to, nursing homes and intermediate care facilities, of design and location suitable for occupancy by elderly and by disabled persons, have not been able to finance sufficient land development, including extensions or construction of water and nonpolluting sewer systems, other utility facilities and off-highway streets and roads, essential to utilization of undeveloped areas of this state for industrial, commercial and residential housing purposes, and have not been able to achieve urgently needed rehabilitation of much of the present housing stock of this state; that it is imperative that the supply of residential housing necessary to retain and attract qualified manpower resources in and to many areas of this state where such resources are, or shortly will be, critically needed for existing, expanding and new mining, industrial and commercial operations and developments be provided, that sufficient new residential housing, including, without limitation, nursing homes and intermediate care facilities, designed and located so as to be suitable for occupancy by elderly persons and by disabled persons be provided, that needed public housing for occupancy by persons and
families at the lowest level of the low and moderate income segment of the population of this state be provided, that land development, including water and nonpolluting sewer systems and other utilities and off-highway streets and roads in this state necessary or desirable for new commercial, industrial and residential housing uses be provided, and that the existing political subdivisions of this state, and private enterprise and investment resources in this state, be encouraged to sponsor and finance land development, including water and nonpolluting sewer systems, other utilities and off-highway streets and roads, and to finance, construct and rehabilitate such residential housing; and that it is necessary that such efforts be supplemented by this state as in this article provided.

(f) The Legislature hereby finds and declares further that political subdivisions in West Virginia which are presently authorized and empowered by law to acquire, construct, operate and manage public housing projects have not been able to acquire and construct, even with available federal and state assistance, public housing projects sufficient to fulfill the needs for sanitary, decent and safe residential housing for occupancy by persons and families at the lowest level of the low and moderate income segment of the population of this state who have been entitled to occupy public housing in many smaller municipalities in West Virginia and especially in the rural areas of West Virginia; that the primary cause of such shortage of needed public housing projects is the inability of such political subdivisions to remedy such shortages because the number of units of public housing needed within its territorial jurisdiction is not sufficient to generate, and justify the expenditure of, adequate funds to provide the requisite arranging of financing for, and planning, development, acquisition, construction, operation and management of such public housing; and that the acquisition, construction, planning, development, financing and management of public housing projects in this state by a governmental instrumentality and public body corporate with statewide jurisdiction as authorized herein will permit or facilitate the arranging of financing for, and planning, development, acquisition,
construction, operation or management of public housing units, even though such units are included in several projects each of which contains a relatively small number of such units, sufficient in the aggregate to generate, and justify the expenditure of, sufficient funds to provide the requisite arranging of financing for, and planning, development, acquisition, construction, operation and management of such public housing, thereby providing the means to alleviate the existing shortages of public housing in many municipalities in West Virginia and in the rural areas of West Virginia.

(g) The Legislature hereby finds and declares further that its intention by enacting this legislation is to provide for the continuation of the West Virginia housing development fund, the corporate purpose of which is to provide financing for development costs and land development to public and private sponsors of land development in this state; further to provide federally insured construction loans to public and private sponsors of land development or to public and private sponsors of residential housing for occupancy by eligible persons and families; further to provide uninsured construction loans to public and private sponsors of land development or to public and private sponsors of residential housing for occupancy by eligible persons and families or to eligible persons and families who may construct such housing; further to provide long term federally insured mortgage loans to public and private sponsors of residential housing for occupancy by eligible persons and families and to eligible persons and families who may purchase or construct such housing; further to provide technical, consultative and project assistance service to public and private sponsors of such land development or residential housing; further to increase the construction of residential housing for occupancy by eligible persons and families through participating in the making of, or the making of, loans to mortgagees approved by the housing
development fund, and taking as collateral security therefor, or purchasing, or investing in long-term federal mortgages or federally insured mortgages, or uninsured mortgages, on residential housing constructed in this state, thereby increasing the supply of funds for long-term mortgage financing of residential housing for occupancy by eligible persons and families and freeing funds for use in short-term construction financing of residential housing for occupancy by eligible persons and families; further to plan, develop, finance, acquire, construct, mortgage or otherwise encumber, operate, manage, sell, lease or otherwise dispose of public housing projects; and finally to assist in coordinating federal, state, regional and local public and private efforts and resources to otherwise increase the supply of such residential housing.

(h) The Legislature hereby finds and declares further that in accomplishing this purpose, the West Virginia housing development fund, heretofore created and established by this article, is acting in all respects for the benefit of the people of the state of West Virginia to serve a public purpose in improving and otherwise promoting their health, welfare and prosperity, and that the West Virginia housing development fund, heretofore created and established, is empowered, hereby, to act on behalf of the state of West Virginia and its people in serving this public purpose for the benefit of the general public.

(i) The Legislature hereby finds and declares further that during a period of national growth this state has experienced a lack of employment and business opportunities, which have caused a reduction in the tax base of the state, diminishing the resources available to this state to provide for the health, safety and welfare of its citizens; that there has been and continues to be a need for economic development and improvement and capital investment in this state, including, but not limited to, the real estate and construction industries, both residential and nonresidential; that there exists in this state a shortage of the capital needed to finance general economic development through investment in enter-
prises which have the potential to create new employment opportunities in this state and that there also exists a shortage of construction and real estate development financing, underwriting and construction expertise, which shortage can be alleviated by utilizing the expertise of the housing development fund and its staff, which are hereby determined to be suited to facilitate, implement and undertake the general economic development and real estate construction and development projects, both residential and nonresidential, which are necessary to support the capital base and employment levels and remedy many of the underlying causes of the current economic difficulties existing in this state; that many other states have facilitated the development of capital and the growth of employment opportunities through state programs which provide combined technical and financial assistance for business and real estate development in such states; and the Legislature hereby finds and declares further in support of the foregoing that it shall be a corporate purpose of the housing development fund to provide assistance by loans, grants or otherwise for the costs, including development and direct and indirect costs, and financing for public and private sponsors of land development, residential housing and nonresidential projects in this state, and further to provide construction loans and mortgage loans (including privately insured and uninsured) to public and private sponsors of land development and residential housing and nonresidential projects in this state, to make grants and provide technical, consultative and project assistance services to public and private sponsors of land development and residential housing and nonresidential projects in this state, and to plan, develop, finance, acquire, construct, renovate, improve, mortgage or otherwise encumber, operate, manage, sell, lease or otherwise dispose of general economic development and land development projects and residential projects and nonresidential projects in this state.

(j) The Legislature hereby finds and declares further that the housing development fund and its staff have extensive expertise in real estate development financing,
underwriting and construction activities, and further
that there is a need on behalf of public and educational
bodies to facilitate the construction of new facilities or
renovation of existing facilities, which need can best be
met by making available to such public agencies and
bodies the real estate and construction development
services and consultative expertise of the housing
development fund at such cost and fees as the housing
development fund would normally impose, subject to the
provisions of this article relating to the powers of the
housing development fund.


As used in this article, unless the context otherwise
requires:

(1) "Annual sinking fund payment" means the amount
of money specified in the resolution or resolutions
authorizing term bonds as payable into a sinking fund
during a particular calendar year for the retirement of
term bonds at maturity after such calendar year, but
shall not include any amount payable by reason only of
the maturity of a bond.

(2) "Development costs" means the costs approved by
the housing development fund as appropriate expendi-
tures by the housing development fund or by sponsors,
for land development, residential housing, or nonresi-
dential projects within this state, including, but not
limited to:

(a) Payments for options to purchase proposed sites,
necessary easements and other related property rights,
deposits on contracts of purchase, or, with prior
approval of the housing development fund, payments for
the purchase of such properties;

(b) Legal and organizational expenses, including
payments of attorneys' fees, utility and governmental
application and filing fees and expenses, project
manager and clerical staff salaries, office rent and other
incidental expenses;

(c) Payment of fees and expenses for preliminary
feasibility studies and costs estimates and advances for
planning, engineering and architectural work;
(d) Expenses for tenant surveys and market analyses; and

(e) Necessary application, approval and other fees.

(3) “Eligible persons and families” means:

(a) Persons and families of low and moderate income; or

(b) Persons or families of higher income to the extent the housing development fund shall find and determine, by resolution, that construction of new or rehabilitated residential housing for occupancy by them will cause to be vacated existing sanitary, decent and safe residential housing available at prices or rentals which persons and families of low and moderate income can afford; or

(c) Persons or families of higher income to the extent the housing development fund shall find and determine, by resolution, that construction of new or rehabilitated multi-family rental housing or new, rehabilitated or existing home ownership housing in the state for occupancy by them will further economic growth, increase the housing stock in the state by eliminating substandard or deteriorating housing conditions, or provide additional housing opportunities in the state; or

(d) Persons who because of age or physical disability are found and determined by the housing development fund, by resolution, to require residential housing of a special location or design in order to provide them with sanitary, decent and safe residential housing; or

(e) Persons and families for whom, as found and determined by the housing development fund by resolution, construction of new or rehabilitated residential housing in some designated area or areas of the state is necessary for the purpose of retaining in, or attracting to, such area or areas qualified manpower resources essential to modern mining, industrial and commercial operations and development in such area or areas.

(4) “Federally insured construction loan” means a construction loan for land development, residential housing or nonresidential projects, which are either
secured or guaranteed, in whole or in part, by a
federally insured mortgage or a federal mortgage, or
which are insured or guaranteed, in whole or in part,
by the United States or an instrumentality thereof, or
a commitment by the United States or an instrument-
ality thereof to insure such loan;

(5) "Federally insured mortgage" means a mortgage
loan for land development, residential housing or
nonresidential projects with a commitment by the
United States or an instrumentality thereof to insure or
guarantee such a mortgage.

(6) "Federal mortgage" means a mortgage loan for
land development, residential housing or nonresidential
projects made by the United States or an instrument-
ality thereof, or a commitment by the United States or an
instrumentality thereof to make such a mortgage loan.

(7) "Housing development fund" means the West
Virginia housing development fund heretofore created
and established by section four of this article.

(8) "Land development" means the process of acquir-
ing land for residential housing construction or nonre-
sidential projects or of making, installing or construct-
ing improvements, including waterlines and water
supply installations, sewer lines and sewage disposal
installations, steam, gas, telephone and telecommunications and electric lines and installations, roads, railroad
spurs, docking and shipping facilities, streets, curbs,
gutters, sidewalks, drainage and flood control facilities,
whether on or off the site, which the housing develop-
ment fund deems necessary or desirable to prepare such
land for construction within this state.

(9) "Land development fund" means the land develop-
ment fund which may be created and established by the
housing development fund in accordance with section
twenty-a of this article.

(10) "Minimum bond insurance requirement" means,
as of any particular date of computation, an amount of
money equal to the greatest of the respective amounts,
for the then current or any future calendar year, of
annual debt service of the housing development fund on
all outstanding mortgage finance bonds, such annual
debt service for any calendar year being the amount of
money equal to the aggregate of (a) all interest payable
during such calendar year on such mortgage finance
bonds on said date of computation, plus (b) the principal
amount of such mortgage finance bonds outstanding
which matures during such calendar year, other than
mortgage finance bonds for which annual sinking fund
payments have been or are to be made in accordance
with the resolution authorizing such bonds, plus (c) the
amount of all annual sinking fund payments payable
during such calendar year with respect to any such
mortgage finance bonds, all calculated on the assump-
tion that bonds will after said date of computation cease
to be outstanding by reason, but only by reason, of the
payment of bonds when due, and the payment when due
and application in accordance with the resolution
authorizing such bonds of all such sinking fund pay-
ments payable at or after said date of computation.

(11) "Mortgage finance bonds" means bonds issued or
to be issued by the housing development fund and
secured by a pledge of amounts payable from the
mortgage finance bond insurance fund in the manner
and to the extent provided in section twenty-b of this
article.

(12) "Mortgage finance bond insurance fund" means
the special trust fund created and established in the
state treasury in accordance with section twenty-b of
this article.

(13) "Nonresidential project" means a project in the
state, whether or not directly related to the providing
of residential housing, determined by the housing
development fund as likely to foster and enhance
economic growth and development in the area of the
state in which such project is developed, for retail,
commercial, industrial, community improvement or
preservation or other proper purpose, including tourism
and recreational housing, land, air or water transpor-
tation facilities, facilities for vocational or other training
or to provide medical care and other special needs of
persons residing in the state, sports complexes and cultural, artistic and other exhibition centers, industrial or commercial projects and facilities, mail order, wholesale and retail sales facilities and other real or personal properties including facilities which are owned or leased by this state, any county or municipality or other public body within the state, and includes, without limitation, the process of acquiring, holding, operating, planning, financing, demolition, construction, renovation, leasing or otherwise disposing of such project or any part thereof or interest therein. Any such project may include appurtenant machinery and equipment.

(14) "Operating loan fund" means the operating loan fund which may be created and established by the housing development fund in accordance with section nineteen of this article.

(15) "Persons and families of low and moderate income" means persons and families, irrespective of race, creed, national origin or sex, determined by the housing development fund to require such assistance as is made available by this article on account of personal or family income not sufficient to afford sanitary, decent and safe housing, and to be eligible or potentially eligible to occupy residential housing constructed and financed, wholly or in part, with federally insured construction loans, federally insured mortgages, federal mortgages or with other public or private assistance, or with uninsured construction loans, or uninsured mortgage loans, and in making such determination the fund shall take into account the following: (a) The amount of the total income of such persons and families available for housing needs, (b) the size of the family, (c) the cost and condition of housing facilities available, (d) the eligibility of such persons and families for federal housing assistance of any type predicated upon low or moderate income basis, and (e) the ability of such persons and families to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing sanitary, decent and safe housing: Provided, That to the extent found and determined by the housing development fund, by
resolution, to be necessary or appropriate for the purposes of eliminating undesirable social conditions and permanently eliminating slum conditions, the income limitation requirements of this article may be waived as to any persons or families who are eligible to occupy residential housing constructed in whole, or in part, with federally insured construction loans, federally insured mortgages or federal mortgages under housing assistance or mortgage insurance programs of the United States, or an instrumentality thereof, predicated upon any low or moderate income basis.

(16) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for residential housing for occupancy by eligible persons and families, including, but not limited to, facilities for temporary housing and emergency housing, nursing homes and intermediate care facilities, and such other nonhousing facilities as may be incidental or appurtenant thereto.

(17) "Special bond insurance commitment fee" means a fee in the amount of one per centum of the total principal amount of each loan which is to be temporarily or permanently financed from the proceeds of mortgage finance bonds, other than a federally insured construction loan, a federally insured mortgage or a federal mortgage, or an amount equal to an equivalent discount on each loan purchased or invested in by the housing development fund from the proceeds of mortgage finance bonds, other than a federally insured construction loan, a federally insured mortgage or a federal mortgage, and which may be payable from the proceeds of such bonds or any other source available to the housing development fund for such use: Provided, That if the period of time between the first disbursement of proceeds of such loan and the date upon which it is specified that the first repayment of principal of such a loan shall be payable exceeds twelve months, an additional amount computed on the basis of one twelfth of one per centum per month on the total principal
amount of such loan over the number of months of such
period of time in excess of twelve months shall be
included in such fee.

(18) "Special bond insurance premium" means (i) a
fee at the rate of one half of one percent per annum on
the outstanding principal balance which the housing
development fund shall charge the borrower of a
mortgage loan, or of a loan secured by a mortgage,
financed from the proceeds of mortgage finance bonds,
other than a federally insured construction loan, a
federally insured mortgage or a federal mortgage,
which shall accrue from a date which is one month prior
to the date on which the first installment payment of
principal of such a loan is payable and which shall be
payable thereafter in monthly installments on the same
day of each successive month that installment payments
of principal of such a loan are payable, and (ii) with
respect to any loan, other than a federally insured
construction loan, a federally insured mortgage or a
federal mortgage, purchased, or invested in with such
proceeds, an equivalent amount which the housing
development fund shall set aside from payments it
receives on such loan or from any other source available
to the housing development fund for such use.

(19) "State sinking fund commission" means the
commission known as such and continued in existence
pursuant to article three, chapter thirteen of this code
and any body, board, person or commission which shall,
by law, hereafter succeed to the powers and duties of
such commission.

(20) "Temporary housing" means a specific work or
improvement within this state undertaken primarily to
provide dwelling accommodations, including the acqui-
sition, construction or rehabilitation of land, buildings
and improvements thereto, for temporary residential
housing, including, but not limited to, shelters for
homeless people, housing for victims of floods and other
disasters, shelters for abused or battered persons and
their children, housing for families with hospitalized
family members, housing for students and student
families, and housing for the handicapped and such
other nonhousing facilities as may be incidental or appurtenant thereto.

(21) "Uninsured construction loans" means a construction loan for land development, residential housing or nonresidential projects which is not secured by either a federally insured mortgage or a federal mortgage, and which is not insured by the United States or an instrumentality thereof, and as to which there is no commitment by the United States or an instrumentality thereof to provide insurance.

(22) "Uninsured mortgage" and "uninsured mortgage loan" means mortgage loans for land development, residential housing or nonresidential projects which are not insured or guaranteed by the United States or an instrumentality thereof, and as to which there is no commitment by the United States or an instrumentality thereof to provide insurance.

§31-18-6. Corporate powers.

1 The housing development fund is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose, including, but not limited to, the following, except that notwithstanding any other provision of this article, the housing development fund shall not directly or indirectly make a loan for or otherwise finance or review any nonresidential project unless (a) the governor's office of community and industrial development, in writing, has referred the nonresidential project under consideration to the housing development fund, and (b) the board of directors of the housing development fund shall have by resolution first found and determined (i) that such loan or other financing is not available upon reasonably equivalent terms and conditions from financial institutions, based upon, among other pertinent factors, that at least three financial institutions have had at least forty-five days to make a loan to or otherwise finance such project, but have failed to act upon or declined or refused opportunity within such forty-five day period; and (ii) that such loan or other financing is not available on reasonably equivalent
terms and conditions from the United States, this state, any county or municipality in this state or any board, agency, department or commission of any thereof:

(1) To make or participate in the making of federally insured construction loans to sponsors of land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(2) To make temporary loans, with or without interest, but with such security for repayment as the housing development fund determines reasonably necessary and practicable, from the operating loan fund, if created, established, organized and operated in accordance with the provisions of section nineteen of this article, to defray development costs to sponsors of land development, residential housing or nonresidential projects which are eligible or potentially eligible for federally insured construction loans, federally insured mortgages, federal mortgages, or uninsured construction loans or uninsured mortgage loans;

(3) To make or participate in the making of long-term federally insured mortgage loans to sponsors of land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(4) To establish residential housing and nonresidential and land development projects for counties declared to be in a disaster area by the Federal Emergency Management Agency or other agency or instrumentality of the United States or this state;

(5) To accept appropriations, gifts, grants, bequests and devises, and to utilize or dispose of the same to carry out its corporate purpose;
(6) To make and execute contracts, releases, compromises, compositions and other instruments necessary or convenient for the exercise of its powers, or to carry out its corporate purpose;

(7) To collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments and other evidences of indebtedness, and in connection with providing technical, consultative and project assistance services;

(8) To invest any funds not required for immediate disbursement in any of the following securities:

(i) Direct obligations of or obligations guaranteed by the United States of America or for the payment of the principal and interest on which the full faith and credit of the United States of America is pledged;

(ii) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan bank system; Export-Import Bank of the United States; federal land banks; Tennessee Valley Authority; United States Postal Service; Inter-American Development Bank; International Bank for Reconstruction and Development; Small Business Administration; Washington Metropolitan Area Transit Authority; General Services Administration; Federal Financing Bank; Federal Home Loan Mortgage Corporation; Student Loan Marketing Association; Farmer's Home Administration; the Federal National Mortgage Association or the Government National Mortgage Association; or any bond, debenture, note, participation certificate or other similar obligation to the extent such obligations are guaranteed by the Government National Mortgage Association or Federal National Mortgage Association or are issued by any other federal agency and backed by the full faith and credit of the United States of America;

(iii) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or
contracts with the United States of America; or
temporary notes, preliminary loan notes, or project notes
issued by public agencies or municipalities, in each case,
fully secured as to the payment of both principal and
interest by a requisition or payment agreement with the
United States of America;

(iv) Certificates of deposit, time deposits, investment
agreements, repurchase agreements or similar banking
arrangements with a member bank or banks of the
federal reserve system or a bank the deposits of which
are insured by the Federal Deposit Insurance Corpora-
tion, or its successor, or a savings and loan association
or savings bank the deposits of which are insured by the
Federal Savings and Loan Insurance Corporation, or its
successor, or government bond dealers reporting to,
trading with and recognized as primary dealers by a
Federal Reserve Bank: Provided, That such investments
shall only be made to the extent insured by the Federal
Deposit Insurance Corporation or the Federal Savings
and Loan Insurance Corporation or to the extent that the
principal amount thereof shall be fully collateralized by
obligations which are authorized investments for the
housing development fund pursuant to this section;

(v) Direct obligations of or obligations guaranteed by
the state of West Virginia;

(vi) Direct and general obligations of any other state,
municipality or other political subdivision within the
territorial United States: Provided, That at the time of
their purchase, such obligations are rated in either of
the two highest rating categories by a nationally
recognized bond-rating agency;

(vii) Any bond, note, debenture or annuity issued by
any corporation organized and operating within the
United States: Provided, That such corporation shall
have a minimum net worth of fifteen million dollars and
its securities or its parent corporation's securities are
listed on one or more of the national stock exchanges:
Provided, however, That (1) such corporation has earned
a profit in eight of the preceding ten fiscal years as
reflected in its statements, and (2) such corporation has
not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding ten fiscal years, and (3) the bonds, notes or debentures of such corporation to be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof by at least two or more nationally recognized rating services such as Standard and Poor's, Dun & Bradstreet, Best's or Moody's;

(viii) If entered into solely for the purpose of reducing investment, interest rate, liquidity or other market risks in relation to obligations issued or to be issued or owned or to be owned by the housing development fund, options, futures contracts (including index futures but exclusive of commodities futures, options or other contracts), standby purchase agreements or similar hedging arrangements listed by a nationally recognized securities exchange or a corporation described in (vii) above;

(ix) Certificates, shares or other interests in mutual funds, unit trusts or other entities registered under section eight of the United States investment company act of 1940, but only to the extent that the terms on which the underlying investments are to be made prevent any more than a minor portion of the pool which is being invested in to consist of obligations other than investments permitted pursuant to this section; and

(x) To the extent not inconsistent with the express provisions of this section, obligations of the West Virginia state board of investments or any other obligation authorized as an investment for the West Virginia state board of investments under article six, chapter twelve of this code or for a public housing authority under article fifteen, chapter sixteen of this code;

(9) To sue and be sued;

(10) To have a seal and alter the same at will;

(11) To make, and from time to time, amend and repeal bylaws and rules and regulations not inconsistent with the provisions of this article;
(12) To appoint such officers, employees and consultants as it deems advisable and to fix their compensation and prescribe their duties;

(13) To acquire, hold and dispose of real and personal property for its corporate purposes;

(14) To enter into agreements or other transactions with any federal or state agency, any person and any domestic or foreign partnership, corporation, association or organization;

(15) To acquire real property, or an interest therein, in its own name, by purchase or foreclosure, where such acquisition is necessary or appropriate to protect any loan in which the housing development fund has an interest and to sell, transfer and convey any such property to a buyer and, in the event of such sale, transfer or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease such property to a tenant;

(16) To purchase or sell, at public or private sale, any mortgage or other negotiable instrument or obligation securing a construction, rehabilitation, improvement, land development, mortgage or temporary loan;

(17) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(18) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purpose, to the modification of the rate of interest, time of payment or any installment of principal or interest, or any other terms, of mortgage loan, mortgage loan commitment, construction loan, rehabilitation loan, improvement loan, temporary loan, contract or agreement of any kind to which the housing development fund is a party;

(19) To make and publish rules and regulations respecting its federally insured mortgage lending, uninsured mortgage lending, construction lending, rehabilitation lending, improvement lending and lending to defray development costs and any such other rules and regulations as are necessary to effectuate its corporate purpose;
(20) To borrow money to carry out and effectuate its corporate purpose and to issue its bonds or notes as evidence of any such borrowing in such principal amounts and upon such terms as shall be necessary to provide sufficient funds for achieving its corporate purpose, except that no notes shall be issued to mature more than ten years from date of issuance and no bonds shall be issued to mature more than fifty years from date of issuance;

(21) To issue renewal notes, to issue bonds to pay notes and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no such renewal notes shall be issued to mature more than ten years from date of issuance of the notes renewed and no such refunding bonds shall be issued to mature more than fifty years from the date of issuance;

(22) To apply the proceeds from the sale of renewal notes or refunding bonds to the purchase, redemption or payment of the notes or bonds to be refunded;

(23) To make grants and provide technical services to assist in the purchase or other acquisition, planning, processing, design, construction, or rehabilitation, improvement or operation of residential housing, nonresidential projects or land development: Provided, That no such grant or other financial assistance shall be provided except upon a finding by the housing development fund that such assistance and the manner in which it will be provided will preserve and promote residential housing in this state or the interests of this state in maintaining or increasing employment or the tax base;

(24) To provide project assistance services for residential housing, nonresidential projects and land development, including, but not limited to, management, training and social and other services;

(25) To promote research and development in scientific methods of constructing low cost land development, residential housing or nonresidential projects of high
durability including grants, loans or equity contributions for research and development purposes: Provided, That no such grant or other financial assistance shall be provided except upon a finding by the housing development fund that such assistance and the manner in which it will be provided will preserve and promote residential housing in this state or the interests of this state in maintaining and increasing employment and the tax base;

(26) With the proceeds from the issuance of notes or bonds of the housing development fund, including, but not limited to, mortgage finance bonds, or with other funds available to the housing development fund for such purpose, to participate in the making of or to make loans to mortgagees approved by the housing development fund and take such collateral security therefor as is approved by the housing development fund and to invest in, purchase, acquire, sell or participate in the sale of, or take assignments of, notes and mortgages, evidencing loans for the construction, rehabilitation, improvement, purchase or refinancing of land development, residential housing or nonresidential projects in this state: Provided, That the housing development fund shall obtain such written assurances as shall be satisfactory to it that the proceeds of such loans, investments or purchases will be used, as nearly as practicable, for the making of or investment in long-term federally insured mortgage loans or federally insured construction loans, uninsured mortgage loans or uninsured construction loans, for land development, residential housing or nonresidential projects or that other moneys in an amount approximately equal to such proceeds shall be committed and used for such purpose;

(27) To make or participate in the making of uninsured construction loans for land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;
(28) To make or participate in the making of long-term uninsured mortgage loans for land development, residential housing or nonresidential projects. Such loans shall be made only upon determination by the housing development fund that long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(29) To obtain options to acquire real property, or any interest therein, in its own name, by purchase, or lease, or otherwise, which is found by the housing development fund to be suitable, or potentially suitable, as a site, or as part of a site, for land development or the construction of residential housing or nonresidential projects; to hold such real property or to acquire by purchase or otherwise and to transfer by sale or otherwise any ownership or equity interests in any other legal entity which holds such real property; to finance the performance of land development, residential housing or nonresidential projects on or in connection with any such real property or to perform land development, residential housing or nonresidential projects on or in connection with any such real property; to own, operate and sponsor or participate in the sponsorship of land development, residential housing or nonresidential projects; or to sell, transfer and convey, lease or otherwise dispose of such real property, or lots, tracts or parcels of such real property, for such prices, upon such terms, conditions and limitations, and at such time or times as the housing development fund shall determine;

(30) To make loans, with or without interest, but with such security for repayment as the housing development fund determines reasonably necessary and practicable from the land development fund, if created, established, organized and operated in accordance with the provisions of section twenty-a of this article, to sponsors of land development, to defray development costs and other costs of land development;

(31) To exercise all of the rights, powers and authorities of a public housing authority as set forth and
provided in article fifteen, chapter sixteen of this code, in any area or areas of the state which the housing development fund shall determine by resolution to be necessary or appropriate;

(32) To provide assistance to urban renewal projects in accordance with the provisions of section twenty-eight, article eighteen, chapter sixteen of this code and in so doing to exercise all of the rights, powers and authorities granted in this article or in article eighteen, chapter sixteen of this code, in and for any communities of the state which the housing development fund shall determine by resolution to be necessary or appropriate;

(33) To make or participate in the making of loans for the purpose of rehabilitating or improving existing residential and temporary housing or nonresidential projects, or to owners of existing residential or temporary housing for occupancy by eligible persons and families for the purpose of rehabilitating or improving such residential or temporary housing or nonresidential projects and, in connection therewith, to refinance existing loans involving the same property. Such loans shall be made only upon determination by the housing development fund that rehabilitation or improvement loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

(34) Whenever the housing development fund deems it necessary in order to exercise any of its powers set forth in subdivision (28) of this section, and upon being unable to agree with the owner or owners of real property or interest therein sought to be acquired by the fund upon a price for acquisition of private property not being used or operated by the owner in the production of agricultural products, to exercise the powers of eminent domain in the acquisition of such real property or interest therein in the manner provided under chapter fifty-four of this code, and the purposes set forth in subdivision (28) of this section are hereby declared to be public purposes for which private property may be taken. For the purposes of this section, the determination of "use or operation by the owner in the production
of agricultural products" means that the principal use of such real estate is for the production of food and fiber by agricultural production other than forestry, and the fund shall not initiate or exercise any powers of eminent domain without first receiving an opinion in writing from both the governor and the commissioner of agriculture of this state that at the time the fund had first attempted to acquire such real estate or interest therein, such real estate or interest therein was not in fact being used or operated by the owner in the production of agricultural products; and

(35) To acquire, by purchase or otherwise, and to hold, transfer, sell, assign, pool or syndicate, or participate in the syndication of, any loans, notes, mortgages, securities or debt instruments collateralized by mortgages or interests in mortgages or other instruments evidencing loans or equity interests in or for the construction, rehabilitation, improvement, renovation, purchase or refinancing of land development, residential housing and nonresidential projects in this state.

§31-18-20a. Land development fund.

(a) The board of directors of the housing development fund may create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan, to be known as the land development fund and to be governed, administered and accounted for by the directors, officers and managerial staff of the housing development fund as a special purpose account separate and distinct from any other moneys, fund or funds owned and managed by the housing development fund.

(b) The purpose of the land development fund shall be to provide a source from which the housing development fund may finance development costs and land development in this state by making loans or grants therefrom, such loans to be with or without interest and with such security for repayment as the housing development fund deems reasonably necessary and practicable, or by expending moneys therefrom, for development costs and land development in this state.
(c) The housing development fund may invest and reinvest all moneys in the land development fund in any investments authorized under section six of this article, pending the disbursement thereof in connection with the financing of development costs and land development in this state.

(d) No loans shall be made by the housing development fund from the land development fund except in accordance with a written loan agreement which shall include, but not be limited to, the following terms and conditions:

1. The proceeds of all such loans shall be used only for development costs and land development;
2. All such loans shall be repaid in full, with or without interest, as provided in the agreement;
3. All repayments shall be made concurrent with receipt by the borrower of the proceeds of a construction loan or mortgage, as the case may be, or at such other times as the housing development fund deems reasonably necessary or practicable; and
4. Specification of such security for repayments upon such terms and conditions as the housing development fund deems reasonably necessary or practicable.

(e) No grants shall be made by the housing development fund from the land development fund except in accordance with a written grant agreement which shall require that the proceeds of all such grants shall be used only for development costs or land development and containing such other terms and provisions as the housing development fund may require to ensure that the public purposes of this article are furthered by such grant.

(f) The housing development fund may expend any income from the financing of development costs and land development with moneys in the land development fund, and from investment of such moneys, in payment, or reimbursement, of all expenses of the housing development fund which, as determined in accordance with procedures approved by the board of directors of
the housing development fund, are fairly allocable to such financing or its land-development activities: 

Provided, That no funds from the land development fund shall be used to carry on propaganda, or otherwise attempt to influence legislation.

§31-18-21. Prohibition on funds inuring to the benefit of or being distributable to directors, officers or private persons; transactions between the housing development fund and directors or officers having certain interests in such transactions.

(a) No part of the funds of the housing development fund, or of the operating loan fund, or of the land development fund, shall inure to the benefit of or be distributable to its directors or officers or other private persons except that the housing development fund shall be authorized and empowered to pay reasonable compensation, other than to the directors, including the chairman, vice chairman and treasurer of the board of directors and the secretary of the board of directors, for services rendered and to make loans and exercise its other powers as previously specified in furtherance of its corporate purpose: Provided, That no such loans shall be made, and no property shall be purchased or leased from, or sold, leased or otherwise disposed of, to any director or officer of the housing development fund.

(b) Notwithstanding any provision contained in paragraph (a) of this section, no loans shall be made by the housing development fund to, and no property shall be purchased or leased from, or sold, leased or otherwise disposed of to, any corporation or other entity in which any officer or director is a stockholder or is otherwise financially interested, unless:

(1) The interest of such director or officer in such transaction is specifically and fully disclosed to the board of directors of the housing development fund at the time it authorizes, approves or ratifies such transaction and the fact and nature of such interest are stated in the minutes of each meeting of the board of directors at which such transaction is considered;
(2) Such transaction is fair and reasonable to the housing development fund; and

(3) In the case of a director, such director abstains from voting or written consent as to the authorization, approval or ratification of such transaction by the board of directors of the housing development fund.

§31-18-24. Annual audit; reports to joint committee on government and finance; information to joint committee or legislative auditor.

The housing development fund shall cause an annual audit to be made by an independent certified public accountant of its books, accounts and records, with respect to its receipts, disbursements, contracts, mortgages, leases, assignments, loans and all other matters relating to its financial operations, including those of the operating loan fund, the land development fund, and the mortgage finance bond insurance fund. The person performing such audit shall furnish copies of the audit report to the commissioner of finance and administration, where they shall be placed on file and made available for inspection by the general public. The person performing such audit shall also furnish copies of the audit report to the speaker of the House of Delegates, the president of the Senate and the majority and minority leaders of both houses.

In addition to the foregoing annual audit report, the housing development fund shall also render every six months to the joint committee on government and finance a report setting forth in detail a complete analysis of the activities, indebtedness, receipts and financial affairs of such fund and the operating loan fund, the land development fund, and the mortgage finance bond insurance fund. Upon demand, the housing development fund shall also submit to the joint committee on government and finance or the legislative auditor any other information requested by such committee or the legislative auditor.

§31-18-26. Projects not to be deemed public improvements.

No project or business facility acquired, constructed,
COUNTY COMMISSIONS

2 maintained, or financed in whole or in part by the
3 housing development fund shall be deemed to be a
4 "public improvement" within the meaning of the
5 provisions of article five-a, chapter twenty-one of this
6 code, as a result of such financing.

§31-18-27. Documentary materials concerning trade
secrets; commercial, financial, or personal
information; confidentiality.

1 Any documentary material or data made or received
2 by the housing development fund for the purpose of
3 furnishing assistance, to the extent that such material
4 or data consists of trade secrets, commercial, financial
5 or personal information regarding the financial position
6 or business operation of such business or person, shall
7 not be considered public records and shall be exempt
8 from disclosure pursuant to the provisions of chapter
9 twenty-nine-b of this code. Any discussion or consider-
10 ation of such trade secrets, commercial, financial or
11 personal information may be held by the housing
12 development fund in executive session closed to the
13 public, notwithstanding the provisions of article nine-a,
14 chapter six of this code: Provided, That the housing
15 development fund shall make publicly available the
16 following information regarding executed loans: (1) the
17 name of the debtor, (2) location(s) of the project, (3)
18 amount of the loan or financial assistance provided by
19 the fund, (4) the purpose of the loan or financial
20 assistance, (5) the term, rate, and interest of the loan,
21 and (6) the fixed assets which serve as security for the
22 loan.

CHAPTER 39
(H. B. 2046—By Delegate Faircloth)

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

AN ACT to amend and reenact section three-a, article one,
chapter seven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to county
COMMISSIONS GENERALLY; CONSTRUCTION OF WATERWORKS; SEWERS AND SEWAGE DISPOSAL PLANTS; IMPROVEMENTS OF STREETS, ALLEYS AND SIDEWALKS; AND PROVIDING FOR THE ASSESSMENT OF COST OF SANITARY SEWERS, AND MAINTENANCE OF ROADS NOT IN THE STATE ROAD SYSTEM.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3a. Construction of waterworks; sewers and sewage disposal plants; improvements of streets, alleys and sidewalks; assessment of cost of sanitary sewers, improved streets and maintenance of roads not in the state road system.

1 In addition to all other powers and duties now conferred by law upon county commissions, such commissions are hereby authorized and empowered to install, construct, repair, maintain and operate waterworks, water mains, sewer lines and sewage disposal plants in connection therewith within their respective counties: Provided, That the county commission of Webster County is authorized to expend county funds in the opening of, and upkeep of a sulphur well now situate on county property: Provided, however, That such authority and power herein conferred upon county commissions shall not extend into the territory within any municipal corporation: Provided further, That any county commission is hereby authorized to enter into contracts or agreements with any municipality within the county, or with a municipality in an adjoining county, with reference to the exercise of the powers vested in such commissions by this section.

In addition to the foregoing, the county commission shall have the power to improve streets, sidewalks and alleys and lay sewers and enter into contracts for maintenance of county roads and subdivision roads used by the public but not in the state road system as follows:

Upon petition in writing duly verified, of the persons,
firms or corporations owning not less than sixty percent
of the frontage of the lots abutting on both sides of any
street or alley, between any two cross-streets, or between
a cross-street and an alley in any unincorporated
community, requesting the county commission so to do
according to plans and specifications submitted with
such petition and offering to have their property so
abutting assessed not only with their portion of the cost
of such improvement abutting upon their respective
properties, but also offering to have their said properties
proportionately assessed with the total cost of paving,
grading and curbing the intersections of such streets
and alleys, or the total cost of maintenance of county
roads or subdivision roads used by the public but not
in the state road system, the county commission may
cause any such street or alley to be improved or paved
or repaved substantially with the materials and accord-
ing to such plans and specifications as hereinafter
provided: Provided, That the county commission is
further authorized, if the said county commission so
determines by a unanimous vote of its constituted
membership, that two or more intersecting streets,
sidewalks, alleys and sewers, should be improved as one
project, in order to satisfy peculiar problems resulting
from access as well as drainage problems, then, in that
event, the said county commission may order such
improvements as one single unit and project, upon
petition in writing duly verified of the persons, firms or
corporations owning not less than sixty percent of the
frontage of the lots abutting on both sides of all streets
or alleys, or portions thereof included by said county
commission in said unit and project.

The total cost including labor and materials, engineer-
ing, and legal service of grading and paving, curbing,
improving any such road, street or alley (including the
cost of the intersections) and assessing the cost thereof
shall be borne by the owners of the land abutting upon
such road, street or alley when the work is completed
and accepted according to the following plan, that is to
say, payment is to be made by all landowners on either
side of such road, street or alley so paved or improved
in such proportion of the total cost as the frontage in
feet of each owner's land so abutting bears to the total
frontage of all the land so abutting on such road, street
or alley, so paved or improved as aforesaid, which
computation shall be made by the county engineer or
surveyor and certified by him to the clerk of said
commission.

Upon petition in writing duly verified, of the persons,
firms or corporations owning not less than sixty percent
of the frontage of the lots abutting on one side of any
county or subdivision road or roads between any two
cross-roads, all used by the public but not in the state
road system or street between any two cross-streets or
between a cross-street and an alley in any unincorpo-
rated community requesting the county commission so
to do according to plans and specifications submitted
with such petition and offering to have their property
so abutting assessed with the total cost thereof, the
county commission may cause any sidewalk to be
improved, or paved, or repaved, substantially with such
materials according to such plans and specifications and
the total cost including labor and materials, engineering
and legal service of improving, grading, paving or
repaving such sidewalk and assessing the cost thereof
shall, when the work is completed and accepted, be
assessed against the owners of the lots or fractional part
of lots abutting on such sidewalk, in such portion of the
total cost as the frontage in feet of each owner's land
so abutting bears to the total frontage of all lots so
abutting on such sidewalk so paved or improved, as
aforesaid, which computation shall be made by the
county engineer or surveyor and certified by him to the
clerk of said commission.

Upon petition in writing duly verified, of the persons,
firms or corporations owning not less than sixty percent
of the frontage of the lots abutting on both sides of any
street or alley, in any unincorporated community
requesting the county commission so to do according to
plans and specifications submitted with such petition
and offering to have their property so abutting assessed
with the cost, as hereinafter provided, the county
commission may lay and construct sanitary sewers in
any street or alley with such materials and substantially
according to such plans and specifications and when
such sewer is completed and accepted, the county
engineer or surveyor shall report to the county commis-

sion, in writing, the total cost of such sewer and a
description of the lots and lands, as to the location,
frontage, depth and ownership liable for such sewer
assessment, so far as the same may be ascertained,
together with the amount chargeable against each lot
and owner, calculated in the following manner: The total
cost of constructing and laying the sewer including
labor, materials, legal and engineering services shall be
borne by the owners of the land abutting upon the
streets and alleys, in which the sewer is laid according
to the following plan: Payment is to be made by each
landowner on either side of such portion of a street or
alley in which such sewer is laid, in such proportions
as the frontage of his land upon said street or alley bears
to the total frontage of all lots so abutting on such street
or alley. In case of a corner lot, frontage is to be
measured along the longest dimensions thereof abutting
on such street or alley in which such sewer is laid. Any
lot having a depth of two hundred feet or more, and
fronting on two streets or alleys, one in the front and
one in the rear of said lot, shall be assessed on both of
said streets or alleys if a sewer is laid in both such
streets and alleys. Where a corner lot has been assessed
on the end it shall not be assessed on the side for the
same sewer and where it has been assessed on the side
it shall not be assessed on the end for the same sewer.

If the petitioners request the improvement of any such
county road or subdivision road, street, alley or sidewalk
in a manner which does not require the permanent
paving or repaving thereof, the county commission shall
likewise have authority to improve such county road or
subdivision road, street, alley or sidewalk, substantially
as requested in such petition, and the total cost thereof
including labor, materials, engineering and legal
services shall be assessed against the abutting owners
in the proportion which the frontage of their lots
abutting upon such county road or subdivision road,
street, alley or sidewalk bears to the total frontage of
all lots abutting upon such street, alley or sidewalk so
improved.

Upon the filing of such petition and before work is
begun, or let to contract, the county commission shall
fix a time and place for hearing protests and shall
require the petitioners to post notice of such hearing in
at least two conspicuous places on the county road or
subdivision road, street, alley or sidewalk affected, and
to give notice thereof by publication of such notice 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 such publication shall be
the county in which the improvement is to be made. The
hearing shall be held not less than ten nor more than
thirty days after the filing of such petition.

At the time and place set for hearing protests the
county commission may examine witnesses and consider
other evidence to show that said petition was filed in
good faith; that the signatures thereto are genuine; and
that the proposed improvement, paving, repaving or
sewer ing will result in special benefits to all owners of
property abutting on said county road or subdivision
road, street, alley or sidewalk in an amount at least
equal in value to the cost thereof. The commission shall
within ten days thereafter enter a formal order stating
its decision and if the petition be granted shall proceed
after due advertisement, reserving the right to reject
any or all bids, to let a contract for such work and
materials to the lowest responsible bidder.

Any owner of property abutting upon said county road
or subdivision road, street, alley or sidewalk aggrieved
by such order shall have the right to review the same
on the record made before the county commission by
filing within ten days after the entry of such order a
petition with the clerk of the circuit court assigning
errors and giving bond in a penalty to be fixed by the
circuit court to pay any costs or expenses incurred upon
such appeal should the order of the county commission
be affirmed. The circuit court shall proceed to review
the matter as in other cases of appeal from the county
commission.
All assessments made under this section shall be certified to the county clerk and recorded in a proper trust deed book and indexed in the name of the owner of any lot or fractional part of a lot so assessed. The assessment so made shall be a lien on the property liable therefor, and shall have priority over all other liens except those for taxes, and may be enforced by a civil action in the name of the contractor performing the work in the same manner as provided for other liens for permanent improvements. Such assessment shall be paid in not more than ten equal annual installments, bearing interest at a rate not to exceed twelve percent per annum, as follows: The first installment, together with interest on the whole assessment, shall be paid not later than one year from the date of such assessment, and a like installment with interest on the whole amount remaining unpaid each year thereafter until the principal and all interest shall have been paid in full.

The county commission may issue coupon-bearing certificates payable in not more than ten equal annual installments for the amount of such assessment and the interest thereon, to be paid by the owner of any lot or fractional part thereof, fronting on such county road or subdivision road, street, alley or sidewalk which has been improved, paved, or repaved or in which a sewer has been laid, as aforesaid, and the holder of said certificate shall have a lien having priority over all other liens except those for taxes upon the lot or part of lot fronting on such county road or subdivision road, street, alley or sidewalk, and such certificate shall likewise draw interest from the date of assessment at a rate not to exceed twelve percent per annum, and payment thereof may be enforced in the name of the holder of said certificate by proper civil action in any court having jurisdiction to enforce such lien.

Certificates authorized under this section may be issued, sold or negotiated to the contractor doing the work, or to his assignee, or to any person, firm or corporation: Provided, That the county commission in issuing such certificates shall not be held as a guarantor, or in any way liable for the payment thereof.
Certificates so issued shall contain a provision to the effect that in the event of default in the payment of any one or more of said installments, when due, said default continuing for a period of sixty days, all unpaid installments shall thereupon become due and payable, and the owner of said certificates may proceed to collect the unpaid balance thereof in the manner hereinbefore provided.

In all cases where petitioners request paving or repaving, or the laying of sewers under the provisions of this section, the county commission shall let the work of grading, paving, curbing or sewer ing to contract to the lowest responsible bidder. In each such case the county commission shall require a bond in the penalty of the contract price guaranteeing the faithful performance of the work and each such contract shall require the contractor to repair any defects due to defective workmanship or materials discovered within one year after the completion of the work.

Upon presentation to the clerk of the county commission of the certificates evidencing the lien, duly canceled and marked paid by the holder thereof, or evidence of payment of the assessment if no certificates have been issued, said clerk shall execute and acknowledge a release of the lien which release may be recorded, as other releases in the office of the clerk of the county commission.

The owner of any lot or fractional part of a lot abutting upon such county road or subdivision road, street, alley or sidewalk so improved, paved, repaved, or sewer ed shall have the right to anticipate the payment of any such assessment or certificate by paying the principal amount due, with interest accrued thereon to date of payment, and also to pay the entire amount, without interest at any time, within thirty days following the date of the assessment.

Nothing in this section contained shall be construed to authorize the county commissions of the various counties to acquire any road construction, ditching or paving equipment. The county commissions are hereby
authorized to rent from the state road commissioner or
any other person, firm or corporation such equipment
as may be necessary from time to time, to improve any
county road or subdivision road used by the public but
not in the state road system, street or sidewalk which
petitioners do not desire to have paved in a permanent
manner, and for such purpose to employ such labor as
may be necessary but no expense connected therewith
shall be charged to any county funds.

No county commission shall be under any duty after
the paving, repaving or improvement of any county road
or subdivision road used by the public but not in the
state road system, street, alley or sidewalk or the laying
of any sanitary sewer under the provisions of this
section, to maintain or repair the same, but any such
commission shall have authority upon petition duly
verified, signed by at least sixty percent of the owners
of property abutting upon any improvement made under
this section, to maintain or repair such improvement or
sewer and to assess the cost thereof against the owners
of such abutting property in the same manner as the
cost of the original improvement.

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CHAPTER 40
(S. B. 151—By Senators Hawse and J. Manchin)

[Passed March 14, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated
section three-ee; to amend article thirteen, chapter eight
of said code by adding thereto a new section, designated
section fifteen-a; and to amend article one, chapter
eleven-a of said code by adding thereto a new section,
designated section eight-a, all relating to authorizing
county commissions, sheriffs and municipalities to enter
into contracts with banking institutions to receive
payment of service fees, assessments, fines, property
taxes and other taxes.
Be it enacted by the Legislature of West Virginia:

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-ee; that article thirteen, chapter eight of said code be amended by adding thereto a new section, designated section fifteen-a; and that article one, chapter eleven-a of said code be amended by adding thereto a new section, designated section eight-a, all to read as follows:

Chapter

7. County Commissions and Officers.
11A. Collection and Enforcement of Property Taxes.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ee. Providing for payment of service fees at banking institutions.

1 Notwithstanding any other provision of this code the county commission may enter into a contract with one or more banking institutions, as defined in section two, article one, chapter thirty-one-a of this code, doing business in the county for the purpose of receiving payment of any service fee authorized in this article or elsewhere in this code.

2 Any such contract shall specify the manner in which the fees received shall be paid over to the county and a method for verification by the county commission of all amounts received pursuant to the contract. The contract may provide for the payment of a reasonable fee for the provision of such services by the banking institution.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-15a. Providing for payment at banking institutions.

1 Notwithstanding any other provision of this code the treasurer of the municipality, or other individual who
may be designated by general law, by charter provision
or by the governing body, to collect and promptly pay
into the municipal treasury all taxes, fines, special
assessments and other moneys due the municipality,
may enter into a contract with one or more banking
institutions, as defined in section two, article one,
chapter thirty-one-a of this code, doing business in the
municipality for the purpose of receiving payment of
municipal taxes, fines, assessments and other moneys.

Any such contract shall specify the manner in which
the taxes, fines, assessments and other moneys received
shall be paid over to the municipality and a method for
verification by the treasurer of the municipality of all
amounts received pursuant to the contract. The contract
may provide for the payment of a reasonable fee for the
provision of such services by the banking institutions.

CHAPTER 11A. COLLECTION AND
ENFORCEMENT OF PROPERTY TAXES.

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-8a. Providing for payment at banking
institutions.

Notwithstanding any other provision of this code the
sheriff, with the consent of the county commission, may
enter into a contract with one or more banking institu-
tions, as defined in section two, article one, chapter
thirty-one-a of this code, doing business in the county for
the purpose of receiving payment of property taxes.

Any such contract shall specify the manner in which
all taxes received shall be paid to the sheriff and a
method for verification by the sheriff and the county
commission of all amounts received pursuant to the
contract. The contract may provide for the payment of
a reasonable fee for the provision of such services by the
banking institution.

Nothing herein may be construed to affect the amount
of the commission due the sheriff provided for in section
seventeen of this article.
AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-ff; and to amend and reenact section five, article twelve, chapter eight of said code, all relating to county commissions' and county health officers' duties to require clearance of refuse and debris on private lands; notice of demand and the contents thereof to be sent to private landowners requiring them to clear their lands of refuse and debris; the proper procedure to contest a demand to clear private land; and municipalities' authorization to require the clearance of private land of refuse and debris.

Be it enacted by the Legislature of West Virginia:

That article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-ff; and that section five, article twelve, chapter eight of said code be amended and reenacted, all to read as follows:

Chapter
7. County Commissions and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Duty to require clearance of refuse and debris from private lands; notice of demand thereof; procedure to contest demand.

1 In addition to all other powers and duties conferred by law upon county commissions, as set forth in this article, and county health officers, as set forth in section two, article two, chapter sixteen of this code, such commissions and health officers are hereby authorized
and obliged to require clearance of any refuse or debris consisting of remnants or remains of any unused or unoccupied dwelling, nonfarm building, structure or manmade appurtenance on all private lands within their respective scopes of authority by the owners thereof that has accumulated as the result of any natural or manmade force or effect which presents a safety or health hazard or which has deteriorated to such a degree as to be unsightly, visually offensive and be depressive of the value of the adjacent properties or uses of such properties.

Upon a determination by a county commission or county health officer that substantial accumulations of refuse or the presence of debris, as described above, exist on any such private lands, notice shall be forwarded to the owner thereof informing the landowner of the following:

(a) Of the commission's or health officer's demand to remove all refuse and debris within ninety days of the receipt of such notice unless an extension be granted by said commission or health officer;

(b) Of the landowner's right to contest such demand and of the proper procedure in which to do so;

(c) That if the landowner fails to both properly contest and comply with the commission's or health officer's demand, that removal will be achieved otherwise and that the reasonable costs incurred thereto will become a civil debt owed by the landowner to the county;

(d) That if the county incurs costs of removal and the landowner fails to pay such costs within two months of such removal that a judgment lien on the subject property will be filed in the county clerk's office wherein the subject property exists.

The commission or health officer shall send notice as described herein by certified mail. If, for any reason, such certified mail is returned without evidence of proper receipt thereof, then in such event, a Class III-0 legal advertisement shall be published in a newspaper of general circulation in the county wherein such land
is situated, in order to render proper notice in accordance with this section: Provided, That if the commission or health officer determines, after notice and inquiry as provided herein, that such refuse or debris was created by someone other than the present landowner, without such landowner's expressed or implied permission, the commission or health officer shall remove any such refuse or debris and shall apply to and be eligible to receive from the solid waste reclamation and environmental response fund created under section five-a, article five-f, chapter twenty of this code for reimbursement for all reasonable costs incurred for such removal.

In the event any landowner desires to contest any demand brought forth pursuant to this section, the landowner shall do so in accordance with article three, chapter fifty-eight of this code.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

PART III. GENERAL POWERS OF MUNICIPALITIES AND GOVERNING BODIES.

§8-12-5. General powers of every municipality and the governing body thereof.

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 (1); 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 such permission for any person to
construct and maintain a passageway, building or other
structure overhanging or crossing any such 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 such 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 such publication
shall be the municipality: Provided, That any such
permit so granted shall automatically cease and termi-
nate 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 such
municipality for its use and benefit;

(2) To provide for the opening and excavation of
streets, avenues, roads, alleys, ways, sidewalks, cross-
walks 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;

(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;

(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 such 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 person any revolver or other pistol, dirk, bowie knife, razor, slung shot, billy, metallic or other false knuckles, or any other dangerous or other deadly weapon of like kind or character;

(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 under his 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 such
(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, shall have refused to grant a license to operate a pool or billiard room, mandamus shall not lie to compel such municipality to grant such license unless it shall clearly appear that the refusal of the municipality to grant such license is discriminatory or arbitrary; and in the event that the municipality determines to license any such business, the municipality shall have 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 such 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 said articles
nineteen and twenty), within or without the corporate
limits of the municipality, except that the municipality
shall not erect any such 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 such 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 shall have 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 such
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 such 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 department of health;

(41) To establish, construct, acquire, maintain and operate hospitals, sanitariums 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 such terms and conditions as to price and otherwise as may be determined by the governing body, and, in order
244 to carry into effect such authority the governing body
245 may acquire any cemetery or cemeteries already
246 established;

247 (43) To exercise general police jurisdiction over any
territory without the corporate limits owned by the
municipality or over which it has a right-of-way;

250 (44) To protect and promote the public morals, safety,
health, welfare and good order;

252 (45) To adopt rules for the transaction of business and
the government and regulation of its governing body;

254 (46) Except as otherwise provided, to require and
take such bonds from such officers, when deemed
necessary, payable to the municipality, in its corporate
name, with such sureties and in such penalty as the
governing body may see fit, conditioned upon the
faithful discharge of their duties;

260 (47) To require and take from such employees and
contractors such bonds in such penalty, with such
sureties and with such conditions, as the governing body
may see fit;

264 (48) To investigate and inquire into all matters of
concern to the municipality or its inhabitants;

266 (49) To establish, construct, require, maintain and
operate such instrumentalities, other than free public
schools, for the instruction, enlightenment, improve-
ment, entertainment, recreation and welfare of the
municipality's inhabitants as the governing body may
deem necessary or appropriate for the public interest;

272 (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 such classes thereof as may be deemed
advisable;

277 (51) To appropriate and expend not exceeding twenty-
five cents per capita per annum for advertising the
municipality and the entertainment of visitors;

280 (52) To conduct programs to improve community
relations and public relations generally and to expend municipal revenue for such purposes;

(53) To reimburse applicants for employment by the municipality for travel and other reasonable and necessary expenses actually incurred by such applicants in traveling to and from such municipality to be interviewed;

(54) To provide revenue for the municipality and appropriate the same to its expenses;

(55) To create and maintain an employee benefits fund, which shall not exceed one tenth of one percent of the annual payroll budget for general employee benefits and which shall be set up for the purpose of stimulating and encouraging employees to develop and implement cost-saving ideas and programs, and to expend moneys from such fund for such purposes;

(56) 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 such purposes; and

(57) 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 shall not exceed any penalties provided in this chapter and chapter sixty-one of this code for like offenses and violations.

CHAPTER 42
(Com. Sub. for S. B. 1—By Senators Tucker, Mr. President, and Hawse)

[Passed April 5, 1989; in effect from passage. Approved by the Governor.]
ambulance services as eligible to receive county or district property.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. COUNTY PROPERTY.

§7-3-3. Sale of county or district property.

1 In all instances where the county commission of a county is authorized by law to sell or dispose of any property, either real or personal, belonging to the county or held by it for the use of any district thereof, the same shall be sold at public auction, at the front door of the courthouse of the county, and such sale shall be conducted by the president of the county commission, but before making any such sale, notice of the time, terms and place of sale, together with a brief description of the property to be sold, shall be 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 county: Provided, That this section shall not apply to the sale of any one item of property of less value than one thousand dollars: Provided, however, That the provisions of this section concerning sale at public auction shall not apply to a county commission selling or disposing of its property for a public use to the United States of America, its instrumentalities, agencies or political subdivisions or to the state of West Virginia, or its political subdivisions, including county boards of education, volunteer fire departments and volunteer ambulance services, for an adequate consideration without considering alone the present commercial or market value of the property: Provided further, That all real property conveyed or sold by a county commission to a volunteer fire department or volunteer ambulance service under this provision shall revert back to the county commission if the volunteer fire department or volunteer ambulance service ceases to use it for the purpose for which the real property was conveyed or sold.
AN ACT to amend article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three; and to amend article thirteen, chapter eight of said code by adding thereto a new section, designated section twenty-two-b, all relating to authorizing county and municipal treasurers to make direct deposits of salaries of employees to banks or other financial institutions when so authorized by the employees.

Be it enacted by the Legislature of West Virginia:

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

Chapter 7. County Commissions and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-23. Voluntary direct deposits by county treasurer of salaries of employees to banks or other financial institutions.

1 Any officer or employee of a county of West Virginia may authorize that his net wages be deposited directly to his account in any bank or other financial institution within this state. The direct deposits may be authorized on a form provided by the county. Upon execution of such authorization and its receipt by the county treasurer, the direct deposits shall be made in the
manner specified on the form and remitted to the
designated bank or other financial institution on or
before the day or days the officer or employee is due his
net wages. Direct deposit authorizations may be revoked
at any time thirty days prior to the date on which the
direct deposit is regularly made and on a form to be
provided by the county treasurer.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-22b. Voluntary direct deposits by municipal treasurer of salaries of employees to banks or other financial institutions.

Any officer or employee of a municipality of West Virginia may authorize that his net wages be deposited directly to his account in any bank or other financial institution within this state. The direct deposits may be authorized on a form provided by the municipality. Upon execution of such authorization and its receipt by the municipal treasurer, the direct deposits shall be made in the manner specified on the form and remitted to the designated bank or other financial institution on or before the day or days the officer or employee is due his net wages. Direct deposit authorizations may be revoked at any time thirty days prior to the date on which the direct deposit is regularly made and on a form to be provided by the municipal treasurer.

CHAPTER 44
(H. B. 2287—By Delegate Love)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article ten, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment of deputy sheriffs or dog wardens as humane officers.

Be it enacted by the Legislature of West Virginia:
That section one, article ten, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10. HUMANE OFFICERS.

§7-10-1. Deputy sheriffs as humane officers.

1 The sheriff of each county of this state shall annually designate, by a record made in the office of the clerk of the county commission, one of his deputies to act as humane officer of such county: Provided, That, if the county commission and sheriff agree, they may in the alternative designate the county dog warden to act as the humane officer; and it shall be the duty of the person so designated to act as humane officer as well as all peace officers as designated by law, to investigate all complaints made to him of cruel or inhuman treatment of animals within his county, and to personally see that the law relating to the prevention of cruelty to animals is enforced; and failure to investigate any complaint made to him and to take proper measures in such case or to perform his duty in any other respect shall constitute good cause for removal from office.

CHAPTER 45

(H. B. 2432—By Delegates Seacrist and Ashcraft)

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

AN ACT to amend and reenact section fourteen, article eighteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hotel occupancy tax; proceeds of tax, application of proceeds; and making historic sites an eligible purpose for expenditures.

Be it enacted by the Legislature of West Virginia:

That section fourteen, article eighteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-14. Proceeds of tax; application of proceeds.

(a) Application of proceeds.—The net proceeds of the tax collected and remitted to the taxing authority pursuant to this article shall be deposited into the general revenue fund of such municipality or county commission, and after appropriation thereof shall be expended only as provided in subsections (b) and (c) of this section.

(b) Required expenditures.—At least fifty percent of the net revenue receivable during the fiscal year by a county, or a municipality, pursuant to this article shall be expended in the following manner for the promotion of conventions and tourism:

(1) Municipalities.—If a convention and visitor’s bureau is located within the municipality, the governing body of such municipality shall appropriate the percentage required by this subsection (b) to that bureau. If a convention and visitor’s bureau is not located within the municipality, but such a bureau is located within the county in which the municipality is located, then the percentage appropriation required by this subsection (b) shall be appropriated to such convention and visitor’s bureau located within such county. If a convention and visitor’s bureau is not located within such county, then the percentage appropriation required by this subsection (b) shall be appropriated as follows:

(i) Any hotel located within such municipality may apply to such municipality for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to such municipality, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to subsection (b) of this section: Provided, That prior to appropriating any moneys to such hotel such municipality shall require the
submission of, and give approval to, a budget setting forth the proposed uses of such moneys.

(ii) The balance of net revenue required to be expended by subsection (b) of this section shall be appropriated to the regional travel council serving the area in which the municipality is located.

(2) Counties.—If a convention and visitor's bureau is located within a county, the county commission shall appropriate the percentage required by this subsection (b) to that convention and visitor's bureau. If a convention and visitor's bureau is not located within such county, then the percentage appropriation required by this subsection (b) shall be appropriated as follows:

(i) Any hotel located within such county may apply to such county for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to such county, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to subsection (b) of this section: Provided, That prior to appropriating any moneys to such hotel such county shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.

(ii) The balance of net revenue required to be expended by subsection (b) of this section shall be appropriated to the regional travel council serving the area in which the county is located.

(3) Legislative finding.—The Legislature hereby finds that the support of convention and visitor's bureaus, hotels and regional travel councils is a public purpose for which funds may be expended. Local convention and visitor's bureaus, hotels and regional travel councils receiving funds under this subsection (b) may expend such funds for the payment of administrative expenses, and for the direct or indirect promotion of conventions
and tourism, and for any other uses and purposes authorized by subdivisions one and two of this subsection (b).

(c) Permissible expenditures.—After making the appropriation required by subsection (b) of this section, the remaining portion of the net revenues receivable during the fiscal year by such county or municipality, pursuant to this article, may be expended for one or more of the purposes set forth in this subsection, but for no other purpose. The purposes for which expenditures may be made pursuant to this subsection are as follows:

(1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities including, but not limited to, arenas, auditoriums, civic centers and convention centers;

(2) The payment of principal or interest or both on revenue bonds issued to finance such convention facilities;

(3) The promotion of conventions;

(4) The construction or maintenance of public parks, tourist information centers and recreation facilities (including land acquisition);

(5) The promotion of the arts; or

(6) Historic sites.

(d) Definitions.—For purposes of this section, the following terms are defined:

(1) Convention and visitor's bureau and visitor's and convention bureau.—“Convention and visitor’s bureau” and “visitor’s and convention bureau” are interchangeable, and either shall mean a nonstock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the municipality or county in which such convention and visitor's bureau or visitor's and convention bureau is located.
(2) Convention center.—“Convention center” means a convention facility owned by the state, a county, a municipality or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities, and publicly owned facilities constructed or used for the accommodation and entertainment of tourist and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto.

(3) Fiscal year.—“Fiscal year” means the year beginning July first and ending June thirtieth of the next calendar year.

(4) Net proceeds.—“Net proceeds” means the gross amount of tax collections less the amount of tax lawfully refunded.

(5) Promotion of the arts.—“Promotion of the arts” means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music for all types, the dramatic arts, dancing, painting and the creative arts through shows, exhibits, festivals, concerts, musicals and plays.

(6) Recreational facilities.—“Recreational facilities” means and includes any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts and other park and recreation facilities, whether of a like or different nature, that are owned by a county or municipality.

(7) Regional travel council.—“Regional travel council” means a nonstock, nonprofit corporation, with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the region of this state served by the regional travel council.

(8) Historic site.—“Historic site” means any site listed on the United States national register of historic places, or listed by a local historical landmarks commission, established under state law, when such sites are owned by a city, a county or a nonprofit historical association, and are open from time to time to accommodate visitors.
AN ACT to amend and reenact section four hundred six, article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing mandatory period of incarceration prior to parole eligibility for distribution of certain controlled substances to persons under the age of eighteen by persons over the age of twenty-one and increasing mandatory period of incarceration prior to parole eligibility for distribution of certain controlled substances by persons eighteen or older in or on, or within one thousand feet of, the real property comprising an educational facility.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-406. Distribution to persons under the age of eighteen by persons over the age of twenty-one; distribution by persons eighteen or over in or on, or within one thousand feet of, school or college; increasing mandatory period of incarceration prior to parole eligibility.

1 (a) Notwithstanding any provision of this code, a person convicted of a felony violation of the provisions of section four hundred one of this article for distribution of a controlled substance who:

2 (1) Is twenty-one years of age or older at the time of the distribution upon which the conviction is based, and the person to whom the controlled substance was distributed was under the age of eighteen years at the time of the distribution; or
(2) Is eighteen years of age or older and the distribution upon which the conviction is based occurred in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university in this state, shall, if sentenced to the custody of the commissioner of corrections for service of a sentence of incarceration, be ineligible for parole for a period of two years.

(b) The existence of any fact which would make any person subject to the provisions of this section shall not be considered unless such fact is clearly stated and included in the indictment or presentment by which such person is charged and is either:

(1) Found by the court upon a plea of guilty or nolo contendere;

(2) Found by the jury, if the matter be tried before a jury, upon submission to the jury of a special interrogatory for such purpose; or

(3) Found by the court, if the matter be tried by the court without a jury.

(c) Nothing in this section shall be construed to limit the sentencing alternatives made available to circuit court judges under other provisions of this code.

CHAPTER 47
(Com. Sub. for S. B. 92—By Senators Warner, Boettner and J. Manchin)

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

AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-c, relating to computer crimes; defining offenses generally; penalties; venue; civil cause of action established; and general provisions.

Be it enacted by the Legislature of West Virginia:
That chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-c, to read as follows:

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§§61-3C-1. Short title.
1 This act shall be known and may be cited as the “West Virginia Computer Crime and Abuse Act.”

§61-3C-2. Legislative findings.
1 The Legislature finds that:
2 (a) The computer and related industries play an essential role in the commerce and welfare of this state.
3 (b) Computer-related crime is a growing problem in business and government.
4 (c) Computer-related crime has a direct effect on state commerce and can result in serious economic and, in some cases, physical harm to the public.
5 (d) Because of the pervasiveness of computers in today’s society, opportunities are great for computer
related crimes through the introduction of false records
into a computer or computer system, the unauthorized
use of computers and computer facilities, the alteration
and destruction of computers, computer programs and
computer data, and the theft of computer resources,
computer software and computer data.

(e) Because computers have now become an integral
part of society, the Legislature recognizes the need to
protect the rights of owners and legitimate users of
computers and computer systems, as well as the privacy
interest of the general public, from those who abuse
computers and computer systems.

(f) While various forms of computer crime or abuse
might possibly be the subject of criminal charges or civil
suit based on other provisions of law, it is appropriate
and desirable that a supplemental and additional statute
be provided which specifically proscribes various forms
of computer crime and abuse and provides criminal
penalties and civil remedies therefor.

§61-3C-3. Definitions.

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

(a) “Access” means to instruct, communicate with,
store data in, retrieve data from, intercept data from,
or otherwise make use of any computer, computer
network, computer program, computer software, com-
puter data or other computer resources.

(b) “Authorization” means the express or implied
consent given by a person to another to access or use said
person’s computer, computer network, computer pro-
gram, computer software, computer system, password,
identifying code or personal identification number.

(c) “Computer” means an electronic, magnetic, opti-
cal, electrochemical, or other high speed data processing
device performing logical, arithmetic, or storage
functions, and includes any data storage facility or
communication facility directly related to or operating
in conjunction with such device. The term “computer”
includes any connected or directly related device,
equipment or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator or other similar device.

(d) "Computer data" means any representation of knowledge, facts, concepts, instruction, or other information computed, classified, processed, transmitted, received, retrieved, originated, stored, manifested, measured, detected, recorded, reproduced, handled or utilized by a computer, computer network, computer program or computer software, and may be in any medium, including, but not limited to, computer printouts, microfilm, microfiche, magnetic storage media, optical storage media, punch paper tape or punch cards, or it may be stored internally in read-only memory or random access memory of a computer or any other peripheral device.

(e) "Computer network" means a set of connected devices and communication facilities, including more than one computer, with the capability to transmit computer data among them through such communication facilities.

(f) "Computer operations" means arithmetic, logical, storage, display, monitoring or retrieval functions or any combination thereof, and includes, but is not limited to, communication with, storage of data in or to, or retrieval of data from any device and the human manual manipulation of electronic magnetic impulses. A "computer operation" for a particular computer shall also mean any function for which that computer was designed.

(g) "Computer program" means an ordered set of computer data representing instructions or statements, in a form readable by a computer, which controls, directs, or otherwise influences the functioning of a computer or computer network.

(h) "Computer software" means a set of computer
60 programs, procedures and associated documentation
61 concerned with computer data or with the operation of
62 a computer, computer program, or computer network.
63
64 (i) "Computer services" means computer access time,
65 computer data processing, or computer data storage,
66 and the computer data processed or stored in connection
67 therewith.
68
69 (j) "Computer supplies" means punchcards, paper
70 tape, magnetic tape, magnetic disks or diskettes, optical
71 disks or diskettes, disk or diskette packs, paper,
72 microfilm, and any other tangible input, output or
73 storage medium used in connection with a computer,
74 computer network, computer data, computer software
75 or computer program.
76
77 (k) "Computer resources" includes, but is not limited
78 to, information retrieval; computer data processing,
79 transmission and storage; and any other functions
80 performed, in whole or in part, by the use of a computer,
81 computer network, computer software, or computer
82 program.
83
84 (l) "Owner" means any person who owns or leases or
85 is a licensee of a computer, computer network, computer
86 data, computer program, computer software, computer
87 resources or computer supplies.
88
89 (m) "Person" means any natural person, general
90 partnership, limited partnership, trust, association,
91 corporation, joint venture, or any state, county or
92 municipal government and any subdivision, branch,
93 department or agency thereof.
94
95 (n) "Property" includes:
96
97 (1) Real property;
98
99 (2) Computers and computer networks;
100
101 (3) Financial instruments, computer data, computer
102 programs, computer software and all other personal
103 property regardless of whether they are:
104
105 (i) Tangible or intangible;
106
107 (ii) In a format readable by humans or by a computer;
(iii) In transit between computers or within a computer network or between any devices which comprise a computer; or

(iv) Located on any paper or in any device on which it is stored by a computer or by a human; and

(4) Computer services.

(o) "Value" means having any potential to provide any direct or indirect gain or advantage to any person.

(p) "Financial instrument" includes, but is not limited to, any check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security or any computerized representation thereof.

(q) "Value of property or computer services" shall be (1) the market value of the property or computer services at the time of a violation of this article; or (2) if the property or computer services are unrecoverable, damaged, or destroyed as a result of a violation of section three or four of this article, the cost of reproducing or replacing the property or computer services at the time of the violation.

§61-3C-4. Computer fraud; penalties.

Any person who, knowingly and willfully, directly or indirectly, accesses or causes to be accessed any computer, computer services or computer network for the purpose of (1) executing any scheme or artifice to defraud or (2) obtaining money, property or services by means of fraudulent pretenses, representations or promises shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than ten thousand dollars or imprisoned in the penitentiary for not more than ten years, or both.

§61-3C-5. Unauthorized access to computer services.

Any person who knowingly, willfully and without authorization, directly or indirectly, accesses or causes to be accessed a computer or computer network with the intent to obtain computer services shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than one thousand dollars or confined in the county jail not more than one year, or both.

§61-3C-6. Unauthorized possession of computer data or programs.

(a) Any person who knowingly, willfully and without authorization possesses any computer data or computer program belonging to another and having a value of five thousand dollars or more shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than ten thousand dollars or imprisoned in the penitentiary for not more than ten years, or both.

(b) Any person who knowingly, willfully and without authorization possesses any computer data or computer program belonging to another and having a value of less than five thousand dollars shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both.

§61-3C-7. Alteration, destruction, etc., of computer equipment.

Any person who knowingly, willfully and without authorization, directly or indirectly, tampers with, deletes, alters, damages or destroys or attempts to tamper with, delete, alter, damage or destroy any computer, computer network, computer software, computer resources, computer program or computer data shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than ten thousand dollars or confined in the penitentiary not more than ten years, or both, or, in the discretion of the court, be fined not less than two hundred nor more than one thousand dollars and confined in the county jail not more than one year.

§61-3C-8. Disruption of computer services.

Any person who knowingly, willfully and without authorization, directly or indirectly, disrupts or degrades or causes the disruption or degradation of
computer services or denies or causes the denial of computer services to an authorized recipient or user of such computer services, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred nor more than one thousand dollars or confined in the county jail not more than one year, or both.

§61-3C-9. Unauthorized possession of computer information, etc.

Any person who knowingly, willfully and without authorization possesses any computer data, computer software, computer supplies or a computer program which he knows or reasonably should know was obtained in violation of any section of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred nor more than one thousand dollars or confined in the county jail for not more than one year, or both.

§61-3C-10. Disclosure of computer security information.

Any person who knowingly, willfully and without authorization discloses a password, identifying code, personal identification number or other confidential information about a computer security system to another person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county jail for not more than six months, or both.


Any person who knowingly, willfully and without authorization accesses or causes to be accessed any computer or computer network and thereby obtains information filed by any person with the state or any county or municipality which is required by law to be kept confidential shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county jail not more than six months, or both.

Any person who knowingly, willfully and without authorization accesses a computer or computer network and examines any employment, salary, credit or any other financial or personal information relating to any other person, after the time at which the offender knows or reasonably should know that he is without authorization to view the information displayed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county jail for not more than six months, or both.


(a) As used in this section, the following terms shall have the following meanings:

(1) "Access device" means any card, plate, code, account number, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument);

(2) "Counterfeit access device" means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device;

(3) "Unauthorized access device" means any access device that is lost, stolen, expired, revoked, canceled, or obtained without authority;

(4) "Produce" includes design, alter, authenticate, duplicate, or assemble;

(5) "Traffic" means transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of.

(b) Any person who knowingly and willfully possesses any counterfeit or unauthorized access device shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or
confined in the county jail for not more than six months, or both.

(c) Any person who knowingly, willfully and with intent to defraud possesses a counterfeit or unauthorized access device or who knowingly, willfully and with intent to defraud, uses, produces or traffics in any counterfeit or unauthorized access device shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than ten thousand dollars or imprisoned in the penitentiary not more than ten years, or both.

(d) This section shall not prohibit any lawfully authorized investigative or protective activity of any state, county or municipal law-enforcement agency.


Any person who accesses a computer or computer network and knowingly, willfully and without authorization (a) interrupts or impairs the providing of services by any private or public utility; (b) interrupts or impairs the providing of any medical services; (c) interrupts or impairs the providing of services by any state, county or local government agency, public carrier or public communication service; or otherwise endangers public safety shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than fifty thousand dollars or imprisoned not more than twenty years, or both.

§61-3C-15. Computer as instrument of forgery.

The creation, alteration or deletion of any computer data contained in any computer or computer network, which if done on a tangible document or instrument would constitute forgery under section five, article four, chapter sixty-one of this code will also be deemed to be forgery. The absence of a tangible writing directly created or altered by the offender shall not be a defense to any crime set forth in section five, article four, chapter sixty-one if a creation, alteration or deletion of computer data was involved in lieu of a tangible document or instrument.
§61-3C-16. Civil relief; damages.

1. Any person whose property or person is injured by reason of a violation of any provision of this article may sue therefor in circuit court and may be entitled to recover for each violation:

2. (1) Compensatory damages;

3. (2) Punitive damages; and

4. (3) Such other relief, including injunctive relief, as the court may deem appropriate.

5. Without limiting the generality of the term, "damages" shall include loss of profits.

6. (b) At the request of any party to an action brought pursuant to this section, the court may, in its discretion, conduct all legal proceedings in such a manner as to protect the secrecy and security of the computer network, computer data, computer program or computer software involved in order to prevent any possible recurrence of the same or a similar act by another person or to protect any trade secret or confidential information of any person. For the purposes of this section "trade secret" means the whole or any portion or phase of any scientific or technological information, design, process, procedure or formula or improvement which is secret and of value. A trade secret shall be presumed to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those authorized by the owner to have access thereto for a limited purpose.

7. (c) The provisions of this section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

8. (d) A civil action under this section must be commenced before the earlier of: (1) five years after the last act in the course of conduct constituting a violation of this article; or (2) two years after the plaintiff discovers or reasonably should have discovered the last act in the course of conduct constituting a violation of this article.
§61-3C-17. Defenses to criminal prosecution.

(a) In any criminal prosecution under this article, it shall be a defense that:

(1) The defendant had reasonable grounds to believe that he had authority to access or could not have reasonably known he did not have authority to access the computer, computer network, computer data, computer program or computer software in question; or,

(2) The defendant had reasonable grounds to believe that he had the right to alter or destroy the computer data, computer software or computer program in question; or,

(3) The defendant had reasonable grounds to believe that he had the right to copy, reproduce, duplicate or disclose the computer data, computer program, computer security system information or computer software in question.

(b) Nothing in this section shall be construed to limit any defense available to a person charged with a violation of this article.

§61-3C-18. Venue.

For the purpose of criminal and civil venue under this article, any violation of this article shall be considered to have been committed:

(1) In any county in which any act was performed in furtherance of any course of conduct which violates this article;

(2) In the county of the principal place of business in this state of the aggrieved owner of the computer, computer data, computer program, computer software or computer network, or any part thereof;

(3) In any county in which any violator had control or possession of any proceeds of the violation or any books, records, documentation, property, financial instrument, computer data, computer software, computer program, or other material or objects which were used in furtherance of or obtained as a result of the violation;
(4) In any county from which, to which, or through which any access to a computer or computer network was made, whether by wires, electromagnetic waves, microwaves or any other means of communication; and

(5) In the county in which the aggrieved owner or the defendant resides or either of them maintains a place of business.

§61-3C-19. Prosecution under other criminal statutes not prohibited.

Criminal prosecution pursuant to this article shall not prevent prosecution pursuant to any other provision of law.

§61-3C-20. Personal jurisdiction.

Any person who violates any provision of this article and, in doing so, accesses, permits access to, causes access to or attempts to access a computer, computer network, computer data, computer resources, computer software or computer program which is located, in whole or in part, within this state, or passes through this state in transit, shall be subject to criminal prosecution and punishment in this state and to the civil jurisdiction of the courts of this state.


If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or applications of this article which can be given effect without the invalid provision or application, and to that end the provisions of this article are declared to be severable.

CHAPTER 48
(S. B. 624—Originating in the Committee on the Judiciary)

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

AN ACT to amend and reenact article seven, chapter sixty-
one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deadly weapons generally, defining certain terms; carrying deadly weapon without license or other authorization, penalties; license to carry deadly weapons, how obtained; revocation of license; exceptions as to prohibitions against carrying concealed deadly weapons; persons prohibited from possession of deadly weapons, penalties; possession of deadly weapons by minors, minor may be adjudged delinquent; possession of machine guns or automatic weapons, penalties; display of deadly weapons for sale or hire, sale to prohibited persons, penalties; brandishing or exposing deadly weapons, threatening or causing breach of the peace, penalties; exposing or brandishing firearm or deadly weapon on premises of school or court of law, penalties; negligent shooting, wounding or killing of human being or livestock while hunting, penalties; shooting across road or near building or crowd, penalties; right of certain persons to limit possession of firearms on premises; refusing to temporarily relinquish firearm or deadly weapon or to leave premises, penalties; and prohibition on possessing or carrying firearm or other deadly weapon on school premises.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-1. Legislative findings.
§61-7-2. Definitions.
§61-7-3. Carrying deadly weapon without license or other authorization; penalties.
§61-7-4. License to carry deadly weapons; how obtained.
§61-7-5. Revocation of license.
§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.
§61-7-7. Persons prohibited from possession of deadly weapons.
§61-7-8. Possession of deadly weapons by minors; prohibition.
§61-7-10. Display of deadly weapons for sale or hire; sale to prohibited persons; penalties.
§61-7-11. Brandishing deadly weapons; threatening or causing breach of the peace; brandishing deadly weapons on premises of educational facility or court; penalties.

§61-7-12. Negligent shooting, wounding or killing of human being or livestock while hunting; penalty.

§61-7-13. Shooting across road or near building or crowd; penalty.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

§61-7-1. Legislative findings.

The Legislature finds that the overwhelming support of the citizens of West Virginia for article three, section twenty-two of the constitution of this state, commonly known as the “Right to Keep and Bear Arms Amendment”, combined with the obligation of the state to reasonably regulate the right of persons to keep and bear arms for self-defense requires the reenactment of this article.

§61-7-2. Definitions.

As used in this article, unless the context otherwise requires:

(1) “Blackjack” means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. The term “blackjack” shall include, but not be limited to, a billy, billy club, sand club, sandbag or slapjack.

(2) “Gravity knife” means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force, and when so released is locked in place by means of a button, spring, lever, or other locking or catching device.

(3) “Knife” means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle, which is capable of inflicting cutting, stabbing or tearing wounds. The term “knife” shall include, but not be limited to, any dagger, dirk, poniard or stiletto with a blade over three and one-half inches in length, any switchblade knife or gravity knife, and any other instrument capable of inflicting cutting, stabbing, or tearing wounds. A pocket knife
with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports or other recreational uses, or a knife designed for use as a tool or household implement shall not be included within the term "knife" as defined herein, unless such knife is knowingly used or intended to be used to produce serious bodily injury or death.

(4) "Switchblade knife" means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch or other releasing device in its handle.

(5) "Nunchuka" means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope or other nonrigid, flexible or springy material, constructed in such a manner as to allow the rigid parts to swing freely, so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.

(6) "Metallic or false knuckles" means a set of finger rings attached to a transverse piece, to be worn over the front of the hand for use as a weapon, and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person struck. The terms "metallic or false knuckles" shall include any such instrument, without reference to the metal or other substance or substances from which the metallic or false knuckles are made.

(7) "Pistol" means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.

(8) "Revolver" means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.

(9) "Deadly weapon" means an instrument which is designed to be used to produce serious bodily injury or death, or is readily adaptable to such use. The term
“deadly weapon” shall include, but not be limited to, the instruments defined in subdivisions (1) through (8) of this section, or other deadly weapons of like kind or character which may be easily concealed on or about the person.

(10) “Concealed” means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried.

(11) “Firearm” means any weapon which will expel a projectile by action of an explosion.

(12) “Controlled substance” shall have the same meaning as is ascribed to that term in subsection (d), section one hundred one, article one, chapter sixty-a of this code.

(13) “Drug” shall have the same meaning as is ascribed to that term in subsection (I), section one hundred one, article one, chapter sixty-a of this code.

§61-7-3. Carrying deadly weapon without license or other authorization; penalties.

(a) Any person who carries a concealed deadly weapon, without a state license or other lawful authorization established under the provisions of this code, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars and may be imprisoned in the county jail for not more than twelve months for the first offense; but upon conviction of a second or subsequent offense, he or she shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than five years and fined not less than one thousand dollars nor more than five thousand dollars.

(b) It shall be the duty of the prosecuting attorney in all cases to ascertain whether or not the charge made by the grand jury is a first offense or is a second or subsequent offense and, if it shall be a second or
subsequent offense, it shall be so stated in the indict-
ment returned, and the prosecuting attorney shall
introduce the record evidence before the trial court of
such second or subsequent offense and shall not be
permitted to use discretion in introducing evidence to
prove the same on the trial.

§61-7-4. License to carry deadly weapons; how obtained.

(a) Any person desiring to obtain a state license to
carry a concealed deadly weapon shall apply to the
circuit court of his or her county for such license, and
shall pay to the clerk of the circuit court, at the time
of application, a filing fee of twenty dollars. The
applicant shall file with the clerk of the circuit court an
application in writing, duly verified, which sets forth
the following:

(1) That the applicant is a citizen of the United States
of America or lawfully resides in the United States of
America;

(2) That, on the date the application is made, the
applicant is a bona fide resident of this state and of the
county in which the application is made;

(3) That the applicant is eighteen years of age or
older;

(4) That the applicant is not addicted to alcohol, a
controlled substance or a drug, and is not an unlawful
user thereof;

(5) That the applicant has not been convicted of a
felony or of an act of violence involving the misuse of
such deadly weapon;

(6) That the applicant desires to carry such deadly
weapon for the defense of self, family, home or state, or
other lawful purpose;

(7) That the applicant is physically and mentally
competent to carry such weapon;

(8) That, in the case of a person applying for a license
to carry a concealed pistol or revolver, the applicant has
qualified under minimum requirements for handling
and firing such firearms. These minimum requirements are those promulgated by the department of natural resources and attained under the auspices of the department of natural resources: Provided, That the court shall waive this requirement in the case of a renewal applicant who has previously qualified: Provided, however, That the following may be substituted for those minimum requirements promulgated by the department of natural resources:

(A) Successful completion of any official national rifle association firearms safety or training course;

(B) Successful completion of any firearms safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college, or private or public institution or organization or firearms training school, utilizing instructors currently certified by the national rifle association;

(C) Successful completion of any firearms training or safety course or class conducted by a firearms instructor certified as such by the state or by the national rifle association.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization, or group that conducted or taught said course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class, shall constitute evidence of qualification under this section.

(b) The court shall issue or deny such license within thirty days after the application is filed with the circuit clerk. The court shall, if necessary, hear evidence upon all matters stated in such application and upon any other matter related to the eligibility of the applicant under subsection (a) of this section. If from such application or the proof it appears that the purpose for such person to carry such weapon is defense of self, family, home or state, or other lawful purpose, and all other conditions in subsection (a) are complied with, the
court, or the judge thereof in vacation, shall grant such license.

(c) In the event an application is denied, the specific reasons for the denial shall be stated in the order of the court denying the application. Upon denial of an application and at the request of the applicant made within ten days of such denial, the court shall schedule the matter for a hearing. The applicant may be represented by counsel, but in no case shall the court be required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law.

(d) If an application is approved, the court shall require in its order granting the license that before any license shall be issued or become effective, the applicant shall pay to the sheriff a license fee in the amount of fifty dollars. Any such license shall be valid for five years, unless sooner revoked.

(e) All license fees collected hereunder shall be paid by the sheriff and accounted for to the auditor as other license taxes are collected and paid, and the state tax commissioner shall prepare all suitable forms for licenses and certificates showing that such license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(f) The clerk of the circuit court shall, immediately after the license is granted as aforesaid, furnish the superintendent of the department of public safety a certified copy of the order of the court granting such license, for which service the clerk shall be paid a fee of two dollars which shall be taxed as costs in the proceeding. It shall be the duty of the clerk of each circuit court to furnish to the superintendent of the department of public safety, at any time so requested, a certified list of all such licenses issued in the county.

(g) No person who is engaged in the receipt, review, or in the issuance of such license shall incur any civil liability as the result of the lawful performance of his or her duties under this article.
§61-7-5. Revocation of license.

1 A license to carry a deadly weapon shall be deemed revoked at such time as the person licensed becomes unable to meet the criteria for initial licensure set forth in section four of this article. Any person licensed under the provisions of this article shall immediately surrender his or her license to the circuit court upon becoming ineligible for continued licensure.

§61-7-6. Exceptions as to prohibitions against carrying concealed deadly weapons.

1 The licensure provisions set forth in this article shall not apply to:

3 (1) Any person carrying a deadly weapon upon his own premises; nor shall anything herein prevent a person from carrying any firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business, nor shall anything herein prohibit a person from possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site, and returning to his or her home, residence or place of business;

14 (2) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this state, or from the United States for the purpose of target practice, from carrying any pistol, as defined in this article, unloaded, from his home, residence or place of business to a place of target practice, and from any such place of target practice back to his home, residence or place of business, for using any such weapon at such place of target practice in training and improving his skill in the use of such weapons;

25 (3) Any law-enforcement officer or law-enforcement official as such are defined in section one, article twenty-nine, chapter thirty of this code;

28 (4) Any employee of the West Virginia department of corrections duly appointed pursuant to the provisions of
section five, article five, chapter twenty-eight of this code while such employee is on duty;

(5) Any member of the armed forces of the United States or the militia of this state while such member is on duty;

(6) Any circuit judge, prosecuting attorney, assistant prosecuting attorney or a duly appointed investigator employed by a prosecuting attorney.

§61-7-7. Persons prohibited from possession of deadly weapons.

Notwithstanding any provision of this code to the contrary, no person who: (1) Has been convicted of a felony in this state or in any other jurisdiction; (2) has been discharged under less than honorable conditions from the armed forces of the United States; (3) has been adjudicated as a mental incompetent or has been committed involuntarily to a mental institution; (4) is an alien illegally or unlawfully in the United States; or (5) is addicted to alcohol, a controlled substance or a drug, or is an unlawful user thereof shall have in his or her possession any firearm or other deadly weapon:

Provided, That any person prohibited from possessing a firearm or other deadly weapon by the provisions of this section may petition the circuit court of the county in which he or she resides and if the court finds by clear and convincing evidence that such person is competent and capable of exercising the responsibility concomitant with the possession of a firearm or other deadly weapon the court may enter an order allowing such person to possess such weapon if such would not violate any federal statute.

Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars or confined in the county jail for not less than ninety days nor more than one year, or both.

§61-7-8. Possession of deadly weapons by minors; prohibitions.

Notwithstanding any other provision of this article to
the contrary, a person under the age of eighteen years who is not married or otherwise emancipated shall not possess or carry concealed or openly any deadly weapon: Provided, That a minor may possess a firearm upon premises owned by said minor or his family or on the premises of another with the permission of his or her parent or guardian and in the case of property other than his or her own or that of his family, with the permission of the owner or lessee of such property: Provided, however, That nothing in this section shall prohibit a minor from possessing a firearm while hunting in a lawful manner or while traveling from a place where he or she may lawfully possess a deadly weapon, to a hunting site, and returning to a place where he or she may lawfully possess such weapon.

A violation of this section by a person under the age of eighteen years shall subject the child to the jurisdiction of the circuit court under the provisions of article five, chapter forty-nine of this code, and such minor may be proceeded against in the same manner as if he or she had committed an act which if committed by an adult would be a crime, and may be adjudicated delinquent.

§61-7-9. Possession of machine guns; penalties.

It shall be unlawful for any person to carry, transport, or have in his possession, any machine gun, submachine gun, or any other fully automatic weapon unless he or she has fully complied with applicable federal statutes and all applicable rules and regulations of the secretary of the treasury of the United States relating to such firearms.

Any person who violates the provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars, or shall be confined in the county jail for not less than ninety days, nor more than one year, or both.

§61-7-10. Display of deadly weapons for sale or hire; sale to prohibited persons; penalties.

(a) It shall be unlawful for any person to publicly
display and offer for rent or sale, to passersby on any
street, road or alley, any deadly weapon, machine gun,
submachine gun or other fully automatic weapon, any
rifle, shotgun or ammunition for same.

(b) It shall be unlawful for any person to knowingly
sell, rent, give or lend any of the arms mentioned in this
article to a person prohibited from possessing same by
any provision of this article.

(c) Any person, partnership, corporation or firm
violating the provisions of this section shall be guilty of
a misdemeanor, and, upon conviction thereof, shall be
fined not less than five hundred dollars nor more than
five thousand dollars or shall be confined in the county
jail for not more than one year, or both.

§61-7-11. Brandishing deadly weapons; threatening or
causing breach of the peace; brandishing
deadly weapons on premises of educational
facility or court; penalties.

(a) It shall be unlawful for any person armed with a
firearm or other deadly weapon, whether licensed to
carry the same or not, to carry, brandish, or use such
weapon in a way or manner to cause, or threaten, a
breach of the peace. Any person violating this subsection
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than fifty nor more than
one thousand dollars, or shall be confined in the county
jail not less than ninety days nor more than one year,
or both.

(b) It shall be unlawful for any person armed with a
firearm or deadly weapon, except for law-enforcement
officers on duty, to expose, brandish, unholster or hold
such firearm in his or her hand or expose, brandish or
hold such deadly weapon in his or her hand (1) on the
premises of any primary or secondary educational
facility in this state, except for valid educational
purposes by faculty or by individuals invited by faculty;
or (2) on any premises housing a court of law. Any
person violating this subsection shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not less than two hundred dollars nor more than
§61-7-12. Negligent shooting, wounding or killing of human being or livestock while hunting; penalty.

It shall be unlawful for any person, while engaged in hunting or pursuing game animals, game birds or game fowl, carelessly or negligently to shoot, wound or kill any human being, or any livestock, or destroy or injure any other chattels or property, and any person violating this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars, or shall be confined in the county jail for a period not exceeding one year, or both.

§61-7-13. Shooting across road or near building or crowd; penalty.

(a) It shall be unlawful for any person to shoot or discharge any firearm across or in any public road in this state, at any time, or within four hundred feet of any schoolhouse or church, or within five hundred feet of any dwelling house by any person other than the owner and his or her family or guests, or on or near any park or other place where persons gather for purposes of pleasure, and any person violating this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or shall be imprisoned in the county jail not more than one hundred days.

(b) Any person operating a gun repair shop, licensed to do business in the state of West Virginia and duly licensed under applicable federal statutes, is exempt from the prohibition established by this section and section fifty-eight, article two, chapter twenty of this code for the purpose of test-firing firearms.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

Notwithstanding the provisions of this article, any owner, lessee or other person charged with the care,
custody and control of real property may prohibit the carrying openly or concealed of any firearm or deadly weapon on property under his or her domain: Provided, That for purposes of this section “person” means an individual or any entity which may acquire title to real property.

Any person carrying or possessing a firearm or other deadly weapon on the property of another who refuses to temporarily relinquish possession of such firearm or other deadly weapon, upon being requested to do so, or to leave such premises, while in possession of such firearm or other deadly weapon, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county jail not more than six months, or both: Provided, That the provisions of this section shall not apply to those persons set forth in subsections (3) through (6), section six of this code while such persons are acting in an official capacity: Provided, however, That under no circumstances may any person possess or carry or cause the possession or carrying of any firearm or other deadly weapon on the premises of any primary or secondary educational facility in this state unless such person is a law-enforcement officer or he or she has the express written permission of the county school superintendent.

CHAPTER 49

(Com. Sub. for H. B. 2010—By Mr. Speaker, Mr. Chambers, and Delegate Hatcher)

[Passed March 2, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen-a, article one-c, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the court to make conditions of bond concerning contact with the victim as necessary to protect the victim.

Be it enacted by the Legislature of West Virginia:

That section seventeen-a, article one-c, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 1C. BAIL.

§62-1C-17a. Bail in situations of alleged child abuse and alleged sexual offenses.

When the offense charged is an assault or other offense against a child who is defined in chapter forty-nine of this code, it may be a condition of bond that the defendant shall not live in the same residence as the victim of the alleged offense, and the court may make such other conditions of bond with respect to contact with the victim as it deems necessary under the circumstances to protect the child.

In cases where the charge is a sexual offense, as defined in chapter sixty-one of this code, against any person, the court, upon a showing of cause, may make such conditions of bond on the defendant or on any witness bond issued under section fifteen of this article as it deems necessary with respect to contact with the victim.

CHAPTER 50

(Com. Sub. for H. B. 2036—By Delegates Farley and Murensky)

[Passed April 6, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to criminal penalties for failing to return to confinement in jails while on release for work or other purposes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.


(a) Any person lawfully confined in jail on conviction
of one or more felonies, or on conviction of one or more
felonies and one or more misdemeanors, who has been
granted release for work or other purposes under section
one-a of this article, and who fails to return to jail at
the times designated in the release order with the intent
to evade lawful detention, shall be guilty of an additional
felony, and, upon conviction, may be confined in the
penitentiary for not less than one nor more than five
years.

(b) Any person lawfully confined in jail on conviction
of one or more misdemeanors, who has been granted
release for work or other purposes under section one-a
of this article, and who fails to return to jail at the times
designated in the release order with the intent to evade
lawful detention, shall be guilty of a misdemeanor, and,
upon conviction, may be confined in jail for up to one
year.

CHAPTER 51
(S. B. 564—By Senator Lucht)

[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter nineteen of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated
section twenty-three; to amend and reenact section five,
article ten, chapter seven of said code; and to amend and
reenact section nineteen-a, article eight, chapter sixty-
one of said code, all relating to removal of dog or cat
from owner charged with cruelty; relating to the sale
of impounded dogs or cats only for adoption as pets; sale
or transfer of dogs or cats prohibited to any person or
entity for use in education or scientific activities;
humane disposition of dogs and cats; and effective date.

Be it enacted by the Legislature of West Virginia:

That article twenty, chapter nineteen of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be amended by adding thereto a new section, designated
section twenty-three; that section five, article ten, chapter seven of said code be amended and reenacted; and that section nineteen-a, article eight, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter
7. County Commissions and Officers.
19. Agriculture.
61. Crimes and Their Punishment.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 10. HUMANE OFFICERS.

§7-10-5. Destruction of animals.

1 Any such officer may lawfully destroy or cause to be destroyed any animal in his charge, when in the judgment of such humane officer, and by the written certificate of a regularly licensed veterinary surgeon, such animal appears to be injured, disabled, diseased past recovery, or the animal is unclaimed.

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-23. Prohibition of the use of impounded dogs and cats.

1 On and after the first day of September, one thousand nine hundred eighty-nine, any dog or cat impounded under the provisions of this article may not be sold, given, transferred or otherwise made available directly or indirectly to any person, institution, corporation or other entity for use in educational or scientific research or related activities. Disposition of impounded dogs or cats may only be by adoption as pets or humanely destroyed. Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than four hundred fifty dollars nor more than two thousand dollars.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.
§61-8-19a. Cruelty to dogs and cats prohibited; putting such animals in fights against each other prohibited; penalties.

If any person shall cruelly, or needlessly beat, torture, torment, mutilate, kill or willfully deprive necessary sustenance, to any dog or cat, irrespective of whether any such dog or cat be his or her own or that of another person, or if any such person shall impound or confine any such dog or cat in any place unprotected from the elements or fail to supply the same with a sufficient quantity of food and water, or shall abandon to die any maimed, sick, or diseased dog or cat or shall be engaged in or employed at dogfighting, or putting one dog or cat to fight against another dog or cat or any similar cruelty to any dog or cat, or shall receive money for the admission of any person, or shall use, train or possess a dog or cat for the purpose of seizing, detaining or maltreating any other dog or cat, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred nor more than one thousand dollars, and in addition thereto, in the discretion of the court or magistrate, may be imprisoned in the county jail not exceeding thirty days, and the county humane officer may remove the dog or cat involved and place said animal in the county pound, and said dog or cat shall not be returned to owner (or perpetrator of act of cruelty) but shall be put up for adoption to desirable home or given over into the care of a humane society, or upon the recommendation of a licensed veterinarian shall be humanely destroyed.

CHAPTER 52
(H.B. 2791—By Delegates Ashley and Rowe)

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

AN ACT to amend and reenact section twenty-three, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to restoring a former name of a party upon divorce.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-23. Former name of party; restoration.

The court upon granting an annulment or divorce, shall, if requested to do so by either party, allow such party to resume the name used prior to his or her first marriage. The court shall, if requested to do so by either party, allow such party to resume the name of a former spouse if such party has any living child or children by marriage to such former spouse.

CHAPTER 53
(Com. Sub. for H. B. 2103—By Delegate Hatfield)

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

AN ACT to amend and reenact article two-c. chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the domestic violence act; licensure and funding of domestic violence shelters; definitions; establishing a family protection services board; duties; closure of shelters; provisional license waivers; establishing additional fee for filing of divorce actions to be collected by circuit clerk; funding application requirements; award provisions; referral to shelters; licenses; waiver; rules; and termination of board.

Be it enacted by the Legislature of West Virginia:

That article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2C. DOMESTIC VIOLENCE ACT.
§48-2C-1. Title.

This article shall be known as the Domestic Violence Act of 1989.


1 As used in this article, unless the context clearly requires otherwise:

2 (a) "Board" means the family protection services board created pursuant to section three of this article;

3 (b) "Department" means the department of human services or any successor agency however so named;

4 (c) "Shelter" or "Family Protection Shelter" means a family shelter created for the purpose of receiving, on a temporary basis, persons who are victims of domestic violence, abuse or rape as well as the children of such victims;

5 (d) "Commissioner" shall mean the commissioner of the department of human services; and

6 (e) "Family protection program" or "program" means a program offered by a locally controlled organization primarily for the purpose of providing services to victims of domestic violence or abuse and their children.

§48-2C-3. Family protection services board.

1 (a) There is hereby created a family protection services board. The board shall consist of five persons.

2 The governor, with the advice and consent of the Senate,
shall appoint three members of the board. One such member shall be a director of a shelter. One member shall be a member of a major trade association which represents shelters across the state. The final gubernatorial appointee shall be a member of the public. The other two members shall be the commissioner of the department of human services, or his or her designee, and the chairman of the governor's committee on crime, delinquency and correction.

(b) The terms of the three members appointed by the governor shall be staggered terms of three years. In the case of the initial appointments, the director of the shelter shall serve a one-year term and the representative of the trade association shall serve a two-year term.

(c) In the event that a member of the board shall cease to be qualified for appointment, then such appointment shall terminate.

§48-2C-4. Duties of board.

It is the duty of the board to:

(a) Regulate its procedural practice;

(b) Receive and consider applications for the development of shelters;

(c) Facilitate the formation and operation of shelters;

(d) Promulgate rules and regulations to implement the provisions of this article and any applicable federal guidelines;

(e) Advise the commissioner on matters of concern relative to his or her responsibilities under this article;

(f) Study issues pertinent to family protection shelters, programs for domestic violence victims, and report the results to the governor and the Legislature;

(g) Conduct hearings as necessary under this article;

(h) Delegate to the commissioner such powers and duties of the board as the board may deem appropriate to delegate, including, but not limited to, the authority to approve, disapprove, revoke or suspend licenses;
(i) Deliver funds to shelters within forty-five days of the approval of a proposal for such shelters;

(j) Establish a system of peer review which will ensure the safety, well being and health of the clients of all shelters operating in the state;

(k) Evaluate annually each funded shelter to determine its compliance with the goals and objectives set out in its original application for funding or subsequent revisions;

(l) To award to shelters, for each fiscal year, ninety-five percent of the total funds collected and paid over during the fiscal year to the special revenue account established pursuant to section twenty-four, article one of this chapter and to expend, during said period a sum not in excess of five percent of said funds for cost of administering provisions of this article;

(m) Establish and enforce system of standards for annual licensure for all shelters and programs in the state;

(n) Enforce standards; and

(o) Review its rules and regulations biannually.

§48-2C-5. Closure of shelters; provisional licensee waivers.

(a) The board may close any shelter which violates the standards established under this article and which threatens the health, well being and safety of its clients: Provided, That the board shall establish a plan to place such clients in other shelters and to develop a method to continue serving the areas served by the shelter to be closed.

(b) The board may place a shelter, which violates standards established under this article and which threatens the health, well being and safety of its clients, under receivership and operate said shelter. The board shall have access and may use all assets of the shelter.

(c) In order to close or place a shelter in receivership, the board shall hold a public hearing within the confines
of municipality or county in which the shelter is located. The board, by the first day of September, one thousand nine hundred eighty-nine, shall establish rules and regulations to govern the conduct of such hearings: Provided, That four members of the board must vote in the affirmative before a shelter is closed or placed in receivership.

(d) If a shelter disagrees with the findings of the board, the shelter may appeal such ruling to the circuit court of Kanawha County or the circuit court of the county where the shelter is located pursuant to the provisions of section four, article five, chapter twenty-nine-a of this code.

§48-2C-6. Additional fee to be collected for divorce filing.

In addition to any fee heretofore established for the filing of a divorce action, the clerk of the circuit court shall collect an additional fee of thirty dollars. The fee shall be deposited in the special revenue fund established pursuant to section twenty-four, article one, chapter forty-eight of this code: Provided, That such additional fee shall not be collected by the clerk from persons complying with the provisions of section one, article two, chapter fifty-nine of this code pertaining to suits filed by poor persons.

§48-2C-7. Funding application requirements.

(a) A shelter or program may apply to the board for a grant of funds as provided by this article. The application shall include, but not be limited to, the following:

(1) Evidence that the organization submitting the application is incorporated in this state as a nonprofit corporation.

(2) A list of the incorporators of the corporation and a list of the officers and the board of directors;

(3) The proposed budget of the shelter or program for the following fiscal year;

(4) A summary of the services proposed to be offered in the following fiscal year by the shelter or program;
(5) An evaluation of local needs for a shelter or program;

(6) An estimate of the number of people to be served by the shelter or program during the following fiscal year; and,

(7) Any other information the board may feel is necessary.

(b) In order to qualify for a grant of funds under this article, each family protection shelter or program shall:

(1) Provide or propose to provide a facility which will serve as temporary shelter to receive, care and provide services for persons who are victims of domestic violence or abuse and their children;

(2) Be incorporated in this state as a nonprofit corporation;

(3) Have a board of directors which represents a broad spectrum of the community to be served, including at least one person who is or has been a victim of domestic violence or abuse;

(4) Receive at least fifty-five percent of its funds from sources other than funds distributed under this article. These sources may be public or private and may include contributions of goods or services; and

(5) Require persons employed by or volunteering services to the shelter or program to maintain the confidentiality of any information which may identify individuals served by it.

(c) A family protection shelter or program may not be funded initially if it is shown that it discriminates in its services on the basis of race, religion, age, sex, marital status, national origin or ancestry. If such discrimination occurs after initial funding, the shelter or program may not be refunded until the discrimination ceases.

(d) A family protection shelter program may not be refunded if its original application projected the provision of residential services and such services were not provided in the first six months following disburse-
ment of the original funds under this article: Provided, That upon a subsequent showing that the funds were used in the manner proposed in the original application, the shelter or program is not barred from subsequent funding. A revision of the original application may be filed with the board.

§48-2C-8. Award provisions.

Grants made pursuant to this article shall be awarded on the basis of the following criteria:

(a) Demonstration of local need for proposed services;

(b) Merit of project as proposed;

(c) Demonstration of local control of the shelter or program;

(d) Administrative design and efficiency of the project; and

(e) The Board shall develop a formula for equal distribution of fifty percent of any money it awards.

§48-2C-9. Annual reports of shelter and programs.

A shelter or program receiving funds pursuant to this article shall file an annual report with the board by the thirty-first day of each October for the prior fiscal year. The report shall include statistics on the number of persons served, the relationship of the victim to the abuser, services provided to the abuser, the number of referrals made for medical, psychological, financial, educational, vocational, child care or legal services and the results of an independent audit. No information contained in the report may identify any person served by the shelter or enable any person to determine the identity of any such person.

§48-2C-10. Referral to shelters.

Where shelters are available, any law-enforcement officer or any public authority investigating an alleged incident of domestic violence shall advise the victim of such abuse of the availability of the family protection shelter to which such person may be admitted.
1 (a) The board shall establish an application for licensure for all shelters and programs.
2 (b) Licenses may be renewed on an annual basis with all such licenses having a term of one year commencing on the first day of July and terminating on the thirtieth day of June on the next year.
3 (c) The board shall grant or deny any license within forty-five days of the receipt of the application.
4 (d) The license granted by the board shall be conspicuously displayed by the licensees.

§48-2C-12. Waiver.
1 The board may grant a provisional license or grant a waiver of licensure if the board deems such waiver or provisional license necessary for the shelter or program. All such waivers or provisional licenses shall be reviewed semiannually.

1 The board shall promulgate rules and regulations to effectuate the provisions of this article. The rules and regulations shall not take effect until the first set of rules and regulations are approved by the Legislature.

1 The family protection services board shall be terminated pursuant to the provisions of article ten, chapter four of this code, on the first day of July, one thousand nine hundred ninety-two, unless sooner terminated or unless sooner continued or reestablished pursuant to that article.

CHAPTER 54
(Com. Sub. for S. B. 575—By Senators Tucker, Mr. President, and Harman, By Request of the Executive)

[Passed April 8, 1989; in effect from passage. Approved by the Governor.]
said code; and to amend and reenact article fifteen, chapter thirty-one of said code, relating to the West Virginia Economic Development Authority Act; making certain legislative findings as to general economic condition of West Virginia and identifying segments of state economy requiring promotion and development and further identifying financing methods necessary to finance and promote economic and industrial development within state; recognizing that availability of financial assistance through creation of insurance fund will promote economic development of state; further recognizing public interest in establishing state instrumentality with powers to address economic development needs of the state including, but not limited to, furnishing money and credit to approved industrial development agencies and enterprises, promoting establishment of new commercial and industrial projects and retaining existing projects; setting forth and identifying purposes of act including, but not limited to, creation of economic development authority to develop and advance business prosperity and economic welfare of state, to borrow money and issue bonds, notes, commercial paper and other debt instruments, to furnish money and credit or credit enhancement to industrial development agencies and enterprises for the promotion of new commercial and industrial projects and to retain existing projects, to insure the financing of working capital or the refinancing of existing debt of an enterprise, and creation of an insurance fund for credit enhancement purposes, and declaring that all such purposes are public purposes; abolishing West Virginia industry and jobs development corporation and designating economic development authority as its successor; defining certain key terms; establishing composition of authority and setting forth appointment and terms of members thereof and voting by such members; stating general powers of authority, including, but not limited to, the issuance of bonds and notes, borrowing money, financing projects, insuring bonds and notes issued by the authority and others, and insuring loans made to various parties by financial institutions, and to apply for, develop, maintain and
operate foreign trade zones in accordance with applicable federal law; providing for loans to industrial development agencies and enterprises for certain projects; creating, as a credit enhancement vehicle, an insurance fund which may be used, among other purposes, to insure payment or repayment of all or any part of bonds and notes issued by the authority as well as by certain other public bodies, to insure payment or repayment of instruments executed, obtained or delivered in connection with issuance and sale of such bonds and notes, and to insure payment or repayment of other types of debt instruments entered into by an enterprise or a state public body or authority with a financial institution, and enabling authority to apply for, develop, maintain and operate foreign trade zones in accordance with applicable federal law; authorizing authority to issue bonds and notes and providing that such bonds and notes are special obligations of the authority, and specifying form of such bonds and notes; setting forth procedure for approval of projects, issuance of bonds and notes and other matters concerning authority; providing that bonds or notes may be secured by trust agreement and that trustee may be any bank or trust company located within or outside state, and providing for pledge or assignment of revenues; setting forth permitted uses of funds acquired by authority and restrictions thereon; providing for refunding bonds and notes; establishing that bonds and notes issued and other obligations undertaken by authority are not debts of state or any political subdivision thereof; providing that bonds and notes are negotiable instruments and constitute legal investments; exempting authority from payment of taxes or assessments upon any property acquired or used by authority or upon income therefrom; shielding various parties from personal liability with respect to bonds or notes issued by authority; declaring that powers granted under act cumulative; setting forth authority of board of investments; providing for loan and insurance application requirements; providing for confidentiality of certain documentary materials or data made or received by authority; establishing economic development fund and setting
forth uses thereof; authorizing governor to transfer state property to authority; providing for validity of certain pledges, mortgages and other security instruments; providing for collection of money accruing to authority and deposit thereof into state treasury; providing conflicts of interest clause; providing for agreements with federal agencies; requiring annual audits; enabling public corporations to apply for foreign trade zone status in accordance with applicable federal law; providing severability and construction clauses; and declaring that projects shall not be deemed public improvements.

Be it enacted by the Legislature of West Virginia:

That article one, chapter five-c, and article sixteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article fifteen, chapter thirty-one of said code be amended and reenacted, all to read as follows:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-2. Legislative findings.
§31-15-3a. West Virginia Industry and Jobs Development Corporation abolished; establishment of economic development authority as successor to corporation.
§31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by chairman; voting; compensation and expenses.
§31-15-7. Loans to industrial development agencies or enterprises for projects.
§31-15-9. Bonds and notes issued pursuant to this article.
§31-15-10. Approval by authority.
§31-15-11. Trustee for bondholders; contents of trust agreement; pledge or assignment of revenues.
§31-15-12. Use of funds by authority; restrictions thereon relating to projects.
§31-15-14. Obligations of authority undertaken pursuant to this article not debt of state, county, municipality or any political subdivision.
§31-15-15. Negotiability of bonds and notes issued pursuant to this article.
§31-15-16. Bonds and notes issued pursuant to this article; legal investments.
§31-15-17. Exemption from taxation.
§31-15-18. Personal liability; persons executing bonds or notes issued pursuant to this article.

§31-15-19. Cumulative authority as to powers conferred; applicability of other statutes and charters; bonds and notes issued pursuant to this article.


§31-15-21. Loans and insurance application requirements.

§31-15-22. Documentary materials concerning trade secrets; commercial or financial information; or confidentiality.


§31-15-27. Conflict of interest; when contracts void.

§31-15-28. Agreement with federal agencies not to alter or limit powers of authority.


§31-15-30. Projects not to be considered public improvements.

§31-15-31. Foreign trade zones; authority approval.


This article shall be known and may be cited as "The West Virginia Economic Development Authority Act."

§31-15-2. Legislative findings.

It is hereby determined and declared as a matter of legislative finding: (a) That unemployment exists in many areas of the state and may well come about, from time to time, in other areas of the state; (b) that in some areas of the state, unemployment is a serious problem and has been for so long a period of time that, without remedial measures, it may become so in other areas of the state; (c) that economic insecurity due to unemployment is a serious menace to the health, safety, morals and general welfare of the people of the entire state; (d) that widespread industry unemployment produces indigency which falls with crushing force upon all unemployed workers and ultimately upon the state in the form of welfare and unemployment compensation; (e) that the absence of employment and business opportunities for youth is a serious threat to the strength and permanence of their faith in our American political and economic institutions and the philosophy of freedom on which those institutions are based; (f) that lack of
employment and business opportunities has resulted in thousands of workers and their families leaving the state to find such opportunities elsewhere, and that this exodus has adversely affected the tax base of counties and municipalities resulting in an impairment of their financial ability to support education and other local government services; (g) that security against unemployment and the spread of indigency and economic stagnation can best be provided by the promotion, attraction, stimulation, rehabilitation and revitalization of commerce, tourism, industry and manufacturing; (h) that the present and future health, safety, morals, right to gainful employment and general welfare of the people of the state require as a public purpose the promotion and development of new and expanded coal and other energy production, industrial, commercial, tourist and manufacturing enterprises within this state; (i) that the means and measures being authorized for the financing of projects, including the insuring of loans or other debt issued for working capital or the refinancing of existing debt of an enterprise, are, as a matter of public policy, for the public purposes of the several counties, municipalities and the state; (j) that the device under which private community industrial development organizations in the state acquire or build industrial buildings or sites and equip the same with funds raised through popular subscription, loans or otherwise for lease and sale to new or expanding industries has proven effective in creating new employment and business opportunities locally, is in accord with the American tradition of community initiative and enterprise, and requires and deserves encouragement and support from the state, as a means toward alleviation of unemployment and economic distress; (k) that community industrial development corporations in the state have invested substantial funds in successful coal production, industrial projects and are experiencing difficulty in undertaking additional projects by reason of the partial inadequacy of their own funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizable first deed of trust or mortgage loans
or letters of credit and other forms of credit enhancement; (l) that an urgent need exists to stimulate a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions into projects; (m) that by increasing the number of projects presenting attractive opportunities for private investment, a larger portion of the private capital available in this state for investment can be put to use for the general economic development of the state; (n) that the availability of financial assistance through the creation of an insurance fund will promote the economic development of the state; and that it is in the public interest, in order to address the needs aforesaid, that a state instrumentality be created as a public body corporate with full powers to accept grants, gifts and appropriations, to generate revenues, to borrow money and issue its bonds, notes, commercial paper, other debt instruments and security interests to the end that funds obtained thereby may be used to furnish money and credit to approved industrial development agencies or enterprises or to promote the establishment of new projects or to retain existing projects.


The purposes of this article shall be to provide for the formation of a public economic development authority to promote, assist, encourage and, in conjunction with such banking corporations or institutions, trust companies, savings banks, building and loan associations, insurance companies or related corporations, partnerships, foundations or other institutions, to develop and advance the business prosperity and economic welfare of the state of West Virginia; to encourage and assist in the location of new business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift and improve the standard of living of the citizens of this state; to cooperate and act in conjunction with other organizations, public or private, the objects of which are the promotion and advancement
of industrial, commercial, tourist or manufacturing
developments in this state; to borrow moneys and to
issue its bonds, notes, commercial paper, other debt
instruments and security interests as well as creating an
insurance fund for credit enhancement purposes; to
furnish money and credit or credit enhancement to
approved industrial development agencies or enterprises
in this state or for the promotion of new projects or to
retain existing projects or to financially assist projects
by insuring bonds, notes, loans and other instruments,
including, but not limited to, the insuring of financing
of working capital or the refinancing of existing debt
of an enterprise, thereby establishing a source of credit
and credit enhancement not otherwise available there-
for. Such purposes are hereby declared to be public
purposes for which public money may be spent and are
purposes which will promote the health, safety, morals,
right to gainful employment, business opportunities and
general welfare of the inhabitants of the state.
§31-15-3a. West Virginia industry and jobs development
corporation abolished; establishment of
economic development authority as succes-
sor to corporation.

The authority shall be the corporate successor to the
West Virginia industry and jobs development corpora-
tion and is hereby vested with all right, title and interest
of such corporation in and to all property, rights and
chooses in action heretofore owned by or vested in such
corporation, including, but not limited to, its loan
portfolio, and shall assume all debts, liabilities and other
obligations, if any, of such corporation. As of the
effective date of this legislation, such corporation shall
cease to exist and all rights and interests heretofore
vested in such corporation shall be vested in the
authority.

The unexpended balance of funds authorized under
section seventeen, article one, chapter five-c of this code
available for use of the West Virginia industry and jobs
development corporation as of the effective date of this
legislation is hereby transferred to the authority.

1 Unless the context clearly indicates otherwise, as used in this article:

2 (a) "Authority" means the West Virginia economic development authority.

3 (b) "Board" means the governing body of the authority.

4 (c) "Board of investments" means the board of investments established by article six, chapter twelve of this code.

5 (d) "Bonds" means bonds or other debt instruments of the authority issued under this article, whether the interest thereon is taxable or tax-exempt for federal income tax purposes.

6 (e) "Business plan" means a document detailing the sales, production and distribution plans of an enterprise, together with the expenditures necessary to carry out those plans (including budget and cash flow projections) on an annual basis, and an employment plan setting forth steps to be taken by the enterprise to retain jobs or reduce unemployment in this state.

7 (f) "Cost of establishing a project" means the cost of acquiring existing facilities, cost of machinery, cost of equipment and fixtures, cost of construction, including, without limitation, cost of improvements, repairs and renovations, cost of all lands, water areas, property rights and easements, financing charges and interest prior to and during construction, cost of architectural, engineering, legal and financial or other consulting services, plans, specifications and surveys, estimates of costs and any other expenses necessary or incident to determining the feasibility or practicability of any project, together with such other costs and expenses as may be necessary or incidental to the financing and the construction or acquisition of the project and the placing of the same in operation.

8 (g) "County" means any county of this state.

9 (h) "Enterprise" means an entity which is or proposes
to be engaged in this state in any business activity for
profit. The entity may be owned, operated, controlled,
or under the management of a person, partnership,
corporation, trust, community-based development
organization or council, local commerce group, employee
stock ownership plan, pension or profit-sharing plan,
trust, a group of participating employees who desire to
own an entity which does not presently exist, or any
similar entity or organization.

(i) "Federal agency" means the United States of
America and any department, corporation, agency or
instrumentality created, designated or established by
the United States of America.

(j) "Financing plan" means a plan designed to meet
the financing needs of an enterprise as reflected in the
business plan.

(k) "Fund" means the economic development fund
provided for in section twenty-three of this article.

(l) "Government" means state and federal govern-
ment, and any political subdivision, agency or instru-
mentality thereof, corporate or otherwise.

(m) "Industrial development agency" means any
incorporated organization, foundation, association or
agency to whose members or shareholders no profit
inures, which has as its primary function the promotion,
encouragement and development of industrial, commer-
cial, manufacturing and tourist enterprises or projects
in this state.

(n) "Insurance fund" means the insurance fund
created by this article.

(o) "Loan" means any extension of financing by the
authority to an industrial development agency or an
enterprise, including, but not limited to, a loan, a lease
or an installment sale.

(p) "Municipality" means any city or town in this
state.

(q) "Notes" means any notes, including commercial
paper, of the authority issued under this article whether
the interest thereon is taxable or tax-exempt for federal income tax purposes.

(r) "Project" means a commercial or industrial undertaking and all of the assets reasonably and necessarily required therefor, all as determined by the authority, which determination shall be conclusive, and shall include, without limiting the generality of the foregoing, industrial projects and commercial projects as presently defined in section three, article two-c, chapter thirteen of this code.

(s) "Revenues" means all fees, premiums, charges, moneys, profits, payments of principal of, or interest on, loans and other investments, gifts, grants, appropriations, contributions and all other income derived or to be derived by the authority under this article.

(t) "Security interest" means an interest in the loan portfolio of the authority which interest is secured by an underlying loan or loans and is evidenced by a note issued by the authority.

§31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by chairman; voting; compensation and expenses.

The West Virginia economic development authority heretofore created is hereby continued as a body corporate and politic, constituting a public corporation and government instrumentality.

The authority shall be composed of a board of members consisting of a chairman, who shall be the governor, or his designated representative, the tax commissioner and seven members who shall be appointed by the governor, by and with the advice and consent of the Senate, and who shall be broadly representative of the geographic regions of the state. The board shall direct the exercise of all the powers given to the authority in this article. The governor shall also be the chief executive officer of the authority, and shall designate the treasurer and the secretary of the board.
Upon the effective date of this legislation, the governor shall forthwith appoint seven members of the board for staggered terms. The terms of the board members first taking office on or after the effective date of this legislation shall expire as designated by the governor at the time of the nomination, two at the end of the first year, two at the end of the second year, two at the end of the third year, and one at the end of the fourth year, after the first day of July, one thousand nine hundred eighty-nine. As these original appointments expire, each subsequent appointment shall be for a full four-year term. Any member whose term has expired shall serve until his successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall be eligible for reappointment. The term of any person serving as a member of the board immediately preceding the effective date of this legislation shall cease and otherwise expire upon such effective date: Provided, That any such member shall be eligible for reappointment.

The governor may, by written notice filed with the secretary of the authority, from time to time, delegate to any subordinate the power to represent him at any meeting of the authority. In such case, the subordinate shall have the same power and privileges as the governor and may vote on any question.

Members of the authority shall not be entitled to compensation for services performed as members, but shall be entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

A majority of the members shall constitute a quorum for the purpose of conducting business. Except in the case of a loan or insurance application or unless the bylaws require a larger number, action may be taken by majority vote of the members present. Approval or rejection of a loan or insurance application shall be made by majority vote of the full membership of the board.
The board shall manage the property and business of the authority and may prescribe, amend, adopt and repeal bylaws and rules and regulations governing the manner in which the business of the authority is conducted.

The board shall, without regard to the provisions of civil service laws applicable to officers and employees of the state of West Virginia, appoint such managers, assistant managers, officers, employees, attorneys and agents as are necessary for the transaction of its business, fix their compensation, define their duties and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed at the discretion of the board. The authority may reimburse any state spending unit for any special expense actually incurred in providing any service or the use of any facility to the authority.

In cases of any vacancy in the office of a member, such vacancy shall be filled by the governor. Any member appointed to fill a vacancy in the board occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

The governor may remove a member in the case of incompetence, neglect of duty, gross immorality or malfeasance in office, and may declare such member’s office vacant and appoint a person for such vacancy as provided in other cases of vacancy.

The secretary of the board shall keep a record of the proceedings of the board and perform such other duties as may be determined appropriate by the board. The treasurer shall be custodian of all funds of the authority and shall be bonded in such amount as other members of the board may designate.


The authority, as a public corporation and governmental instrumentality exercising public powers of the state, shall have and may exercise all powers necessary or
appropriate to carry out the purposes of this article, including the power:

(a) To cooperate with industrial development agencies in efforts to promote the expansion of industrial, commercial, manufacturing and tourist activity in this state.

(b) To determine, upon the proper application of an industrial development agency or an enterprise, whether the declared public purposes of this article have been or will be accomplished by the establishment by such agency or enterprise of a project in this state.

(c) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter relevant to this article and necessary for information on the establishment of any project.

(d) To issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant to any hearing before such authority or one or more members appointed by it to conduct any hearing.

(e) To apply to the circuit court having venue of such offense to have punished for contempt any witness who refuses to obey a subpoena, to be sworn or affirmed or to testify or who commits any contempt after being summoned to appear.

(f) To authorize any member of the authority to conduct hearings, administer oaths, take affidavits and issue subpoenas.

(g) To financially assist projects by insuring obligations in the manner provided in this article through the use of the insurance fund.

(h) To finance any projects by making loans to industrial development agencies or enterprises upon such terms as the authority shall deem appropriate: Provided, That nothing contained in this subsection (h) or under any other provision in this article shall be construed as permitting the authority to make loans for working capital: Provided, however, That nothing
contained in this article shall be construed as prohibiting the authority from insuring loans for working capital made to industrial development agencies or to enterprises by financial institutions: Provided further, That nothing contained in this subsection or any other provision of this article shall be construed as permitting the authority to refinance existing debt except when such refinancing will result in the expansion of the enterprise whose debt is to be refinanced or in the creation of new jobs.

(i) To issue revenue bonds or notes to fulfill the purposes of this article, and to secure the payment of such bonds or notes, all as hereinafter provided.

(j) To issue and deliver revenue bonds or notes in exchange for a project.

(k) To borrow money for its purposes and issue bonds or notes for the money and provide for the rights of the holders of the bonds or notes or other negotiable instruments, to secure the bonds or notes by a deed of trust on, or an assignment or pledge of, any or all of its property and property of the project, including any part of the security for loans, and the authority may issue and sell its bonds and notes, by public or private sale, in such principal amounts as it shall deem necessary to provide funds for any purposes under this article, including the making of loans for the purposes set forth in this article.

(l) To maintain such sinking funds and reserves as the board shall determine appropriate for the purposes of meeting future monetary obligations and needs of the authority.

(m) To sue and be sued, implead and be impleaded, and complain and defend in any court.

(n) To adopt, use and alter at will a corporate seal.

(o) To make, amend, repeal and adopt both bylaws and rules and regulations for the management and regulation of its affairs.

(p) To appoint officers, agents and employees and to contract for and engage the services of consultants.
(q) To make contracts of every kind and nature to execute all instruments necessary or convenient for carrying on its business.

(r) To accept grants and loans from and enter into contracts and other transactions with any federal agency.

(s) To take title by conveyance or foreclosure to any project where acquisition is necessary to protect any loan previously made by the authority and to sell, by public or private sale, transfer, lease or convey such project to any enterprise.

(t) To participate in any reorganization proceeding pending pursuant to the United States Code (being the act of Congress establishing a uniform system of bankruptcy throughout the United States, as amended) or in any receivership proceeding in a state or federal court for the reorganization or liquidation of an enterprise. The authority may file its claim against any such enterprise in any of the foregoing proceedings, vote upon any questions pending therein which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such enterprise or of any other entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(u) To acquire, construct, maintain, improve, repair, replace and operate projects within this state, as well as streets, roads, alleys, sidewalks, crosswalks and other means of ingress and egress to and from projects located within this state.

(v) To acquire, construct, maintain, improve, repair and replace and operate pipelines, electric transmission lines, waterlines, sewer lines, electric power substations, waterworks systems, sewage treatment and disposal facilities and any combinations thereof for the use and benefit of any enterprise located within this state.
(w) To acquire watersheds, water and riparian rights, rights-of-way, easements, licenses and any and all other property, property rights and appurtenances for the use and benefit of any enterprise located within this state.

(x) To acquire, by purchase, lease, donation or eminent domain, any real or personal property, or any right or interest therein, as may be necessary or convenient to carry out the purposes of the authority. Title to all property, property rights and interests acquired by the authority shall be taken in the name of the authority.

(y) To issue renewal notes, or security interests, to issue bonds to pay notes or security interests and, whenever it deems refunding expedient, to refund any bonds or notes by the issuance of new bonds or notes, whether the bonds or notes to be refunded have or have not matured and whether or not the authority originally issued the bonds or notes to be refunded.

(z) To apply the proceeds from the sale of renewal notes, security interests or refunding bonds or notes to the purchase, redemption or payment of the notes, security interests or bonds or notes to be refunded.

(aa) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, firm or corporation, and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants.

(bb) To the extent permitted under its contracts with the holders of bonds, security interests or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interests, note or contract or agreement of any kind to which the authority is a party.

(cc) To sell loans, security interests or other obliga-
158 tions in the loan portfolio of the authority. Such security
159 interests shall be evidenced by instruments issued by the
160 authority. Proceeds from the sale of loans, security
161 interests, or other obligations may be used in the same
162 manner and for the same purposes as bond and note
163 revenues.
164 (dd) To procure insurance against any losses in
165 connection with its property, operations or assets in such
166 amounts and from such insurers as the authority deems
167 desirable.
168 (ee) To sell, license, lease, mortgage, assign, pledge or
169 donate its property, both real and personal, or any right
170 or interest therein to another or authorize the possession,
171 occupancy or use of such property or any right or
172 interest therein by another, in such manner and upon
173 such terms as it deems appropriate.
174 (ff) To participate with the state and federal agencies
175 in efforts to promote the expansion of commercial and
176 industrial development in this state.
177 (gg) To finance, organize, conduct, sponsor, partici-
178 pate and assist in the conduct of special institutes,
179 conferences, demonstrations and studies relating to the
180 stimulation and formation of business, industry and
181 trade endeavors.
182 (hh) To conduct, finance and participate in technolog-
183 ical, business, financial and other studies related to
184 business and economic development.
185 (ii) To conduct, sponsor, finance, participate and
186 assist in the preparation of business plans, financing
187 plans and other proposals of new or established busi-
188 nesses suitable for support by the authority.
189 (jj) To prepare, publish and distribute, with or
190 without charge as the authority may determine, such
191 technical studies, reports, bulletins and other materials
192 as it deems appropriate, subject only to the maintenance
193 and respect for confidentiality of client proprietary
194 information.
195 (kk) To exercise such other and additional powers as
may be necessary or appropriate for the exercise of the
powers herein conferred.

(ii) To exercise all of the powers which a corporation
may lawfully exercise under the laws of this state.

(mm) To contract for the provision of legal services by
private counsel, and notwithstanding the provisions of
article three, chapter five, such counsel may, but is not
limited to, represent the authority in court, negotiate
contracts and other agreements on behalf of the
authority, render advice to the authority on any matter
relating thereto, prepare contracts and other agree-
ments, and provide such other legal services as may be
requested by the authority.

(nn) To develop, maintain, operate and apply for the
establishment of foreign trade zones pursuant to and in
accordance with all applicable provisions of federal law.

§31-15-7. Loans to industrial development agencies or
enterprises for projects.

(a) When it has determined upon application of an
industrial development agency or an enterprise that the
establishment or acquisition of a particular project has
accomplished or will accomplish the public purposes of
this article, the authority may contract to loan such
agency or enterprise up to one hundred percent of the
estimated cost of such project from any or all of the
following sources:

(1) The proceeds of bonds or notes issued by the
authority pursuant to this article;

(2) Moneys in the fund available to make loans; or

(3) The investment in such loans by the board of
investments through the consolidated fund of the state
as provided in this article.

(b) Loans made under subsection (a) of this section
shall be subject to the following conditions:

(1) If the authority is providing less than one hundred
percent financing for the project, the authority shall
determine that other sources of funds will be available
to complete the project;
(2) The loan shall contain such terms and conditions as the authority deems appropriate, which terms and conditions shall be set forth in a resolution adopted by the board in accordance with the provisions of section ten of this article;

(3) The authority may, in its discretion, include within the terms of a loan minimum project operating periods, liquidated damage provisions for cessation of operations prior to the end of the loan period, loan acceleration provisions, project equipment purchase options in the event of early closure and other provisions to protect the jobs intended to be created by the project;

(4) The industrial development agency or enterprise shall pay such loan fees as may be prescribed by the authority from time to time pursuant to the provisions of this article.

Money loaned by the authority to an industrial development agency or enterprise pursuant to subdivisions (2) and (3), subsection (a) of this section seven shall be withdrawn from the fund and paid over to the agency or enterprise in such manner as shall be determined by the authority, and the authority shall deposit all payments of interest on such loans and the principal thereof in the fund.


(a) There is hereby created an insurance fund which shall be a continuing, nonlapsing, revolving fund that consists of:

(1) Moneys appropriated by the state to the insurance fund;

(2) Premiums, fees, and any other amounts received by the authority with respect to financial assistance provided by the authority from the insurance fund;

(3) Upon the satisfaction of any indebtedness or other obligation owed on any property held or acquired by the authority, such proceeds as designated by the authority from the sale, lease, or other disposition of such property;
(4) Income from investments made from moneys in the insurance fund; and

(5) Any other moneys transferred to the insurance fund or made available to it for the purposes described under this section, under this article or pursuant to any other provisions of this code.

Subject to the provisions of any outstanding insurance agreements entered into by the authority under this section, the authority may enter into covenants or agreements with respect to the insurance fund, and establish accounts within the insurance fund which may be used to implement the purposes of this article. If the authority elects to establish separate accounts within the insurance fund, the authority may allocate its revenues and receipts among the respective accounts in any manner the authority considers appropriate.

If the authority at any time finds that more money is needed to keep the reserves of the insurance fund at an adequate level, the authority, with the consent of the chairman, shall send a written request to the Legislature for additional funds.

(b) The insurance fund shall be used for the following purposes by the authority to financially assist projects so long as such financial assistance will, as determined by the authority, fulfill the public purposes of this article:

(1) To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on bonds or notes whether issued under the provisions of this article or under the Industrial Development and Commercial Development Bond Act, the West Virginia Hospital Finance Authority Act or, with respect to health care facilities only, article thirty-three, chapter eight of this code;

(2) To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on any instrument executed, obtained, or delivered in connection with
the issuance and sale of bonds or notes whether under
the provisions of this article or under the Industrial
Development and Commercial Development Bond Act,
the West Virginia Hospital Finance Authority Act or,
with respect to health care facilities only, article thirty-
three, chapter eight of this code;

(3) To insure the payment or repayment of all or any
part of the principal of, prepayment premiums or
penalties on, and interest on any form of debt instru-
ment entered into by an enterprise, public body or
authority of the state with a financial institution,
including, but not limited to, banks, insurance compan-
ies and other institutions in the business of lending
money, which debt instruments shall include, but not be
limited to, instruments relating to loans for working
capital and to the refinancing of existing debt: Provided,
That nothing contained in this subsection or any other
provision of this article shall be construed as permitting
the authority to insure the refinancing of existing debt
except when such insurance will result in the expansion
of the enterprise whose debt is to be refinanced or in
the creation of new jobs;

(4) To pay or insure the payment of any fees or
premiums necessary to obtain insurance, guarantees,
letters of credit or other credit support from any person
or financial institution in connection with financial
assistance provided by the authority under this section;
and

(5) To pay any and all expenses of the authority,
including, but not limited to:

(i) Any and all expenses for administrative, legal,
actuarial, and other services related to the operation of
the insurance fund; and

(ii) All costs, charges, fees, and expenses of the
authority related to the authorizing, preparing, print-
ing, selling, issuing, and insuring of bonds or notes
(including, by way of example, bonds or notes, the
proceeds of which are used to refund outstanding bonds
or notes) and the funding of reserves.
(c) The total aggregate amount of insurance from the insurance fund with respect to the insured portions of principal of bonds or notes or other instruments may not exceed at any time an amount equal to five times the balance in the insurance fund.

(d) The authority may, in its sole and absolute discretion, set the premiums and fees to be paid to it for providing financial assistance under this section. The premiums and fees set by the authority shall be payable in the amounts, at the time, and in the manner that the authority, in its sole and absolute discretion, requires. The premiums and fees need not be uniform among transactions, and may vary in amount: (1) among transactions, and (2) at different stages during the terms of transactions.

(e) The authority may, in its sole and absolute discretion, require the security it believes sufficient in connection with its insuring of the payment or repayment of any bonds, notes, debt or other instruments described in subdivisions (1), (2), (3) and (4), subsection (b) of this section.

(f) The authority may itself approve the form of any insurance agreement entered into under this section or may authorize the chairman or his designee to approve the form of any such agreement. Any payment by the authority under an agreement entered into by the authority under this section shall be made at the time and in the manner that the authority, in its sole and absolute discretion, determines.

(g) The obligations of the authority under any insurance agreement entered into pursuant to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this state or of any county, municipality or any political subdivision of this state for the payment of any amount due thereunder or pursuant thereto, but the obligations evidenced by such insurance agreement shall be payable solely from the funds pledged for their payment. All such insurance agreements shall contain on the face thereof a statement to the effect that such agreements and the obligations
evidenced thereby are not debts of the state or any county, municipality or political subdivision thereof but are payable solely from funds pledged for their pay-
ment.

§31-15-9. Bonds and notes issued pursuant to this article.

(a) The authority may issue its bonds or notes to fulfill the purposes set forth in this article.

(b) The authority may issue renewal notes to pay notes and, if it considers refunding expedient, may refund or refund in advance, bonds or notes, whether or not originally issued by the authority, by the issuance of new bonds or notes.

(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 section ten of this article, and shall be secured, be in such denominations, may bear interest at such rate or rates, 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 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.

§31-15-10. Approval by authority.

(a) To implement the powers and authority conferred upon it by this article, the board of the authority may adopt a resolution pursuant to which it shall:

(1) Specify and describe the project;

(2) Generally describe the public purpose to be served and the financing transaction to be accomplished under this article;

(3) Specify the maximum principal amount of any bonds or notes to be issued by the authority, the maximum principal amount of the loan, and the amount of insurance, if any, to be provided by the authority; and

(4) Impose any terms or conditions on the issuance of notes or bonds, the making of a loan or the provision of insurance that the authority deems appropriate.

(b) The board of the authority may, by resolution, or may delegate to the chairman or other designee the authority to, specify, prescribe, determine, provide for and approve such matters, details, forms, documents or procedures as the authority deems appropriate to the making of a loan, the authorization, sale, issuance, security, delivery, or payment of or for bonds or notes, or the authority's insurance of bonds, notes, loans or other instruments, including, without limitation, the rate or rates of interest and any security for the loan or insurance.

(c) The resolution adopted pursuant to this section is administrative in nature, is not subject to procedures required for legislative acts, and is not subject to referendum.

(d) In any suit, action, or proceeding involving the validity or enforceability of any bonds or notes issued, loan made, or insurance extended by the authority
under this article or any security therefor, any finding
by the authority as to the public purpose of any actions
taken under this article and the appropriateness of those
actions to serve the public purpose shall be conclusive.

(e) Any resolution authorizing the issuance of bonds
or notes shall provide that such bonds or notes shall
contain a recital that they are issued pursuant to this
article, which recital shall be conclusive evidence of
their validity and of the regularity of their issuance.

§31-15-11. Trustee for bondholders; contents of trust
agreement; pledge or assignment of
revenues.

For bonds or notes issued pursuant to the provisions
of this article, in the discretion of the authority, any
bonds or notes, including refunding bonds or notes
issued by the authority, may be secured by a trust
agreement between the authority and a corporate
trustee, which trustee may be any bank or trust
company within or without the state. Any such trust
agreement may contain such binding covenants with the
holders of such bonds or notes as to any matter or
provisions as are deemed necessary or advisable to the
authority to enhance the marketability and security of
such bonds or notes and may also contain such other
provisions with respect thereto as the authority may
authorize and approve. Any resolution adopted by the
authority or any trust agreement may contain a pledge
or assignment of revenues to be received in connection
with the financing.

§31-15-12. Use of funds by authority; restrictions thereon
relating to projects.

All moneys, properties and assets acquired by the
authority, whether as proceeds from the sale of bonds
or notes or as revenues or otherwise, shall be held by
it in trust for the purposes of carrying out its powers
and duties and shall be used and reused in accordance
with the purposes and provisions of this article. Such
moneys shall at no time be commingled with other
public funds. Such moneys, except as otherwise pro-
vided in any resolution authorizing the issuance of bonds
or notes or in any trust agreement securing the same, or except when invested pursuant to this article, shall be kept in appropriate depositories and secured as provided and required by law. The resolution authorizing the issuance of such bonds or notes of any issue or the trust agreement securing such bonds or notes shall provide that any officer to whom, or any banking institution or trust company to which, such moneys are paid, shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and such resolution or trust agreement provide.


Any bonds or notes issued by the authority or any other public body or authority of the state pursuant to the provisions of this article or any other provision of this code and at any time outstanding may at any time and from time to time be refunded by the authority by the issuance of its refunding bonds or notes in such amount as it may deem necessary to refund the principal of the bonds or notes so to be refunded, together with any unpaid interest thereon; to provide additional funds for the purposes of the authority; and to pay any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds or notes to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds or notes and the application of the proceeds thereof for the redemption of the bonds or notes to be refunded thereby or by exchange of the refunding bonds or notes for the bonds or notes to be refunded thereby. Such refunding bonds or notes shall be issued in conformance with the provisions of sections nine and ten of this article.

§31-15-14. Obligations of authority undertaken pursuant to this article not debt of state, county, municipality or any political subdivision.

Bonds and notes, including refunding bonds and notes, issued under the authority of this article and any coupons in connection therewith, and any other obliga-
tions undertaken by the authority pursuant to this article, shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders and owners thereof shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon, but such bonds, notes and other obligations shall be payable solely from revenues and funds pledged for their payment as authorized by this article unless the notes are issued in anticipation of the issuance of bonds or the notes are refunded by refunding bonds issued under the authority of this article, which bonds or refunding bonds shall be payable solely from revenues and funds pledged for their payment as authorized by this article. All such bonds and notes, and all documents evidencing any other obligation, shall contain on the face thereof a statement to the effect that the bonds, notes or such other obligation as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

§31-15-15. Negotiability of bonds and notes issued pursuant to this article.

Whether or not the bonds or notes issued pursuant to this article are of such form or character as to be negotiable instruments under the Uniform Commercial Code, such bonds or notes are negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code, subject only to the provisions of the bonds or notes for registration.

§31-15-16. Bonds and notes issued pursuant to this article; legal investments.

The provisions of sections nine and ten, article six, chapter twelve of this code to the contrary notwithstanding, the bonds and notes issued pursuant to the provisions of this article are securities in which all public officers and bodies of this state, including the West
Virginia state board of investments, all municipalities and other political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, including domestic for life and domestic not for life insurance companies, all banks, trust companies, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations and investment companies, all administrators, guardians, executors, trustees and other fiduciaries and all other persons whatsoever who are authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital, in their control or belonging to them.

§31-15-17. Exemption from taxation.

The exercise of the powers granted to the authority by this article will be in all respects for the benefit of the people of the state for the improvement of their health, safety, convenience and welfare and is a public purpose. As the operation and maintenance of projects financed under this article will constitute the performance of essential governmental functions, the authority shall not be required to pay any taxes or assessments upon any property acquired or used by the authority or upon the income therefrom. All bonds and notes of the authority, and all interest and income thereon, shall be exempt from all taxation by this state and any county, municipality, political subdivision or agency thereof, except inheritance taxes.

§31-15-18. Personal liability; persons executing bonds or notes issued pursuant to this article.

Neither the members or officers of the authority or of any authority, agency or office, nor any person executing the bonds or notes issued pursuant to the provisions of this article, shall be liable personally on such bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.
§31-15-19. Cumulative authority as to powers conferred; applicability of other statutes and charters; bonds and notes issued pursuant to this article.

The provisions of this article relating to the making of loans and to the issuance of bonds and notes shall be construed as granting cumulative authority for the exercise of the various powers herein conferred, and neither the powers nor any bonds or notes issued hereunder shall be affected or limited by any other statutory or charter provision now or hereafter in force, other than as may be provided in this article, it being the purpose and intention of this article to create full, separate and complete additional powers. The various powers conferred herein may be exercised independently and notwithstanding that no bonds or notes are issued hereunder.


The board of investments shall, under the provisions of this article, invest moneys, securities and other assets of the special account for the common investment of state funds designated as the state account within the special investment fund designated as the consolidated fund established under the provisions of subsection (b), section eight, article six, chapter twelve of this code as a revolving loan fund with the authority, to enable the authority to make loans approved by the authority and to be funded from such consolidated fund in an amount which shall not at anytime exceed one hundred fifty million dollars in the aggregate principal amount outstanding. With respect to loans funded under this article through the consolidated fund of the state, such loans shall be made in the name of the consolidated fund by the authority.

§31-15-21. Loan and insurance application requirements.

Prior to the loaning of any funds to an industrial development agency or an enterprise for a project or the insuring of any bonds, notes, loans or other instruments pursuant to section eight of this article, the authority shall receive from such agency or enterprise an appli-
§31-15-22. **Documentary materials concerning trade secrets; commercial or financial information; or confidentiality.**

Any documentary material or data made or received by the authority for the purpose of furnishing assistance to a business, to the extent that such material or data consists of trade secrets or commercial or financial information regarding the financial position or business operation of such business, shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of chapter twenty-nine-b of this code. Any discussion or consideration of such trade secrets or commercial or financial information may be held by the authority in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code: Provided, That the authority shall make publicly available the following information regarding executed loans or its provision of insurance:

1. The name of the debtor,
2. Location(s) of the project,
3. Amount of the authority loan or financial assistance provided by the insurance fund,
4. Purpose of the loan or financial assistance,
5. Term, rate and interest of the loan,
6. Fixed assets which serve as security for the loan or insurance provided.

§31-15-23. **Economic development fund.**

The economic development fund, to which shall be credited any appropriation made by the Legislature to the authority, any funds which the authority is authorized to receive under any provision of this code, other funds which the board directs to be deposited into the fund, and such other deposits as are provided for in this section, is hereby continued in the state treasury as a special account.

The authority may requisition from the fund such amounts as are necessary to provide for the payment of the administrative expenses of this article. Notwithstanding any other provision of this article, whenever the authority determines it to be necessary to
purchase at a foreclosure sale any project pursuant to subdivision (t), section six of this article, it may requisition from the fund such amount as is necessary to pay the purchase price thereof.

The authority shall requisition from the fund such amounts as are allocated and appropriated for loans to industrial development agencies or enterprises for projects. As loans to industrial development agencies or enterprises are repaid to the authority pursuant to the terms of mortgages and other agreements, the authority shall pay such amounts into the fund, consistent with the intent of this article that the fund shall operate as a revolving fund whereby all appropriations and payments made thereto may be applied and reapplied for the purposes of this article. Revenues deposited into the fund may be used to make payments of interest and principal and may be pledged as security for bonds, security interests or notes issued by the authority pursuant to this article.

Whenever the authority determines that the balance in the fund is in excess of the immediate requirements for loans, it may request that such excess be invested until needed for loan purposes, in which case such excess shall be invested in a manner consistent with the investment of other temporary state funds. Interest earned on any money invested pursuant to this section shall be credited to the fund.

If the authority determines that funds held in the fund are in excess of the amount needed to carry out the purposes of this article, it may take such action as is necessary to release such excess and transfer it to the general fund of the state treasury.


The governor is authorized to provide for the transfer to the authority of the use, possession and control of such real or personal property of the state as he may from time to time deem useful to the authority in the conduct of its activities as authorized by this article.

1 It is the intention hereof that any pledge, mortgage, deed of trust or security instrument made by or for the benefit of the authority shall be valid and binding between the parties from the time the pledge, mortgage, deed of trust or security instrument is made; and that the moneys or property so pledged, encumbered, mortgaged or entrusted shall immediately be subject to the lien of such pledge, mortgage, deed of trust or security instrument without any physical delivery thereof or further act.


1 All money accruing to the authority from whatever source derived, except legislative appropriations, shall be collected and received by the treasurer of the authority, who shall pay it into the state treasury in the manner required by section two, article two, chapter twelve of this code, which shall be credited to the appropriate fund of the authority.

§31-15-27. Conflict of interest; when contracts void.

1 No member, officer or employee of the authority shall either directly or indirectly be a party to or interested in any manner in any contract or agreement with the authority whereby liability or indebtedness against or to the authority is in any manner created. Any contract or agreement made in violation of the provisions of this section shall be void and no action thereon shall be maintained against the authority.

§31-15-28. Agreement with federal agencies not to alter or limit powers of authority.

1 The state hereby pledges to and agrees with each federal agency that, if such agency constructs or loans or contributes any funds for any project, the state will not alter or limit the rights and powers of the authority in any manner which would be inconsistent with the due performance of any agreement between the authority and such federal agency and that the authority shall continue to have and exercise all powers granted for

As soon as possible after the close of each fiscal year, the authority shall make an annual report of its activities for the preceding fiscal year to the governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of its projects.

§31-15-30. Projects not to be considered public improvements.

No project, enterprise or business facility which conducts as its primary activity a manufacturing process or other nongovernmental or nonpublic activity may be deemed to be a "public improvement" within the meaning of the provisions of article five-a, chapter twenty-one of this code.

§31-15-31. Foreign trade zones; authority approval.

Any public corporation located in the state is hereby authorized to apply for, develop, maintain and operate a foreign trade zone in the state pursuant to and in accordance with all applicable provisions of federal law: Provided, That any public corporation desiring to apply for or develop a foreign trade zone must first receive the approval of the authority.


If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable.

1 The provisions of this article are remedial and shall be liberally construed and applied so as to promote the purposes set out in section three of this article.

CHAPTER 55

(Com. Sub. for H. B. 2326—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]
for awarding competitive grants to schools to implement exemplary and innovative programs to improve instruction; providing for establishment of a statewide curriculum technology resource center to facilitate access to and expedite acquisition of materials; providing for regional educational service agencies to serve as depository and distribution centers for curriculum technology resource materials; clarifying intent of readiness evaluations; providing criteria for use in the development of an evaluation model; requiring a criterion referenced test to be given to first and second graders in reading and math with third and fourth graders being tested in reading, composition and math; providing for honors and advanced placement courses in grades nine through twelve by school year one thousand nine hundred ninety—ninety-one; defining honors and advanced placement; establishing curriculum offered in honors and advanced placement and providing for the instruction thereof; providing for the phase-in of honors and advanced placement; providing that certain students in grades nine through twelve may be served in honors and advanced placement; requiring state board of education to designate an employee who is an expert in financial assistance to inform students of the availability of financial assistance to attend college; providing for high quality basic skills development and remediation in the public schools; changing the time requirement for when a county board must hold a public hearing concerning the preliminary operating budget; providing for additional compensation for elementary teachers whose number of pupils have exceeded the maximum class size; creating the early childhood program to replace the transitional or developmental kindergarten program; revising the definitions of professional instructional personnel, adjusted enrollment and basic resources per pupil; providing that attrition, early retirement and other methods shall be utilized before implementing reduction in force procedures; permitting waiver of ratio of foundation allowance for professional educators and service personnel to net enrollment for a limited period; changing the gradual phase-in of the teachers retirement factor
schedule from three and one half percent to the full fifteen percent; increasing school bus replacement cycle to ten years; increasing the foundation allowance for administrative cost to provide additional funding for regional educational service agencies; increasing the allowance for current expense; resetting base in foundation allowance to improve instructional programs; increasing the minimum amount of funds allocated to each county on the basis of adjusted enrollment from one hundred thousand to one hundred fifty thousand; changing the distribution of funds recaptured due to adjusted enrollment in allowances for remedial and accelerated education programs and salary equity; eliminating certain standards for education quality; revising exceptional children program and defining exceptional gifted; requiring caseload review of various programs in certain grades; establishing requirements for in-field master's degrees earned after a certain date; increasing by five percent the state minimum salary schedule for teachers effective the second half of the employment term and establishing in-field master's salary schedule; removing the limits placed on benefits that counties may provide for teachers and service personnel; requiring certain study relating to service personnel salaries; increasing the service personnel state minimum pay scale to reflect an approximate aggregate five percent increase effective the second half of the employment term; and providing for consolidation of services and seniority rights for administrative personnel.

Be it enacted by the Legislature of West Virginia:

That sections six, twenty-six and twenty-nine, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section thirty; that section two, article two-e of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections three-a, three-b and seven; that sections four, eighteen-a and eighteen-c, article five of said chapter be amended and reenacted; that sections two,
four, five-a, six-a, seven, eight, nine, ten, thirteen-b and twenty-two, article nine-a of said chapter be amended and reenacted; that section one, article twenty of said chapter be amended and reenacted; that said article twenty be further amended by adding thereto a new section, designated section nine; that sections one, two, five-a, five-b, five-c and eight-a, article four, chapter eighteen-a of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eight-d, all to read as follows:

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Training of teachers; accreditation, classification and standardization of schools; standards for degrees and diploma.

1 (a) The education of teachers in the state shall be under the general direction and control of the state board of education after consultation with the board of regents, which shall, through the state superintendent of schools, exercise supervisory control over teacher preparation including (1) those programs in all institutions of higher education, including student teaching in the public schools; and (2) any alternative training programs leading to licensure, in accordance with
standards for program approval stated in writing by the board. Such standards shall include a provision for the study of multicultural education.

As used in this section, multicultural education means the study of the pluralistic nature of American society including its values, institutions, organizations, groups, status positions and social roles.

(b) To give prospective teachers the teaching experience needed to demonstrate competence, as a prerequisite to licensure, the state board of education may enter into an agreement with county boards of education for the use of the public schools. Such agreement shall recognize student teaching as a joint responsibility of the teacher preparation institution and the cooperating public schools and shall include (1) the minimum qualifications for the employment of public school teachers selected as supervising teachers; (2) the remuneration to be paid public school teachers by the state board, in addition to their contractual salaries, for supervising student teachers; and (3) minimum standards to guarantee adequacy of facilities and program of the public school selected for student teaching. The student teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher.

Institutions of higher education approved for teacher preparation may cooperate with each other and with one or more county boards of education in the organization and operation of centers to provide selected phases of the teacher preparation program such as student teaching or internship programs, instruction in methodology, seminar programs for college students, first year teachers and supervising teachers.

Such institutions of higher education and participating county boards of education may budget and expend funds for the operation of such centers through payments to the appropriate fiscal office of the county designated by mutual agreement of participating county school boards and higher education institutions to serve as the administering agency of the center.
The provisions of this section shall not be construed to require the discontinuation of an existing student teacher training center or school which meets the standards of the state board of education.

All institutions of higher education approved for teacher preparation in the school year of one thousand nine hundred sixty-two—sixty-three shall continue to hold that distinction so long as they meet the minimum standards for teacher preparation. Nothing contained herein shall infringe upon the rights granted to any institution by charter given according to law previous to the adoption of this code.

(c) Notwithstanding any other provision of this article to the contrary, the state board of education is authorized to develop alternative training programs leading to licensure in accordance with rules and regulations adopted by the state board of education after consultation with the board of regents: Provided, That no teacher shall be permanently certified who has not completed a core curriculum, as determined by the state board after consultation with the board of regents, in an approved teacher preparation or improvement program of an accredited institution of higher education.

The state board shall also develop and implement a beginning teacher internship program by the first day of July, one thousand nine hundred ninety.

(d) The state board shall make rules for the accreditation, classification and standardization of all schools in the state, except institutions of higher education, and shall determine the minimum standards for the granting of diplomas and certificates of proficiency by those schools. Not later than the school year one thousand nine hundred ninety—ninety-one, certificates of proficiency including specific information regarding the graduate's skills, competence, and readiness for employment or honors and advanced education shall be granted, along with the diploma, to every eligible high school graduate. No institution of less than collegiate or university status may grant any diploma or certificate of proficiency on
any basis of work or merit below the minimum standards prescribed by the state board.

No charter or other instrument containing the right to issue diplomas or certificates of proficiency shall be granted by the state of West Virginia to any institution or other associations or organizations of less than collegiate or university status within the state until the condition of granting or issuing such diplomas or other certificates of proficiency has first been approved in writing by the state board.

§18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.

(a) In order to consolidate and administer more effectively existing educational programs and services so individual districts will have more discretionary moneys for educational improvement and in order to equalize and extend educational opportunities, the state board of education shall establish multicounty regional educational service agencies for the purpose of providing high quality, cost effective educational programs and services to the county school systems, and shall make such rules as may be necessary for the effective administration and operation of such agencies.

(b) In furtherance of these purposes, it is the duty of the board of directors of each regional educational service agency to continually explore possibilities for the delivery of services on a regional basis which will facilitate equality in the educational offerings among counties in its service area, permit the delivery of high quality educational programs at a lower per student cost, strengthen the cost effectiveness of education funding resources, reduce administrative and/or operational costs, including the consolidation of administrative, coordinating and other county level functions into region level functions, and promote the efficient administration and operation of the public school systems generally.

Technical, operational, programmatic or professional services would be among the types of services appropriate for delivery on a regional basis.
(c) In addition to performing the services and functions required by the provisions of this or any other section of this code, a regional educational service agency may implement regional programs and services by a majority vote of its board of directors. When said vote is not unanimous, the board of directors shall file a plan for the service or program delivery with the state board describing the program or service, the manner of delivery and the projected savings and/or the improved quality of the program or service. The state board shall promulgate rules requiring a county board that declines to participate in such programs or services to show just cause for not participating and the estimated savings accruing to the county therefrom. If a county board fails to show that savings will accrue to the county or that the quality of the program will be significantly and positively affected as a result of its decision not to participate, the state board shall withhold from the county's foundation allowance for administrative cost the lesser of the amount of the estimated savings or the allocation for the county's foundation allowance for administrative cost.

(d) The state board, in conjunction with the various regional educational service agencies, shall develop an effective model for the regional delivery of instruction in subjects where there exists low student enrollment or a shortage of certified teachers or where such delivery method substantially improves the quality of an instructional program. Such model shall incorporate an interactive electronic classroom approach to instruction. To the extent funds are appropriated or otherwise available, county boards or regional educational service agencies may adopt and utilize the model for the delivery of such instruction.

(e) Each regional educational service agency shall conduct a study setting forth how the following services and functions may be performed by the agency for public schools and school districts within the region without terminating the employment of personnel employed by school districts prior to the effective date of this subsection: Accounting, purchasing, food service,
transportation, delivery of high cost services to low incidence student populations, audiovisual material distribution, facilities planning, federal program coordination, personnel recruiting and an integrated regional computer information system. On or before the tenth day of January, one thousand nine hundred ninety, each regional educational service agency shall submit the study to the state board, to the standing committees on education and finance of the West Virginia Senate and House of Delegates, and to the secretary of education and the arts: Provided, That in the event such study is implemented those individuals employed prior to the effective date thereof shall not have their employment terminated as a result of the study.

(f) Each regional educational service agency shall submit a report and evaluation of the services provided and utilized by the schools within each respective region. Furthermore, each school shall submit an evaluation of the services provided by the regional educational service agency, which shall include an evaluation of the regional educational service agency program, suggestions as to how to improve utilization and the individual school's plan as to development of new programs and enhancement of existing programs. The reports shall be due by the first day of January of each year commencing with the year one thousand nine hundred ninety-one and shall be made available to the state board of education, standing committees on education of the West Virginia Senate and House of Delegates and to the secretary of education and the arts.

(g) A regional board shall be empowered to receive and disburse funds from the state and federal governments, member counties, gifts and grants.

§18-2-29. Competitive grant program for selected schools and school districts.

The state board shall establish no later than the school year one thousand nine hundred eighty-nine—ninety, a competitive grant program whereby schools may be awarded grants to implement exemplary and innovative programs designed to improve instruction.
Applications for awarding competitive grants which include one or more of the following considerations shall be given priority: (a) Whether local community resources have been committed to work in partnership with the school to implement the program, (b) whether the program involves extending the school year, (c) whether the program is for remediation, (d) whether the proposal will implement an early childhood program pursuant to section eighteen-c, article five of this chapter, (e) whether the proposal will implement a beginning teacher assistance program, (f) whether the school has probationary or nonapproval accreditation status, and, (g) how the program will be evaluated based on measurable performance criteria such as: Student achievement gain; student attendance; teacher attendance; parent participation; reduction in the amount of paperwork required of teachers; and any other factor promoting the attainment of full accreditation for the school or the school district.

The state board shall promulgate rules which ensure that the school or school district utilizes these funds appropriately. The state board shall encourage the donation of funds from private and other sources to augment state funding for the program.

§18-2-30. Statewide curriculum technology resource center established; distribution of materials by regional educational service agencies.

There shall be established a statewide curriculum technology resource center to facilitate access to, and expedite the acquisition of, audiovisual materials to assist in the continued enrichment of the school curriculum. The state board shall designate the statewide center. The legislative intent is that appropriations for the said resource center be designated primarily for supportive materials to be made available for use by teachers: Provided, That no more than five percent of the moneys allocated for fiscal year one thousand nine hundred eighty-nine—ninety be used for capital outlay and improvements on any structure used to house said resource center. The center shall develop a program of services for public school teachers in the fields of
curricular development, instructional resources and technology. The center shall also undertake projects to describe systematically and evaluate curriculum materials and instruction resources, provide for dissemination of software and programs to teachers, provide leadership in the areas of instructional resources and provide training to increase skills in the use of technology and other instructional resources.

The center shall be a centralized purchasing agent for audiovisual materials requested for use in the public schools. The center shall utilize curriculum teams of classroom teachers and other professional educators representing all regional educational service agency regions to assist in the materials selection process. The center may obtain authorization to duplicate such materials and may duplicate such materials when duplication is justified by cost and need and when appropriate authorization has been obtained. The center shall maintain a central library of all original materials duplicated and shall compile no later than the first day of July, one thousand nine hundred ninety, a statewide catalog of all audiovisual materials available. The center shall make the statewide catalog accessible to teachers through electronic or other means.

Each regional educational service agency shall serve as a depository and distribution center for the audiovisual materials available to the public schools in its region. Each regional educational service agency shall survey audiovisual material currently held in the public schools in its region and submit the list to the statewide center for possible inclusion in the statewide catalog: Provided, That nothing in this section shall be construed to change ownership by any county board of any materials which are included in the catalog. Whenever the regional educational service agency receives a request for material not listed in the statewide catalog, the agency shall submit a request to the statewide center for review by one of the curriculum teams and, if appropriate, purchase and distribute the material.
§18-2E-2. Statewide testing of educational progress program (WV-STEP); purposes, development and implementation of program.

(a) The state board shall establish a program for the statewide testing of the educational progress of public school students in attaining a high quality education, hereinafter referred to as the WV-STEP program.

The WV-STEP program shall provide information to:

1. Assess the overall academic progress of students, including (i) identifying individual students' academic weaknesses and readiness, and (ii) identifying students who may need remediation;

2. Assist the teacher in determining student promotion;

3. Compare achievement of students in West Virginia to achievement of students on a national basis;

4. Assess the strengths and weaknesses of school performance;

5. Assess the effects of state and local educational programs;

6. Make decisions at the state and local level with regard to educational matters, including (i) the need for new or revised educational programs and the need to terminate existing educational programs, (ii) overall curriculum development and revision activities, and (iii) teacher training and staff development activities; and

7. Inform the public of the overall quality of education in individual schools and school districts.

(b) The state board shall prepare detailed design specifications for the WV-STEP program which accomplish the following:
(1) Take into account the state learning outcome statements in the basic skill areas of reading, composition, mathematics and other subject areas as determined by the state board; and

(2) Include testing of students' higher level cognitive thinking in each subject area tested.

"Learning outcome statements" means statements developed and adopted by the state board which for the purposes of this article have been fully and properly field tested to ensure their reliability and validity in indicating the knowledge base and skills expected of students for particular subject areas and which may be used to measure indicators of statewide standards for student progress in attaining a high quality education.

(c) The state board shall implement the WV-STEP program as follows:

(1) Beginning in the school year one thousand nine hundred ninety-one, and continuing thereafter:

(i) An evaluation designed to measure student readiness to begin the formal school curriculum shall be administered to all kindergarten public school students. Such evaluation shall be used solely to assist in making policy decisions at the state and local levels with regard to educational matters as outlined in subdivision six, subsection (a) of this section, and shall not be used for individual diagnostic or placement purposes.

(ii) An evaluation model for children in kindergarten, first and second grades shall be developed by a committee of teachers, parents and principals selected by each regional educational service agency board within each regional educational service agency. The evaluation model shall be developed using the following criteria:

(A) The model shall be based on the fact that kindergarten through second grade is educationally continuous;

(B) The model shall allow for variability in the achievement of children in kindergarten through second grade;
68 (C) The model shall be applied continuously to reflect assessment as a teaching tool;

69 (D) Information gathered by the evaluation model shall be used to adapt curriculum and to provide feedback to parents;

70 (E) The model shall include a measure of achievement of the state learning outcomes.

71 The evaluation model, as developed by each regional educational service agency committee, shall be made available to the state board and to the legislative oversight commission on education accountability by the first day of January, one thousand nine hundred ninety; and

81 (iii) A criterion referenced test measuring competencies based on the learning outcome statements shall be administered to all public school students in grades one and two to measure their academic progress in reading and mathematics; and

86 (iv) A criterion referenced test measuring competencies based on the learning outcome statements shall be administered to all public school students in grades three and four to measure their academic progress in reading, composition and mathematics.

94 The results of the tests shall be used to identify each student's deficiencies, aid in determining instruction needed by the student in achieving the statewide standards established for the respective grade and assist the teacher in determining student promotion.

96 (2) Beginning in the school year one thousand nine hundred ninety-one—ninety-two, and continuing thereafter:

99 (i) A criterion referenced test measuring competencies based on the learning outcome statements for reading, composition and mathematics in grade five shall be administered to all public school students in grade five. Each year thereafter, a criterion referenced test for these subject areas shall be administered to
students in the next higher grade through grade eight;

and

(ii) Criterion referenced testing measuring competencies based on the learning outcome statements in additional subject areas shall be implemented as funds are available on a schedule determined by the board.

(3) Beginning in the school year one thousand nine hundred ninety-one, and continuing thereafter, National Assessment of Educational Progress Program tests shall be administered in academic areas at the various grades designated by the National Assessment of Educational Progress officials to provide comparisons of West Virginia students to a national sample.

(d) The state board shall revise and update the learning outcome statements as necessary and shall determine a schedule for the annual administration of the WV-STEP program tests. The state superintendent is responsible for the overall development, implementation and monitoring of the program. The state board may establish a pilot program to implement the WV-STEP program prior to the required implementation dates under subsection (c) of this section.

(e) Any student who is unable to take any of the tests prescribed in this section because of absence from school and provides school authorities with a valid reason for such absence shall be given the missed test as soon as possible following the student's return to school. An exceptional child is subject to testing under the WV-STEP program only to the extent specified in that child's individualized education program (IEP).

(f) The parent or guardian of each student tested under the WV-STEP program shall be notified in writing of the students test score, along with the average test score of all other students in the same grade at the school. The state board shall promulgate rules for the compilation of aggregate test scores by grade in such manner as to permit the comparison of student performance at different schools within and among the various school districts. The test scores of all students taking the test at each school shall be compiled by the district
pursuant to such rules, shall be made available for public inspection and shall be included in the school and county report cards under section four of this article. However, no individual student’s WV-STEP scores may be disclosed to the public.

(g) The department of education shall take necessary administrative action under section five of this article to monitor and evaluate the curriculum and instruction methods in each school district to ensure compliance with the standards and purposes of this article.

§18-2E-3a. Honors and advanced placement programs.

(a) The purpose of this section is to provide honors and advanced placement programs to meet the needs of students who have the potential and desire to complete curriculum more demanding than that offered in the regular classroom for their current grade level. Honors programs are those programs offering courses to expand the academic content in a given program of study and may include, but shall not be limited to, research and in-depth studies, mentorships, content-focused seminars, and extended learning outcomes instruction in the content area. Advanced placement programs are those programs offering classes which are advanced in terms of content and performance expectations of those normally available for the age/grade level of the student and providing credit toward graduation and possible college credit. Advanced placement classes also include those recognized or offered by the college board, postsecondary institutions and other recognized foundations, corporations or institutions.

Curriculum approved under this section shall be designed to advance the achievement of students in the subject area or areas in which the student has achieved at least two of the following three criteria: (a) Demonstrated exceptional ability and interest through past performance, (b) obtained the prerequisite knowledge and skills to perform honors or advanced placement work, and (c) recommended by the student’s former or present teachers. Honors and advanced placement curriculum may include advanced placement courses
offered through the college board or other public or private foundations, corporations, institutions, or businesses whose courses are generally accepted as leading to advanced placement or standing in a postsecondary institution, accelerated instructional courses offered via satellite and other courses and arrangements, approved by the state board, which provide students an opportunity to advance their learning above that offered through the regular curriculum. To the maximum extent possible, honors and advanced placement courses shall be taught by a regular classroom teacher. Such classroom teacher shall have adequate knowledge in the subject area for the instruction of such course. If a teacher, licensed by the state board, with adequate knowledge in the advanced subject area is not available, an adjunct teacher or other qualified person may be employed, contracted for, or shared between schools to instruct such course: Provided, That the position shall be posted annually prior to the beginning of the school year immediately following the school year in which the adjunct teacher or other qualified person is employed. The state board may grant waivers to existing certification requirements for an adjunct teacher or other qualified person who has an earned bachelors degree and has demonstrated competence in the subject to be taught.

(b) The honors and advanced placement curriculum shall be phased-in in accordance with the following schedule:

(1) Prior to the first day of June, one thousand nine hundred eighty-nine, the state board shall establish a program coordinated through the colleges and universities or some other entity, to provide training to teachers in the instruction of honors and advanced placement courses: Provided, That the state board shall not establish an additional certification area for the teaching of honors or advanced placement courses;

(2) To assist in the implementation of teacher training for honors and advanced placement instruction, there shall be an appropriation to the state board;
(3) On or before the first day of June, one thousand nine hundred eighty-nine, and each year thereafter, teachers shall be selected to teach honors and advanced placement courses based upon the teacher's qualifications and academic interests and the needs of the students. The county boards of education shall, if necessary, make arrangements for the teachers to attend a training program;

(4) Beginning in the school year one thousand nine hundred ninety-ninety-one, each county board shall provide in grades nine through twelve honors and advanced placement courses as provided under subsection (a) of this section.

(c) The state board shall designate one employee who is an expert in the area of higher education financial aid, including, but not limited to, loans, grants and work studies, to work on a full-time continuous basis with high school counselors to ensure that all high school students are informed of the availability of financial assistance to attend college.

§18-2E-3b. Placement advisory committee established.

Gifted students in grades nine through twelve may be served in honors and advanced placement programs as described in section three of this article, pursuant to the student's individualized education program and set forth in the student's four year education plan. Prior to the end of grade eight, a placement advisory committee shall convene for the purpose of determining whether a student should be placed in an honors or advanced placement program pursuant to the placement criteria set forth in section three-a of this article. Upon a determination that placement in one of the programs would be appropriate, the placement advisory committee shall write a four year education plan which will designate honors or advanced placement courses and/or offerings appropriate and agreed to by the school, parent and student.

The four year education plan must be reviewed annually and approved by the parent, student and school. Schools shall be required to deliver the individu-
Providing for high quality basic skills development and remediation in all public schools.

The Legislature finds that teachers must be provided the support, assistance and teaching tools necessary to meet individual student instructional needs on a daily basis in a classroom of students who differ in learning styles, learning rates and in motivation to learn. The Legislature further finds that attaining a solid foundation in the basic skills of reading, composition and arithmetic is essential for advancement in higher education, occupational and avocational pursuits and that computers are an effective tool for the teacher in corrective, remedial and enrichment activities. Therefore, the state board shall develop a plan which specifies the resources to be used to provide services to students in the earliest grade level and moving upward as resources become available based on a plan developed by each individual school team.

This plan must provide for standardization of computer hardware and software for the purposes of achieving economies of scale, facilitating teacher training, permitting the comparison of achievement of students in schools and counties utilizing the hardware and software, and facilitating the repair of equipment, and ensuring appropriate utilization of the hardware and software purchased for remediation and basic skills development.

The state board shall determine the computer hardware and software specifications after input from practicing teachers at the appropriate grade levels and with the assistance of educational computer experts and the curriculum technology resource center.

Computer hardware and software shall be purchased either directly or through a lease purchase arrangement pursuant to the provisions of article three, chapter five-a of this code in the amount equal to anticipated revenues being appropriated.
The state board shall develop and provide through the state curriculum technology resource center a program to ensure adequate teacher training, continuous teacher support and updates.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.


§18-5-18c. Early childhood programs; eligibility and standards for placement; guidelines and criteria.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

The board shall meet on the first Monday of January, except that in the year one thousand nine hundred eighty-two, and every year thereafter, the board shall meet on the first Monday of July, and upon the dates provided by law for the laying of levies, and at such other times as the board may fix upon its records. At any meeting as authorized above and in compliance with the provisions of article four of this chapter, the board may employ such qualified teachers, or those who will qualify by the time of entering upon their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. At a meeting of the board, on or before the first Monday of May, the superintendent shall furnish in writing to the board a list of those teachers to be considered for transfer and subsequent assignment for the next ensuing school year; all other teachers not so listed shall be considered as reassigned to the positions held at the time of this meeting. Such list of those recommended for transfer shall be included in the minute record and the teachers so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to such teachers' last-known addresses within ten days following said board meeting, of their having been so recommended for transfer and subsequent assignment.
Special meetings may be called by the president or any three members, but no business shall be transacted other than that designated in the call.

In addition, a public hearing shall be held concerning the preliminary operating budget for the next fiscal year not less than ten days after such budget has received tentative approval by the West Virginia board of education and at such hearing reasonable time shall be granted to any person or persons who wish to speak regarding parts or all of such budget. Notice of such hearing shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.

A majority of the members shall constitute the quorum necessary for the transaction of official business.

Board members may receive compensation at a rate not to exceed eighty dollars per meeting attended. But they shall not receive pay for more than fifty-two meetings in any one fiscal year.

Members shall also be paid, upon the presentation of an itemized sworn statement, for all necessary traveling expenses, including all authorized meetings, incurred on official business, at the order of the board.

When, by a majority vote of its members, a county board of education deems it a matter of public interest, such board may join the West Virginia school board association and the national school board association, and may pay such dues as may be prescribed by said associations and approved by action of the respective county boards. Membership dues and actual traveling expenses of board members for attending meetings of the West Virginia school board association may be paid by their respective county boards of education out of funds available to meet actual expenses of the members, but no allowance shall be made except upon sworn itemized statements.


County boards of education shall provide, by the
school year one thousand nine hundred eighty-three—
eighty-four, and thereafter, sufficient personnel, equip-
ment and facilities as will ensure that each first and
second grade classroom, or classrooms having two or
more grades that include either the first or second
grades shall not have more than twenty-five pupils for
each teacher of the grade or grades and shall not have
more than twenty pupils for each kindergarten teacher
per session, unless the state superintendent has excepted
a specific classroom upon application therefor by a
county board.

County boards shall provide by the school year one
thousand nine hundred eighty-four—eighty-five, and
continue thereafter, sufficient personnel, equipment and
facilities as will ensure that each third, fourth, fifth and
sixth grade classroom, or classrooms having two or more
grades that include one or more of the third, fourth, fifth
and sixth grades, shall not have more than twenty-five
pupils for each teacher of the grade or grades.

Beginning with the school year one thousand nine
hundred eighty-six—eighty-seven, and thereafter, no
county shall maintain a greater number of classrooms
having two or more grades that include one or more of
the grade levels referred to in this section than were in
existence in said county as of the first day of January,
one thousand nine hundred eighty-three: Provided, That
for the prior school years, and only if there is insuffi-
cient classroom space available in the school or county,
a county may maintain one hundred ten percent of such
number of classrooms.

During the school year one thousand nine hundred
eighty-four—eighty-five, and thereafter, the state
superintendent is authorized, consistent with sound
educational policy, (a) to permit on a statewide basis, in
grades four through six, more than twenty-five pupils
per teacher in a classroom for the purposes of instruc-
tion in physical education, and (b) to permit more than
twenty pupils per teacher in a specific kindergarten
classroom and twenty-five pupils per teacher in a
specific classroom in grades one through six during a
school year in the event of extraordinary circumstances
as determined by the state superintendent after application by a county board of education.

The state board shall establish guidelines for the exceptions authorized in this section, but in no event shall the superintendent except classrooms having more than three pupils above the pupil-teacher ratio as set forth in this section.

The requirement for approval of an exception to exceed the twenty pupils per kindergarten teacher per session limit or the twenty-five pupils per teacher limit in grades one through six is waived in schools where the schoolwide pupil-teacher ratio is twenty-five or less in grades one through six: Provided, That a teacher shall not have more than three pupils above the teacher/pupil ratio as set forth in this section. Any kindergarten teacher who has more than twenty pupils per session and any classroom teacher of grades one through six who has more than twenty-five pupils shall be paid additional compensation based on the affected classroom teacher's average daily salary divided by twenty for kindergarten teachers or twenty-five for teachers of grades one through six for every day times the number of additional pupils enrolled up to the maximum pupils permitted in the teacher's classroom. All such additional compensation shall be paid from county funds exclusively.

No provision of this section is intended to limit the number of pupils per teacher in a classroom for the purpose of instruction in choral, band or orchestra music.

Each school principal shall assign students equitably among the classroom teachers, taking into consideration reasonable differences due to subject areas and/or grade levels.

The state board shall collect from each county board of education information on class size and the number of pupils per teacher for all classes in grades seven through twelve. The state board shall report such information to the legislative oversight commission on
§18-5-18c. Early childhood programs; eligibility and standards for placement; guidelines and criteria.

County boards shall provide by the school year one thousand nine hundred eighty-nine—ninety, and continuing thereafter, programs and instructional procedures that recognize the variability in achievement, development, and background experience of the early childhood years.

Such programs and instructional procedures may include, but shall not be limited to, developmental kindergarten, developmental first grade, early first grade, transitional first grade, and/or developmental second grade.

Placement of children in any of the aforementioned early childhood programs shall be based on the judgment of the teacher and other professional personnel after consultation with the parent or guardian and in accordance with the evaluation model for children as set forth in section two, article two-e of this chapter.

Counties may designate one or more classes or schools for such early childhood programs and may transport children to these schools.

Provisions shall be made for early childhood teachers to communicate on a regular basis with other teachers, professional personnel and representatives of other appropriate agencies.

The state board shall establish and prescribe guidelines and criteria relating to the establishment, operation and successful completion of early childhood programs in accordance with the other provisions of this section and high quality educational programs.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-4. Foundation allowance for professional educators.
§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.
§18-9A-6a. Teachers retirement fund allowance.
§18-9A-9. Foundation allowance for other current expense and substitute employees.
§18-9A-10. Foundation allowance to improve instructional programs.
§18-9A-13b. Allowances for remedial and accelerated education programs and salary equity.


1 For the purpose of this article:

2 "State board" means the West Virginia board of education.

3 "County board" or "board" means a county board of education.

4 "Professional salaries" means the state legally mandated salaries of the professional educators as provided in article four, chapter eighteen-a of this code.

5 "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code.

6 "Professional instructional personnel" means a professional educator whose regular duty is as that of a classroom teacher, librarian, counselor, attendance director, school psychologist or school nurse with a bachelors degree and who is licensed by the West Virginia board of examiners for registered professional nurses. 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 is assigned and serves on a regular full-time basis in appropriate instruction, library, counseling, attendance, psychologist or nursing duties.

7 "Service personnel salaries" shall mean the state legally mandated salaries for service personnel as provided in section eight-a, article four, chapter eighteen-a of this code.

8 "Service personnel" shall mean all personnel as provided for 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 adjusted enrollment, a service employee shall be counted as that number found by dividing his number of employment days in a fiscal year by two hundred: Provided, That the computation for any such 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.

"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. Commencing with the school year beginning on the first day of July, one thousand nine hundred eighty-eight, net enrollment further shall include adults enrolled in regular secondary vocational programs existing as of the effective date of this section: Provided, That net enrollment shall include no more than one thousand such 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: Provided, however, That no tuition or special fees beyond that required of the regular secondary vocational student is charged for such adult students.

"Adjusted enrollment" means the net enrollment plus twice the number of pupils enrolled for special education. Commencing with the school year beginning on the first day of July, one thousand nine hundred ninety, adjusted enrollment means the net enrollment plus twice the number of pupils enrolled for special education, including exceptional gifted, plus the number of pupils in grades nine through twelve enrolled for honors and advanced placement programs, plus the number of pupils enrolled on the first day of July, one thousand nine hundred eighty-nine, in the gifted program in grades nine through twelve: Provided, That commencing with the school year beginning on the first day of July, one thousand nine hundred ninety, no more than
four percent of net enrollment of grades one through eight may be counted as enrolled in gifted education and no more than six percent of net enrollment of grades nine through twelve may be counted as enrolled in gifted education, exceptional gifted education (subject to the limitation set forth in section one, article twenty of this chapter) and honors and advanced placement programs for the purpose of determining adjusted enrollment within a county: Provided, however, That nothing herein shall be construed to limit the number of students who may actually enroll in gifted, honors or advanced placement education programs in any county: Provided further, That until the school year beginning on the first day of July, one thousand nine hundred ninety-two, the preceding percentage limitations shall not restrict the adjusted enrollment definition for a county to the extent that those limitations are exceeded by students enrolled in gifted education programs on the first day of July, one thousand nine hundred eighty-nine: And provided further, That no pupil may be counted more than three times for the purpose of determining adjusted enrollment. Such enrollment shall be adjusted to the equivalent of the instructional term and in accordance with such eligibility requirements and rules as established by the state board. 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.

"Levies for general current expense purposes" means on each hundred dollars of valuation, twenty-two and five tenths cents on Class I property, forty-five cents on Class II property, and ninety cents on Classes III and IV property.

"Basic resources per pupil" for the state and the several counties means the total of (a) property tax revenues computed at the maximum regular levy rates as provided by section six-c, article eight, chapter eleven of this code, at a uniform rate of ninety-five percent, but excluding revenues from increased levies as provided in section ten, article X of the Constitution of West
Virginia, and (b) basic state aid as provided in sections twelve and thirteen of this article, but excluding the foundation allowance to improve instructional programs as provided in section ten of this article, and excluding any funds appropriated for the purpose of achieving salary equity among county board employees, this total divided by the number of students in adjusted enrollment: Provided, That beginning with the school year commencing on the first day of July, one thousand nine hundred ninety-one, and thereafter, the foundation allowance for transportation cost as provided in section seven of this article shall also be excluded and the total shall be divided by the number of students in net enrollment: Provided, however, That any year's allocations to the counties of the eighty percent portion of the foundation allowance to improve instructional programs, as provided in section ten of this article, shall be determined on the basis of the immediately preceding school year's basic resources per pupil.

§18-9A-4. Foundation allowance for professional educators.

1 The basic foundation allowance to the county for professional educators shall be the amount of money required to pay the state minimum salaries, in accordance with provisions of article four, chapter eighteen-a of the code, to such personnel employed: Provided, That in making this computation no county shall receive an allowance for such personnel which number is in excess of fifty-five professional educators to each one thousand students in adjusted enrollment: Provided, however, That any county not qualifying under the provision of section fourteen of this article shall be eligible for a growth rate in professional personnel in any one year not to exceed twenty percent of its total potential increase under this provision, except that in no case shall such limit be fewer than five professionals: Provided further, That the number of and the allowance for personnel paid in part by state and county funds shall be prorated: And provided further, That where two or more counties join together in support of a vocational or comprehensive high school or any other program or
service, the professional educators for such school or
program may be prorated among the participating
counties on the basis of each one's enrollment therein
and that such personnel shall be considered within the
above-stated limit: And provided further, That in the
school year beginning the first day of July, one thousand
nine hundred eighty-eight, and the succeeding school
year, each county board shall establish and maintain a
minimum ratio of fifty professional instructional
personnel per one thousand students in adjusted
enrollment, and in the school year beginning the first
day of July, one thousand nine hundred ninety, and for
each succeeding school year, each county board shall
establish and maintain a minimum ratio of fifty-one
professional instructional personnel per one thousand
students in adjusted enrollment. Any county board
which does not establish and maintain this minimum
ratio shall suffer a pro rata reduction in the allowance
for professional educators under this section, and, further, any county board which does not establish and
maintain this minimum ratio shall utilize any and all
allocations to it by provision of section fourteen of this
article solely to employ professional instructional
personnel until the minimum ratio is attained: And
provided further, That for the fiscal year commencing
on the first day of July, one thousand nine hundred
eighty-eight, only, the foundation allowance for profes-
sional educators for a county board of education shall
be equal to the amount allowable based upon the actual
ratio of professional educators per one thousand students
in net enrollment for which the county board of
education received state reimbursement during the
school year one thousand nine hundred eighty-seven—
eighty-eight, except that this provision shall not apply
to those counties whose percent rate of special education
enrollment to net enrollment is less than sixteen and two
tenths percent. No person employed prior to the first
day of July, one thousand nine hundred eighty-eight,
shall have their employment terminated because of a
reduction in force resulting from the provisions of this
section. Every county shall utilize methods other than
reductions in force, such as attrition and early retire-
§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.

(a) The purpose of this section is to establish maximum ratios between the numbers of professional educators and service personnel in the counties which are funded through the public school support plan and the net enrollment in the counties, such ratios are in addition to the ratios provided for in sections four and five of this article. It is the intent of the Legislature to adjust these ratios pursuant to legislative act as may be appropriate when additional personnel are needed to perform additional duties.

(b) Commencing with the school year one thousand nine hundred eighty-nine—ninety, and each year thereafter, in computing the basic foundation allowance to a county for professional educators and the basic foundation allowance to a county for service personnel under sections four and five of this article, a county shall not receive an allowance for such personnel which number per one thousand students in net enrollment is in excess of the number of professional educators and the number of service personnel in the county computed as follows:

<table>
<thead>
<tr>
<th>For the school year</th>
<th>Maximum professional educators per 1000 net enrollment the preceding year</th>
<th>Maximum service personnel per 1000 net enrollment the preceding year</th>
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<tr>
<td>1994-95 and thereafter</td>
<td>74.0</td>
<td>43.5</td>
</tr>
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</table>

(c) No person employed prior to the first day of July, one thousand nine hundred eighty-eight, will be laid off because of a reduction in force resulting from the
provisions of this section. Every county shall utilize methods other than reductions in force, such as attrition and early retirement, before implementing their reductions in force policy to comply with the limitations of this section.

(d) For the school years one thousand nine hundred eighty-nine—ninety and one thousand nine hundred ninety—ninety-one only, if a school district loses more than six percent of the number chargeable for the previous school year for professional educator positions or service personnel positions, due to the maximum ratios established in subsection (b) of this section, it may apply to the state board for a waiver of said ratios to the extent that the loss exceeds either six percent of its professional educators or service personnel: Provided, That the county board of education establishes and maintains a minimum ratio of fifty professional instructional personnel per one thousand students in adjusted enrollment for the school year beginning the first day of July, one thousand nine hundred eighty-nine, and fifty-one professional instructional personnel per one thousand students in adjusted enrollment for the school year one thousand nine hundred ninety—ninety-one as required in section four of this article. Waivers shall be determined on a case by case basis according to rules adopted by the state board and granted to the extent funds are appropriated by the Legislature for this purpose. Prior to the adoption of such rules, the state board shall conduct a thorough review of the staffing patterns in each county. Any personnel positions funded as a result of a waiver granted under the provisions of this subsection shall not be included in the computations set forth in sections four and five of this article.

§18-9A-6a. Teachers retirement fund allowance.

1 The total teachers retirement fund allowance shall be the sum of the basic foundation allowance for professional educators and the basic foundation allowance for service personnel, as provided in sections four and five of this article; all salary equity appropriations authorized in section five, article four of chapter eighteen-a; and such amounts as are to be paid by the counties
pursuant to sections five-a and five-b of said article to
the extent such county salary supplements are equal to
the amount distributed for salary equity among the
counties, multiplied by fifteen percent.

The teachers retirement fund allowance amounts shall
be accumulated in the employers accumulation fund of
the state teachers retirement system pursuant to section
eighteen, article seven-a of this chapter, and shall be in
lieu of the contribution required of employers pursuant
to subsection (b) of said section eighteen as to all
personnel included in the allowance for state aid in
accordance with sections four and five of this article.


The allowance in the foundation school program for
each county for transportation shall be the sum of the
following computations:

1. Eighty percent of the transportation cost within
each county for maintenance, operation and related
costs, exclusive of all salaries;

2. The total cost, within each county, of insurance
 premiums on buses, buildings and equipment used in
 transportation: Provided, That such premiums were
 procured through competitive bidding;

3. For the school year beginning the first day of July,
one thousand nine hundred eighty-nine, and thereafter,
an amount equal to ten percent of the current replace-
ment value of the bus fleet within each county as
determined by the state board, such amount to be used
only for the replacement of buses;

4. Eighty percent of the cost of contracted transpor-
tation services and public utility transportation with
each county; and

5. Aid in lieu of transportation equal to the state
average amount per pupil for each pupil receiving such
aid within each county.

The total state share for this purpose shall be the sum
of the county shares: Provided, That no county shall
receive an allowance which is greater than one third
above the computed state average allowance per mile multiplied by the total mileage in the county.


The allowance for administrative cost shall be equal to one and twenty-five one hundredths percent of the allocation for professional educators, as determined in section four of this article.

Distribution of the computed allowance shall be made as follows:

(1) Fifty-six percent of the allowance shall be distributed to the counties in equal amounts; and

(2) Forty-four percent of the allowance shall be distributed to the regional educational service agencies in accordance with rules adopted by the state board. The allowance for regional educational service agencies shall be excluded from the computation of total basic state aid as provided for in section twelve of this article.

§18-9A-9. Foundation allowance for other current expense and substitute employees.

The total allowance for other current expense and substitute employees shall be the sum of the following:

(1) For current expense, for the year one thousand nine hundred eighty-nine-ninety only, ten percent of the sum of the computed state allocation for professional educators and service personnel as determined in sections four and five of this article, and thereafter the rate shall be ten and six-tenths percent. Distribution to the counties shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment; plus

(2) For professional educator substitutes or current expense, two and five-tenths percent of the computed state allocation for professional educators as determined in section four of this article. Distribution to the counties shall be made proportional to the total county allocation for professional educators; plus

(3) For service personnel substitutes or current expense, two and five-tenths percent of the computed
21 state allocation for service personnel as determined in
22 section five of this article. Distribution to the counties
23 shall be made proportional to the total county allocation
24 for service personnel.

§18-9A-10. Foundation allowance to improve instructional programs.

1 (a) Commencing with the school year beginning on
2 the first day of July, one thousand nine hundred eighty-
3 nine, and thereafter, twenty-eight million eight hundred
4 thousand dollars, in addition to funds which accrue from
5 allocations due to increase in total local share above that
6 computed for the school year beginning on the first day
7 of July, one thousand nine hundred eighty-nine, from
8 balances in the general school fund, or from appropri-
9 ations for such purpose shall be allocated to increase
10 state support of counties as follows:

11 (1) Twenty percent of these funds shall be allocated
12 to the counties proportional to adjusted enrollment; and
13
14 (2) Each county whose allocation in subsection (1) is
15 less than one hundred fifty thousand dollars in any fiscal
16 year shall then receive an amount which equals the
17 difference between such amount received and one
18 hundred fifty thousand dollars.
19
20 (b) The remainder of these funds shall be allocated
21 according to the following plan for progress toward
22 basic resources per pupil equity:
23
24 Beginning with the county which has the lowest basic
25 resources per pupil and progressing through the
26 counties successively to and beyond the county with the
27 highest basic resources per pupil, the funds available
28 shall be allocated in amounts necessary to increase
29 moneys available to the county or counties to the basic
30 resources per pupil level, as nearly as is possible, of the
31 county having the next higher basic resources per pupil:
32 Provided, That to be eligible for its allocation under this
33 section, a county board shall lay the maximum regular
34 tax rates set out in section six-c, article eight, chapter
35 eleven of this code: Provided, however, That moneys
36 allocated by provision of this section shall be used to
improve instructional programs according to a plan for instructional improvement which the affected county board shall file with the state board by the first day of August of each year, to be approved by the state board by the first day of September of that year if such plan substantially complies with standards to be adopted by the state board: Provided further, That no part of this allocation may be used to employ professional educators in counties until and unless all applicable provisions of sections four and fourteen of this article have been fully utilized. Such instructional improvement plan shall be made available for distribution to the public at the office of each affected county board.

(c) Commencing with the school year beginning on the first day of July, one thousand nine hundred eighty-eight, and thereafter, fifty percent of the funds which accrue due to an increase in local share above that computed for the school year beginning on the first day of July, one thousand nine hundred eighty-seven, shall be paid into the school building capital improvements fund created by section six, article nine-d of this chapter, and shall be used solely for the purposes of said article nine-d.

(d) There shall be appropriated seven million four hundred ten thousand six hundred sixty-eight dollars for aid to counties which may be expended by the county boards for the initiation, and/or improvements of special education programs including employment of new special education professional personnel solely serving exceptional children; instructional programs which utilize state of the art technology; training of educational personnel to work with exceptional children; and supportive costs such as materials, transportation, contracted services, minor renovations and other costs directly related to the special education delivery process prescribed by the state board. The appropriation may also be used for nonpersonnel costs associated with the maintenance of special education programs in accordance with such rules as established by the state board. The appropriation includes out-of-state instruction and may be expended to provide instruction, care and
maintenance for educable persons who are severely handicapped and for whom the state provides no facilities.

(e) There shall be appropriated two million one thousand seven hundred thirty-two dollars to be used by the state department of education which may be expended for the purposes of paying staff and operating costs of both administrative/program personnel and instructional personnel delivering education to handicapped children in facilities operated by the state department of health; paying state department of education staff, current expenses and equipment; supporting a gifted summer camp; and supporting special state projects including, but not limited to, (1) an instructional materials center for visually handicapped children at the West Virginia Schools for the Deaf and the Blind, (2) the state special olympics program, (3) the West Virginia advisory council for the education of exceptional children at the West Virginia College of Graduate Studies, (4) statewide training activities or other programs benefiting exceptional children, and (5) the state very special arts program.

§18-9A-13b. Allowances for remedial and accelerated education programs and salary equity.

For the fiscal years commencing on the first day of July, one thousand nine hundred eighty-eight and eighty-nine, only, the total state appropriation for the basic foundation program shall be no less than the state appropriation for the fiscal year which began on the first day of July, one thousand nine hundred eighty-seven.

For the school year beginning on the first day of July, one thousand nine hundred eighty-eight, and the school year beginning on the first day of July, one thousand nine hundred eighty-nine, funds which accrue from allocations due to changes in adjusted enrollment above that computed for the school year beginning on the first day of July, one thousand nine hundred eighty-seven, or from appropriations for such purpose, shall be allocated to increase state support for salary equity and to develop
and implement remedial and accelerated programs in the following manner:

Sixty percent of these funds shall be allocated for the purpose of attaining salary equity among the counties pursuant to section five, article four, chapter eighteen-a; and

Forty percent of these funds shall be allocated to implement remedial and accelerated programs as developed under guidelines of the state board: Provided, That for the school year one thousand nine hundred eighty-nine—ninety, only, funds which accrue from allocations due to changes in adjusted enrollment above that computed for the school year beginning on the first day of July, one thousand nine hundred eighty-seven, shall be distributed for the purpose of achieving equity within the state basic foundation program.

Commencing with the school year beginning on the first day of July, one thousand nine hundred ninety, and thereafter, funds which accrue from allocations due to changes in adjusted enrollment above that computed for the school year beginning on the first day of July, one thousand nine hundred eighty-seven, or from appropriations for such purpose, shall be allocated to increase state support for salary equity and to develop and implement remedial and accelerated programs in the following manner:

Eighty percent of these funds shall be allocated for the purpose of attaining salary equity among the counties pursuant to section five, article four, chapter eighteen-a; and

Twenty percent of these funds shall be allocated to implement remedial and accelerated programs as developed under guidelines of the state board.


(a) The purpose of this section is to declare the intent of the Legislature to provide a thorough and efficient system of education for West Virginia public school students. High quality educational standards shall be provided all public school students on an equal educa-
tional opportunity basis. A system for the review of county educational plans and the on-site reviews of county educational programs shall provide assurances that the high quality standards, established pursuant to this section, are being met.

On or before January one, one thousand nine hundred eighty-five, the state board of education shall establish and adopt high quality educational standards and shall provide each county board of education a copy thereof.

On or before July one, one thousand nine hundred eighty-five, and each July one thereafter, each county board of education shall file an annual specific program plan with the state department of education. The program plan shall, at a minimum, meet the statewide high quality educational standards as established by the state board of education.

The purpose of the program plan is to allow county boards of education flexibility in developing school improvement programs structured around locally identified needs, but in compliance with the high quality standards adopted by the state board of education. High quality standards must be met in curriculum, finance, transportation, special education, facilities, textbooks, personnel qualifications and other such areas as determined by the state board of education.

The state department of education shall review the plans annually and conduct an on-site review of each county’s educational program every fourth year. The state board of education shall have authority to issue four types of recognition status: (1) Full approval, (2) substantial approval, (3) probationary and (4) nonapproval.

Full approval status may be granted to a county board of education whose educational program has undergone an on-site evaluation by representatives of the state department of education and has met the high quality standards adopted by the state board of education. Full approval status shall be for a period not to exceed four years.
Substantial approval status may be granted to a county board of education whose educational program has satisfied all conditions identified under full approval status, with the exception of an on-site review, or all conditions identified under full approval have been satisfied except that one or more of the high quality standards have not been met but will be attained within one year, as described in an acceptable plan of action.

Probationary status is given to a county board of education whose educational program has not met the high quality standards. Probationary status is a warning that the county board of education must make specified improvements. If progress is not made toward meeting the high quality standards during the succeeding year, the county board of education is automatically placed on nonapproval status.

Nonapproval status is given to a county board of education which fails to submit an annual program plan, fails to give evidence of meeting the high quality standards or has not demonstrated a reasonable effort to meet such standards.

(b) After the thirty-first day of December, one thousand nine hundred eighty-eight, the approval of educational programs based on high quality educational standards established by the state board shall be in accordance with the provisions of article two-e of this chapter and the provisions of this section shall expire.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-1. Establishment of special programs and teaching services for exceptional children.

In accordance with the following provisions, county boards of education throughout the state shall establish and maintain for all exceptional children between five and twenty-three years of age special educational programs, including, but not limited to, special schools, classes, regular classroom programs, home-teaching or
visiting-teacher services for any type or classification as the state board shall approve. Provisions shall be made for educating exceptional children (including the handicapped and the gifted) who differ from the average or normal in physical, mental or emotional characteristics, or in communicative or intellectual deviation characteristics, or in both communicative and intellectual deviation characteristics, to the extent that they cannot be educated safely or profitably in the regular classes of the public schools or to the extent that they need special educational provisions within the regular classroom in order to educate them in accordance with their capacities, limitations and needs:

Provided, That commencing with the school year beginning on the first day of July, one thousand nine hundred ninety, provisions shall be made for educating exceptional children, including the handicapped, the gifted in grades one through eight, the pupils enrolled on the first day of July, one thousand nine hundred eighty-nine, in the gifted program in grades nine through twelve and the exceptional gifted in grades nine through twelve. The term “exceptional gifted” means those students in grades nine through twelve identified as gifted and at least one of the following: Behavior disorder, specific learning disabilities, psychological adjustment disorder, underachieving, or economically disadvantaged. Exceptional gifted children shall be referred for identification pursuant to recommendation by a school psychologist, school counselor, principal, teacher, parent or by self-referral, at which time the placement process, including development of an individualized education program, and attendant due process rights, shall commence. Exceptional gifted children, for purposes of calculating adjusted enrollment pursuant to section two, article nine-a of this chapter, shall not exceed one percent of net enrollment in grades nine through twelve. Nothing herein shall be construed to limit the number of students identified as exceptional gifted and who receive appropriate services. Each county board of education is mandated to provide gifted education to its students according to guidelines promulgated by the state board and consistent with the
provisions of this chapter. Upon the recommendation of
a principal, counselor, teacher and parent, a student
who does not meet the gifted eligibility criteria may
participate in any school program deemed appropriate
for the student provided that classroom space is
available. In addition, county boards of education may
establish and maintain other educational services for
exceptional children as the state superintendent of
schools may approve.

By the school year beginning on the first day of July,
one thousand nine hundred seventy-four, county boards
of education shall establish and maintain these special
educational programs, including, but not limited to,
special schools, classes, regular class programs, home-
teaching and visiting-teacher services. After the first
day of July, one thousand nine hundred eighty-three, the
special education programs shall include home-teaching
or visiting-teacher services for children who are
homebound due to injury or who for any other reason
as certified by a licensed physician are homebound for
a period that has lasted or will last more than three
weeks: Provided, That pupils receiving such homebound
or visiting-teacher services shall not be included when
computing adjusted enrollment as defined in section
two, article nine-a, chapter eighteen of this code. The
state board shall adopt rules and regulations to advance
and accomplish this program and to assure that all
exceptional children in the state, including children in
mental health facilities, residential institutions and
private schools, will receive an education in accordance
with the mandates of state and federal laws.

Nothing in this section shall be construed to prevent
county boards of education from providing special
educational programs, including, but not limited to,
special schools, classes, regular class programs, home-
teaching or visiting-teacher services for such excep-
tional children who are three years of age or older.


Notwithstanding any other provision of this code to
the contrary, the teacher-student ratio for gifted, honors,
and advanced placement education in grades nine through twelve shall be the same as regular classroom education and not as required for special education of exceptional children: Provided, That this shall not apply to education of exceptional gifted, as defined in section one, article twenty of this chapter. The state board shall review class sizes and enrollment percentages of students in gifted, exceptional gifted, honors, and advanced placement programs in grades nine through twelve and report its findings to the standing education committees of the Senate and House of Delegates by the tenth day of January, one thousand nine hundred ninety-one.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-1. Definitions.
§18A-4-2. State minimum salaries for teachers.
§18A-4-5a. County salary supplements for teachers.
§18A-4-5b. County salary supplements for school service personnel.
§18A-4-5c. Equity appropriation from surplus revenues.
§18A-4-8a. Service personnel minimum monthly salaries.
§18A-4-8d. Consolidation of services and seniority rights for administrative personnel.

§18A-4-1. Definitions.

For the purpose of this section, salaries shall be defined as: (a) “Basic salaries” which shall mean the salaries paid to teachers with zero years of experience and in accordance with the classification of certification and of training of said teachers; and (b) “advanced salaries” which shall mean the basic salary plus an experience increment based on the allowable years of experience of the respective teachers in accordance with the schedule established herein for the applicable classification of certification and of training of said teachers.

“Classification of certification” means the class or type of certificate issued by the state superintendent of schools under the statutory provisions of this chapter. “Classification of training” means the number of collegiate or graduate hours necessary to meet the
The column heads of the state minimum salary schedule set forth in section two of this article are defined as follows:

(1) "Years of experience" means the number of years the teacher has been employed in the teaching profession, including active work in educational positions other than the public schools, and service in the armed forces of the United States if the teacher were under contract to teach at the time of induction. For a registered professional nurse employed by a county board of education, "years of experience" means the number of years the nurse has been employed as a public school health nurse, including active work in a nursing position related to education, and service in the armed forces if the nurse was under contract with the county board at the time of induction. For the purpose of section two of this article, the experience of a teacher or a nurse shall be limited to that allowed under their training classification as found in the minimum salary schedule.

(2) "Fourth class" means all certificates previously identified as (a) "certificates secured by examination," and (b) "other first grade certificates."

(3) "Third class" means all certificates previously identified as (a) "standard normal certificates" and (b) "third class temporary (sixty-four semester hours) certificates."

(4) "Second class" means all certificates previously identified as "second class temporary certificates based upon the required ninety-six hours of college work."

(5) "A.B." means a bachelor's degree, from an accredited institution of higher education, which has been issued to, or for which the requirements for such have been met by, a person who qualifies for or holds a professional certificate or its equivalent. A registered professional nurse with a bachelor's degree, who is licensed by the West Virginia board of examiners for
registered professional nurses and employed by a county board of education, shall be within this classification for payment in accordance with sections two and two-a of this article.

(6) "A.B. plus 15" means a bachelor's degree as defined above plus fifteen hours of graduate work, from an accredited institution of higher education certified to do graduate work, in an approved planned program at the graduate level which requirements have been met by a person who qualifies for or holds a professional certificate or its equivalent.

(7) "M. A." means a master's degree, earned in an institution of higher education approved to do graduate work, which has been issued to, or the requirements for such have been met by, a person who qualifies for or holds a professional certificate or its equivalent.

(8) "M. A. plus 15" means the above-defined master's degree plus fifteen hours of graduate work, earned in an institution of higher education approved to do graduate work, if the person is qualified for or holds a professional certificate or its equivalent.

(9) "M. A. plus 30" means the above-defined master's degree plus thirty graduate hours, earned in an institution approved to do graduate work, if the person is qualified for or holds a professional certificate or its equivalent.

(10) "Doctorate" means a doctor's degree, earned from a university qualified and approved to confer such a degree, which has been issued to or the requirements for such have been met by a person who qualifies for or holds a professional certificate or its equivalent.

Notwithstanding the requirements set forth in subdivisions (6), (8) and (9) of this section relating to hours of graduate work at an institution certified to do such work, fifteen undergraduate credit hours from a regionally accredited institution of higher education, earned after the effective date of this section, may be utilized for advanced salary classification if such hours are in accordance with (a) the teacher's current
classification of certification and of training, (b) a
designated instructional shortage area documented by
the employing county superintendent, or (c) an identi-
fied teaching deficiency documented through the state
approved county personnel evaluation system.

Any professional educator earning a master's degree
shall be entitled to any “MA” classifications of training
for purposes of compensation pursuant to the provisions
of the in-field master's salary schedule set forth in
section two of this article only if a minimum of two-
thirds of the course work for such degree is in the field
in which the professional educator holds certification
and is employed: Provided, That the classroom teacher
who holds multiple certifications or a certification in
elementary education and has obtained an in-field
master's in one of those certification areas shall be
compensated at the level commensurate with the in-field
provisions.

Upon request for a specific master's degree program,
the appropriate governing board of higher education
shall provide all of the course work needed to obtain a
master's degree in the requested program. The course
work for such program shall be initiated no later than
two years from the date requested and shall be provided
in its entirety within each regional educational service
agency area in which the request has been made as
follows: (1) Via satellite instruction; (2) via public
television home instruction; or (3) in a manner pres-
cribed by such governing board. If a governing board
fails to initiate the course work within the above time
period, an individual shall be compensated at the
appropriate level of years of experience on the in-field
master's salary schedule whenever the individual has
obtained any master's degree related to the public school
program.

The governing boards of higher education shall
develop a plan to provide “MA” classification programs
to professional educators throughout this state by the
first day of January, one thousand nine hundred ninety-
one, with the objective being to provide course work
enabling professional educators to achieve an "MA" degree classification in their teaching field.

§18A-4-2. State minimum salaries for teachers.

STATE MINIMUM SALARY SCHEDULE I

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On and after the first day of July, one thousand nine hundred ninety-four, each teacher who has met the in-field master's requirements set forth in section one of this article shall receive the amount prescribed in the "state in-field master's salary schedule" in lieu of the "state minimum salary schedule II" and any other compensation otherwise provided for in this section.

On and after the first day of July, one thousand nine hundred eighty-six, each teacher shall receive the amount prescribed in the "state minimum salary schedule I" 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:

Provided, That on and after the first day of the second half of the teacher's employment term in the school year one thousand nine hundred eighty-nine—ninety, each teacher shall receive the amount prescribed in the "state minimum salary schedule II" 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.

Six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. Such payments shall be in addition to any amounts prescribed in the "state minimum salary schedule II" as set forth in this section, and shall be deemed a part of the state minimum salaries for teachers.

§18A-4-5a. County salary supplements for teachers.

County boards of education in fixing the salaries of teachers shall use at least the state minimum salaries established under the provisions of this article. The board may establish salary schedules which shall be in excess of the state minimums fixed by this article, such county schedules to be uniform throughout the county as to the above stipulated training classifications, experience, responsibility and other requirements, except that no such county schedule may exceed one
hundred two and one-half percent of a schedule which incorporates the state minimum salary for teachers in effect on the first day of July, one thousand nine hundred eighty-four, and adopts a supplement which equals the highest supplement provided by a county on the first day of January, one thousand nine hundred eighty-four, so as to assist the state in meeting its objective of salary equity among the counties: Provided, That all teachers in the state shall be entitled to any increases in the minimum salary schedules established under the provisions of this article, and when a county schedule changes due to said increase in the state minimum salary taking effect after the first day of July, one thousand nine hundred eighty-four, it shall not be deemed to exceed the maximum salary schedule prescribed herein.

Counties may fix higher salaries for teachers placed in special instructional assignments, for those assigned to or employed for duties other than regular instructional duties, and for teachers of one-teacher schools, and they may provide additional compensation for any teacher assigned duties in addition to the teacher's regular instructional duties wherein such noninstructional duties are not a part of the scheduled hours of the regular school day. Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county: Provided, That in establishing such local salary schedules, no county shall reduce local funds allocated for salaries in effect on the first day of January, one thousand nine hundred eighty-four, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

Counties may provide, in a uniform manner, benefits for teachers which require an appropriation from local funds including, but not limited to, dental, optical, health and income protection insurance, vacation time
and retirement plans excluding the state teachers retirement system. Nothing herein shall prohibit the maintenance nor result in the reduction of any benefits in effect on January one, one thousand nine hundred eighty-four, by any county board of education.

To further assist the state in meeting such objective, each county board of education shall provide to the state board of education on or before the first day of November, one thousand nine hundred eighty-nine, such information as the state board directs to assist the state superintendent of schools in preparing a report to be submitted to the Legislature on the first day of the regular session thereof in the year one thousand nine hundred ninety. Such report shall include findings, conclusions and recommendations with respect to benefits provided and meeting the objective of benefit equity among the counties.

§18A-4-5b. County salary supplements for school service personnel.

The county board of education may establish salary schedules which shall be in excess of the state minimums fixed by this article, except that no such schedule may exceed one hundred two and one-half percent of a schedule which incorporates the state minimum salary for school service personnel in effect on the first day of July, one thousand nine hundred eighty-four, and adopts a monthly supplement of two hundred and five dollars for zero years of experience for all pay grades and which increases said monthly supplement by two dollars for each year of experience codified for school service personnel in this article, so as to assist the state in meeting its objective of salary equity among the counties: Provided, That all school service personnel in the state shall be entitled to any increases in the minimum salary for school service personnel established under the provisions of this article, and when a county schedule changes due to said increase in the state minimum salary taking effect after the first day of July, one thousand nine hundred eighty-four, it shall not be deemed to exceed the maximum salary schedule prescribed herein. Any county supplement for any position
which, on the first day of January, one thousand nine hundred eighty-four, extends the schedule beyond the maximum prescribed herein for such position shall be exempt from the maximums stated herein, subject to the approval of the state board, but no such supplement shall be increased beyond the amount received on the first day of January, one thousand nine hundred eighty-four.

These county schedules shall be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Further, uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county: Provided, That in establishing such local salary schedules, no county shall reduce local funds allocated for salaries in effect on the first day of January, one thousand nine hundred eighty-four, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

Counties may provide, in a uniform manner, benefits for service personnel which require an appropriation from local funds including, but not limited to, dental, optical, health and income protection insurance, vacation time and retirement plans excluding the state teachers retirement system. Nothing herein shall prohibit the maintenance nor result in the reduction of any benefits in effect on January one, one thousand nine hundred eighty-four, by any county board of education.

To further assist the state in meeting such objective, each county board of education shall provide to the state board of education on or before the first day of November, one thousand nine hundred eighty-nine, such information as the state board directs to assist the state superintendent of schools in preparing a report to be
submitted to the Legislature on the first day of the regular session thereof in the year one thousand nine hundred ninety. Such report shall include findings, conclusions, and recommendations with respect to benefits provided and meeting the objective of benefit equity among the counties.

§18A-4-5c. Equity appropriation from surplus revenues.

Notwithstanding the provisions of section five of this article, any moneys appropriated and expended for equity that are in addition to such amounts as were expended for such purpose prior to the effective date of this section shall be apportioned between teachers and school service personnel in such proportion as necessary to align more closely teachers and school service personnel with their counterparts in the contiguous states: Provided, That an adequate amount of such funds shall be reserved to finance the appropriate foundation allowances and staffing incentives provided for in article nine-a of chapter eighteen.

The state board shall collect information annually from contiguous states for the purpose of making a thorough and comprehensive comparison of West Virginia school service personnel salaries to those in surrounding states, which shall be used as a guide to align more closely teachers and school service personnel with their counterparts in the contiguous states.

§18A-4-8a. Service personnel minimum monthly salaries.

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On and after the first day of July, one thousand nine hundred eighty-nine, 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 I" as set forth in this section, 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 I" set forth in this section: Provided, That beginning on the first day of the second half of the employment term in the school year one thousand nine hundred eighty-nine—ninety, and thereafter, "state minimum pay scale pay grade II" shall replace "state minimum pay scale pay grade I", and an additional ten dollars per month shall be added to the minimum monthly pay if the service employee holds a high school diploma or its equivalent.

Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times such employee’s usual hourly rate.

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 shall be paid for such additional hours or fraction thereof at a rate of one and one-half times their usual hourly rate and paid entirely from county board of education funds.

No service employee shall have his or her daily work schedule changed during the school year without such employee’s written consent, and such employee’s required daily work hours shall not be changed to prevent the payment of time and one-half wages or the employment of another employee.

The minimum pay for extra-duty assignments as defined in section eight-b of this article shall be no less than one-seventh of the employee’s daily total salary for
each hour the employee is involved in performing the assignment and paid entirely from local funds. The salary for any fraction of an hour the employee is involved in performing the assignment shall be prorated accordingly. When performing extra-duty assignments, employees who are regularly employed on a one-half day salary basis shall receive the same hourly extra-duty assignment pay computed as though such an employee were employed on a full-day salary basis.

§18A-4-8d. Consolidation of services and seniority rights for administrative personnel.

Where two or more counties join together to share the services of central office administrative personnel, any employee whose services are no longer needed by virtue of such sharing may have his or her contract terminated for lack of need, as provided in sections two and six, article two of this chapter, notwithstanding any provision of this code to the contrary. Any employee whose contract is so terminated shall be afforded all rights pursuant to section eight-b of this article.

CHAPTER 56
(H. B. 2280—By Delegates Sattes and Farmer)

[Passed March 23, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to providing option to requirement of mailing school report cards.

Be it enacted by the Legislature of West Virginia:

That article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-a, to read as follows:
ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-4a. Exception to requirement of mailing school report cards.

1 Notwithstanding the provisions of section four of this article requiring school report cards to be mailed directly to the parent or parents of each child enrolled in the school, such report cards may, at the option of the county board of education, be mailed as provided in said section four or be given to each child for delivery to his or her parent, parents, custodian or legal guardian: Provided, That if the school report card is delivered by the child, written verification must be received by the school indicating the parent, parents, custodian or legal guardian has received the school report card.

CHAPTER 57

(Com. Sub. for S. B. 478—By Senators Tomblin, M. Manchin and Blatnik, By Request)

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

AN ACT to amend and reenact section four, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county superintendents of schools; and providing a delayed effective date of current requirements for the appointment of a new superintendent.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-4. Compensation generally; master's degree or equivalent required for new appointee.

1 On or before the first day of May of the year in which the superintendent is appointed, the board shall fix the annual salary of the superintendent for the period of
appointment for the term beginning on the first day of July following. The board shall pay the salary from the general current expense fund of the district: Provided, That the superintendent shall hold at least a master's degree or its equivalent related to public school education earned at an institution of higher education approved to offer graduate work: Provided, however, That commencing with the first day of July, one thousand nine hundred ninety-three, any newly appointed superintendent employed as a superintendent after the twenty-seventh day of June, one thousand nine hundred eighty-eight, shall meet the requirements set forth in section two of this article and at a minimum shall qualify for an initial license as a superintendent, hold at least a master's degree or its equivalent related to public school education plus twenty-four semester hours related to public school education earned at an institution of higher education approved to offer graduate work, and shall qualify for a superintendent's certificate within three years of being employed as a superintendent: Provided further, That any assistant superintendent or educational administrator employed in such capacity in this state prior to the twenty-seventh day of June, one thousand nine hundred eighty-eight, who was employed as a county superintendent in this state shall not be required to meet the requirements of the superintendent's initial licensure, certificate and said twenty-four semester hours beyond a master's degree.

CHAPTER 58
(S. B. 127—By Senators Holmes, Craigo, Blatnik, Diltmar, Warner, Felton and Chernenko)

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

AN ACT to amend and reenact section one-b, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to term of office for county board members; and reducing the terms from six years to four years.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1b. Election; terms of office.

As the terms of county school board members who presently hold office expire, members shall be elected for four-year terms at the time of each regular primary election commencing with the year one thousand nine hundred ninety. The terms of such members shall begin on the first day of July next following the primary election at which they were elected.

The term of office of any member of any county board of education shall immediately cease, and a vacancy shall exist, upon occurrence of ineligibility as prescribed in section one-a of this article.

This section shall in no manner be construed so as to affect the unexpired terms of county school board members who hold office or were elected under prior existing law.

CHAPTER 59

(Com. Sub. for H. B. 2165—By Delegates Murphy and Sattes)

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

AN ACT to amend and reenact section fifteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school terms; employment terms for teachers; providing that one of the seven days outside the school environment coincide with the federal holiday honoring the birthday of Martin Luther King, Jr.; and providing that no more than eight noninstructional days, except holidays, be scheduled before the first day of January in a school term.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15. School term; exception; levies; ages of persons to whom schools are open.

(a) The board shall provide a school term for its schools which shall be comprised of (a) an employment term for teachers, and (b) an instructional term for pupils. Nothing in this section shall prohibit the establishment of year-round schools in accordance with rules to be established by the state board.

The employment term for teachers shall be no less than ten months, a month to be defined as twenty employment days exclusive of Saturdays and Sundays: Provided, That the board may contract with all or part of the personnel for a longer term. The employment term shall be fixed within such beginning and closing dates as established by the state board: Provided, however, That the time between the beginning and closing dates does not exceed forty-three weeks.

Within the employment term there shall be an instructional term for pupils of not less than one hundred eighty nor more than one hundred eighty-five instructional days: Provided, That the minimum instructional term may be decreased, by order of the state superintendent of schools, in any West Virginia county declared to be a federal disaster area by the Federal Emergency Management Agency. Instructional and noninstructional activities may be scheduled during the same employment day. Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach. The instructional term shall commence no earlier than the first day of September and shall terminate no later than the eighth day of June.

Noninstructional days in the employment term may be used for making up canceled instructional days, curriculum development, preparation for opening and
closing of the instructional term, in-service and professional training of teachers, teacher-pupil-parent conferences, professional meetings and other related activities. In addition, each board shall designate and schedule for teachers and service personnel seven days to be used by the employee outside the school environment one of which days shall coincide with the federal holiday honoring the birthday of Martin Luther King, Jr. However, no more than eight noninstructional days, except holidays, may be scheduled prior to the first day of January in a school term.

Notwithstanding any other provisions of the law to the contrary, if the board has canceled instructional days equal to the difference between the total instructional days scheduled and one hundred seventy-eight, each succeeding instructional day canceled shall be rescheduled, utilizing only the remaining noninstructional days, except holidays, following such cancellation, which are available prior to the second day before the end of the employment term established by such county board.

Where the employment term overlaps a teacher's or service personnel's participation in a summer institute or institution of higher education for the purpose of advancement or professional growth, the teacher or service personnel may substitute, with the approval of the county superintendent, such participation for not more than five of the noninstructional days of the employment term.

The board may extend the instructional term beyond one hundred eighty-five instructional days provided the employment term is extended an equal number of days. If the state revenues and regular levies, as provided by law, are insufficient to enable the board of education to provide for the school term, the board may at any general or special election, if petitioned by at least five percent of the qualified voters in the district, submit the question of additional levies to the voters. If at the election a majority of the qualified voters cast their ballots in favor of the additional levy, the board shall fix the term and lay a levy necessary to pay the cost of the additional term. The additional levy fixed by the
74 election shall not continue longer than five years without
75 submission to the voters. The additional rate shall not
76 exceed by more than one hundred percent the maximum
77 school rate prescribed by article eight, chapter eleven
78 of the code, as amended.
79
80 (b) The Legislature finds and declares that excess
81 levies as they currently exist create unequal educational
82 opportunities from county to county based on the
83 difference in the will of the voters and also based on the
84 differences in property wealth among the counties; that
85 prior to the first day of July, one thousand nine hundred
86 ninety-four, the Legislature shall proceed to equalize
87 educational opportunities over and above the opportun-
88 ities afforded by each county's property values by
89 considering the existence or nonexistence of excess
90 levies as a factor in the distribution of equity moneys;
91 and that on and after the first day of July, one thousand
92 nine hundred ninety-four, the Legislature shall imple-
93 ment a plan for the equitable distribution of funds so
94 as to eliminate the inequities resulting from county
95 excess levies.
96
97 (c) The public schools shall be open for the full
98 instructional term to all persons who have attained the
99 entrance age as stated in section five, article two and
100 section eighteen, article five, chapter eighteen of this
code: Provided, That persons over the age of twenty-one
101 may enter only those programs or classes authorized by
102 the state board of education and deemed appropriate by
103 the county board of education conducting any such
104 program or class: Provided, however, That authorization
105 for such programs or classes shall in no way serve to
106 affect or eliminate programs or classes offered by
107 county boards of education at the adult level for which
108 fees are charged to support such programs or classes.

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CHAPTER 60

(Com. Sub. for H. B. 2557—By Delegates Basham and Flanigan)

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

AN ACT to amend and reenact section twenty-two, article five,
chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to “specialized health procedures” in the public schools; defining “specialized health procedures”; providing for emergency assistance; specifying school employees who shall be authorized and trained to perform “specialized health procedures”; creating a council of school nurses; and granting authority to the department of health to establish standards relating to “specialized health procedures.”

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-22. Medical and dental inspection; school nurses; specialized health procedures; establishment of council of school nurses.

1 County boards of education shall provide proper medical and dental inspections for all pupils attending the schools of their county and shall further have the authority to take any other action necessary to protect the pupils from infectious diseases, including the authority to require from all school personnel employed in their county, certificates of good health and of physical fitness.

2 Each county board of education shall employ full time at least one school nurse for every one thousand five hundred kindergarten through seventh grade pupils in net enrollment or major fraction thereof: Provided, That each county shall employ full time at least one school nurse: Provided, however, That a county board may contract with a public health department for services deemed equivalent to those required by this section in accordance with a plan to be approved by the state board: Provided further, That the state board shall promulgate rules and regulations requiring the employment of school nurses in excess of the number required by this section to ensure adequate provision of services to severely handicapped pupils.
Any person employed as a school nurse shall be a registered professional nurse properly licensed by the West Virginia board of examiners for registered professional nurses in accordance with article seven, chapter thirty of this code.

Beginning with the school year one thousand nine hundred ninety-nineteen, specialized health procedures that require the skill, knowledge and judgment of a licensed health professional, shall be performed only by school nurses, other licensed school health care providers as provided for in this section, or school employees who have been trained and retrained every two years and subject to the supervision and approval by school nurses. After assessing the health status of the individual student, a school nurse, in collaboration with the student’s physician, parents and in some instances an individualized education program team, may delegate certain health care procedures to a school employee who shall be trained pursuant to this section, deemed competent, have consultation with, and be monitored or supervised by the school nurse: Provided, That nothing herein shall prohibit any school employee from providing specialized health procedures or any other prudent action to aid any person who is in acute physical distress or requires emergency assistance. For the purposes of this section “specialized health procedures” means, but is not limited to, catheterization, suctioning of tracheostomy, naso-gastric tube feeding or gastrostomy tube feeding; and “school employee” means teachers as defined in section one, article one of this chapter and aides as defined in section eight, article four-a, chapter eighteen-a of this code.

Any school employee who elects to undergo training or retraining to provide, in the manner specified herein, such specialized health care procedures and for whom such selection has been approved by both the principal and the county board, may receive additional pay at the discretion of the county board: Provided, That any training may be considered in lieu of required in-service training of such school employee and a school employee
cannot be required to elect to undergo the training or retraining: Provided, however, That commencing with the first day of July, one thousand nine hundred eighty-nine, any newly employed school employee in the field of special education shall be required to undergo the training and retraining as provided for in this section.

Each county school nurse, as designated and defined by this section, shall perform a needs assessment. These nurses shall meet on the basis of the area served by their regional educational service agency, prepare recommendations and elect a representative to serve on the council of school nurses.

There shall be established a council of school nurses which shall be convened by the state board of education. This council shall prepare a procedural manual and shall provide recommendations regarding a training course to the director of the state department of health who shall consult with the state department of education. The state department of health shall then have the authority to promulgate rules and regulations to implement the training and to create standards used by those performing specialized health procedures. The council shall meet every two years to review the certification and training program regarding school employees.

The state board of education shall work in conjunction with county boards to provide training and retraining every two years as recommended by the council of school nurses and implemented by the state department of health.

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CHAPTER 61
(S. B. 159—Originating in the Committee on Education)

(Passed February 28, 1989; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section thirty-five-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and
to amend and reenact sections two, six and seven, article two, chapter eighteen-a of said code, all relating to requiring members of state teachers retirement system to provide written notification of decision not to retire; extending time for terminating continuing contracts of teachers and service personnel; and extending time for notifying school personnel of possible transfer.

Be it enacted by the Legislature of West Virginia:

That section thirty-five-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections two, six and seven, article two, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-35b. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions, and exceptions; certain positions abolished; special rule of eighty; effective, termination, and notice dates.

1 The Legislature hereby finds and declares that a compelling state interest exists in providing a temporary, early retirement incentives program for encouraging the early, voluntary retirement of those public employees who were current, active, contributing members of this retirement system on the first day of April, one thousand nine hundred eighty-eight, in the reduction of the number of such employees and in reduction of governmental costs therefor; that such program constitutes a public purpose; and that the special classifications and differentiations provided in respect of such program are reasonable and equitable
ones for the accomplishment of such purpose and program as enacted in Enrolled Committee Substitute for H. B. No. 4672, regular session, one thousand nine hundred eighty-eight, and as clarified and supplemented herein, retroactive to such beginning date, aforesaid.

(a) Beginning on the first day of April, one thousand nine hundred eighty-eight, and continuing through the thirty-first day of December, one thousand nine hundred eighty-eight, (or as extended by contract or by eligibility qualification requirement, as hereinafter specified) eligible members, being those active, contributing members actually and currently employed on such beginning date, retiring pursuant to this section (except disability retirees, but including those so employed on said beginning date and leaving the system during the incentive period and who are eligible for deferred benefits), may elect to participate in this incentives program and may elect any one of the three following incentive options:

(1) Retirement incentive option one:

For the purpose of computing the member's annuity, the normal final average salary shall be computed and one-eighth thereof shall be added thereto in arriving at the true final average salary for use in actual computation of retirement benefit.

(2) Retirement incentive option two:

A member may elect a lump sum payment, in addition to his regular retirement annuity, equal to ten percent of his final average salary not to exceed five thousand dollars, and in the case of a deferred retirement electing this option, such lump sum payment shall be receivable and deferred to the time of receipt of such deferred retirement annuity.

(3) Retirement incentive option three:

A person shall be credited with an additional two years of contributing service and an additional two years of age. The years credited under this option shall in no way add to a member's final average salary factor of computation.
(b) Eligible, active, contributing members, aforesaid, employed under contract and rendering services during school year one thousand nine hundred eighty-eight—eighty-nine shall, if retiring pursuant to the provisions of this section and the early retirement incentive program set forth herein, make application for retirement, including choice of their respective option, and give notice to their respective county boards of education by the thirty-first day of December, one thousand nine hundred eighty-eight, but shall be permitted to postpone actual retirement until immediately after the close of such contract period and said school year; with proper credit to be granted for such extended period.

Also, eligible, active, contributing members employed, not under contract, who desire to retire under this section but who are unable to retire by the thirty-first day of December, one thousand nine hundred eighty-eight, because an element of eligibility for retirement, such as age or other element, will not be met until a date after the thirty-first day of December, one thousand nine hundred eighty-eight, and before the first day of July, one thousand nine hundred eighty-nine, shall be permitted to postpone actual retirement until the date of fulfilling such element of eligibility and shall retire on such date, before the temporary retirement incentive program ends on the thirtieth day of June, one thousand nine hundred eighty-nine; with proper credit to be granted for such extended period: Provided, That members eligible under the preceding paragraph and this paragraph shall have made application for retirement, including choice of their respective option, and given notice to their respective employer by the thirty-first day of December, one thousand nine hundred eighty-eight, although postponing actual retirement, as aforesaid: Provided, however, That an application for retirement under the provisions of the preceding paragraph and this paragraph shall be binding upon a member unless the member provides the retirement system and the local board of education or other educational agency with written notification of his or her decision not to retire by the first day of April, one thousand nine hundred eighty-nine: Provided further,
That an eligible member under this paragraph or the preceding paragraph who has a grievance filed on or before the twenty-second day of February, one thousand nine hundred eighty-nine, or court proceeding which is pending as of the twenty-second day of February, one thousand nine hundred eighty-nine, shall be required to give final notice of decision not to retire by the thirtieth day of June, one thousand nine hundred eighty-nine: And provided further, That the state teachers retirement board on or before the seventeenth day of March, one thousand nine hundred eighty-nine, shall provide calculations of anticipated retirement benefits to those members who intend to retire pursuant to the provisions of this section.

Eligible members other than those covered under the provisions of the two preceding paragraphs, desiring to retire under this incentive program shall make their option election prior to and take their respective retirement by the close of the thirty-first day of December, one thousand nine hundred eighty-eight.

Any eligible member who retires hereunder during the school year (after the first day of July, one thousand nine hundred eighty-eight, and on any date prior to the thirtieth day of June, one thousand nine hundred eighty-nine) shall have included such months of such school year and the salary in respect thereof, if ones of higher salary, in place of and for any like number of months in his or her five-year period for computation of annuities as provided for in section twenty-six of this article.

(c) Any member participating in this retirement incentive program is not eligible to accept further employment from the state or any of its political subdivisions: Provided, That a person may retire under this section and thereafter serve in an elective office: Provided, however, That he shall not receive an incentive annuity under this section during the term of service in said office, but shall receive his or her annuity calculated on regular basis, as if originally taken not under this section but on such regular basis. At the end of such term and cessation of service in such office, such
incentive annuity shall resume. In respect of an
appointive office, as distinguished from an elective
office, any person retiring under this section and
thereafter serving in such appointive office shall not
receive an incentive annuity under this section during
the term of service in said office, but the same shall be
suspended during such period: Provided further, That at
the end of such term and cessation of service in such
appointive office the incentive annuity provided for
under this section shall be resumed.

In any event, an eligible member may retire under
this section and thereafter continue to receive his
incentive annuity and be employed as a substitute
teacher or as adjunct faculty, or as a school service
personnel substitute.

Any such incentive retirants, under this section, may
not thereafter receive such annuity and enter or reenter
any governmental retirement system established or
authorized to be established by the state, notwithstanding
any provision of the code to the contrary, unless
required by constitutional provision.

The additional annuity allowed for temporary early
retirement under these options is intended to be paid
from the retirement incentive account hereby created as
a special account in the state treasury and from the
funds therein established with moneys required to be
applied or transferred by heads of spending units from
the unused portion of salary and fringe benefits in their
budgets accruing in respect to such positions vacated
and subsequently canceled under this temporary early
retirement program. Salary and fringe benefit moneys
actually saved in a particular fiscal year shall constitute
the fund source. No such additional annuity shall be
disallowed even though initial receipts may not be
sufficient, with funds of the system to be applied for
such purpose, as for the base annuity.

(d) The executive secretary of the retirement system
shall provide forms for applicants. Such forms shall
include a detailed description of the incentive plan
options.
The executive secretary of the retirement system shall file a report to the Legislature no later than the fifteenth day of February, one thousand nine hundred eighty-nine, and quarterly thereafter, detailing the number of retirees who have elected to accept early retirement incentive options, the dollar cost to date by option selected, and the projected annual cost through the year two thousand.

(e) Within every spending unit, department, board, corporation, commission, or any other agency or entity wherein two or multiples of two members elect to retire either under the temporary early retirement incentives set forth above, or under regular, voluntary retirement, and countable on an agency-wide or entity-wide basis, no more than one of such vacated positions may be filled, with the second position being abolished upon the effective day of the member's retirement: Provided, That county boards of education in replacing employees leaving under this temporary early retirement incentive program shall be eligible to replace in that number as authorized by the basic school aid formula and pursuant to those guidelines in respect of number of positions lost or projected to be lost due to declining enrollment, changes in statutes, changes in state appropriations and the other guidelines set forth and contained within said basic school aid formula. The vacant position abolishment requirement shall not apply to elective positions or appointed public officers whose positions are established by state constitutional or statutory provision. The retirant's employing entity shall decide as to which of the vacated positions made available through special early retirement or through regular, voluntary retirement are to be abolished and the head of such spending unit shall immediately notify the state auditor, the legislative auditor, and the commissioner of the department of finance and administration of the decisions and shall then apply and/or transfer, as aforesaid, the remaining salary and fringe benefit appropriations: Provided, however, That this vacant position abolishment provision shall not apply to any county position, other than those under the authority of county boards of education, nor to any position or positions, whether
designated by spending unit, department, agency, commission, entity or otherwise, which the governor may exempt or amend under such abolishment provision upon his recommendation that such exemption or amendment is necessary to preserve the health, welfare or safety of the people of West Virginia, and with the prior concurrence of the joint committee on government and finance in such recommendation, after the chairmen thereof shall cause such committee to meet.

(f) Special rule of eighty. — Any active, contributing member of the retirement system as of the first day of April, one thousand nine hundred eighty-eight, who selects one of the incentive options in this section, may retire under the special early retirement provisions with full pension rights, without reduction of benefits if the sum of such member's age plus years of contributing service equals or exceeds eighty: Provided, That such person has at least twenty years of contributing service, up to two years of which may be military service, or prior service, or already paid and credited out-of-state service (if so paid and credited by the first day of April, one thousand nine hundred eighty-eight) or any combination thereof not exceeding an aggregate of two years.

(g) Termination of temporary retirement incentives program. — The right to elect, choose, select or use any of the options, special rule of eighty, or other benefits set forth in this section shall terminate on the thirtieth day of June, one thousand nine hundred eighty-nine.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

§18A-2-6. Continuing contract status for service personnel; termination.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.
§18A-2-2. Employment of teachers; contracts; continuing contract status; how terminated; dismissal for lack of need; released time; failure of teacher to perform contract or violation thereof.

Before entering upon their duties, all teachers shall execute a contract with their boards of education, which contract shall state the salary to be paid and shall be in the form prescribed by the state superintendent of schools. Every such contract shall be signed by the teacher and by the president and secretary of the board of education, and when so signed shall be filed, together with the certificate of the teacher, by the secretary of the office of the board.

A teacher’s contract, under this section, shall be for a term of not less than one nor more than three years; and if, after three years of such employment, the teacher who holds a professional certificate, based on at least a bachelor’s degree, has met the qualifications for the same, and the board of education enter into a new contract of employment, it shall be a continuing contract: Provided, That any teacher holding a valid certificate with less than a bachelor’s degree who is employed in a county beyond the said three-year probationary period shall upon qualifying for said professional certificate based upon a bachelor’s degree, if reemployed, be granted continuing contract status: Provided, however, That a teacher holding continuing contract status with one county shall be granted continuing contract status with any other county upon completion of one year of acceptable employment if such employment is during the next succeeding school year or immediately following an approved leave of absence extending no more than one year.

The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated (1) by a majority vote of the full membership of the board before April first of the then current year, after written notice, served upon the
teacher, return receipt requested, stating cause or causes, and an opportunity to be heard at a meeting of the board prior to the board's action thereon, or (2) by written resignation of the teacher before that date, except that for the school year one thousand nine hundred eighty-eight—eighty-nine only, the board shall have until the fourth Monday of April, one thousand nine hundred eighty-nine, to initiate termination of a continuing contract. Such termination shall take effect at the close of the school year in which the contract is so terminated: Provided, That the contract may be terminated at any time by mutual consent of the school board and the teacher, and that this section shall not affect the powers of the school board to suspend or dismiss a principal or teacher pursuant to section eight of this article: Provided, however, That a continuing contract for any teacher holding a certificate valid for more than one year and in full force and effect during the school year one thousand nine hundred eighty-four, and one thousand nine hundred eighty-five, shall remain in full force and effect: Provided further, That a continuing contract shall not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation to teachers and pupil-teacher ratios. But in case of such dismissal, the teachers so dismissed shall be placed upon a preferred list in the order of their length of service with that board, and no teacher shall be employed by the board until each qualified teacher upon the preferred list, in order, shall have been offered the opportunity for reemployment: And provided further, That he has not accepted a teaching position elsewhere. Such reemployment shall be upon a teacher's preexisting continuing contract and shall have the same effect as though the contract had been suspended during the time the teacher was not employed.

In the assignment of position or duties of a teacher under said continuing contract, the board shall have authority to provide for released time of a teacher for any special professional or governmental assignment without jeopardizing the contractual rights of such
teacher or any other rights, privileges or benefits under
the provisions of this chapter.

Any teacher who fails to fulfill his contract with the
board, unless prevented from so doing by personal
illness or other just cause, or unless released from such
contract by the board, or who violates any lawful
provision thereof, shall be disqualified to teach in any
other public school in the state for a period of the next
ensuing school year, and the state department of
education or board may hold all papers and credentials
of such teacher on file for a period of one year for such
violation: Provided, That marriage of a teacher shall not
be considered a failure to fulfill, or violation of, the
contract.

Any classroom teacher, as defined in section one,
article one of this chapter, who desires to resign
employment with a board of education or request a leave
of absence, such resignation or leave of absence to
become effective on or before the fifteenth day of July
of the same year and after completion of the employ-
ment term, may do so at any time during the school year
by written notification thereof, and any such notification
received by a board of education shall automatically
extend such teacher’s public employee insurance
coverage until the thirty-first day of August of the same
year.

§18A-2-6. Continuing contract status for service person-
nel; termination.

1 After three years of acceptable employment, each
service personnel employee who enters into a new
contract of employment with the board shall be granted
continuing contract status: Provided, That a service
personnel employee holding continuing contract status
with one county shall be granted continuing contract
status with any other county upon completion of one
year of acceptable employment if such employment is
during the next succeeding school year or immediately
following an approved leave of absence extending no
more than one year. The continuing contract of any such
employee shall remain in full force and effect except as modified by mutual consent of the school board and the employee, unless and until terminated with written notice, stating cause or causes, to the employee, by a majority vote of the full membership of the board before the first day of April of the then current year, or by written resignation of the employee before that date, except that for the school year one thousand nine hundred eighty-eight—eighty-nine only, the board shall have until the fourth Monday of April, one thousand nine hundred eighty-nine, to initiate termination of a continuing contract. The affected employee shall have the right of a hearing before the board, if requested, before final action is taken by the board upon the termination of such employment.

Those employees who have completed three years of acceptable employment as of the effective date of this legislation shall be granted continuing contract status.

§18A-2-7. Assignment, transfer, promotion, demotion, suspension and recommendation of dismissal of school personnel by superintendent; preliminary notice of transfer; hearing on the transfer; proof required.

The superintendent, subject only to approval of the board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred, except that for the school year one thousand nine hundred eighty-eight—eighty-nine only, the superintendent shall have until the fourth Monday of April to provide an employee with such written notice. Any teacher or employee who desires to protest such proposed transfer may request in writing a statement of the reasons for the proposed transfer. Such statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the
teacher or employee may make written demand upon
the superintendent for a hearing on the proposed
transfer before the county board of education. The
hearing on the proposed transfer shall be held on or
before the first Monday in May, except that for the
school year one thousand nine hundred eighty-eight—
eighty-nine only, the hearing shall be held on or before
the fourth Monday in May, one thousand nine hundred
eighty-nine. At the hearing, the reasons for the proposed
transfer must be shown.

The superintendent at a meeting of the board on or
before the first Monday in May shall furnish in writing
to the board a list of teachers and other employees to
be considered for transfer and subsequent assignment
for the next ensuing school year, except that for the
school year one thousand nine hundred eighty-eight--
eighty-nine only, the superintendent shall have until the
fourth Monday in May to provide the board with such
written list. All other teachers and employees not so
listed shall be considered as reassigned to the positions
or jobs held at the time of this meeting. The list of those
recommended for transfer shall be included in the
minute record of such meeting and all those so listed
shall be notified in writing, which notice shall be
delivered in writing, by certified mail, return receipt
requested, to such persons' last known addresses within
ten days following said board meeting, of their having
been so recommended for transfer and subsequent
assignment and the reasons therefor. The superintend-
ent's authority to suspend school personnel shall be
temporary only pending a hearing upon charges filed by
the superintendent with the board of education and such
period of suspension shall not exceed thirty days unless
extended by order of the board.

The provisions of this section respecting hearing upon
notice of transfer shall not be applicable in emergency
situations where the school building becomes damaged
or destroyed through an unforeseeable act and which act
necessitates a transfer of such school personnel because
of the aforementioned condition of the building.
AN ACT to repeal section twenty-one, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, six and eight, article nine-d of said chapter; and to further amend said article nine-d by adding thereto two new sections, designated sections fifteen and sixteen, all relating to school facilities generally; reconstituting the school building authority and providing generally therefor; defining certain terms; authorizing authority to contract for professional services; changing manner in which counties are allocated facilities moneys; deleting requirement of legislative appropriation; modifying content of bond resolution; providing for distribution of certain bond revenues on basis of net enrollment and need; allowing percentage of available funds to be used by state board; providing for forfeiture of allocations unexpended by a county after three years; requiring guidelines for certain matters; requiring approved regional facilities plans prior to distribution of moneys; providing generally for submission of facilities plans; outlining certain matters to be included in such plans; and allowing authority to require changes or additions in approved plans.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, three, four, six and eight, article nine-d of said chapter be amended and reenacted; and that said article nine-d be further amended by adding thereto two new sections, designated sections fifteen and sixteen, all to read as follows:
ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-1. School building authority; powers.


§18-9D-4. School building authority authorized to issue revenue bonds for school building capital improvement projects; refunding bonds authorized.

§18-9D-6. School building capital improvements fund in state treasury; collections to be paid into special fund; authority to pledge such collections as security for revenue bonds; authority to finance projects on a cash basis.

§18-9D-8. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.

§18-9D-15. Legislative intent; distribution of money.

§18-9D-16. Facilities plans generally; need-based eligibility.

§18-9D-1. School building authority; powers.

1 The school building authority shall consist of eight persons, of whom one shall be the state superintendent of schools, ex officio; three shall be members of the state board of education, elected by the state board; and four shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate, who are knowledgeable in matters relevant to the issues addressed by the authority.

9 The citizen appointments shall be made as soon as possible after the effective date of this section, and no two citizen appointees shall be residents within the same region. Two of the initial appointments shall be for two-year terms, and two shall be for four-year terms, with all successive appointments being for four-year terms.

15 Until such appointments take effect, the state board as constituted under the provisions of section one, article two of this chapter may act as the authority with such power as was granted them under the prior enactment of this section.

20 The school building authority shall meet at least quarterly, and the citizen members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of their official duties from funds appropriated or otherwise made available for such purposes upon submission of an itemized statement therefor. The state superintendent of schools shall serve as president of the authority.
The acts performed by the members of the state board
of education in their capacity as members of the school
building authority are solely the acts of the authority.


1 The following terms, wherever used or referred to in
this article, shall have the following meanings, unless a
different meaning clearly appears from the context:

4 (1) “Authority” means the school building authority of
West Virginia or, if said authority shall be abolished,
any board or officer succeeding to the principal
functions thereof, or to whom the powers given to said
authority shall be given by law;

9 (2) “Bonds” means bonds issued by the authority
pursuant to this article;

11 (3) “Project” or “capital improvement project” means
the new construction, major renovation, repair and
safety upgrading of facilities, buildings and structures
for school purposes including the acquisition of land for
current or future use in connection therewith, equip-
ment, machinery, furnishings, installation of utilities
and other similar items convenient in connection with
placing the foregoing into operation, but may not
include such items as books, fuel, supplies and other
items which are customarily deemed to result in a
current operating charge;

22 (4) “Cost of project” means the cost of construction,
renovation, repair and safety upgrading of facilities,
buildings and structures for school purposes; the cost of
land, equipment, machinery, furnishings, installation of
utilities and other similar items convenient in connec-
tion with placing the foregoing into operation; and the
cost of financing, interest during construction, profes-
sional service fees and all other charges or expenses
necessary, appurtenant or incidental to the foregoing,
including the cost of administration of this article;

32 (5) “Revenue” or “revenues” mean moneys deposited
in the school building capital improvements fund
pursuant to the operation of section ten, article nine-a
of this chapter; any moneys received, directly or
indirectly, from any source for the use of all or any part
of any project completed pursuant to this article; and
any other moneys received by the authority for the
purposes of this article;

(6) "Facilities plan" means the regional plan for
school facilities required prior to the distribution of
state funds to any county board pursuant to section
fifteen; and

(7) "Region" means the area encompassed within and
serviced by a regional educational service agency
established pursuant to section twenty-six, article two of
this chapter.


The school building authority has the power:

(1) To sue and be sued, plead and be impleaded;

(2) To have a seal and alter the same at pleasure;

(3) To contract to acquire and to acquire, in the name
of the authority by purchase, lease-purchase, or other-
wise, real property or rights or easements necessary or
convenient for its corporate purposes and to exercise the
power of eminent domain to accomplish such purposes;

(4) To acquire, hold and dispose of real and personal
property for its corporate purposes;

(5) To make bylaws for the management and rule of
its affairs;

(6) With the consent of the attorney general of the
state of West Virginia, to use the facilities, office,
assistants and employees of the attorney general in all
legal matters relating to or pertaining to the authority;

(7) To appoint officers, agents and employees and fix
their compensation;

(8) To make contracts and to execute all instruments
necessary or convenient to effectuate the intent of, and
to exercise the powers granted to it by, this article;

(9) To renegotiate all contracts entered into by it
whenever, due to a change in situation, it appears to the
authority that its interests will be best served;
(10) To acquire by purchase, eminent domain or otherwise all real property or interests therein necessary or convenient to accomplish the purposes of this article;

(11) To require proper maintenance and insurance of any project authorized hereunder;

(12) To charge rent for the use of all or any part of a project or buildings at any time financed, constructed, acquired or improved in whole or in part with the revenues of the authority;

(13) To acquire land, buildings and capital improvements to existing school buildings and property, by lease from a private or public lessor for a term not to exceed twenty-five years, with or without an option to purchase pursuant to an investment contract with said lessor, for use as public school facilities on such terms and conditions as may be determined to be in the best interests of the authority and consistent with the purposes of this article;

(14) To accept and expend any gift, grant, contribution, bequest or endowment of money to, or for the benefit of, the authority, from the state of West Virginia or any other source for any or all of the purposes specified in this article or for any one or more of such purposes as may be specified in connection with such gift, grant, contribution, bequest or endowment;

(15) To enter on any lands and premises for the purpose of making surveys, soundings and examinations;

(16) To contract for architectural, engineering or other professional services deemed necessary or economical by the authority to provide consultative or other services to any regional educational service agency or county board requesting professional services offered by the authority, to evaluate any facilities plan or any project encompassed therein, to inspect existing facilities or any project that has received or may receive funding from the authority, or to perform any other service deemed by the authority to be necessary or economical. Assistance to the region or district may
include the development of preapproved systems, plans, designs, models or documents; advice or oversight on any plan or project; or any other service that may be efficiently provided to regional educational service agencies or county boards by the authority; and

(17) To do all things necessary or convenient to carry out the powers given in this article.

§18-9D-4. School building authority authorized to issue revenue bonds for school building capital improvement projects; refunding bonds authorized.

The school building authority may by resolution, in accordance with the provisions of this article, issue revenue bonds of the authority from time to time, either to finance the cost of school building capital improvement projects for public schools in this state, or to refund, at the discretion of the authority, bonds issued and outstanding under and pursuant to the provisions of this article. The principal of, interest and redemption premium, if any, on such bonds shall be payable solely from the special fund herein provided for such payment.

§18-9D-6. School building capital improvements fund in state treasury; collections to be paid into special fund; authority to pledge such collections as security for revenue bonds; authority to finance projects on a cash basis.

There is created in the state treasury a school building capital improvements fund to be expended by the authority for the purposes of this article.

The school building authority shall have authority to pledge all or such part of the revenues paid into the school building capital improvements fund as may be needed to meet the requirements of any revenue bond issue or issues authorized by this article, including the payment of principal of, interest and redemption premium, if any, on such 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 such revenue bond issue.
or issues when other moneys pledged may be insufficient therefore, including such additional protective pledge of revenues as the authority in its discretion may provide by resolution authorizing the issue of such bonds and in any trust agreement made in connection therewith. The authority may further provide in such resolution and in such trust agreement for such priorities on the revenues paid into such school building capital improvements 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 article.

Any balance remaining in the school building capital improvements fund after the authority has issued bonds authorized by this article, and after the requirements of all funds including reserve funds established in connection with the bonds issued pursuant to this article have been satisfied, may be used for the redemption of any of the outstanding bonds issued hereunder which by their terms are then redeemable, or for the purchase of such bonds at the market price, but not exceeding the price, if any, at which such bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be canceled and shall not again be issued.

The school building authority, in its discretion, may use the moneys in the school building capital improvements fund to finance the cost of projects on a cash basis. Any pledge of moneys in such fund for revenue bonds shall be a prior and superior charge on such fund over the use of any of the moneys in such fund to pay for the cost of any project on a cash basis: Provided, That any expenditures from such fund, other than for the retirement of revenue bonds, may only be made by the authority in accordance with the provisions of this article.

§18-9D-8. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.

The issuance of revenue bonds under the provisions of this article shall be authorized from time to time by resolution or resolutions of the school building authority,
which shall set forth the proposed projects and provide for the issuance of bonds in amounts sufficient, when sold as hereinafter provided, to provide moneys deemed by the authority sufficient to pay such costs, less the amounts of any other funds available for said costs or from any appropriation, grant or gift therefor: Provided, That bond revenues which are to be distributed in accordance with section fifteen of this article shall not be required to set forth the proposed projects in the resolution. Such resolution shall prescribe the rights and duties of the bondholders and the school building authority, and for such purpose may prescribe the form of the trust agreement hereinafter referred to. The bonds may be issued from time to time, in such amounts, shall be of such series, bear such date or dates, mature at such time or times not exceeding forty years from their respective dates, bear interest at such rate or rates; be in such denominations; be in such form, either coupon or registered, carrying such registration, exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places within or without the state; be subject to such terms of redemption at such prices not exceeding one hundred five percent of the principal amount thereof; and be entitled to such priorities on the revenues paid into the school building authority capital improvements fund as may be provided in the resolution authorizing the issuance of the bonds or in any trust agreement made in connection therewith. The bonds shall be signed by the governor, and by the president or vice president of the authority, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the president or vice president of the authority. In case any of the officers whose signatures appear on the bonds or coupons cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if such officers had remained in office until such delivery. Such revenue bonds shall be sold in such manner as the authority may determine to be for the best interests of the state.
Any pledge of revenues for such revenue bonds made by the school building authority shall be valid and binding between the parties from the time the pledge is made; and the revenues so pledged shall immediately be subject to the lien of such pledge without any further physical delivery thereof or further act. The lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise, irrespective of whether such parties have notice of the lien of such pledge, and such pledge shall be a prior and superior charge over any other use of such revenues so pledged.

The proceeds of such bonds shall be used solely for the purpose or purposes as may be generally or specifically set forth in the resolution authorizing those bonds and shall be deposited in the state treasury in a special fund to be disbursed as provided by law for the disbursement of any other state funds. If the proceeds of such bonds, by error in calculations or otherwise, shall be less than the cost of any projects specifically set forth in the resolution, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, such additional bonds shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, as the bonds before issued for such projects. If the proceeds of bonds issued for such projects exceed the cost thereof, the surplus may be used for such other projects as the school building authority may determine or in such other manner as the resolution authorizing such bonds may provide. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of such definitive bonds.

After the issuance of any of such revenue bonds, the revenues pledged therefor shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust
agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds and the revenue refunding bonds, and bonds issued for combined purposes shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof.

§18-9D-15. Legislative intent; distribution of money.

(a) It is the intent of the Legislature to empower the school building authority to facilitate and provide state funds for the construction and maintenance of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facilities plan in relation to the needs of the individual student, the general school population, the communities served by the facilities, and facility needs statewide.

(b) An amount that is no more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from (1) the increase in local share paid into the school building capital improvements fund pursuant to section ten, article nine-a of this chapter, (2) the issuance of revenue bonds for which such increase in local share is pledged as security, and (3) any other moneys received by the authority may be allocated and may be expended by the authority for projects that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board.

Fifty percent of the remaining available funds shall be allocated and distributed to each county board on the basis of its net enrollment as defined in section two, article nine-a of this chapter: Provided, That such moneys shall not be distributed to any county board whose region does not have an approved facilities plan or to any county board that is not prepared to commence expenditures of such funds during the fiscal year in
which the moneys are distributed: Provided, however, that any moneys allocated to a county board and not distributed to that county board shall be redistributed on the basis of net enrollment to those county boards then eligible for the receipt of net enrollment distributions in that fiscal year. Prior to any allocation and distribution of the fifty percent based on net enrollment in a subsequent fiscal year, the authority shall deduct from the fifty percent determination any moneys allocated and not distributed to a county board during the preceding three fiscal years upon written notice from any county board that such county board is prepared to expend such amount in the then current fiscal year and shall distribute such moneys accordingly. The balance shall then be allocated and distributed among all the eligible counties.

The remaining fifty percent of moneys available for distribution shall be allocated and expended on the basis of need and efficient use of resources, such basis to be determined by the authority in accordance with the provisions of section sixteen of this article.

No local matching funds shall be required under the provisions of this subsection, and any county board may use the state moneys provided herein in conjunction with local funds derived from bonding or other source. Any county board may dedicate any allocations of state moneys pursuant to this subsection to the payment of local bonds used for purposes encompassed in an approved facilities plan or for the payment of bonds that are issued by the authority for the benefit of that county that are in addition to the bond moneys distributed in accordance with this subsection.

Moneys made available pursuant to this subsection that shall be expended on projects that benefit more than one district shall be apportioned among the districts in accordance with the formula encompassed in that portion of the facilities plan that addresses the project designed to benefit more than one district.

(c) To encourage regional educational service agencies and county boards to proceed promptly with facilities
planning and to prepare for the expenditure of any state moneys derived from the sources described in subsection (b) of this section, any county board failing to expend money within three years of the allocation thereto shall forfeit such allocation and thereafter shall be ineligible for further net enrollment or other allocations pursuant to subsection (b) until the county board is ready to expend funds in accordance with an approved facilities plan. Any amount so forfeited shall be added to the total funds available for allocation and distribution in the next ensuing fiscal year.

(d) Distribution to the county boards may be in a lump sum or in accordance with a schedule of payments adopted by the authority pursuant to such guidelines as it shall adopt.

§18-9D-16. Facilities plans generally; need-based eligibility.

(a) To facilitate the goals as stated in section fifteen of this article and to assure the prudent and resourceful expenditure of state funds, each regional educational service agency created pursuant to section twenty-six, article two of this chapter shall submit a region-wide facilities plan that addresses the facilities needs of each district within the region pursuant to such guidelines as shall be adopted by the authority in accordance with this section. Any project receiving funding shall be in furtherance of such approved facilities plan.

(b) To assure efficiency and productivity in the project approval process, the facilities plan shall be submitted only after a preliminary plan, a plan outline or a proposal for a plan has been submitted to the authority. Selected members of the authority, which selection shall include citizen members, shall then meet promptly with those persons designated by the regional educational service agency, including one person from each county within the region, to attend the facilities plan consultation. The purpose of the consultation is to assure understanding of the general goals of the school building authority and the specific goals encompassed
in the following criteria and to discuss ways the plan
may be structured to meet those goals.

(c) The guidelines for the development of a facilities
plan shall state the manner, timeline and process for
submission of any plan to the authority; such project
specifications as may be deemed appropriate by the
authority; and those matters which are deemed by the
authority to be important reflections of how the project
will further the overall goals of the authority.

The guidelines regarding submission of the plans shall
include requirements for public hearings, comments or
other means of providing broad-based input within a
reasonable time period as the authority may deem
appropriate. The submission of each facilities plan shall
be accompanied by a synopsis of all comments received
and a formal comment by each county board included
in the region. The guidelines regarding project specifi-
cations may include such matters as energy efficiency,
preferred siting, construction materials, maintenance
plans or any other matter related to how the capital
improvement project is to proceed. The guidelines
pertaining to quality education shall require that a
facilities plan address how the current facilities do not
meet and the proposed plan and any project thereunder
does meet the following goals:

(1) Student health and safety;

(2) Economies of scale, including compatibility with
similar schools that have achieved the most economical
organization, facility utilization and pupil-teacher
ratios;

(3) Reasonable travel time and practical means of
addressing other demographic considerations;

(4) Multicounty and regional planning to achieve the
most effective and efficient instructional delivery
system;

(5) Curricular improvement and diversification,
including computerization and technology and advanced
senior courses in science, mathematics, language arts
and social studies;
(6) Innovations in education such as year-round schools and community-based programs; and

(7) Adequate space for projected student enrollments.

If the project is to benefit more than one county in the region, the facilities plan shall state the manner in which the cost and funding of the project shall be apportioned among the counties.

(d) Each plan shall prioritize all the projects both within a county and among the counties, which priority list shall be the basis for determining how available funds shall be expended.

(e) Each plan shall include the objective means to be utilized in evaluating implementation of the overall plan and each project included therein. Such evaluation shall measure each project's furtherance of each goal stated in this section and any guidelines adopted hereunder, as well as the overall success of any project as it relates to the facilities plan of its region and the overall goals of the authority.

(f) The authority may adopt guidelines for requiring that a regional educational service agency modify, update, supplement or otherwise submit changes or additions to an approved plan and shall provide reasonable notification and sufficient time for such change or addition.

CHAPTER 63

(H. B. 2029—By Delegates Love and Ashley)

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

AN ACT to amend and reenact section three, article ten-c, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to membership in the southern regional education compact continued.

Be it enacted by the Legislature of West Virginia:
That section three, article ten-c, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 10C. THE SOUTHERN REGIONAL EDUCATION COMPACT.

§18-10C-3. Membership in compact continued; findings.

1 After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that West Virginia should remain a member of the compact. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, West Virginia shall continue to be a member of this compact until the first day of July, one thousand nine hundred ninety-four.

CHAPTER 64

(Com. Sub. for S. B. 420—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]
reenact sections five and thirteen, article thirty of said chapter; to further amend said code by adding thereto two new chapters, designated chapters eighteen-b and eighteen-c; and to amend and reenact section four, article three-b, chapter sixty-one of said code, all relating to the reorganization of higher education; clarifying the meaning of board of regents in rules for construction of statutes; changing membership on the advisory council to the department of veterans' affairs, the educational broadcasting authority and the state board of education; authorizing the state board of education to promulgate rules for granting certificates and awards with respect to certain vocational-technical- occupational programs; abolishing the state board of vocational education effective the first day of July, one thousand nine hundred ninety; establishing the joint commission on vocational-technical-occupational education effective the first day of July, one thousand nine hundred eighty-nine; providing that the joint commission shall be the sole agency for administering vocational-technical-occupational education; establishing implementation team to review the work of the joint commission and requiring certain reports; establishing area vocational education program funds for secondary vocational education and post-secondary vocational education; authorizing certain boards to expend funds; vesting title to property in certain boards effective the first day of July, one thousand nine hundred eighty-nine; creating the Albert Yanni programs of excellence in vocational-technical education; establishing an academy for talented vocational-technical education students and administrators; establishing a scholarship program for secondary vocational-technical education graduates and educators for enumerated purposes; establishing an interdisciplinary doctoral program for vocational-technical education; establishing an effective schools program in vocational-technical education; establishing a unified technology transfer program; placing state autism training center under jurisdiction of board of trustees; providing that same hearing examiner may not hear grievance brought before education employees grievance board by former grievant; changing compo-
sition and quorum of board of directors of the West Virginia higher education tuition trust; changing conditions precedent to administration of trust; creating the University of West Virginia board of trustees and the board of directors of the state college system; providing definitions and assigning the state institutions of higher education to the state university system or the state college system and providing for the governance of each system by separate governing boards; transferring the powers, duties, authorities, orders, resolutions, rules, titles to property, valid agreements and obligations, and statutory powers and duties of the board of regents to the appropriate governing boards and abolishing the board of regents; placing board of trustees and board of directors under the jurisdiction of the department of education and the arts; providing for coordination of policies and purposes of state university system and state college system by secretary of education and the arts; requiring study of certain institutions of higher education for the purpose of determining their role and mission within the reorganized system of higher education; providing for review of rules promulgated by board of trustees and board of directors; transferring supervision of state institutions of higher education from board of regents to appropriate governing board; requiring each governing board to develop a system of comparison information and allocation decisions for implementation; providing powers and duties of governing boards and institutional presidents; establishing a task force on faculty salaries and resource allocation; providing for composition, appointment, terms and qualifications of members of University of West Virginia board of trustees; providing for meetings and compensation; providing additional duties of board of trustees; changing name of college of graduate studies to University of West Virginia college of graduate studies and transferring operation of the institution to the board of trustees; transferring operation of West Virginia school of osteopathic medicine to board of trustees; providing for composition, appointment, terms and qualifications of members of board of directors of the state college system; providing
for meetings and compensation; providing additional duties of board of directors; providing for the continuance and establishment of community colleges, technical courses and job training and establishing eight community college service areas; establishing a separate division of community colleges within the state college system and creating position of vice chancellor for community colleges; moving the authority to adopt rules for accreditation of private proprietary institutions awarding specialized associate degrees from the state board of education to the board of directors of state college system and providing penalties for violations; providing definition for proprietary schools that award specialized associate degrees; providing remedies for students under consumer laws; establishing the West Virginia joint commission for vocational-technical-occupational education subject to the jurisdiction of the department of education and the arts; providing definitions; providing for composition, terms and qualifications of members of joint commission; providing for meetings, compensation and duties and responsibilities of members of the joint commission; providing for general administration of board of trustees and board of directors; providing for employment of chancellors, senior administrator and staff for the boards; appointing director of state department of health as vice chancellor for health affairs and requiring study of role and mission of state medical schools for governor and Legislature; enumerating powers and duties of senior administrator; authorizing board of trustees and board of directors to participate in reciprocal regional and interstate higher educational agreements; authorizing board of trustees and board of directors to apply for, accept, administer and expend funds from federal and private grants, appropriations, allocations and programs for higher education and establishing related powers and duties; authorizing board of trustees and board of directors to appoint and compensate security officers; granting powers, authority and responsibilities of law-enforcement officers to security officers and establishing eligibility for law-enforcement training at an approved academy; authorizing the acquisition,
operation and regulation of parking areas, roads and facilities at state institutions of higher education and providing civil and criminal penalties for violations; providing for accreditation of institutions of higher education and standards for degrees; providing three areas for budget appropriations within the system of higher education; providing for allocation and disposition of appropriated funds; authorizing the board of trustees and the board of directors to contract for programs, services and facilities; providing for purchase or acquisition of materials, supplies, equipment and printing through the senior administrator; permitting private institutions of higher education to join as purchasers and to be responsible for payment of purchases; eliminating reference to board of regents in various code provisions and replacing it with reference to governing boards; providing that members of advisory councils of faculty may be elected by ballot process; providing for proportional representation on advisory councils of students; increasing membership on advisory councils of classified employees; increasing membership on advisory council on federal resources and increasing mileage allowance; eliminating reference to West Virginia Anatomical Board and replacing it with reference to the University of West Virginia Anatomical Board; seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to granting sabbatical leaves, effect of leave of absence on academic tenure and rank, notice to probationary faculty members of retention or nonretention and hearing procedures, and faculty and classified employee continuing education and development program; defining Marshall University as a doctoral institution and placing it on the minimum salary schedule for full-time faculty at doctoral institutions; providing a five percent salary increase for faculty beginning the first day of January, one thousand nine hundred ninety, and providing for the distribution of such salary increase; providing for the employment of
faculty after the first day of July, one thousand nine hundred eighty-nine, and assigning them to the appropriate salary schedule; eliminating reference to board of regents and replacing it with reference to appropriate governing board in code provisions relating to merit increases and salary adjustment, additional employment by mutual agreement and classified employee salary schedule and classification system; changing definition of classified employee and adding new definition for job and grade classification; redesignating chapter number for higher education classified employee monthly salary schedule; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to establishment of personnel classification system, assignment to classification and to salary schedule and classified employee salary; requiring governing boards to establish by rule an equitable system of job classifications for review by secretary of education and the arts and for implementation by the first day of July, one thousand nine hundred ninety; requiring governing boards to notify employees of assignment to classification, job title, pay grade and providing for appeal procedures; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to classified employees salary, annual review of classifications and classification system, conferences regarding personnel classification, hirings after effective date and additional employment by mutual agreement; establishing effective date of the first day of July, one thousand nine hundred eighty-nine, for classified employee salary and experience increment; providing five percent salary increase and method of distributing such increase for classified staff beginning on the first day of January, one thousand nine hundred ninety; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to fees and other money collected at state institutions of higher education, enrollment, tuition and other fees at educational institutions, refund of fees, higher education resource fee, faculty improvement fee and medical education fee; establishing a health
professions education fee; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to fee waivers—undergraduate schools, fee waivers—professional and graduate schools and tuition and fee waivers for children and spouses of officers and firefighters killed in the line of duty; providing that additional registration fees collected from students shall be paid into special capital improvements fund which shall be expended jointly by the governing boards; redesignating chapter reference in code provision relating to authority to excuse students in certain educational programs from payment of enrollment fees; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to disposition and use of student union fees, issuance of revenue bonds, fees and money derived from athletic contests, fees from operation of dormitories, faculty homes, dining halls and cafeterias, bookstores, changing disposition of end of year bookstore moneys, authority of educational institutions to provide special services and programs, collection and disposition of fees; providing that funds collected from certain sources and interest revenue generated by special student fee account shall be expended only at or for the institution where such funds or fee was collected; creating a center for regional progress and providing for a director, powers and mission and purpose; redesignating chapter reference for code provisions relating to institute for public affairs and institute for international trade development; providing for private nonprofit research and development corporations under agreements with state institutions of higher education; research and development agreements for state institutions of higher education; creating a “High-Tech 2000” program and foundation for science and technology to assist business and industry in adopting new technology; redesignating chapter reference in code provisions relating to authorization to sell West Virginia University poultry farm properties located in Morgantown and authorization to sell West Virginia University vacant lot located in Morgantown and biological research station located in
Terra Alta; providing that senior administrator shall administer programs for student financial assistance, guaranteed student loans and medical student loans; authorizing board of trustees to contract for training of students in optometry; eliminating reference to board of regents and replacing it with reference to governing boards in code provisions relating to trespass on student residence premises or student facility premises of an institution of higher education.

Be it enacted by the Legislature of West Virginia:

That articles twenty-two, twenty-four, twenty-six, twenty-six-b, twenty-six-c and twenty-six-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section ten, article two, chapter two of said code be amended and reenacted; that section eleven, article one, chapter nine-a of said code be amended and reenacted; that section two, article five, chapter ten of said code be amended and reenacted; that sections one, three and ten, article two, chapter eighteen of said code be amended and reenacted; that sections two, three, four and five, article two-b of said chapter be amended and reenacted; that said chapter eighteen be further amended by adding thereto a new article, designated article ten-h; that sections one, two, three and six, article twenty-six-a of said chapter be amended and reenacted; that section five, article twenty-nine of said chapter be amended and reenacted; that sections five and thirteen, article thirty of said chapter be amended and reenacted; that said code be further amended by adding thereto two new chapters, designated chapters eighteen-b and eighteen-c; and that section four, article three-b, chapter sixty-one of said code be amended and reenacted, all to read as follows:

Chapter

2. Common Law, Statutes, Legal Holidays, Definitions and Legal Capacity.

9A. Veterans' Affairs.

10. Public Libraries; Public Recreation; Athletic Establishments; Monuments and Memorials; Roster of Servicemen; Educational Broadcasting Authority.

18. Education.

18B. Higher Education.

18C. Student Loans; Scholarships and State Aid.

61. Crimes and Their Punishment.
CHAPTER 2. COMMON LAW, STATUTES, LEGAL HOLIDAYS, DEFINITIONS AND LEGAL CAPACITY.

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-10. Rules for construction of statutes.

The following rules shall be observed in the construction of statutes, unless a different intent on the part of the Legislature be apparent from the context:

(a) A word importing the singular number only may be applied to several persons or things, as well as to one person or thing; a word importing the plural number only may be applied to one person or thing as well as to several; and a word importing the masculine gender only may be applied to females as well as males;

(b) Words purporting to give a joint authority to three or more persons confer such authority upon a majority of them, and not upon any less number;

(c) The words "written" or "in writing" include any representation of words, letters or figures, whether by printing, engraving, writing or otherwise. But when the signature of any person is required, it must be in his or her own proper handwriting, or his or her mark, attested, proved or acknowledged;

(d) The words "preceding," "succeeding" or "following" used in reference to any section or sections of a chapter or statute, mean next preceding, next succeeding or next following that in which such reference is made, unless a different interpretation be required by the context;

(e) An officer shall be deemed to have qualified when he or she has done all that is required by law to be done before proceeding to exercise the authority and discharge the duties of his or her office;

(f) The words "the governor" are equivalent to "the executive of the state" or "the person having the executive power";
(g) "Justice" or "justices" as used in article one, chapter fifty-one of this code and in other references to a member or members of the supreme court of appeals shall mean and apply to a judge or the judges of said court as provided for in the constitution of the state. The word "justice" in any other context is equivalent to the words "justice of the peace," and the word "notary" is equivalent to "notary public";

(h) The word "state," when applied to a part of the United States and not restricted by the context, includes the District of Columbia and the several territories, and the words "United States" also include the said district and territories;

(i) The word "person" or "whoever" shall include corporations, societies, associations and partnerships, if not restricted by the context;

(j) The words "personal representative" include the executor of a will, the administrator of the estate of a deceased person, the administrator of such estate with the will annexed, the administrator de bonis non of such estate, whether there be a will or not, the sheriff or other officer lawfully charged with the administration of the estate of a deceased person, and every other curator or committee of a decedent's estate for or against whom suits may be brought for causes of action which accrued to or against such decedent;

(k) The word "will" embraces a testament, a codicil, an appointment by will or writing in the nature of a will in exercise of a power, also any other testamentary disposition;

(l) The word "judgment" includes decrees and orders for the payment of money or the conveyance or delivery of land or personal property, or some interest therein, or any undertaking, bond or recognizance which has the legal effect of a judgment;

(m) The words "under disability" include persons under the age of eighteen years, insane persons, and convicts while confined in the penitentiary;

(n) The words "insane person" include everyone who
has mental illness as defined in section two, article one, chapter twenty-seven of this code;

(o) The word "convict" means a person confined in the penitentiary of this or any other state, or of the United States;

(p) The word "land" or "lands" and the words "real estate" or "real property" include lands, tenements and hereditaments, all rights thereto and interests therein except chattel interests;

(q) The words "personal estate" or "personal property" include goods, chattels, real and personal, money, credits, investments and the evidences thereof;

(r) The word "property" or "estate" embraces both real and personal estate;

(s) The word "offense" includes every act or omission for which a fine, forfeiture or punishment is imposed by law;

(t) The expression "laws of the state" includes the constitution of the state and the constitution of the United States, and treaties and laws made in pursuance thereof;

(u) The word "town" includes a city, village or town, and the word "council," any body or board, whether composed of one or more branches, who are authorized to make ordinances for the government of a city, town or village;

(v) When a council of a town, city or village, or any board, number of persons or corporations, are authorized to make ordinances, bylaws, rules, regulations or orders, it shall be understood that the same must be consistent with the laws of this state;

(w) The words "county court" include any existing tribunal created in lieu of a county court; the words "commissioner of the county court" and "county commissioner" mean, and have reference to, the commissioners, or one of them, composing the county court, in pursuance of section twenty-two, article eight of the constitu-
tion, as amended, or any existing tribunal created in lieu of a county court;

(x) The word "horse" embraces a stallion, a mare and a gelding;

(y) The words "railroad" and "railway" shall be construed by the courts of this state to mean the same thing in law; and, in any proceeding wherein a railroad company or a railway company is a party, it shall not be deemed error to call a railroad company a railway company or vice versa; nor shall any demurrer, plea or any other defense be set up to a motion, pleading or indictment in consequence of such misdescription;

(z) The sectional headings or headlines of the several sections of this code printed in black-faced type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, or as any part of the statute, and, unless expressly so provided, they shall not be so deemed when any of such sections, including the headlines, are amended or reenacted;

(aa) The words "infant" and "minor" mean persons under the age of eighteen years as such words are used in this code or in rules and regulations promulgated by the supreme court of appeals;

(bb) A statute is presumed to be prospective in its operation unless expressly made retrospective;

(cc) Unless there is a provision in a section, article or chapter of this code specifying that the provisions thereof shall not be severable, the provisions of every section, article or chapter of this code, whether enacted before or subsequent to the effective date of this subdivision, shall be severable so that if any provision of any such section, article or chapter is held to be unconstitutional or void, the remaining provisions of such section, article or chapter shall remain valid, unless the court finds the valid provisions are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that the court cannot presume the Legislature would have enacted the remaining valid provisions without the
unconstitutional or void one, or unless the court finds the
remaining valid provisions, standing alone, are incom-
plete and are incapable of being executed in accordance
with the legislative intent: Provided, That if any such
section, article or chapter of this code has its own
severability clause; then such severability clause shall
govern and control with respect to such section, article
or chapter in lieu of the provisions of this subdivision.
The provisions of this subdivision shall be fully appli-
cable to all future amendments or additions to this code,
with like effect as if the provisions of this subdivision
were set forth in extenso in every such amendment or
addition and were reenacted as a part thereof, unless
such amendment or addition contains its own severabil-
ity clause;

(dd) A reference to any section, article or chapter of
this code applies to all reenactments, revisions or
amendments thereof;

(ee) If a statute refers to a series of numbers or
letters, the first and the last numbers or letters in the
series are deemed to be included;

(ff) The words “board of regents,” wherever they
appear in the code, means the board of trustees created
by section one, article one, chapter eighteen-b of this
code and the board of directors created by section one,
article one, chapter eighteen-b of this code unless the
term is used in relation to activities conducted solely by
an institution or institutions governed by article two,
chapter eighteen-b of this code in which case it only
means the board of trustees, or where the term is used
in relation to activities conducted solely by an institution
or institutions governed by article three, chapter
eighteen-b of the code in which case it only means the
board of directors.

CHAPTER 9A. VETERANS’ AFFAIRS.

ARTICLE 1. DEPARTMENT OF VETERANS’ AFFAIRS.


There is hereby established an advisory council to the
West Virginia department of veterans’ affairs, which
shall meet on the call of the chairman of the veterans' council with the veterans' council at any of its regular or special meetings, in connection with the establishment of rules of the department to effectuate the purposes of this article and promote the efficient operation of the department, but the advisory council shall have no vote. The director, in carrying out his powers and duties, shall have the right to call on the individual members of the advisory council, and through them or their department, agency or organization, and also to call on such other departments or agencies of the state, as may be necessary, for advice, aid and assistance. The members of the advisory council shall be the state superintendent of free schools, commissioner of agriculture, adjutant general, state banking commissioner, state director of health, secretary of education and the arts, commissioner of corrections, commissioner of the department of highways and the commissioner of the department of human services, or their duly authorized and accredited representatives.

CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION; ATHLETIC ESTABLISHMENTS; MONUMENTS AND MEMORIALS; ROSTER OF SERVICEMEN; EDUCATIONAL BROADCASTING AUTHORITY.

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-2. West Virginia educational broadcasting authority; members; organization; officers; employees; meetings; expenses.

The West Virginia educational broadcasting authority, heretofore created, is hereby continued as a public benefit corporation. It shall consist of eleven voting members, who shall be residents of the state, of whom one shall be the state superintendent of schools, one shall be a member of the West Virginia board of education to be selected by it annually, one shall be a member of the university of West Virginia board of trustees to be selected by it annually, and one shall be a member of the board of directors of the state college system to be selected by it annually. The other seven members shall
be appointed by the governor by and with the advice and consent of the Senate for overlapping terms of seven years, one term expiring each year, except that the appointment to fill the membership position for the term expiring in the year one thousand nine hundred eighty-three, shall be for a term of six years. Not less than one appointive member shall come from each congressional district. Employees of noncommercial broadcasting stations in West Virginia are not eligible for appointment to the authority. The present members of the authority shall continue to serve out the terms to which they were appointed. Any vacancy among the appointive members shall be filled by the governor by appointment for the unexpired term.

The chairperson and vice chairperson of the authority as of the effective date of this section shall continue in their respective offices until their successors are elected. Thereafter, at its annual meeting in each year the authority shall elect one of its members as chairperson and one as vice chairperson. The authority is authorized to select an executive director and such other personnel as may be necessary to perform its duties and to fix the compensation of such personnel to be paid out of moneys appropriated for this purpose. The executive director shall keep a record of the proceedings of the authority and shall perform such other duties as it may prescribe. The authority is authorized to establish such office or offices as may be necessary for the proper performance of its duties.

The authority shall hold an annual meeting and may meet at such other times and places as may be necessary, such meetings to be held upon its own resolution or at the call of the chairperson of the authority. The members shall serve without compensation but may be reimbursed for actual expenses incident to the performance of their duties upon presentation to the chairperson of an itemized sworn statement thereof.

CHAPTER 18. EDUCATION.

Article.
2. State Board of Education.
2B. Area Vocational Program.
ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-1. Creation; composition; appointment, qualifications, terms and removal of members; offices.

There shall be a state board of education, to be known as the West Virginia board of education, which shall be a corporation and as such may contract and be contracted with, plead and be impleaded, sue and be sued, and have and use a common seal. The state board shall consist of twelve members, of whom one shall be the state superintendent of schools, ex officio; one of whom shall be the chancellor of the board of trustees, ex officio; and one of whom shall be the chancellor of the board of directors, ex officio, none of whom shall be entitled to vote. The other nine members shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate, for overlapping terms of nine years, except that the original appointments shall be for terms of one, two, three, four, five, six, seven, eight and nine years, respectively. Terms of office shall begin on the fifth day of November of the appropriate year and end on the fourth day of November of the appropriate year. At least two but not more than three members shall be appointed from each congressional district.

No more than five of the appointive members shall belong to the same political party, and no person shall be eligible for appointment to membership on the state board who is a member of any political party executive committee or holds any other public office or public employment under the federal government or under the government of this state or any of its political subdivi-
Members shall be eligible for reappointment. Any vacancy on the board shall be filled by the governor by appointment for the unexpired term.

Notwithstanding the provisions of section four, article six, chapter six of this code, no member of the state board may be removed from office by the governor except for official misconduct, incompetence, neglect of duty, or gross immorality and then only in the manner prescribed by law for the removal by the governor of state elective officers.

Before exercising any authority or performing any duties as a member of the state board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article four of the constitution of West Virginia, the certificate whereof shall be filed with the secretary of state. A suitable office in the state department of education at the state capitol shall be provided for the use of the state board.

§18-2-3. Meetings; compensation and expenses of members.

The state board shall hold at least six meetings in every year at such times and places as it may prescribe. It may meet at such other times as may be necessary, such meetings to be held upon its own resolution or at the call of the president of the state board. The members of the state board, other than the ex officio members of the board, shall be paid one hundred dollars per diem each day or any part thereof spent in the performance of their duties under this article, and shall be reimbursed for all reasonable and necessary expenses actually incurred incident to the performance of their duties. The state superintendent of schools, the chancellor of the board of trustees and the chancellor of the board of directors shall be reimbursed for such expenses, but shall not receive a per diem allowance. Upon presentation of itemized sworn statements, the per diem and reimbursement payments shall be made from
18 appropriations made by the Legislature to the state board.

§18-2-10. Certificates and awards.

The state board of education shall make rules and regulations and shall determine the minimum standards for the granting of certificates and awards for secondary vocational education, adult basic education, adult occupational education and adult technical preparatory education, subject to the provisions of section two, article two-b of this chapter and article three-a of chapter eighteen-b of this code.

ARTICLE 2B. AREA VOCATIONAL PROGRAM.

§18-2B-2. State board of vocational education; authority to establish programs, etc., until July 1, 1990; Joint Commission for Vocational-Technical-Occupational Education; state board of education and board of directors; authority to establish programs, etc.; division of vocational education established; rules and regulations; director.

§18-2B-3. Area vocational education program funds.

§18-2B-4. Expenditure of funds.

§18-2B-5. Title to property.

§18-2B-2. State board of vocational education; authority to establish programs, etc., until July 1, 1990; Joint Commission for Vocational-Technical-Occupational Education; state board of education and board of directors; authority to establish programs, etc.; division of vocational education established; rules and regulations; director.

(a) For the purpose of this article, the state board of education is designated as the state board of vocational education serving and meeting as the sole agency responsible for the administration of vocational education and for supervision of the administration thereof by local educational agencies and is hereby authorized and empowered to establish, operate and maintain area vocational educational programs including the acquisition by purchase, lease, gift or otherwise of necessary lands and the construction, expansion, remodeling, alteration and equipping of necessary buildings for the purpose of operating and conducting educational training centers. The state board of vocational education
may delegate for such period of time as it may deter-
de fine its operational authority for multi-county voca-
tional centers to an administrative council composed of
equal representation from each of the participating
county boards of education, the superintendent of
schools from each participating county, and the state
director of vocational education or his representative. To
this end, there is hereby expressly established in the
state board of education a division of vocational
education which shall establish the area or areas in
which the programs are to be conducted and shall have
authority to promulgate, pursuant to the provisions of
chapter twenty-nine-a of this code, rules and regulations
necessary to carry out the provisions of this article. The
administration and supervision of the area vocational
educational programs shall be administered by the
director of the division of vocational education.

(b) Effective the first day of July, one thousand nine
hundred ninety, the West Virginia Joint Commission for
Vocational-Technical-Occupational Education, hereinaf-
ter referred to as "joint commission," established
pursuant to the provisions of article three-a, chapter
eighteen-b of this code, is designated as the sole agency
responsible for the administration of vocational-techni-
cal-occupational education in the state. The joint
commission is designated thereafter to receive federal
money for vocational-technical-occupational education in
the state as of the first day of July, one thousand nine
hundred ninety. Effective the first day of July, one
thousand nine hundred eighty-nine, the joint commission
shall determine which adult occupational education
programs and which adult technical preparatory
educational programs as defined in section one-b, article
three-a, chapter eighteen-b of this code, shall be under
the jurisdiction of the state board of education and
which said programs shall be under the jurisdiction of
the board of directors. Effective the first day of July,
one thousand nine hundred eighty-nine, any proposed
new program by the state board of education or the
board of directors in the areas of adult occupational
education or adult technical preparatory education as
defined in section one-b, article three-a, chapter
eighteen-b of this code shall be filed with the joint commission with notice of intent to plan, which such new program shall require approval by the joint commission prior to institution of such new program. The secondary and post-secondary vocational education programs of the state existing as of the effective date of this article shall remain in place until the first day of July, one thousand nine hundred ninety, during which time the joint commission shall conduct a study of secondary and post-secondary vocational education in the state including definitions of same, and shall make recommendations to the Legislature respecting secondary and post-secondary vocational education in the state, including recommendations as to the definitions of same, on or before the first day of December, one thousand nine hundred ninety. As of the first day of July, one thousand nine hundred ninety, the joint commission is authorized to implement policies to supervise and coordinate the secondary and post-secondary vocational education programs in the state. The joint commission is hereby empowered as of the first day of July, one thousand nine hundred ninety, to determine the standards for the certification and awards of vocational programs in the state or to delegate said authority, based on the joint commission's aforesaid study of the secondary and post-secondary vocational education in the state. The state board of education shall be responsible for the administration of secondary vocational education programs, as determined by the joint commission, and for supervision of the administration thereof by local educational agencies and is hereby authorized and empowered to establish, operate and maintain area vocational educational programs including the acquisition by purchase, lease, gift or otherwise of necessary lands and the construction, expansion, remodeling, alteration and equipping of necessary buildings for the purpose of operating and conducting secondary educational training centers. The state board of education may delegate for such period of time as it may determine its operational authority for multi-county vocational centers to an administrative council composed of equal representation from each of the
participating county boards of education, the superintendent of schools from each participating county, and
the state director of vocational education or his representative. To this end, there is hereby expressly
established in the state board of education a division of secondary vocational education which shall establish the
area or areas in which the programs are to be conducted and shall have authority to promulgate, pursuant to the
provisions of chapter twenty-nine-a of this code, rules and regulations necessary to carry out the provisions of
this article. The administration and supervision of the area vocational educational programs shall be adminis-
tered by the director of the division of vocational education. The state board of vocational education, previously established under this article, is abolished effective the first day of July, one thousand nine hundred ninety.

The board of directors shall be responsible for the administration of all post-secondary vocational educa-
tion in the state, as determined by the joint commission, which shall be administered as a part of the state college
system as defined in section two, article one, chapter eighteen-b of this code. In the development of the post-
secondary education portion of any and all state plans or amendments thereto as may be required for partic-
ipation in the Vocational Education Act of 1963, as amended, or as may be required for state participation in any federally funded post-secondary vocational-technical or occupational education programs, the board of directors shall solicit recommendations from the state board of education and the director of the division of vocational education for the post-secondary education provisions to be included in all such plans.

The joint commission shall, in any and all plans submitted for federal vocational education funds in support of vocational-technical or occupational education, provide that:

(a) The secondary vocational-technical-occupational education programs administered by the state board of education shall be eligible to receive vocational-techni-
(b) The comprehensive community college education service regions as established by the board of directors shall be eligible to receive post-secondary vocational-technical-occupational funds in accordance with federal guidelines;

(c) Services, programs, equipment and facilities may be contracted between comprehensive community colleges, area vocational technical schools and county boards of education as a means of preventing unnecessary duplication;

(d) Federal funds provided to the state in support of vocational-technical-occupational education shall be allocated to the state board of education and to the board of directors for use in the state system of comprehensive vocational-technical-occupational education in an amount in direct proportion as the respective vocational-technical-occupational enrollments of each program is to the total vocational-technical-occupational enrollment of the state.

(e) There shall be established an implementation team to review the work of the joint commission for vocational-technical-occupational education and to file a report with the governor and the Legislature by the first day of December, one thousand nine hundred ninety, and shall also file a report with the legislative oversight commission on education accountability no later than the first day of December, one thousand nine hundred eighty-nine. The implementation team shall be composed of one representative of the state department of education, one representative of the community colleges, three members of the senate education committee and three members of the house education committee, all to be appointed by the governor. The secretary of education and the arts shall be responsible for staffing the implementation team utilizing existing personnel, equipment and offices of the board of directors of the state college system and the state board of education.
§18-2B-3. Area vocational education program funds.
1 There is hereby established a fund to be known as "the
2 area vocational education program fund for secondary
3 education." There is hereby established a separate fund
4 to be known as "the area vocational education program
5 fund for post-secondary vocational education." All
6 moneys appropriated for such purpose by the Legislature
7 as well as any gifts or grants made to the
8 appropriate fund by any governmental subdivision of
9 the state or by the United States government or by any
10 individual, firm or corporation, to carry out the
11 provisions of this article shall be expended by the state
12 board of education or the board of directors, as the case
13 may be.

§18-2B-4. Expenditure of funds.
1 The state board of education and the board of
2 directors, as the case may be, are authorized and
3 empowered to expend the area vocational education
4 program funds for salaries, teachers' retirement contri-
5 butions, and necessary travelling expenses of teachers,
6 and other necessary employees, including, but not
7 limited to, vocational guidance counselors, for purchase,
8 rental, maintenance and repair of instructional equip-
9 ment, buildings and supplies, and for the necessary costs
10 of transportation of certified students.

§18-2B-5. Title to property.
1 Title to any property, equipment, tools, furniture or
2 instructional materials purchased prior to the effective
3 date of this section out of the fund provided for area
4 vocational education program funds previously estab-
5 lished and existing immediately prior to the effective
6 date of this article shall be transferred to and vested in
7 the West Virginia board of education. After the effective
8 date of this article, purchases from funds established in
9 section four shall be vested in the state board of
10 education or the board of directors as the case may be.

ARTICLE 10H. ALBERT YANNI PROGRAMS OF EXCELLENCE
IN VOCATIONAL-TECHNICAL EDUCATION.

§18-10H-1. Purpose; legislative intent.
§18-10H-3. Scholarship fund for vocational-technical education students and
educators.
§18-10H-1. Purpose; legislative intent.

Rapid technological advances, the advent of a global economy, changing demographics and restructuring of the traditional workplace have dictated changes in educational programs designed to prepare workforce entrants and incumbents. More emphasis must be placed on the transfer of technology, via the educational system, to the workplace resulting in an academically and technically literate workforce. A structure must be established to provide incentives, high expectations and encouragement for talented vocational-technical students to pursue advanced education and training related to their technical disciplines, as well as provide a mechanism for the technical updating of vocational-technical teachers and administrators, including opportunities for the attainment of advanced degrees.

The economic future of the state of West Virginia will be greatly influenced by the ability of the educational system to prepare competent individuals for a highly competitive and technological workplace. Excellence in terms of faculty, programs and educational opportunities for all West Virginians will greatly affect the degree of future economic prosperity within the state. With the enactment of this article, the Legislature intends to address a major void in the current system of vocational-technical education in West Virginia through the creation of a comprehensive program of educational incentives for talented students, teachers and administrators. The results of the programs and initiatives proposed by this article can have a significant impact toward achieving excellence in vocational-technical education within West Virginia and revitalizing the state's economy.


The West Virginia board of education shall establish
by the first day of July, one thousand nine hundred
ninety, an annual academy for talented vocational-
technical education students, including a foundation for
receiving private financial support. The purposes of the
academy are to stimulate and reward student commit-
tment to excellence in secondary vocational-technical
education; to stimulate growth in the critical and
creative thinking abilities of vocational-technical
students; to assist exceptionally talented secondary
vocational-technical education students to achieve their
individual potentials; to bridge the gap between
educational practice and the technological workplace;
and to provide a medium for interaction between
talented vocational-technical students and innovative
leaders of business and industry and labor.

The state board of education may establish a coordi-
nating committee to set operating guidelines for the
academy and supporting foundation, including, but not
limited to, selection of participants, promotion, program
development, location, facilities and staffing.

The nonprofit academy foundation shall exist to solicit
private funds and resources to enhance the operation of
the academy.

§18-10H-3. Scholarship fund for vocational-technical
education students and educators.

Beginning with the school year one thousand nine
hundred eighty-nine—ninety, the state board of educa-
tion shall establish a scholarship program for outstand-
ing secondary vocational-technical education graduates
to pursue additional post-secondary college work in a
related career or technical field. The board may award
twenty annual scholarships, not to exceed two thousand
dollars each, based on criteria to be established by the
board. Additionally, the board may award fifteen
annual scholarships, not to exceed one thousand dollars
each, to outstanding vocational-technical teachers for
the purpose of pursing advanced degrees or technical
updating of their professional competencies. The criteria
for awarding the educator scholarships shall be promul-
gated by the board. The foundation provided for in
section two of this article shall solicit private sector funds for these scholarships.

§18-10H-4. Interdisciplinary doctoral program in vocational-technical education.

The West Virginia board of regents shall establish by the first day of July, one thousand nine hundred ninety-one, a plan for a coordinate interdisciplinary doctoral program in vo-tech education utilizing existing facilities and personnel of state universities, colleges, the state department of education vocational-technical staff and board of regents members.

§18-10H-5. Vocational-technical education administrator's academy.

The West Virginia board of education shall maintain and expand an annual vocational-technical education administrator's academy. The purposes of this academy are to stimulate excellence in vocational-technical education programming statewide through the development of progressive instructional leadership, planning and program development competencies of vocational-technical education administrators.

The board may establish a coordinating committee made up of the department of education staff, local vocational administrators and representatives of the vocational-technical education department at Marshall University to plan and administer this program. The nonprofit academy foundation established in section two of this article shall exist to solicit private funds and resources to enhance the operation of the academy.

§18-10H-6. Effective schools program in vocational-technical education.

The state board of education shall establish and operate an effective schools program for vocational-technical education. The purpose of the program is to provide vocational-technical education personnel with resources and staff development for school program improvement based on application of the effective schools research, including components such as instructional leadership, school climate, high student expecta-
9  tions, emphasis on academic and occupational achieve-
10  ment, and community and parental involvement. The
11  program shall be coordinated by the bureau of voca-
12  tional, technical and adult education with the advise-
13  ment from a committee composed of two vocational
14  administrators, two vocational teachers, one vocational
15  guidance counselor, one educator of vocational teachers,
16  one county school superintendent, one comprehensive
17  high school principal, one academic teacher, two
18  business/industry representatives, one labor representa-
19  tive, and one vocational education program completer.

§18-10H-7. Unified technology transfer program.

1  The state board of education shall establish a unified
2  technology transfer program for vocational-technical
3  educators, beginning the first day of July, one thousand
4  nine hundred ninety. This program shall emphasize
5  initiatives designed to improve the transfer of technol-
6  ogy through the vocational-technical education curricu-
7  lum. Such initiatives must impact on improved staff
8  development, curricula and instructional methods
9  reflecting work applications of the new and emerging
10  technologies. The vocational-technical education system
11  must be a catalyst in bridging the gap between high
12  technology and the workplace. Workers for the twenty-
13  first century must know how to install, operate and
14  maintain high technology equipment, systems and
15  processes.

16  The unified technology transfer program shall provide
17  innovative staff development opportunities through the
18  following initiatives:

19  (a) A technical update program for vocational-
20  technical education teachers to learn high technology
21  skills needed to teach the operation, maintenance, or
22  repair of high technology equipment, through placement
23  in industry, formal technical coursework, seminars,
24  teleconferences and other staff development functions;

25  (b) A “Teachers-Teach-Teachers” program to allow
26  the most effective teachers in the state to instruct fellow
27  teachers on how to effectively teach and incorporate
28  high technology skills in the classroom and laboratory;
(c) An “Academy Chair” program to allow education or business-industry persons to serve as a resident expert in the transfer of technology, including conducting seminars in educational institutions, teleconferences and in the workplace;

(d) A business and education exchange program to allow vocational-technical education teachers to work in a company or business, while the business person teaches in the vocational-technical education program;

(e) A beginning teacher internship program to allow new vocational-technical teachers to receive guidance from a mentor teacher in teaching high technology skills, including acquisition of such skills; and

(f) A vocational-technical completer capstone experience program that allows talented students an opportunity to learn high technology skills appropriate for their occupational area of study through internship placement in an appropriate business or industry setting.

The state board of education may formulate policies and procedures designed to implement this section.

The foundation provided for in section two of this article shall solicit private sector funds and encourage partnerships to implement this program.

ARTICLE 26A. STATE AUTISM TRAINING CENTER.

§18-26A-1. Purpose.
§18-26A-6. Advisory board.

§18-26A-1. Purpose.

The purpose of the Legislature in the enactment of this article is to establish and develop an autism training center in the state of West Virginia with a highly skilled, interdisciplinary, appropriately experienced staff which will train teachers, parents, guardians and others important to the autistic person's education and training. The center shall be established and operated by the West Virginia board of trustees or its designees.

For the purposes of this article:

- "Board" means the West Virginia board of trustees;
- "Center" means the autism training center;
- "Client" means a person with the primary diagnosis of autism or autistic-like behavior; and
- "Expenses" means those reasonable and customary expenditures related to training and treatment of eligible clients as defined in the rules and regulations promulgated by the center.


The board of trustees is authorized to operate a state autism training center, including either the acquisition by purchase, lease, gift or otherwise, of necessary lands, and the construction of necessary buildings; the expansion, remodeling, altering or equipping of necessary buildings; and the making of contracts by the board of trustees with any state, county or municipal agency, or nonprofit institution, providing for the equipment, expenses, compensation of personnel, operation and maintenance of any facility of such agency or institution utilized for the purposes of this article. The board or its designees may make and enter into all contracts and agreements necessary and incidental to the performance of its powers and duties under this section, and may cooperate with other agencies of the state, county and federal governments.

§18-26A-6. Advisory board.

The board of trustees shall appoint a board of West Virginia citizens to advise the center director on matters of policy. The advisory board shall be composed of fifty percent parents or guardians of clients eligible for the center's program; forty percent persons from professional fields related to autism, such as special education, psychology, hearing and speech, neurology and pedi-
atries; and ten percent knowledgeable lay citizens such as legislators or other lay community leaders. The director of the center shall be an ex officio nonvoting member of the advisory board.

ARTICLE 29. GRIEVANCE PROCEDURE.

§18-29-5. Education employees grievance board; hearing examiners.

(a) There is hereby created and shall be an education employees grievance board which shall consist of three members who shall be citizens of the state appointed by the governor by and with the advice and consent of the Senate for overlapping terms of three years, except that the original appointments shall be for a period of one, two and three years, respectively, commencing on the first day of July, one thousand nine hundred eighty-five. No two members shall be from the same congressional district, and no more than two of the appointed members shall be from the same political party. No person shall be appointed to membership on the board who is a member of any political party executive committee or holds any other public office or public employment under the federal government or under the government of this state. Members shall be eligible for reappointment, and any vacancy on the board shall be filled within thirty days of the vacancy by the governor by appointment for the unexpired term.

A member of the board may not be removed from office except for official misconduct, incompetence, neglect of duty, gross immorality or malfeasance, and then only in the manner prescribed in article six, chapter six of this code for the removal by the governor of the state elected officers.

The board shall hold at least two meetings yearly at such times and places as it may prescribe and may meet at such other times as may be necessary, such meetings to be agreed to in writing by at least two of the members. Members of the board shall each be paid seventy-five dollars for each calendar day devoted to the work of the board, but not more than seven hundred and fifty dollars during any one fiscal year. Each member
shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of board duties, but shall submit a request therefor upon sworn itemized statement.

The board is hereby authorized and required to administer the grievance procedure at level four as provided for in section four of this article and shall employ at least two full-time hearing examiners on an annual basis and such clerical help as is necessary to implement the legislative intent expressed in section one of this article.

The board shall hire hearing examiners who reside in different regional educational service agency areas unless and until the number of hearing examiners exceeds the number of such areas, at which time two hearing examiners may be from the same such area. If a grievant previously before a hearing examiner again brings a grievance, a different hearing examiner shall be required to hear the grievance upon written request therefor by any party to the grievance. These hearing examiners shall serve at the will and pleasure of the board.

The board shall submit a yearly budget and shall report annually to the governor and Legislature regarding receipts and expenditures, number of level four hearings conducted, synopses of hearing outcomes and such other information as the board may deem appropriate. The board shall further evaluate on an annual basis the level four grievance process and the performance of all hearing examiners and include such evaluation in the annual report to the governor and Legislature. In making such evaluation, the board shall notify all institutions, employee organizations and all grievants participating in level four grievances in the year for which evaluation is being made and shall provide for the submission of written comment and/or the hearing of testimony regarding the grievance process. The board shall provide suitable office space for all hearing examiners in space other than that utilized by any institution as defined in section two of this article.
and shall ensure that reference materials are generally available.

The board is authorized to promulgate rules and regulations consistent with the provisions of this article, such rules and regulations to be adopted in accordance with chapter twenty-nine-a of this code.

(b) Hearing examiners are hereby authorized and shall have the power to consolidate grievances, allocate costs among the parties in accordance with section eight of this article, subpoena witnesses and documents in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code, provide such relief as is deemed fair and equitable in accordance with the provisions of this article, and such other powers as will provide for the effective resolution of grievances not inconsistent with any rules or regulations of the board or the provisions of this article.

ARTICLE 30. WEST VIRGINIA HIGHER EDUCATION TUITION TRUST ACT.

§18-30-5. Appointment of board of directors; terms; compensation; proceedings generally.

(a) The board of directors shall consist of the secretary of education and the arts, who shall be the chairman of the board, the state treasurer, and the state superintendent of schools, who shall serve as ex officio voting members of the board, and six other members with knowledge, skill and experience in an academic, business or financial field, who shall be residents of the state appointed by the governor, by and with the advice and consent of the Senate. Of the six appointed members, four shall be appointed from nominations as follows: One shall be a private citizen not employed by or an officer of the state or any political subdivision thereof appointed from one or more nominees of the
Speaker of the House of Delegates; one shall be a private citizen not employed by or an officer of the state or any political subdivision thereof appointed from one or more nominees of the President of the Senate; one shall be a president of a state institution of higher education who shall be appointed from one or more nominees of the council of presidents of state colleges and universities; and one shall represent the interests of private institutions of higher education located in this state who shall be appointed from one or more nominees of the West Virginia association of private colleges. Of these six members first appointed, two shall be appointed for terms that expire on the thirty-first day of December, one thousand nine hundred eighty-nine, two shall be appointed for terms that expire on the thirty-first day of December, one thousand nine hundred ninety, and two shall be appointed for a term that expires on the thirty-first day of December, one thousand nine hundred ninety-one. Following the expiration of these fixed terms, a member shall be appointed for a term of three years. A member shall serve until a successor is appointed, and a vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The chancellor, treasurer, state superintendent or president of a state institution of higher education may appoint a designee to serve as a voting member of the board in such person's absence.

(b) Members of the board shall serve without compensation, but shall receive reimbursement for reasonable and necessary expenses actually incurred in the performance of their duties as board members unless such member is otherwise reimbursed as an employee of the state.

(c) A majority of the voting members appointed to the board shall constitute a quorum for the transaction of business at a meeting of the board, or the exercise of a power or function of the trust, notwithstanding the existence of one or more vacancies. Voting upon action taken by the board shall be conducted by majority vote of the members present in person at a meeting of the
board, and, if authorized by the bylaws of the board and when a quorum is present in person at the meeting, by use of amplified telephonic equipment. The board shall meet at the call of the chairman and as may be provided in its bylaws. Meetings of the board may be held anywhere within the state.

(d) The board is subject to the open governmental proceedings and freedom of information provisions of article nine-a, chapter six, and chapter twenty-nine-b, respectively, of this code.

§18-30-13. Conditions precedent to administration of trust; disclaimer; enforcement.

(a) Before the trust can enter into a tuition prepayment contract or tuition trust account contract with purchasers, it shall provide the Legislature with a report outlining any ruling or opinion rendered by the Internal Revenue Service regarding the federal tax consequences of any benefits or refunds received from the trust under the applicable contract. This ruling or opinion rendered by the Internal Revenue Service may be a ruling or opinion sought by the trust or a ruling or opinion that relates to similar contracts in another state.

(b) Before entering into a tuition prepayment contract or tuition trust account contract with purchasers, the state shall solicit answers to appropriate ruling requests from the federal Securities and Exchange Commission regarding the application of federal security laws to the trust. No contracts may be entered without the trust making known to the Legislature the status of the request.

(c) Nothing in this article or in a contract entered into pursuant to this article may be construed as a promise or guarantee by the trust or the state that a person will be admitted to a particular institution of higher education, will be allowed to continue to attend an institution of higher education after having been admitted or will be graduated from an institution of higher education.
(d) The board, state institutions of higher education, purchasers and qualified beneficiaries may enforce this article and any contract entered into pursuant to this article in the circuit court of Kanawha County.

CHAPTER 18B. HIGHER EDUCATION.

Article
1. Governance.
2. University of West Virginia Board of Trustees.
3. Board of Directors of the State College System.
3A. West Virginia Joint Commission for Vocational-Technical-Occupational Education.
4. General Administration.
5. Higher Education Budgets and Expenditures.
6. Other Boards and Advisory Councils.
8. Higher Education Full-Time Faculty Salaries.
9. Classified Employee Salary Schedule and Classification System.
10. Fees and Other Money Collected at State Institutions of Higher Education.
11. Miscellaneous Institutes and Centers.

ARTICLE 1. GOVERNANCE.

§18B-1-1. Legislative purpose; creation of governing boards.
§18B-1-2. Definitions.
§18B-1-3. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the board of trustees and board of directors.
§18B-1-4. Prior transfer of powers, etc., to board of regents; board of regents abolished.
§18B-1-5. Board of trustees and board of directors under department of education and the arts.
§18B-1-6. Rule making.
§18B-1-7. Supervision by governing boards; delegation to president.
§18B-1-10. Task force on faculty salaries and resource allocation.

§18B-1-1. Legislative purpose; creation of governing boards.

1 The purpose of the Legislature in the enactment of this article is to establish a governance structure for the state institutions of higher education consisting of a board to govern the University of West Virginia system,
designated the "University of West Virginia Board of Trustees," and a board to govern the state college system, designated the "Board of Directors of The State College System."

In furtherance of this purpose, there are hereby created two governing boards to be known as the university of West Virginia board of trustees, and the board of directors of the state college system, which shall be corporations and as such may contract and be contracted with, plead and be impleaded, sue and be sued, and have and use common seals.

§18B-1-2. Definitions.

The following words when used in this chapter and chapter eighteen-c of this code shall have the meaning hereafter ascribed to them unless the context clearly indicates a different meaning:

(a) "Governing board" or "board" means the university of West Virginia board of trustees or the board of directors of the state college system, whichever is applicable within the context of the institution or institutions referred to in this chapter or in other provisions of law;

(b) "Governing boards" or "boards" means both the board of trustees and the board of directors;

(c) "Community colleges" means Southern West Virginia Community College, West Virginia Northern Community College, and any institution of higher education which has been designated as a community college by the board of directors under the provisions of section four, article three of this chapter;

(d) "Directors" or "board of directors" mean the board of directors of the state college system created pursuant to article three of this chapter or the members thereof;

(e) "Higher educational institution" means any institution as defined by sections 401(f), (g), (h) of the federal higher education facilities act of 1963, as amended;

(f) "Post-secondary vocational education programs" means any college-level course or program beyond the
27 high school level provided through an institution of
28 higher education which results in or may result in the
29 awarding of a two-year associate degree, under the
30 jurisdiction of the board of directors;
31 (g) "Rule" or "rules" mean a regulation, standard,
32 policy or interpretation of general application and
33 future effect;
34 (h) "Senior administrator" means the person hired by
35 the governing boards in accordance with section one,
36 article four of this chapter, with such powers and duties
37 as may be provided for in section two of said article four;
38 (i) "State college" means Bluefield State College,
39 Concord College, Fairmont State College, Glenville
40 State College, Shepherd College, West Liberty State
41 College, West Virginia Institute of Technology, or West
42 Virginia State College;
43 (j) "State college system" means the state colleges and
44 community colleges, and also shall include post-secon-
45 dary vocational education programs in the state, as those
46 terms are defined in this section;
47 (k) "State institution of higher education" means any
48 university, college or community college in the state
49 university system or the state college system as those
50 terms are defined in this section;
51 (l) "Trustees" and "board of trustees" mean the
52 university of West Virginia board of trustees created
53 pursuant to article two of this chapter or the members
54 thereof;
55 (m) "University of West Virginia" and "state univer-
56 sity system" means the multi-campus, integrated
57 university of the state, consisting of West Virginia
58 University including West Virginia University at
59 Parkersburg, Potomac State College of West Virginia
60 University and the West Virginia University School of
61 Medicine; Marshall University including the Marshall
62 University School of Medicine; the University of West
63 Virginia College of Graduate Studies; and the West
64 Virginia School of Osteopathic Medicine; and
(n) "University" means the multi-campus, integrated university of the state, consisting of West Virginia University including West Virginia University at Parkersburg, Potomac State College of West Virginia University and the West Virginia University School of Medicine; Marshall University including the Marshall University School of Medicine; the University of West Virginia College of Graduate Studies; or the West Virginia School of Osteopathic Medicine.

§18B-1-3. Transfer of powers, duties, property, obligations, etc., of prior governing boards to the board of trustees and board of directors.

(a) All powers, duties and authorities transferred to the board of regents pursuant to former provisions of chapter eighteen of this code are hereby transferred to the governing boards created in this chapter and shall be exercised and performed by the governing boards as such powers, duties and authorities may apply to each governing board and to institutions under its jurisdiction.

(b) Title to all property previously transferred to or vested in the board of regents formerly existing under the provisions of chapter eighteen of this code are hereby transferred to such governing board as those titles may apply to property which is appropriately under the jurisdiction of that governing board. Property transferred to or vested in the board of regents shall include (1) all property vested in the board of governors of West Virginia University and transferred to and vested in the West Virginia board of regents; (2) all property acquired in the name of the state board of control or the West Virginia board of education and used by or for the state colleges and universities and transferred to and vested in the West Virginia board of regents; and (3) all property acquired in the name of the state commission on higher education and transferred to and vested in the West Virginia board of regents.

(c) Each valid agreement and obligation previously transferred to or vested in the board of regents formerly existing under the provisions of chapter eighteen of this code shall be performed and enforced as applicable to each governing board and to institutions under its jurisdiction.
code is hereby transferred to the governing boards as those agreements and obligations may apply to each governing board and to institutions under its jurisdiction. Valid agreements and obligations transferred to the board of regents shall include (1) each valid agreement and obligation of the board of governors of West Virginia University transferred to and deemed the agreement and obligation of the West Virginia board of regents; (2) each valid agreement and obligation of the state board of education with respect to the state colleges and universities transferred to and deemed the agreement and obligation of the West Virginia board of regents; and (3) each valid agreement and obligation of the state commission on higher education transferred to and deemed the agreement and obligation of the West Virginia board of regents.

(d) All orders, resolutions and rules adopted or promulgated by the board of regents and in effect immediately prior to the first day of July, one thousand nine hundred eighty-nine, are hereby transferred to the governing boards as those orders, resolutions and rules may apply to each governing board and to institutions under its jurisdiction and shall continue in effect and shall be deemed the orders, resolutions and rules of the respecting governing boards until rescinded, revised, altered or amended by the appropriate governing board in the manner and to the extent authorized and permitted by law. Such orders, resolutions and rules shall include (1) those adopted or promulgated by the board of governors of West Virginia University and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law; (2) those respecting state colleges and universities adopted or promulgated by the West Virginia board of education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law; and (3) those adopted or promulgated by the state commission
on higher education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the board of regents in the manner and to the extent authorized and permitted by law.

(e) As to any title, agreement, obligation, order, resolution, rule or any other matter about which there is some uncertainty, misunderstanding or question regarding the applicability to one or both of the governing boards, the matter shall be summarized in writing and sent to the secretary of education and the arts, who shall make a determination regarding such matter within thirty days of receipt thereof.

(f) Rules or provisions of law which refer to other provisions of law which were repealed, rendered inoperative, or superseded by the provisions of this section shall remain in full force and effect to such extent as may still be applicable to higher education and may be so interpreted. Such references include, but are not limited to, references to sections and prior enactments of article twenty-six, chapter eighteen of this code and code provisions relating to retirement, health insurance, grievance procedures, purchasing, student loans and savings plans. Any determination which needs to be made regarding applicability of any provision of law shall first be made by the secretary of education and the arts.

§18B-1-4. Prior transfer of powers, etc., to board of regents; board of regents abolished.

(a) All the powers, duties and authorities which the board of governors of West Virginia University, previously established by article eleven of chapter eighteen of the code or by any other provisions of law, may have had immediately prior to the first day of July, one thousand nine hundred sixty-nine, shall be the powers, duties and authorities of the West Virginia board of regents until the first day of July, one thousand nine hundred eighty-nine. Until such date, all of the policies and affairs of West Virginia University shall be determined, controlled, supervised and managed by the
West Virginia board of regents, who shall exercise and perform all such powers, duties and authorities.

All powers, duties and authorities which the West Virginia board of education may have had with respect to state colleges and universities immediately prior to the first day of July, one thousand nine hundred sixty-nine, shall be the powers, duties and authorities of the West Virginia board of regents until the first day of July, one thousand nine hundred eighty-nine. Until such date, all of the policies and affairs of the state colleges and universities shall be determined, controlled, supervised and managed by the West Virginia board of regents, who shall exercise and perform all such powers, duties and authorities: Provided, That the standards for education of teachers and teacher preparation programs at the state colleges and universities shall continue to be under the general direction and control of the West Virginia board of education, and the West Virginia board of education shall have sole authority to continue, as authorized by section six, article two, chapter eighteen of this code, to enter into agreements with county boards of education for the use of the public schools to give prospective teachers teaching experience.

All powers, duties and authorities vested in the state commission on higher education by previous provisions of chapter eighteen of this code or by any other provisions of law shall be the powers, duties and authorities of the West Virginia board of regents until the first day of July, one thousand nine hundred eighty-nine. Until such date, all of the powers, duties, and authorities of the state commission on higher education shall be exercised and performed by the West Virginia board of regents.

(b) The board of regents shall be abolished on the first day of July, one thousand nine hundred eighty-nine.

§18B-1-5. Board of trustees and board of directors under department of education and the arts.

(a) The university of West Virginia board of trustees and the board of directors of the state college system, created in articles two and three of this chapter, are
under the jurisdiction of the department of education
and the arts created in article one, chapter five-f of this
code, and are subject to the supervision of the secretary
of education and the arts. Rules adopted by the
governing boards shall be subject to approval by the
secretary of education and the arts. The budget submit-
ted by each board pursuant to the provisions of section
eight of this article shall be subject to approval of the
secretary of the department of education and the arts,
all pursuant to the provisions of article two, chapter
five-f of this code.

(b) The secretary of education and the arts is respon-
sible for the coordination of policies and purposes of the
state university system and the state college system and
shall provide for and facilitate sufficient interaction
between the governing boards, and between the govern-
ing boards and the state board of education, to assure
appropriate mission and program coordination and
cooperation among (1) the state university system, (2)
the state college system, exclusive of the community
colleges, (3) the community colleges and community
college components of four-year institutions, if any, and
(4) the vocational-technical centers in the state, recog-
nizing the inherent differences in the missions and
capabilities of these four categories of institutions.

(c) The secretary of education and the arts shall
conduct a special study of the West Virginia University
at Parkersburg, Potomac State College of West Virginia
University and the University of West Virginia College
of Graduate Studies to determine the role and mission
of said institutions in the reorganized system of higher
education in the state and shall submit a report on the
study to the Legislature on or before the first day of
January, one thousand nine hundred ninety.

§18B-1-6. Rule making.

1 The university of West Virginia board of trustees and
the board of directors of the state college system are
hereby empowered to promulgate, adopt, amend or
repeal rules, subject to the approval of the secretary of
education and the arts, in accordance with the provi-
visions of article three-a, chapter twenty-nine-a of this
code, as they may deem necessary and convenient to
ensure the full implementation of their powers and
duties. Each governing board shall file a copy of any
rule it proposes to promulgate, adopt, amend or repeal
under the authority of this article with the legislative
oversight commission on education accountability
created in said article three-a, chapter twenty-nine-a of
this code.

Nothing in this section shall be construed to apply to
any rule promulgated or adopted by a state institution
of higher education.

§18B-1-7. Supervision by governing boards; delegation to
president.

On and after the first day of July, one thousand nine
hundred eighty-nine, the governing boards shall deter-
mine, control, supervise and manage all of the policies
and affairs of the state institutions of higher education
under their jurisdiction and shall exercise and perform
all such powers, duties and authorities respecting those
institutions as were previously exercised and performed
by the West Virginia board of regents.

The governing boards have the general determination,
control, supervision and management of the financial,
business, and educational policies and affairs of all state
institutions of higher education under their jurisdiction.
The board of trustees and the board of directors shall
seek the approval of the West Virginia Legislature
before either governing board takes action that would
result in the creation or closing of a state institution of
higher education.

Except as otherwise provided by law, each board's
responsibilities shall include, but shall not be limited to,
the making of studies and recommendations respecting
higher education in West Virginia; allocating among the
state institutions of higher education under their
jurisdiction specific functions and responsibilities;
submitting budget requests for such institutions; and
equitably allocating available state appropriated funds
among such institutions.
Each board shall delegate, as far as is lawful, efficient and fiscally responsible and within prescribed standards and limitations, such part of its power and control over financial, educational and administrative affairs of each state institution of higher education to the president or other administrative head of those institutions. This shall not be interpreted to include the classification of employees, lawful appeals made by students in accordance with board policy, lawful appeals made by faculty or staff, or final review of new or established academic or other programs.

To promote the missions and achieve the goals and objectives of the institutions and systems under their jurisdiction and to provide information and guidance for the allocation of funding among institutions in the separate systems in an equitable manner in relation to their missions, goals and objectives, the board of trustees and the board of directors shall each develop comparison information including such factors as peer institution information, enrollment information, data on institutional program scope and diversity, and measures of institutional quality and performance, and shall annually present such information to the secretary of education and the arts and the Legislature along with the resulting allocation decisions made by the respective governing boards. This system shall be implemented by the first day of July, one thousand nine hundred ninety-one. Until the new system is implemented, the current resource allocation model, updated for enrollment and in accordance with other provisions of this code, shall be in effect.


(a) Each governing board shall separately have the power and duty to:

(1) Determine, control, supervise and manage the financial, business and educational policies and affairs of the state institutions of higher education under its jurisdiction;

(2) Prepare a master plan for the state institutions of
higher education under its jurisdiction, setting forth the goals, missions, degree offerings, resource requirements, physical plant needs, state personnel needs, enrollment levels and other planning determinates and projections necessary in such a plan: Provided, That the master plan for post-secondary vocational education is subject to approval by the joint commission for post-secondary occupational education. The plan shall also address the roles and missions of private post-secondary education providers in the state. Each board shall involve the executive and legislative branches of state government and the general public in the development of all segments of the plan for post-secondary education in the state. The plan shall be established for periods of not less than five nor more than ten years and shall be periodically revised as necessary, including the addition or deletion of degree programs as in the discretion of the boards may be necessary. Whenever a state institution of higher education desires to establish a new degree program, such program proposal shall not be implemented until the same is filed with both governing boards. Upon objection thereto within sixty days by either governing board, such program proposal shall be filed with the secretary of education and the arts, who shall approve or disapprove such proposal within one year of the filing of said program proposal;

(3) Prescribe and allocate among the state institutions of higher education under its jurisdiction, in accordance with its master plan, specific functions and responsibilities to meet the higher education needs of the state and to avoid unnecessary duplication;

(4) Consult with the executive branch and the Legislature in the establishment of funding parameters, priorities and goals;

(5) Establish guidelines for and direct the preparation of budget requests for each of the state institutions of higher education under its jurisdiction, such requests to relate directly to missions, goals and projections in its state master plan;

(6) Consider, revise and submit to the appropriate
agencies of the executive and legislative branches of state government separate budget requests on behalf of the state institutions of higher education under its jurisdiction or a single budget for the state institutions of higher education under its jurisdiction: Provided, That when a single budget is submitted, that budget shall be accompanied by a tentative schedule of proposed allocations of funds to the separate state institutions of higher education under its jurisdiction;

(7) Prepare and submit to the Speaker of the House of Delegates and the President of the Senate, no later than the first day of each regular session of the Legislature, and to any member of the Legislature upon request, an analysis of the budget request submitted under subdivision (6) of this subsection. The analysis shall summarize all amounts and sources of funds outside of the general revenue fund anticipated to be received by each state institution of higher education under its jurisdiction and the effect of such funds on the budget request;

(8) Prepare and submit to the legislative auditor, no later than the first day of July of each year, the approved operating budgets of each state institution of higher education under its jurisdiction for the fiscal year beginning on that date and, no later than the first day of August, a summary of federal and other external funds received at each such institution during the previous fiscal year;

(9) Establish a system of information and data management that can be effectively utilized in the development and management of higher education policy, mission and goals;

(10) Review, at least every five years, all academic programs offered at the state institutions of higher education under its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in relation to its master plan;

(11) Utilize faculty, students, and classified staff in institutional level planning and decision-making when those groups are affected;
(12) Administer a uniform system of personnel classification and compensation for all employees other than faculty and policy level administrators;

(13) Establish a uniform system for the hearing of employee grievances and appeals therefrom, so that aggrieved parties may be assured of timely and objective review;

(14) Solicit and utilize or expend voluntary support, including financial contributions and support services, for the state institutions of higher education;

(15) Appoint a president or other administrative head for each institution of higher education from candidates submitted by the search and screening committees of the institutional boards of advisors pursuant to section one, article six of this chapter;

(16) Conduct performance evaluations of each institution's president in every fourth year of employment as president, recognizing unique characteristics of the institution and utilizing institutional personnel, institutional boards of advisors, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not otherwise employed by a governing board;

(17) Submit to the joint committee on government and finance, no later than the first day of December of each year, an annual report of the performance of the system of higher education under its jurisdiction during the previous fiscal year as compared to stated goals in its master plan and budget appropriations for that fiscal year.

(b) The power herein given to each governing board to prescribe and allocate among the state institutions of higher education under its jurisdiction specific functions and responsibilities to meet the higher educational needs of the state and avoid unnecessary duplication shall not be restricted by any provision of law assigning specified functions and responsibilities to designated state institutions of higher education, and such power shall supersede any such provision of law: Provided, That
each governing board may delegate, with prescribed
standards and limitations, such part of its power and
control over the business affairs of a particular state
institution of higher education to the president or other
administrative head of such state institution of higher
education in any case where it deems such delegation
necessary and prudent in order to enable such institu-
tion to function in a proper and expeditious manner:
Provided, however, That such delegation shall not be
interpreted to include classification of employees, lawful
appeals made by students in accordance with the
appropriate governing board's policy, lawful appeals
made by faculty or staff, or final review of new or
established academic or other programs. Any such
delegation of power and control may be rescinded by the
appropriate governing board at any time, in whole or
in part.


Except as is otherwise provided by law or rule, the
president or other administrative head of each state
institution of higher education shall exercise all the
duties and powers conferred by law in the government
of the institution under such person's management and
control and, subject to review by the appropriate
governing board, shall have the authority and respon-
sibility for overseeing the routine matters of the
institution, which include, but are not limited to, travel
approval, sabbaticals, budget oversight and special
student fees. The president or other administrative head
shall assist the chancellors in developing or evaluating
policy options for the governing boards, but not both
developing and evaluating for the same policy, and may
propose policy options for consideration by their
governing board. The president or other administrative
head of each state institution of higher education shall
also be responsible for seeking community advice on
academic or other programs.

§18B-1-10. Task force on faculty salaries and resource
allocation.

Not later than the first day of July, one thousand nine
hundred eighty-nine, there shall be established a task
force on faculty salaries and resource allocation which
shall meet, study and make recommendations as herein
provided.

The task force shall be composed of two members of
the Senate appointed by the president, two members of
the House of Delegates appointed by the speaker, one
member of the faculty advisory council to the board of
trustees chosen by said council, one member of the
faculty advisory council to the board of directors chosen
by said council, one member of the board of trustees
chosen by said board, one member of the board of
directors chosen by said board, one institutional
president chosen by the presidents under the board of
trustees, one institutional president chosen by the
presidents under the board of supervisors and three
members appointed by the governor to represent the
public interest.

The task force shall conduct studies on faculty
salaries, faculty salary schedules, faculty compensation
and specifically on resource allocation models. The task
force shall develop a faculty salary program with the
overall goal that compares average faculty salaries with
similar groups of disciplines at comparable peer
institutions. The task force shall make such recommenda-
tions as it deems appropriate to address needs
identified in the studies and shall specifically make
recommendations on the resource allocation model and
the faculty salary schedules to the board of trustees and
the board of supervisors.

Additionally, the task force shall file a report with the
Legislature and the governor on or before the first day
of December, one thousand nine hundred eighty-nine.

The secretary of the department of education and the
arts shall be responsible for staffing the task force
utilizing existing personnel, equipment and offices of
the board of trustees and the board of directors.

In the case of the board of trustees, the task force shall
recommend that the board adopt a faculty salary
schedule with an overall goal that compares average
faculty salaries with similar groups of disciplines at comparable peer institutions (Doctoral I at West Virginia University; Doctoral III at Marshall University; and appropriate and comparable levels at the University of West Virginia College of Graduate Studies, and the West Virginia School of Osteopathic Medicine, Potomac State College of West Virginia University and West Virginia University at Parkersburg).

The salary program shall incorporate a minimum salary schedule, approved by the Legislature, for West Virginia University, Marshall University, the University of West Virginia College of Graduate Studies and the West Virginia School of Osteopathic Medicine and a minimum salary schedule for Potomac State College of West Virginia University and West Virginia University at Parkersburg. It shall be the goal that these minimum salary schedules shall be fully in effect within three years after the effective implementation of those schedules.

Salary funds shall be distributed to all of the respective institutions based upon legislative intent to achieve basic improvements in compensation for all employees with any additional funds being distributed to the respective institutions based on the proportion needed to move to parity in relation to the overall goal described above. If needed, no less than fifty percent of new salary funds at each institution shall be used to assure that the appropriate minimum schedule is so implemented.

ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.

§18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.


§18B-2-4. Establishment and operation of graduate college; transfer of programs, etc., of Kanawha Valley Graduate Center of West Virginia University.
§18B-2-5. Establishment and operation of a state school of osteopathic medicine; authority and duty to purchase property, expend appropriations and conduct programs of the West Virginia School of Osteopathic Medicine.

§18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

(a) The board of trustees shall consist of seventeen persons, of whom one shall be the chancellor of the board of directors of the state college system, ex officio, who shall not be entitled to vote; one shall be the state superintendent of schools, ex officio, who shall not be entitled to vote; one shall be the chairman of the advisory council of students, ex officio, who shall be entitled to vote; one shall be the chairman of the advisory council of faculty, ex officio, who shall be entitled to vote; and one shall be the chairman of the advisory council of classified employees, ex officio, who shall be entitled to vote. The other twelve trustees shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate.

Each of the trustees appointed to the board by the governor shall represent the public interest and shall be especially qualified in the field of higher education by virtue of the person's knowledge, learning, experience or interest in the field.

Except for the ex officio trustees, no person shall be eligible for appointment to membership on the board of trustees who is an officer, employee or member of an advisory board of any state college or university, an officer or member of any political party executive committee, the holder of any other public office or public employment under the federal government or under the government of this state or any of its political subdivisions, or an appointee or employee of the board of trustees or the board of directors. Of the twelve trustees appointed by the governor from the public at large, not more than six thereof shall belong to the same political party and at least two trustees shall be appointed from each congressional district.
Except as provided in this section, no other person may be appointed to the board.

(b) The governor shall appoint twelve trustees as soon after the first day of July, one thousand nine hundred eighty-nine, as is practicable, and the original terms of all trustees shall commence on that date.

The terms of the trustees appointed by the governor shall be for overlapping terms of six years, except, of the original appointments, four shall be appointed to terms of two years, four shall be appointed to terms of four years, and four shall be appointed to terms of six years. Each subsequent appointment which is not for the purpose of filling a vacancy in an unexpired term shall be for a term of six years.

The governor shall appoint a trustee to fill any vacancy among the twelve trustees appointed by the governor, by and with the advice and consent of the Senate, which trustee appointed to fill such vacancy shall serve for the unexpired term of the vacating trustee. The governor shall fill the vacancy within sixty days of the occurrence of the vacancy.

All trustees appointed by the governor shall be eligible for reappointment: Provided, That a person who has served as a trustee or director during all or any part of two consecutive terms shall be ineligible to serve as a trustee or director for a period of three years immediately following the second of the two consecutive terms.

The chairman of the advisory council of students, ex officio; the chairman of the advisory council of faculty, ex officio; and the chairman of the advisory council of classified employees, ex officio, shall serve the terms for which they were elected by their respective advisory councils. These members shall be eligible to succeed themselves.

(c) Before exercising any authority or performing any duties as a trustee, each trustee shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article four of the constitution of West
Virginia, and the certificate thereof shall be filed with
the secretary of state.

(d) No trustee appointed by the governor shall be
removed from office by the governor except for official
misconduct, incompetence, neglect of duty or gross
immorality, and then only in the manner prescribed by
law for the removal of the state elective officers by the
governor.


(a) The board of trustees shall hold at least ten
meetings in every fiscal year, including an annual
meeting each June: Provided, That an annual meeting
for the purpose of selecting the first chairman shall be
held during July, one thousand nine hundred eighty-
ine. Except for the annual meeting, which may be held
at a location anywhere in the state, the said meetings
shall be held on different campuses of institutions in the
university system on a rotating basis or at the central
office. The board of trustees may set aside time at the
meetings at the campuses to afford administrators,
faculty, students and classified staff at the institution an
opportunity to discuss issues affecting these groups. The
board of trustees shall hold at least one meeting each
year with the advisory council of faculty, the advisory
council of students, and the advisory council of classified
employees, each of these bodies to be met with separately.
Except as otherwise provided in this section,
meetings shall be held on such dates and at such places
as the trustees may prescribe. In addition to the
statutorily required meetings, the trustees may meet at
such other times as may be necessary, such meetings to
be held upon its own resolution or at the written request
of at least three appointed trustees.

Of the fifteen voting members of the board of trustees,
eight shall constitute a quorum, and a majority vote of
the quorum shall be necessary to pass upon matters
before the trustees.

(b) The trustees shall be reimbursed for actual and
necessary expenses incident to the performance of such
duties upon presentation of an itemized sworn statement
thereof. The foregoing reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the trustees.


(a) The trustees shall govern the University of West Virginia. The trustees shall develop a master educational plan for the university system in the state, establish research policies for the several institutions within the university system and shall oversee graduate, professional and medical education at the appropriate institutions of higher education under their jurisdiction to the end of avoiding duplication in advanced study, specialty institutes and research.

(b) The board of trustees shall adopt a faculty salary program with an overall goal that compares average faculty salaries with similar groups of disciplines at comparable peer institutions (Doctoral I at West Virginia University; Doctoral III at Marshall University; and appropriate levels at the University of West Virginia College of Graduate Studies, Potomac State College of West Virginia University, West Virginia University at Parkersburg and the School of Osteopathic Medicine as determined by the Board of Trustees). Salary funds shall be distributed to the respective institutions based on the proportion needed to move to parity in relation to the overall goal described above. The salary program shall incorporate a minimum salary schedule which shall be fully in effect within three years after the effective date of this section. If needed, up to fifty percent of new salary funds at each institution shall be used to assure that the minimum schedule is so implemented. The existing minimum salary schedule as set forth within the provisions of article eight of this chapter shall remain in effect until the board of trustees adopts the salary program mandated herein and is then repealed.

§18B-2-4. Establishment and operation of graduate college; transfer of programs, etc., of Kanawha Valley Graduate Center of West Virginia University.
The power of the board of regents, effective July one, one thousand nine hundred seventy-two, to establish, name, maintain and operate a graduate college whose major administrative offices are located in Kanawha county shall be transferred to the board of trustees effective July one, one thousand nine hundred eighty-nine, and shall be known as the “University of West Virginia College of Graduate Studies”. The board of trustees shall employ a president and such staff and faculty as determined appropriate for the school, appoint an advisory board consistent with section one, article six of this chapter and shall exercise general determination, control, supervision and management of the financial, business and educational policies and affairs of the graduate college. The college shall be authorized to offer, in their entirety or in cooperation with other institutions, such curricula, programs, courses and services and confer such graduate degrees as may be approved by the board of trustees. The trustees shall fix tuition and establish and set other fees to be charged students as it deems appropriate, including the establishment of special fees for specific purposes. Special fees shall be paid into special funds and used only for the purposes for which collected. The board of trustees may allocate from the appropriations for the state university system for the operation and capital improvement of the graduate college.

All programs, activities, operations, accounts, and resources of the Kanawha Valley Graduate Center of West Virginia University which were transferred to the graduate college, and the title to all property of the Kanawha Valley Graduate Center of West Virginia University which was transferred to or later vested in the graduate college, shall be transferred to and remain vested in the trustees. The trustees are authorized to enter into contracts on behalf of the graduate college with public and private educational institutions, agencies and boards; with governmental agencies; and with corporations, partnerships and individuals for the use of physical facilities, equipment and for the performance of instructional or other services.
§18B-2-5. Establishment and operation of a state school of osteopathic medicine; authority and duty to purchase property, expend appropriations and conduct programs of the West Virginia School of Osteopathic Medicine.

The board of trustees shall operate and maintain the state school of osteopathy, known as the "West Virginia School of Osteopathic Medicine" and located in Lewisburg, Greenbrier County, as previously established by the board of regents, as a part of the University of West Virginia as defined in section two, article one of this chapter. The title to all the real property and all facilities and equipment of the West Virginia School of Osteopathic Medicine and the previously existing Greenbrier College of Osteopathic Medicine, located at Lewisburg, Greenbrier County, shall be and remain vested in the board of trustees. The title to any such property originally acquired by or vested in the name of the board of regents is hereby transferred to and shall remain vested in the board of trustees.

The board of trustees shall employ a president and such staff and faculty as determined appropriate for the school, appoint an advisory board consistent with section one, article six of this chapter and exercise general determination, control, supervision and management of the financial, business and educational policies and affairs of the school of osteopathic medicine.

The school shall be authorized to offer such curricula, programs, courses and services and confer such degrees as may be approved by the board of trustees. The board of trustees shall fix tuition and establish and set other fees to be charged students as it deems appropriate, including the establishment of special fees for specific purposes. Special fees shall be paid into special funds and be used only for the purposes for which said fees were collected.

The board of trustees shall expend from the appropriations allocated for the West Virginia School of Osteopathic Medicine such funds as are necessary for the operation and conduct of programs, the acquisition of clear title to the property of the Greenbrier College of
Osteopathic Medicine, and for necessary capital improvements. The title to all property purchased for the use of the West Virginia School of Osteopathic Medicine shall be vested in the board of trustees.

The board of trustees is authorized to enter into contracts on behalf of the West Virginia School of Osteopathic Medicine with public and private educational institutions, agencies and boards, with governmental agencies and with corporations, partnerships, and individuals for the performance of instructional or other services.

The board of trustees is hereby specifically authorized to contract with the West Virginia anatomical board and the West Virginia anatomical board is hereby specifically authorized to contract with the board of trustees on behalf of the West Virginia School of Osteopathic Medicine for the requisition, use, disposition and control of any body as may come under the authority of the anatomical board: Provided, That such body be used exclusively for educational purposes of the West Virginia School of Osteopathic Medicine.

The board of trustees is further authorized to contract with any other person, corporation or entity for the purchase of cadavers for educational purposes at the West Virginia School of Osteopathic Medicine, notwithstanding any provision of law to the contrary.

ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

§18B-3-2. Meetings and compensation.

§18B-3-3. Additional duties of board of directors.

§18B-3-4. Community colleges.

§18B-3-5. Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules and regulations; penalty and enforcement.

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.
(a) The board of directors of the state college system shall consist of seventeen persons, of whom one shall be the chancellor of the university of West Virginia, ex officio, who shall not be entitled to vote; one shall be the state superintendent of schools, ex officio, who shall not be entitled to vote; one shall be the chairman of the advisory council of students, ex officio, who shall be entitled to vote; one shall be the chairman of the advisory council of faculty, ex officio, who shall be entitled to vote; and one shall be the chairman of the advisory council of classified employees, ex officio, who shall be entitled to vote. The other twelve directors shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate.

Each of the directors appointed to the board by the governor shall represent the public interest and shall be especially qualified in the field of higher education by virtue of the person’s knowledge, learning, experience or interest in the field.

Except for the ex officio directors, no person shall be eligible for appointment to membership on the board of directors who is an officer, employee or member of an advisory board of any state college or university, an officer or member of any political party executive committee, the holder of any other public office or public employment under the federal government or under the government of this state or any of its political subdivisions, or an appointee or employee of the board of trustees or board of directors. Of the twelve directors appointed by the governor from the public at large, not more than six thereof shall belong to the same political party and at least two directors of the board shall be appointed from each congressional district.

Except as provided in this section, no other person may be appointed to the board.

(b) The governor shall appoint twelve directors as soon after July one, one thousand nine hundred eighty-nine, as is practicable, and the original terms of all directors shall commence on that date. The terms of the directors appointed by the governor shall be for
overlapping terms of six years, except, of the original
appointments, four shall be appointed to terms of two
years, four shall be appointed to terms of four years, and
four shall be appointed to terms of six years. Each
subsequent appointment which is not for the purpose of
filling a vacancy in an unexpired term shall be
appointed to a term of six years.

The governor shall appoint a director to fill any
vacancy among the twelve directors appointed by the
governor, by and with the advice and consent of the
Senate, which director appointed to fill such vacancy
shall serve for the unexpired term of the vacating
director. The governor shall fill the vacancy within sixty
days of the occurrence of the vacancy.

All directors appointed by the governor shall be
eligible for reappointment: Provided, That a person who
has served as a director or trustee during all or any part
of two consecutive terms shall be ineligible to serve as
a director for a period of three years immediately
following the second of the two consecutive terms.

The chairman of the advisory council of students, ex
officio; the chairman of the advisory council of faculty,
ex officio; and the chairman of the advisory council of
classified employees, ex officio, shall serve the terms for
which they were elected by their respective advisory
councils. These members shall be eligible to succeed
themselves.

(c) Before exercising any authority or performing any
duties as a director, each director shall qualify as such
by taking and subscribing to the oath of office pres-
cribed by section five, article four of the constitution of
West Virginia, and the certificate thereof shall be filed
with the secretary of state.

(d) No director appointed by the governor shall be
removed from office by the governor except for official
misconduct, incompetence, neglect of duty or gross
immorality, and then only in the manner prescribed by
law for the removal by the governor of the state elective
officers.
§18B-3-2. Meetings and compensation.

(a) The board of directors shall hold at least ten meetings in every fiscal year, including an annual meeting each June. Provided, That an annual meeting for the purpose of selecting the first chairman shall be held during July, one thousand nine hundred eighty-nine. Except for the annual meeting, which may be held at a location anywhere in the state, the said meetings shall be held on different campuses of institutions in the state college system on a rotating basis or at the central office. The directors may set aside time at these meetings held at the campuses to afford administrators, faculty, students and classified staff at these institutions an opportunity to discuss issues affecting these groups.

(b) The directors shall hold at least one meeting each year with the advisory council of faculty, the advisory council of students and the advisory council of classified employees, each of these bodies to be met separately. Except as otherwise provided in this section, meetings shall be held on such dates and at such places as the directors may prescribe. In addition to the statutorily required meetings, the directors may meet at such other times as may be necessary, such meetings to be held upon its own resolution or at the written request of at least five appointed directors.

Of the fifteen voting members of the board of directors, eight shall constitute a quorum, and a majority vote of the quorum shall be necessary to pass upon matters before the directors.

(b) The directors shall be reimbursed for actual and necessary expenses incident to the performance of such duties, upon presentation of an itemized sworn statement thereof. The foregoing reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the directors.

§18B-3-3. Additional duties of board of directors.

(a) The board of directors shall determine programs to be offered by state institutions of higher education under its jurisdiction.
(b) The directors shall govern community colleges and shall organize eight community college service areas in accordance with section four of this article.

(c) The board of directors of the state college system shall govern the state college system. The directors shall develop by the first day of January, one thousand nine hundred ninety, a proposed classification plan and salary plan for full-time faculty based upon the level of program being taught by said full-time faculty member, whether baccalaureate programs or associate level programs. The classification plan and salary plan shall be submitted to the secretary of education and the arts for approval.

§18B-3-4. Community colleges.

(a) Effective the first day of July, one thousand nine hundred eighty-nine, the following institutions are hereby established or continued as freestanding community colleges: Southern West Virginia Community College and West Virginia Northern Community College. On or before the first day of July, one thousand nine hundred ninety, the board of directors may designate other facilities, centers, locations and schools as freestanding community colleges. Such freestanding community colleges shall not be operated as branches or off-campus locations of any other state institution of higher education.

(b) The directors, in accordance with article two-b, chapter eighteen of this code, shall cooperate with the state board of vocational education, the state council of vocational-technical education, and the joint commission for post-secondary occupational education to develop a network of post-secondary vocational, job training and other educational centers, utilizing existing community colleges and programs, other existing facilities, and existing training needs within the service area. The community colleges shall be organized into eight community college service areas which shall have the same boundaries as the regional educational service agencies established by the state board of education.
pursuant to section twenty-six, article two, chapter
eighteen of this code: Provided, That any community
college and the branches thereof existing on the effective
date of this section may be located in more than one
community college service area created pursuant to this
section and shall not be affected by such service area
boundary.

(c) A separate division of community colleges shall be
established under the board of directors and supervised
by the vice chancellor for community colleges. The
community colleges shall be responsible directly to and
subject to the governance of the vice chancellor for
community colleges, who shall regularly convene the
presidents or other administrative heads of the community
colleges as a community college council.

The vice chancellor for community colleges shall
consider (1) existing branch colleges, community college
components, off-campus locations, and, through agree-
ments with the state board of vocational education,
vocational technical centers included within the bound-
daries of the eight community college service areas and
(2) the needs of each such region in determining the
enrollment, programs and functions of all community
colleges, and the names and locations of newly design-
nated community colleges: Provided, That programs at
community colleges shall be two years or less in
duration.

(d) The board of directors may fix tuition and
establish and set such other fees to be charged students
as it deems appropriate, and shall pay such tuition and
fees collected into a revolving fund for the partial or full
support, including the making of capital improvements,
of any community college established, continued or
designated hereunder. Funds collected at any such
community college may be used only for the benefit of
that community college. The board of directors may also
establish special fees for such purposes as, including,
but not limited to, health services, student activities,
student recreation, athletics or any other extracurricu-
lar purposes. Such special fees shall be paid into special
funds and used only for the purposes for which collected.
Moneys collected at a branch college or off-campus location of a state institution of higher education which is subsequently designated as a community college shall be transferred to and vested in the successor community college.

(e) The board of directors may allocate funds from the appropriations for the state college system for the operation and capital improvement of any community college continued, established or designated under authority of this section and may accept federal grants and funds from county boards of education, other local governmental bodies, corporations or persons. The directors may enter into memoranda of agreements with such governmental bodies, corporations or persons for the use or acceptance of local facilities and/or the acceptance of grants or contributions toward the cost of the acquisition or construction of such facilities. Such local governmental bodies may convey capital improvements, or lease the same without monetary consideration, to the board of directors for the use by the community college, and the board of directors may accept such facilities, or the use or lease thereof, and grants or contributions for such purposes from such governmental bodies, the federal government or any corporation or person.

§18B-3-5. Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules and regulations; penalty and enforcement.

It shall be unlawful for any person representing a correspondence, business, occupational or trade school inside or outside this state to solicit, sell or offer to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first obtains a permit from the West Virginia board of directors in the manner and on the terms herein prescribed.

The application for a permit shall be made on forms to be furnished by the board, and a ten dollar fee shall
be required. The application shall be accompanied by a
surety bond in the penal sum of thirty-five thousand
dollars for any school which has its physical facilities
located in this state and which has operated in this state
for at least ten years. For any other school a surety bond
in the penal sum of not less than thirty-five thousand
dollars, but not more than one hundred thousand
dollars, shall be required, such amount to be determined
in accordance with the rules of the board of directors.
Schools with more than one campus within the state
shall be required to provide a bond for each of its
campuses in an amount equal to the bond required for
its oldest established campus in this state. The bond may
be continuous and shall be conditioned to provide
indemnification to any student suffering loss as a result
of any fraud or misrepresentation used in procuring the
student's enrollment or failure of the school to meet
contractual obligations. The bond shall be given by the
school itself as a blanket bond covering all of its
representatives. The surety on any such bond may
cancel the same upon giving thirty days' notice in
writing to the principal on said bond and to the state
board of directors and thereafter shall be relieved of
liability for any breach of condition occurring after the
effective date of said cancellation. The ten dollar fee will
entitle a school to register up to two individual solicitors.
Additional solicitors may be registered by paying a five
dollar fee for each registration submitted.

A permit shall be valid for one year corresponding to
the effective date of the bond and, upon application,
accompanied by the required fee and the surety bond
as herein required, may be renewed. All fees collected
for the issuance or renewal of such permit shall be
deposited in the state treasury to the credit of the board
of directors.

The board may refuse a permit to any school if the
board finds that the school engages in practices which
are inconsistent with this section or with rules and
regulations issued pursuant thereto. A permit issued
hereunder, upon fifteen days' notice and after a hearing,
if a hearing is requested by the school, may be sus-
pended or revoked by the board of directors for fraud or misrepresentation in soliciting or enrolling students, for failure of the school to fulfill its contract with one or more students who are residents of West Virginia, or for violation of or failure to comply with any provision of this section or with any regulation of the state board of directors pertinent thereto. Prior to the board taking any adverse action, including refusal, suspension or revocation of a permit, the school shall be given reasonable opportunity to take corrective measures. Any refusal, suspension or revocation of a permit, or any other adverse action against a school, shall comply with all constitutional provisions, including due process, relating to the protection of property rights.

All correspondence, business, occupational or trade schools which have been issued a permit shall make annual reports to the board of directors on forms furnished by the board and shall provide such appropriate information as the board reasonably may require. All correspondence, business, occupational or trade schools which have been issued a permit shall furnish to the board of directors a list of its official representatives. Each school shall be issued a certificate of identification by the board of directors for each of its official representatives.

The issuance of a permit pursuant to this section does not constitute approval or accreditation of any course or school. No school nor any representative of a school shall make any representation stating, asserting or implying that a permit issued pursuant to this section constitutes approval or accreditation by the state of West Virginia, state board of directors or any other department or agency of the state.

The board of directors is hereby authorized to adopt rules and conduct on-site reviews to evaluate academic standards maintained by schools for the awarding of certificates, diplomas and specialized associate degrees, which standards may include curriculum, personnel, facilities, materials and equipment: Provided, That in the case of accredited correspondence, business, occupational and trade schools under permit on the effective
date of this section, having their physical facilities
located in this state, and which are accredited by the
appropriate nationally recognized accrediting agency or
association approved by the United States department
of education, the accrediting agency's standards,
procedures and criteria shall be accepted as meeting
applicable laws, standards, rules and regulations of the
board of directors: *Provided, however,* That the board of
directors may authorize an investigation of written
student complaints alleging a violation of this section,
or board's rules or accreditation standards and may take
appropriate action based on the findings of such an
investigation.

The board of directors is hereby authorized to adopt
rules for the awarding of any specialized associate
degree by accredited proprietary institutions: *Provided,
That nothing contained herein shall infringe upon the
rights of accredited West Virginia proprietary schools
operating in West Virginia to confer specialized
associate degrees, diplomas or certificates based on
credit or clock hours in accordance with standards of the
appropriate nationally recognized accrediting agency or
association that is approved by the United States
department of education. For the purposes of this
section, proprietary schools that award specialized
associate degrees shall be defined as institutions of
higher education, and specialized associate degrees shall
mean degrees awarded by such institutions pursuant to
a program of not less than two academic years: *Provided, however,* That nothing herein shall be
construed to qualify the said proprietary schools for
additional state moneys not otherwise qualified for
under other provisions of the code.

In regard to private, proprietary educational institu-
tions operating under this section of the code, accredited
by a national or regional accrediting agency or associ-
ation recognized by the United States Department of
Education and which provide training at a campus
located in this state:

(a) Any rule or standard which is authorized by this
or any section of the code or other law, and which is now
in effect or promulgated hereafter by the board of
directors (or other agency with jurisdiction) shall be
clearly, specifically, and expressly authorized by
narrowly construed enabling law and shall be unen-
forceable and without legal effect unless authorized by
an act of the Legislature under the provisions of article
three-a, chapter twenty-nine-a of the code;

(b) Notwithstanding any other provision of this
section or other law to the contrary, the institution's
accrediting agency standards, procedures, and criteria
shall be accepted as the standards and rules of the board
of directors (or other agency with jurisdiction), and as
meeting other law or legal requirements relating to the
operation of proprietary institutions which such board
or other agency has the legal authority to enforce under
any section of the code or other law: Provided, That
nothing in this section shall be construed to deny
students the use of remedies that would otherwise be
available under state or federal consumer laws or
federal law relating to federal college financial assist-
ance programs.

(c) Accredited institutions operating hereunder are
hereby recognized as post-secondary. Academic pro-
gress shall be measured and reported in credit hours
and all reports/documents filed on a credit hour basis.

A representative of any school violating any provision
of this section shall be guilty of a misdemeanor, and,
upon conviction thereof, shall be fined not more than two
hundred dollars per day of violation, not to exceed a
maximum of two thousand dollars per violation, or
imprisoned in the county jail not more than sixty days,
or both fined and imprisoned. No correspondence,
business, occupational or trade school shall maintain an
action in any court of this state to recover for services
rendered pursuant to a contract solicited by the school
if the school did not hold a valid permit at the time the
contract was signed by any of the parties thereto. The
attorney general or any county prosecuting attorney, at
the request of the board of directors or upon his or her
own motion, may bring any appropriate action or
proceeding in any court of competent jurisdiction for the
enforcement of the provisions of this section relating to permits, bonds and sureties.

ARTICLE 3A. WEST VIRGINIA JOINT COMMISSION FOR VOCATIONAL-TECHNICAL-OCCUPATIONAL EDUCATION.

§18B-3A-1a. Department of education and the arts.
§18B-3A-1b. Definitions.
§18B-3A-2. Composition of commission; terms of members; qualifications of members.
§18B-3A-3. Meeting; compensation of members.
§18B-3A-4. Duties and responsibilities.

1 The West Virginia Joint Commission for Vocational-Technical-Occupational Education, hereinafter referred to in this article as the joint commission, is hereby created, consisting of thirteen members appointed by the governor, with the advice and consent of the Senate, who shall be individuals broadly representative of citizens and organizations within the state having an interest in vocational education.

§18B-3A-1a. Department of education and the arts.
1 The joint commission herein established shall be subject to the jurisdiction of the department of education and the arts pursuant to the provisions of article one, chapter five-f of this code, and the commission shall be subject to the supervision of the secretary of the department of education and the arts.

§18B-3A-1b. Definitions.
1 As used in this article:
   (a) “Secondary vocational education” shall mean any high school level course or program which results or may result in a high school diploma or its equivalent, under the jurisdiction of the state board of education.
   (b) “Post-secondary vocational education” shall mean any college-level course or program beyond the high school level provided through an institution of higher education which results in or may result in the awarding of a two-year associate degree, under the jurisdiction of the board of directors.
(c) "Adult basic education" shall mean adult basic skills education designed to satisfy the basic literacy needs of adults; to improve and/or upgrade information processing skills, communication skills, and computational skills leading to a high school equivalency diploma, under the jurisdiction of the state board of education.

(d) "Adult occupational education" shall mean adult skill training beyond the high school level not leading to a certificate or college credit, under the jurisdiction of the joint commission for vocational-technical-occupational education.

(e) "Adult technical preparatory education" shall mean adult skill training beyond the high school level, but less than the associate degree, leading to a certificate and/or articulated with post-secondary vocational education, under the jurisdiction of the joint commission for vocational-technical-occupational education.

§18B-3A-2. Composition of commission; terms of members; qualifications of members.

The members appointed by the governor shall include all of the following:

(a) Seven individuals who shall be representatives from business, industry, and agriculture, including one member representing small business concerns, one member of whom shall represent the governor's office of community and industrial development, one member of whom shall represent proprietary schools and one member of whom shall represent labor organizations. In selecting private sector individuals under this subdivision, the governor shall give due consideration to the appointment of individuals who serve on a private industry council or other appropriate state agencies.

(b) Six individuals, three of whom shall be representatives of secondary vocational education appointed by the state superintendent of schools and three of whom shall be representatives of post-secondary vocational education appointed by the chancellor of the board of directors.
In addition to the members appointed by the governor the state superintendent of schools and the vice chancellor of the board of directors shall serve as ex officio members.

Members of the commission shall serve for overlapping terms of four years, except that the original appointments to the commission shall be for staggered terms allocated in the following manner: One member appointed by the chancellor, one member appointed by the state superintendent of schools and two members appointed by the governor for terms of two years; one member appointed by the chancellor, one member appointed by the state superintendent of schools and two members appointed by the governor for terms of three years; and one member appointed by the state superintendent of schools, one member appointed by the chancellor and three members appointed by the governor for terms of four years.

§18B-3A-3. Meeting; compensation of members.

The joint commission shall meet quarterly and may meet at the request of the president, a majority of the board or at the call of the secretary of education and the arts. One such meeting of the joint commission shall be a public forum for the discussion of the goals and standards for vocational education in the state. The members shall elect a president who shall serve a term of one year.

Members of the council shall serve without compensation. Members of the council appointed by the governor shall receive their actual necessary expenses incurred in the performance of their duties.

§18B-3A-4. Duties and responsibilities.

The joint commission shall have the duties and responsibilities set forth in the provisions of section two, article two-b, chapter eighteen of this code, and in addition shall:

(a) Meet with the state board of education and the
board of directors, or their representatives, to advise them on state plans for vocational education; and

(b) Advise the state board of education and the board of directors, and report to the Legislature by the first day of December, one thousand nine hundred eighty-nine, and annually thereafter regarding all of the following:

(1) Policies the state should pursue to strengthen vocational education with special emphasis on programs for the handicapped.

(2) Programs and methods through which the private sector could undertake to assist in the modernization of vocational education programs.

(c) Effective July one, one thousand nine hundred ninety, supervise the governance of all secondary and post-secondary vocational education programs in the state, including the programs assisted under the federal Vocational Education Act and the Job Training Partnership Act, and shall implement policies to both coordinate programs of the state board of education and the board of directors and to eliminate duplicative programs of same.

(d) Coordinate the delivery of vocational-technical-occupational education in a manner designed to provide the greatest yet most reasonable level of accessibility to students in consideration of the most efficient use of available public funds.

(e) Encourage through articulation the most efficient utilization of available resources, both public and private, to meet the needs of vocational-technical-occupational education students.

(f) Analyze and report to the governor and the Legislature on the distribution of spending for vocational education in the state and on the availability of vocational education activities and services within the state.

(g) Consult with the state board of education and the board of directors on evaluation criteria for vocational education programs in the state.
(h) Recommend to the state board of education and the board of directors on the delivery of vocational education programs in the state which emphasize the involvement of business and labor organizations.

(i) Assess and report to the governor and Legislature on the distribution of federal vocational education funding provided under Public Law 98-524, with an emphasis on the distribution of financial assistance among secondary and post-secondary vocational education programs.

(j) Recommend procedures to the state board of education and the board of directors to ensure and enhance public participation in the provision of vocational education at the local level, with an emphasis on programs which involve the participation of local employers and labor organizations.

(k) Report to the state board of education, the board of directors, and the Legislature on the extent to which equal access to quality vocational education programs is provided to handicapped and disadvantaged individuals, adults who are in need of training and retraining, individuals who are single parents or homemakers, individuals participating in programs designed to eliminate sexual bias and stereotyping in vocational education, and criminal offenders serving in correctional institutions.

(l) Evaluate at least once every two years:

(1) The adequacy and effectiveness of the vocational educational systems assisted under the federal Vocational Education Act and the Job Training Partnership Act in achieving the objectives defined in those acts.

(2) Develop uniform guidelines for the transferability of credits among institutions in the state and transferability of credits between and among the systems of higher education and the state board of education.

(m) Designate lead institutions and do a region by region study of existing programs, define peculiar needs
of each region and devise a statewide plan for secondary
and post-secondary vocational education.

(n) The secretary of the department of education and
the arts shall be responsible for staffing the joint
commission, utilizing existing personnel, equipment and
offices of the state board of education and the board of
directors.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Officers of governing boards; employment of chancellors and
senior administrator; offices.

§18B-4-2. Senior administrator's powers and duties generally.

§18B-4-3. Authority to participate in reciprocal regional and interstate
higher educational agreements.

§18B-4-4. State agency for participation in federal and private grants to
higher education; related powers and duties.

§18B-4-5. Security officers; appointment; qualifications; authority; compensa-
tion and removal.

§18B-4-6. Acquisition, operation and regulation of parking areas and
facilities at state institutions of higher education; regulation of
parking, speed and flow of traffic on campus roads and
driveways; civil and criminal penalties; disposition of revenue.

§18B-4-7. Accreditation of institutions of higher education; standards for
degrees.

§18B-4-1. Officers of governing boards; employment of
chancellors and senior administrator; offices.

(a) At its annual meeting in June of each year, each
governing board shall elect from its members appointed
by the governor a president and such other officers as
it may deem necessary or desirable: Provided, That the
initial annual meeting shall be held during July, one
thousand nine hundred eighty-nine. The president and
such other officers shall be elected for a one-year term
commencing on the first day of July following the
annual meeting and ending on the thirtieth day of June
of the following year. The president of the board shall
serve no more than two consecutive terms.

(b) Each governing board shall employ a chancellor
who shall serve at the will and pleasure of the employing
board and shall assist the governing board in the
performance of its duties and responsibilities. No
chancellor may hold or retain any other administrative
17 position within the system of higher education while
18 employed as chancellor. Each chancellor is responsible
19 for carrying out the directives of the governing board
20 by which employed and shall work with such board in
21 developing policy options. For the purpose of developing
22 or evaluating policy options, the chancellors may request
23 the assistance of the presidents of the institutions under
24 their jurisdiction and their staffs. The respective
25 chancellors shall jointly agree to, and shall hire, one
26 senior administrator who shall serve at their will and
27 pleasure in accordance with section two of this article.
28
29 (c) The director of health shall serve as the vice
30 chancellor for health affairs, who shall coordinate the
31 West Virginia University School of Medicine, the
32 Marshall University School of Medicine, and the West
33 Virginia School of Osteopathic Medicine. The vice
34 chancellor for health affairs shall conduct a special
35 study of the West Virginia University School of
36 Medicine, the Marshall University School of Medicine
37 and the West Virginia School of Osteopathic Medicine
38 to determine the role and mission of said institutions in
39 the reorganized system of higher education in the state.
40 The special study shall include, but is not limited to,
41 coordinating medical education, training and delivery of
42 health services in the state; preparing nurse midwives,
43 nurse practitioners, medical technologists and other
44 members of the allied health professions; and providing
45 for rural health care. The vice chancellor shall submit
46 a report on said study to the governor and to the
47 Legislature by the first day of December, one thousand
48 nine hundred eighty-nine.
49
50 (d) The board of directors of the state college system
51 shall employ a vice chancellor for community colleges
52 to coordinate the community colleges.
53
54 (e) Suitable offices for the senior administrator and
55 other staff shall be provided in Charleston.
56
§18B-4-2. Senior administrator's powers and duties
generally.
1 (a) The senior administrator has a ministerial duty, in
2 consultation with and under direction of the chancellors,
to perform such functions, tasks and duties as may be
necessary to carry out the policy directives of the
governing boards and such other duties as may be
prescribed by law.

(b) The senior administrator may employ and dis­
charge, and shall supervise, such professional, adminis­
tative, clerical and other employees as may be neces­
sary to these duties and shall delineate staff responsi­
bilities as deemed desirable and appropriate. The senior
administrator shall fix the compensation and emolu­
ments of such employees: Provided, That effective the
first day of July, one thousand nine hundred ninety,
those employees whose job duties meet criteria listed in
the system of job classifications as stated in article nine
of this chapter shall be accorded the job title, compen­
sation and rights established in said article as well as
all other rights and privileges accorded classified
employees by the provisions of this code.

(c) The senior administrator shall follow state and
national educational trends and gather data on higher
educational needs.

(d) The senior administrator, in accordance with
established guidelines and in consultation with and
under the direction of the chancellors, shall administer,
oversee or monitor all state and federal student assist­
ance and support programs administered on the state
level, including those provided for in chapter eighteen­
c of this code.

(e) The senior administrator has a fiduciary respon­
sibility to administer the tuition and registration fee
capital improvement revenue bond accounts of the
governing boards.

(f) The senior administrator shall administer the
purchasing system or systems of the governing boards.

(g) The senior administrator shall be responsible for
the management of the West Virginia network for
educational telecomputing (WVNET). The senior ad­
ministrator shall establish a computer policy board,
which shall be representative of both the university
system and the college system. It shall be the respon-
sibility of the computer policy board to recommend to
the secretary of the department of education and the
arts policies for a statewide shared computer system.

(h) Any program or service currently administered by
the board of regents and not specifically assigned to the
board of trustees or the board of directors may be
administered by the senior administrator. Such pro-
gram or service may include, but shall not be limited
to, telecommunications activities and other programs
and services provided for under grants and contracts
from federal and other external funding sources.

§18B-4-3. Authority to participate in reciprocal regional
and interstate higher educational agreements.

In order to provide higher educational opportunities
at minimum cost to students and the state, the govern-
ning boards, on behalf of the state of West Virginia, are
authorized and empowered to participate in the South-
ern Regional Education Board interstate agreement,
namely the Academic Common Market, and in such
other regional and interstate agreements determined to
be mutually beneficial to the citizens of the participat-
ing states and which provide an opportunity for
qualified nonresident students to enroll in selected
programs and curricula on a resident tuition and fee
charge basis. Each governing board is specifically
authorized to waive the collection of nonresident tuition
and fee charges for students from other states enrolled
in programs and curricula under the jurisdiction of and
approved by the governing board as a part of a regional
or interstate agreement.

§18B-4-4. State agency for participation in federal and
private grants to higher education; related
powers and duties.

The governing boards, on behalf of the state of West
Virginia, are authorized and empowered to apply for,
to accept and administer and expend for the purpose or
purposes designated, any funds which now are, or may
be made, available to the governing boards or to any
institution under their jurisdiction from federal or private grants, appropriations, allocations and programs.

The governing boards have the power:

(1) To receive and disburse funds appropriated by the federal government for the construction, equipment, and improvement of academic facilities of institutions of higher education as required by the federal Higher Education Facilities Act of 1963, and any and all subsequent acts of Congress relating to the same subject;

(2) To apply for, receive, and administer, subject to any applicable regulations or laws of the federal government or any agency thereof, any federal grants, appropriations, allocations, and programs for the development of academic facilities on behalf of the state of West Virginia, or any institution of higher education, public or private, within the state;

(3) To develop, alter, amend, and submit to the federal government state plans for participation in federal grants, appropriations, allocations, and programs for the development of academic facilities and to formulate rules, criteria, methods, forms, procedures, and to do all other things which may be necessary to make possible the participation of the state in such federal grants, appropriations, allocations, and programs for the development of academic facilities;

(4) To hold hearings, and render decisions as to the priority assigned to any project, or as to any other matter or determination affecting any applicant for federal grants, appropriations, allocations and programs for the development of academic facilities;

(5) To hire personnel, purchase materials, make studies and reports, enter into contracts, and do all other things necessary to accomplish the duties as set forth in this section within the limits of the funds available.

§18B-4-5. Security officers; appointment; qualifications; authority; compensation and removal.

The governing boards are hereby authorized to
appoint bona fide residents of this state to act as security
officers upon any premises owned or leased by the state
of West Virginia and under the jurisdiction of the
governing boards, subject to the conditions and restric-
tions hereinafter imposed. Before performing duties as
a security officer in any county, each person so ap-
pointed shall qualify therefor in the same manner as is
required of county officers by the taking and filing an
oath of office as required by article one, chapter six of
this code and by posting an official bond as required by
article two, chapter six of this code. No security officer
shall have authority to carry a gun or any other
dangerous weapon until a license therefor has been
obtained in the manner prescribed by section two,
article seven, chapter sixty-one of this code.

It shall be the duty of any person so appointed and
qualified to preserve law and order on any premises
under the jurisdiction of the governing boards and on
any other street, road or thoroughfare, except controlled
access and open country highways, adjacent to or
passing through such premises, to which the person may
be assigned by the president or other administrative
head of the state institution of higher education. For this
purpose the security officer shall, as to offenses
committed within any area so assigned, have and may
exercise all the powers and authority and shall be
subject to all the responsibilities of a law-enforcement
officer as defined in section one, article twenty-nine,
chapter thirty of this code and shall be eligible for law-
enforcement training at an approved academy under
said article, notwithstanding provisions to the contrary
therein. The assignment of security officers to the duties
authorized by this section shall not be deemed to
supersede in any way the authority or duty of other
peace officers to preserve law and order on such
premises. In addition, the security officers appointed
under provisions of this section shall have authority to
assist local peace officers on public highways in the
control of traffic in and around premises owned by the
state of West Virginia whenever such traffic is gener-
ated as a result of athletic or other activities conducted
or sponsored by a state institution of higher education
and when such assistance has been requested by the local peace officers.

The salary of all such security officers shall be paid by the appropriate governing board. Each state institution may furnish each such security officer with an official uniform to be worn while on duty and shall furnish and require each such officer while on duty to wear a shield with an appropriate inscription and to carry credentials certifying to the person's identity and authority as a security officer.

The governing boards may at their pleasure revoke the authority of any security officer. The president or other administrative head of the state institution of higher education shall report the termination of employment of a security officer by filing a notice to that effect in the office of the clerk of each county in which the security officer's oath of office was filed, and in the case of a security officer licensed to carry a gun or other dangerous weapon, by notifying the clerk of the circuit court of the county in which the license therefor was granted.

§18B-4-6. Acquisition, operation and regulation of parking areas and facilities at state institutions of higher education; regulation of parking, speed and flow of traffic on campus roads and driveways; civil and criminal penalties; disposition of revenue.

(a) The governing boards are hereby authorized to construct, maintain and operate automobile parking facilities or areas upon any premises owned or leased at any state institution of higher education under their jurisdiction for use by students, faculty, staff and visitors. The governing boards may charge fees for use of the parking facilities or areas under their control. All moneys collected for the use of the parking facilities or areas shall be paid to the credit of the state institution of higher education at which the fees were charged into a special fund which is hereby created in the state treasury. The moneys in the fund shall be used first to pay the cost of maintaining and operating the parking
facilities or areas, but any excess not needed for this purpose may be used for the acquisition of property by lease or purchase and the construction thereon of additional parking facilities or areas. Any money in the fund not needed immediately for the acquisition, construction, maintenance or operation of the parking facilities or areas may be temporarily invested by the governing boards with the state board of investments to the credit of the state institution of higher education at which the fees were charged.

(b) Notwithstanding any other motor vehicle or traffic law or regulation to the contrary, the governing boards are hereby authorized to regulate and control at any state institution of higher education under their jurisdiction the speed, flow and parking of vehicles on campus roads, driveways and parking facilities or areas. Rules for this purpose shall be promulgated by the governing boards in the manner prescribed in chapter twenty-nine-a of this code and when so promulgated shall have the force and effect of law. In each parking facility or area a summary of the rules governing the use of the facility or area including, but not limited to, the availability of temporary parking permits and where same may be obtained, and of the penalties which may be imposed for violations of the rules shall be conspicuously posted. Along each campus road and driveway, notice signs pertaining to the speed of vehicles, spaces available for parking, directional flow of traffic and penalties which may be imposed for violations of the rules shall be conspicuously posted.

(c) Any person parking any vehicle or operating any vehicle in violation of the rules shall be issued a citation describing the offense charged and ordering an appearance within ten days, excluding Saturdays, Sundays and holidays observed by the college or university, before a designated official of the state institution of higher education and, if the person cited fails to appear within said ten days, ordering an appearance before a magistrate located in the county in which the state institution of higher education is located or before the judge of the municipal court, if the state institution of higher
education is located within a municipality having such
an official.

The designated official of the state institution of
higher education shall have exclusive jurisdiction of the
offense during the ten-day period. Any person so cited
may plead no contest to the offense and, by so pleading,
shall be subject to a civil penalty to be determined
uniformly by the designated official and commensurate
with the severity of the offense in an amount not more
than ten dollars for each offense as partial reimburse-
ment to the state institution of higher education for the
cost of regulating traffic and parking. Moneys derived
from civil penalties imposed herein shall be deposited
in the special fund in the state treasury created by this
section and credited to the state institution of higher
education at which the penalty was paid.

Upon the expiration of the ten days, or upon a
pleading of not guilty before the designated official of
the state institution of higher education within the ten
days, the magistrate or judge of the municipal court
shall have jurisdiction of the offense, and any person
cited under the provisions of this section, upon a finding
of guilty by the magistrate or municipal judge, shall be
subject to a fine of not less than ten dollars nor more
than twenty dollars for each offense, the amount to be
commensurate with the severity of the offense.

Each designated official of the state institution of
higher education presiding over a case under the
provisions of this section shall keep or cause to be kept
a record of every citation which alleges a violation of
such provisions, or the rules promulgated in accordance
therewith, and shall keep a record of every official
action in reference thereto including, but not limited to,
a record of every plea of no contest, conviction or
acquittal of the offense charged and the amount of the
fine or of the civil penalty resulting from each citation.

(d) Whenever a vehicle is parked on any state insti-
tution of higher education campus road, driveway or
parking facility or area in a manner which violates
posted rules and substantially impedes the flow of
tion may, in addition to the issuing of a citation and subsequent procedures set forth herein, remove the vehicle, by towing or otherwise, to an area owned by the institution or areas designated for this purpose. The vehicle, having been towed to the designated area or areas, may be rendered immovable by use of locking wheel blocks or other device not damaging to the vehicle. The state institution of higher education shall maintain any vehicle so towed in the same condition as it was immediately prior to being towed, but shall not be liable for any damage to a vehicle towed to, or kept in, a designated area pursuant to the provisions of this section. The state institution of higher education shall pay for the cost of removing the vehicle and shall have a right to reimbursement from the owner for this cost and for the reasonable cost of keeping the vehicle in the designated area. Until payment of these costs, the state institution of higher education may retain possession of the vehicle, and the institution shall have a lien on the vehicle for the amount due. The state institution of higher education may enforce this lien in the manner provided in section fourteen, article eleven, chapter thirty-eight of this code for the enforcement of other liens.

§18B-4-7. Accreditation of institutions of higher education; standards for degrees.

The appropriate governing board shall make rules for the accreditation of institutions of higher education in this state under its jurisdiction and shall determine the minimum standards for the conferring of degrees. No institution of higher education may confer any degree on any basis of work or merit below the minimum standards prescribed by the appropriate governing board. Nothing contained herein shall infringe upon the rights, including rights to award degrees, granted to any institution by charter given according to law, or by actions of the governing boards or their predecessors, prior to the adoption of this section.

No charter or other instrument containing the right to confer degrees of higher educational status shall be granted by the state of West Virginia to any institution,
16 association or organization within the state, nor shall
17 any such degree be awarded, until the condition of
18 conferring such degree has first been approved in
19 writing by the appropriate governing board.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND
EXPENDITURES.

§18B-5-1. Budget appropriations.
§18B-5-3. Authority to contract for programs, services and facilities.
§18B-5-4. Purchase or acquisition of materials, supplies, equipment and
printing.
§18B-5-5. Prequalification disclosure by vendors; register of vendors;
exceptions; suspension of vendors.
§18B-5-6. Other code provisions relating to purchasing not controlling;
exceptions; criminal provisions and penalties; financial
interest of governing boards, etc.; receiving anything of value
from interested party and penalties therefor; application of
bribery statute.
§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies
and other unneeded materials; inventories.

§18B-5-1. Budget appropriations.
1 The budget appropriations for the state system of
2 higher education under this chapter and other provi-
3 sions of law shall consist of three major areas of
4 appropriation consisting of (1) an appropriation for the
5 higher education governing boards which shall be for
6 the operation of the governing boards, the central office,
7 the senior administrator and the staff of the senior
8 administrator, (2) separate control accounts or institu-
9 tional control accounts, or some combination of such
10 accounts, for appropriations to the board of trustees to
11 be allocated to the institutions under the state university
12 system and to the board of directors to be allocated to
13 the state college system, and (3) such special tuition and
14 registration fee special capital improvement funds and
15 revenue bond funds as may be necessary for the
16 disposition of tuition and registration fee collections to
17 protect the interests of all holders of obligations for
18 which such fees were pledged by the board of regents
19 and shall remain pledged under the governing boards.

20 The appropriations for the state university system and
21 the state college system until the first day of July, one
thousand nine hundred ninety-one, shall be in the same
percentages of the total of the appropriations to such
accounts as the percentages of the combined institutions
under such systems received in allocations in the fiscal
year one thousand nine hundred eighty-eight—eighty-
nine.


From appropriations for the higher education govern-
ing boards, the governing boards shall jointly allocate
funds for the operation of the central office under the
senior administrator and shall share equally the cost of
suitable offices for the senior administrator and other
staff in Charleston.

Any tuition and registration fee collections paid into
tuition and registration fee special capital improvement
funds and special revenue bond funds which accrue in
excess of the amounts necessary to protect the interests
of all holders of obligations for which such fees were
pledged by the board of regents and shall remain
pledged under the governing boards, shall be allocated
to each governing board in proportion to the amounts
of such fees collected through the institutions under its
jurisdiction and shall be deposited in special capital
improvement funds in the state treasury under the name
of the governing board for expenditure for capital
improvements at the institutions under the appropriate
board's jurisdiction.

§18B-5-3. Authority to contract for programs, services
and facilities.

The governing boards are authorized and empowered
to enter into contracts and expend funds for programs,
services and facilities provided by public and private
educational institutions, associations, boards, agencies,
consortia, corporations, partnerships, individuals and
local, state and federal governmental bodies within and
outside of West Virginia in order that maximum higher
educational opportunities of high quality may be
provided to the citizens of the state in the most
economical manner: Provided, That in no event shall a
contract for such services and facilities be entered into
unless the governing boards have determined that such
services and facilities are necessary and that such
services and facilities would be at a savings to the state.

Notwithstanding the provisions of this section, nothing
herein contained shall supersede the responsibility and
respective duties of the commissioner of finance and
administration, the director of the purchasing division
of such department and the attorney general for the
execution and approval of the contracts entered into
under this article and such contracts shall be in
complete conformity with the provisions of articles three
and five, chapter five-a of this code.

§18B-5-4. Purchase or acquisition of materials, supplies,
equipment and printing.

(a) Each governing board, through the senior admin-
istrator, shall purchase or acquire all materials,
supplies, equipment and printing required for that
board, and the state institutions of higher education
under its jurisdiction. The governing boards shall adopt
rules governing and controlling acquisitions and
purchases in accordance with the provisions of this
section. Such rules shall assure that the governing
board: (1) Shall not preclude any person from partici-
pating and making sales thereof to the board except as
otherwise provided in section five of this article; (2) shall
establish and prescribe specifications, in all proper
cases, for materials, supplies, equipment and printing to
be purchased; (3) shall adopt and prescribe such
purchase order, requisition or other forms as may be
required; (4) shall negotiate for and make purchases and
acquisitions in such quantities, at such times and under
contract, in the open market or through other accepted
methods of governmental purchasing as may be prac-
ticable in accordance with general law; (5) shall
advertise for bids on all purchases exceeding five
thousand dollars, to purchase by means of sealed bids
and competitive bidding or to effect advantageous
purchases through other accepted governmental me-
thods and practices; and (6) shall post in a public place
in the central office of the governing boards, in the
purchasing office of the specific institution involved in
the purchase and in the office of the department of purchases, available to the public during all business hours, notices of all acquisitions and purchases for which competitive bids are being solicited, at least two weeks prior to making such purchases.

The governing boards shall further adopt rules relating to purchasing in the open market pursuant to section thirteen, article three, chapter five-a of this code, and shall further make provision for vendor notification of bid solicitation and emergency purchasing.

Any or all bids may be rejected. However, all purchases based on advertised bid requests shall be awarded to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the governing boards and delivery terms: Provided, That the preference for resident vendors as provided in section forty-four, article three of said chapter five-a shall apply to the competitive bids made pursuant to this section.

The governing boards shall maintain a purchase file, which shall be a public record and open for public inspection. After the award of the order or contract, the governing boards shall indicate upon the successful bid that it was the successful bid, and shall further indicate why bids are rejected and, if the mathematical low vendor is not awarded the order or contract, the reason therefor. No records in the purchase file shall be destroyed without the written consent of the legislative auditor.

(b) The governing boards shall also adopt rules to prescribe qualifications to be met by any person who, on and after the effective date of this section, is to be employed as a buyer pursuant to this section. Such rules shall provide that no person shall be employed as a buyer unless such person, 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. Any
person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of fifty thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, in form prescribed by the attorney general and conditioned upon the faithful performance of all duties in accordance with sections four through seven of this article and the rules of the governing boards. In lieu of separate bonds for such buyers, a blanket surety bond may be obtained. Any such bond or bonds shall be filed with the secretary of state. The cost of any such bond or bonds shall be paid from funds appropriated to the applicable governing board.

(c) All purchases and acquisitions shall be made in consideration and within limits of available appropriations and funds and in accordance with applicable provisions of article two, chapter five-a of this code, relating to expenditure schedules and quarterly allotments of funds and in accordance with section sixteen, article three of said chapter.

The governing boards may make requisitions upon the auditor for a sum to be known as an advance allowance account, in no case to exceed five percent of the total of the appropriations for the board, and the auditor shall draw a warrant upon the treasurer for such accounts; and all such advance allowance accounts shall be accounted for by the applicable governing board once every thirty days or more often if required by the state auditor. Such authority shall not be delegated to any state institution under the control and supervision of the board.

Contracts entered into pursuant to this section shall be signed by the applicable governing board in the name of the state and shall be approved as to form by the attorney general. A contract that requires more than six months for its fulfillment shall be filed with the state auditor. The governing board shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given for the faithful performance of a contract.
If the governing board purchases or contracts for materials, supplies, equipment and printing contrary to the provisions of sections four through seven of this article or the rules pursuant thereto, such purchase or contract shall be void and of no effect.

Either governing board may request the director of purchases to make available, from time to time, the facilities and services of that department to the board in the purchase and acquisition of materials, supplies, equipment and printing, and the director of purchases shall cooperate with that governing board in all such purchases and acquisitions upon such request.

Each governing board shall permit private institutions of higher education to join as purchasers on purchase contracts for materials, supplies and equipment entered into by that governing board. Any private school desiring to join as purchasers on such purchase contracts shall file with that governing board an affidavit signed by the president of the institution of higher education or a designee requesting that it be authorized to join as purchaser on purchase contracts of that governing board and agreeing that it will be bound by such terms and conditions as that governing board may prescribe, and that it will be responsible for payment directly to the vendor under each purchase contract.

§18B-5-5. Prequalification disclosure by vendors; register of vendors; exceptions; suspension of vendors.

(a) Every person, firm or corporation selling or offering to sell to the governing boards, upon competitive bids or otherwise, any materials, equipment, supplies or printing shall comply with all of the provisions of section fourteen-a, article three, chapter five-a of this code and shall file with the director of the purchasing division of the state of West Virginia the affidavit required herein: Provided, That every such person, firm or corporation who is presently in compliance with said section shall not be required to requalify thereunder to be able to transact business with the governing boards.
(b) Any person, firm or corporation failing or refusing to comply with said statute as herein required shall be ineligible to sell or offer to sell commodities or printing to the governing boards as hereinafter set forth: Provided, That any person suspended under the provisions of section thirty-nine of said article three shall not be eligible to sell or offer to sell commodities or printing to the governing boards: Provided, however, That the governing boards shall have the power and authority to suspend, for a period not to exceed one year, the right and privilege of a person to bid on purchases of the governing boards when there is reason to believe that such person has violated any of the provisions in sections four through seven of this article or the rules of the governing boards pursuant thereto. Every person whose right to bid has been so suspended shall be notified thereof by a letter posted by registered mail containing the reason for such suspension and shall have the right to have the appropriate governing board’s action reviewed in accordance with section forty, article three, chapter five-a of this code.

§18B-5-6. Other code provisions relating to purchasing not controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.

The provisions of article three, chapter five-a of this code shall not control or govern the purchase, acquisition or other disposition of any equipment, materials, supplies or printing by the governing boards, except as provided in sections four through seven of this article: Provided, That sections thirty-six, thirty-seven and thirty-eight, article three of said chapter five-a shall apply to all purchasing activities of the governing boards.

Neither the governing boards, nor any employee of the governing boards, shall be financially interested, or have any beneficial personal interest, directly or indirectly, in the purchase of any equipment, materials,
supplies or printing, nor in any firm, partnership, corporation or association furnishing them. Neither the governing boards nor any employee of said boards shall accept or receive directly or indirectly from any person, firm or corporation, known by the governing boards or such 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.

A person who violates any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned in jail not less than three months nor more than one year, or fined not less than fifty nor more than one thousand dollars, or both imprisoned and fined, in the discretion of the court: Provided, That any person who violates any of such provisions by receiving money or other thing of value 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 section nine of said article five-a.

§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials; inventories.

The governing boards shall dispose of obsolete and unusable equipment, surplus supplies and other unneeded materials, either by transfer to other governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise. The governing boards shall adopt rules governing and controlling the disposition of all such equipment, supplies and materials. At least ten days prior to the disposition, the governing boards shall advertise, by newspaper publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in the county in which the equipment, supplies and materials are located the availability or sales of such disposable equipment, supplies and materials and may sell same, in whole or in part, at public auction, or may
transfer, exchange or trade same to other governmental
agencies or institutions (if by exchange or trade, then
without advertising), in whole or in part, as sound
business practices may warrant under existing circum-
stances and conditions. The governing boards shall
inventory all such disposable equipment, supplies and
materials from time to time as quantity and stocks may
warrant, and shall make a complete annual inventory
thereof as of the thirty-first day of March of each year.
The governing boards may report such inventories to the
director of purchases whose services and facilities shall
be available to the governing boards in making advan-
tageous disposition of any part or all of such disposable
equipment, supplies and materials. Such inventories
shall briefly describe the disposable items, the date of
purchase thereof, the vendor to the applicable governing
board, the purchase price paid therefor and the
governing board's order number authorizing disposition
thereof and shall indicate briefly the reason said items
are no longer needed or can no longer be used by the
governing board. All such inventories shall be kept as
public records open to public inspection at one or more
of the institutions under the jurisdiction of the govern-
ing boards for a period of five years and may thereafter
be destroyed: Provided, That under no circumstances
shall any of the property described in this section be
sold, transferred or conveyed to any private person, firm
or corporation other than by public auction or as
provided in article eight, chapter five-a of this code.

ARTICLE 6. OTHER BOARDS AND ADVISORY COUNCILS.
§18B-6-1. Institutional boards of advisors.
§18B-6-2. Advisory councils of faculty.
§18B-6-3. Advisory councils of students.
§18B-6-4. Advisory councils of classified employees.
§18B-6-5. Creation of advisory council on federal resources; appointment,
terms and qualifications of members; vacancies; compensation
and expenses; meetings; quorum.
§18B-6-6. Powers and duties relating to anatomical gifts; requisition of
bodies; autopsies; transportation of bodies; expenses of preser-
vation; bond required; offenses and penalties.

§18B-6-1. Institutional boards of advisors.

(a) There shall be established at each state institution
of higher education, hereinafter referred to as the "institution," excluding centers and branches thereof, an institutional board of advisors. The board of advisors shall consist of eleven members, including an administrative officer of the institution appointed by the president of the institution; a full-time member of the faculty with the rank of instructor or above duly elected by the faculty; a member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body; a member of the institutional classified staff duly elected by the classified staff; and, appointed by the appropriate governing board, seven lay citizens of the state who have demonstrated a sincere interest in and concern for the welfare of that institution and who are representative of its population and fields of study, including at least two alumni of the institution. Of the seven lay citizen members, no more than four may be of the same political party.

The administrative officer, faculty member, student member and classified staff member shall serve for a term of one year, and the seven lay citizen members shall serve terms of four years each. All members shall be eligible to succeed themselves for no more than one additional term. A vacancy in an unexpired term of a member shall be filled within sixty days of the occurrence thereof in the same manner as the original appointment or election. Except in the case of a vacancy, all elections shall be held and all appointments shall be made no later than the thirtieth day of April preceding the commencement of the term.

Each board of advisors shall hold a regular meeting at least quarterly, commencing in July of each year. Additional meetings may be held upon the call of the chairman, president of the institution, or upon the written request of at least four members. A majority of the members shall constitute a quorum for conducting the business of the board of advisors.

(b) One of the seven lay citizen members shall be elected as chairman by the board of advisors in July of
each year: Provided, That no member shall serve as chairman for more than two consecutive years at a time.

The president of the institution shall make available resources of the institution for conducting the business of the board of advisors. The members of the board of advisors shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties under this section upon presentation of an itemized sworn statement thereof. All expenses incurred by the board of advisors and the institution under this section shall be paid from funds allocated to the institution for such purpose.

(c) The board of advisors shall review, prior to the submission by the president to its governing board, all proposals of the institution in the areas of mission, academic programs, budget, capital facilities and such other matters as requested by the president of the institution or its governing board or otherwise assigned to it by law. The board of advisors shall comment on each such proposal in writing, with such recommendations for concurrence therein or revision or rejection thereof as it deems proper. Such written comments and recommendations shall accompany the proposal to the governing board, and the governing board shall include such comments and recommendations in its consideration of and action on the proposal. The governing board shall promptly acknowledge receipt of the comments and recommendations and shall notify the board of advisors in writing of any action taken thereon.

(d) Upon request therefor in writing by the president of the institution, the board of advisors may authorize transfers between items of allocation or appropriation in accordance with the provisions of section nineteen-a, article two, chapter five-a of this code.

(e) The board of advisors shall review, prior to their implementation by the president, all proposals regarding institution-wide personnel policies. The board of advisors may comment on such proposals in writing.

(f) Upon the occurrence of a vacancy in the office of president of the institution, the board of advisors shall
serve as a search and screening committee for candidates to fill the vacancy under guidelines established by its governing board. When serving as a search and screening committee, the board of advisors and its governing board are each authorized to appoint up to three additional persons to serve on the committee as long as the search and screening process is in effect. The three additional appointees of the board of advisors shall be faculty members of the institution. Only for the purposes of the search and screening process, such additional members shall possess the same powers and rights as the regular members of the board of advisors, including reimbursement for all reasonable and necessary expenses actually incurred. Following the search and screening process, the committee shall submit the names of at least three candidates to the governing board for consideration and appointment. If the governing board rejects all candidates so submitted, the committee shall submit the names of at least three additional candidates, and this process shall be repeated until the governing board appoints one of the candidates so submitted. The governing board shall provide all necessary staff assistance to the board of advisors in its role as a search and screening committee.

§18B-6-2. Advisory councils of faculty.

Effective the first day of July, one thousand nine hundred eighty-nine, each governing board shall be assisted by an advisory council of faculty.

During the month of April of each year, each president or other administrative head of a state institution of higher education, including Potomac State College of West Virginia University and West Virginia University at Parkersburg, at the direction of the councils and in accordance with procedures established by the councils, shall convene a meeting or otherwise institute a balloting process to elect one faculty to serve on the appropriate governing board's advisory council of faculty, which shall consist of one faculty, so elected, from each such institution under the appropriate governing board. Terms of the members of each council shall be for one year and shall begin on the first day
of May of each year, and members of each advisory
council shall be eligible to succeed themselves.

The advisory councils of faculty shall meet at least
once each quarter. One of the quarterly meetings shall
be during the month of June, at which meeting each
council shall elect a chairman, who shall be by virtue
of the office a voting member of the appropriate
governing board. No member may vote by proxy at such
election. In the event of a tie in the last vote taken for
such election, a member authorized by the council shall
select the chairman by lot from the names of those
persons tied. Immediately following the election of a
chairman, each council shall elect, in the manner
prescribed by this section for the election of a chairman,
a member of that council to preside over meetings of the
council in the chairman's absence. Should the chairman
vacate the position, the council shall meet and elect a
new chairman to fill the unexpired term within thirty
days following such vacancy.

Each advisory council of faculty, through its chairman
and in any other appropriate manner, shall consult and
advise its governing board in matters of higher educa-
tion in which the faculty members may have an interest.

Members of each advisory council shall serve without
compensation, but shall be entitled to reimbursement
for actual and necessary expenses incurred in the
performance of their official duties from funds allocated
to the state institution of higher education served.

Each governing board shall furnish secretarial
services to its advisory council of faculty, and each
advisory council shall cause to be prepared minutes of
its meetings, which minutes shall be available, upon
request, to any faculty member of a state institution of
higher education represented on the council. Such
minutes shall be forwarded to the advisory council of
faculty serving the other governing board.

§18B-6-3. Advisory councils of students.

Effective the first day of July, one thousand nine
hundred eighty-nine, each governing board shall be
assisted by an advisory council of students.

The student government organization at each state
institution of higher education shall elect a student, who
may be the elected head or president of such organiza-
tion, to serve on the appropriate governing board’s
advisory council of students, which are hereby created,
consisting of the elected representatives of each institu-
tion under the appropriate governing board: Provided,
That the student government organization at each
institution in the university system, including Potomac
State College of West Virginia University and West
Virginia University at Parkersburg, shall elect one
student per three thousand students enrolled at each
institution with a minimum of one representative from
each institution. The student government of each
institution shall determine how its representatives shall
be elected. Terms of the members of such council shall
be for one year and shall begin on the first day of May
of each year, and members of the advisory councils shall
be eligible to succeed themselves.

Each institution shall have only one vote in all
matters. The advisory councils of students shall meet at
least once each quarter, and shall meet during each
month of June, at which meeting each council shall elect
a chairman, who prior to such elections must be entitled
to vote in the state of West Virginia. By virtue of the
office, the chairman shall be a voting member of the
appropriate governing board. No member may vote by
proxy at such election. In the event of a tie in the last
vote taken for such election, a member authorized by the
council shall select the chairman by lot from the names
of those persons tied. Immediately following the election
of a chairman, each council shall elect, in the manner
prescribed by this section for the election of a chairman,
a member of that council to preside over meetings of the
council in the chairman’s absence. Should the chairman
vacate the position, the council shall meet and elect a
new chairman to fill the unexpired term within thirty
days following such vacancy.
Each advisory council of students, through its chair
man and in any other appropriate manner, shall consult
and advise its governing board in matters of higher
education in which the students may have an interest.

Members of each advisory council shall serve without
compensation, but shall be entitled to reimbursement
for actual and necessary expenses incurred in the
performance of their official duties from funds allocated
to the state institution of higher education served.

Each governing board shall furnish secretarial
services to its advisory council of students, and each
advisory council shall cause to be prepared minutes of
its meetings, which minutes shall be available, upon
request, to any student of a state institution of higher
education represented on the council. Such minutes shall
be forwarded to the advisory council of students serving
the other governing board.

§18B-6-4. Advisory councils of classified employees.

Effective the first day of July, one thousand nine
hundred eighty-nine, each governing board shall be
assisted by an advisory council of classified employees.

During the month of April of each year, each presi
dent or other administrative head of a state institution
of higher education, including Potomac State College of
West Virginia University and West Virginia University
at Parkersburg, at the direction of the councils and in
accordance with procedures established by the councils,
shall convene a meeting or otherwise institute a
balloting process to elect one classified employee to serve
on the appropriate governing board's advisory council of
classified employees, which shall consist of one classified
employee, so elected, from each such institution under
the appropriate governing board. Terms of the members
of such councils shall be for one year and shall begin
on the first day of May of each year, and members of
the advisory councils shall be eligible to succeed
themselves. For the purpose of this section the term
"institution of higher education" includes the facilities
and staff supervised by the senior administrator
employed by the governing boards, who shall be deemed
a part of the state college system, and the West Virginia
Each advisory council of classified employees shall meet at least once each quarter. One of the quarterly meetings shall be during the month of June, at which meeting each council shall elect a chairman, who shall be by virtue of the office a voting member of the appropriate governing board: Provided, That the board of directors' advisory council for classified employees' chairman shall not be a member of the staff supervised by the central administrative official. No member may vote by proxy at such election. In the event of a tie in the last vote taken for such election, a member authorized by the council shall select the chairman by lot from the names of those persons tied. Immediately following the election of a chairman, each council shall elect, in the manner prescribed by this section for the election of a chairman, a member of the council to preside over meetings of the council in the chairman's absence. Should the chairman vacate the position, the council shall meet and elect a new chairman to fill the unexpired term within thirty days following such vacancy.

Each advisory council of classified employees, through its chairman and in any other appropriate manner, shall consult and advise its governing board in matters of higher education in which the classified employees may have an interest.

Members of each advisory council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties from funds allocated to the state institution of higher education served.

Each governing board shall furnish secretarial services to its advisory council of classified employees, and each advisory council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any classified employee of a state institution of higher education represented on the council. Such minutes shall be forwarded to the advisory network for telecomputing, who shall be deemed a part of the state university system.
§18B-6-5. Creation of advisory council on federal resources; appointment, terms and qualifications of members; vacancies; compensation and expenses; meetings; quorum.

There is hereby created an advisory council to be known as the higher education advisory council on federal resources. The council shall review the state plan for administration of the federal Higher Education Facilities Act of 1963 and Titles I and VI of the federal Higher Education Act of 1965, as amended. The council shall also evaluate proposals pertaining to the aforementioned federal acts and shall submit such recommendations as it deems appropriate to the secretary of education and the arts. The council shall be involved in every significant function of the office of the secretary, including governing boards under the jurisdiction of the secretary, pertaining to said federal acts.

The advisory council shall consist of twelve members to be appointed as follows: One member of the board of trustees appointed by the president of the board of trustees, one member of the board of directors appointed by the president of the board of directors, two members appointed by the board of trustees to represent the public at large, two members appointed by the board of directors to represent the public at large, two members appointed by each governing board to represent the state institutions of higher education under its control, and one member appointed by each governing board to represent private institutions of higher education under its jurisdiction: Provided, That the two members representing private institutions of higher education shall be presidents of a private institution, and, of the four members representing public institutions of higher education, one appointed by each governing board shall be a president of a state institution of higher education. The secretary of education and the arts shall appoint a chairman of the advisory council who shall be selected from the representatives of the public at large.
The members shall serve for a term of six years, except that the original appointments shall be as follows: Four members to serve two years, four members to serve four years, and four members to serve six years. Such appointments shall be made no later than the first day of September, one thousand nine hundred eighty-nine. The secretary of education and the arts shall appoint a member to fill any vacancy, which member shall serve for the unexpired term of the vacating member. All shall be eligible for reappointment.

The members of the advisory council shall serve without compensation, but shall be reimbursed for their necessary expenses actually incurred in the performance of their official duties not to exceed twenty-five dollars per day plus an allowance of twenty cents per mile actually traveled to and from such meetings.

A meeting of the advisory council shall be held on or before the first day of November, one thousand nine hundred eighty-nine, and thereafter the advisory council shall meet at least annually and at such other times as necessary upon the call of the chairman. Five members of the advisory council shall constitute a quorum, and a majority vote of the quorum shall be necessary to pass upon matters before the council.

§18B-6-6. Powers and duties relating to anatomical gifts; requisition of bodies; autopsies; transportation of bodies; expenses of preservation; bond required; offenses and penalties.

(a) The board of trustees may appoint one dean of a school of medicine, one dean of a school of dentistry and two chairmen of departments of anatomy of schools of medicine, all of whom shall constitute a board for the purpose of performing the duties of the board, which is hereby abolished, formerly known as the “West Virginia Anatomical Board.” This new board shall be known as the “University of West Virginia Anatomical Board,” and shall hereinafter be referred to as the “board” for the purposes of this section. No more than one member of this board shall be from the same school.

The board shall have authority to appoint such
13 officers, employees and agents as may be necessary to
14 carry out the purposes for which the board is organized.
15 It shall keep a full and complete record of its transac-
16 tions, showing, among other things, every dead human
17 body coming under its authority, giving name, sex, age,
18 date of death, place from which received, and when and
19 from whom received, which record shall be open at all
20 times to the inspection of the attorney general and any
21 prosecuting attorney in the state.

22 If the board of trustees does not appoint a “university
23 of West Virginia anatomical board” as herein autho-
24 rized, then the board of trustees itself shall perform the
25 duties of the anatomical board as set forth herein.

26 (b) The board shall be responsible for making requi-
27 sition for, receiving, and making disposition of the dead
28 human bodies for the scientific uses and purposes of
29 reputable educational institutions, within the state and
30 elsewhere, having medical, osteopathy, dentistry or
31 nursing schools. The board shall have full power to
32 establish rules for its own government and for the
33 requisition, use, disposition and control of such bodies
34 as may come under its authority by way of gift,
35 pursuant to this section or pursuant to section four,
36 article nineteen, chapter sixteen of this code.

37 (c) All dead human bodies which may come under the
38 charge or control of any mortician, any officer or agent
39 of the department of welfare or of any county commis-
40 ssion or municipality, or any superintendent, officer or
41 agent having the supervision of any prison, morgue,
42 hospital, or other public institution in this state, and
43 which may be required to be buried at public expense,
44 shall be subject to the requisition of the board as
45 provided in this section. No such body shall be delivered
46 to the board if any person related to the deceased by
47 blood or marriage shall make a statement in writing to
48 that effect, and shall claim such body for burial, or shall
49 make affidavit that the relative is unable to bear the
50 expense of burial and desires that the deceased be
51 buried at public expense. This statement and affidavit
52 may be filed by any such relative with the person having
charge and control of the body of the person so claimed, either before or after the death of such person.

No autopsy shall be performed on any unclaimed body without the written permission of the board, except upon the proper order of a duly authorized law-enforcement officer.

(d) It shall be the duty of any person who has charge or control of any unclaimed body, subject to requisition by the board, to give notice to the board of that fact by telephone or telegraph within twenty-four hours after such body comes under that person's control. Thereafter, such person shall hold the body subject to the order of the board for at least twenty-four hours after the sending of such notice. If the board makes requisition for the body within the twenty-four hour period, it shall be delivered, pursuant to the order of the board, to the board or its authorized agent for transportation to any educational institution which the board deems to be in bona fide need thereof and able to adequately control, use and dispose of the body. The board shall make suitable arrangements for the transportation of any body, or part or parts thereof, which may come under its authority to such educational institution. All expenses incurred in connection with the preservation, delivery and transportation of any such body delivered pursuant to the order of the board shall be paid by the educational institution receiving the body.

(e) No dead body shall be received or requisitioned by the board until the members of the board have filed a bond with the clerk of the circuit court of Kanawha County in a penalty of one thousand dollars, with good security, signed by a responsible person or persons, or by some surety company authorized to do business in this state, or have proved to such clerk that they are covered by a suitable bond in at least that amount, conditioned for the faithful performance of their duties.

(f) Any person who shall neglect, refuse or fail to perform any duty required by this section relating to the board shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not
more than one hundred dollars or by imprisonment in the county jail for not more than ten days, or by both such fine and imprisonment. Any person who fails to give the required notice that that person has charge of an unclaimed body subject to requisition by the board shall also be personally liable for all burial expenses, if such body was buried at public expense, to the public agency that paid for the burial.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

§18B-7-2. Authority to grant sabbatical leaves.

§18B-7-3. Effect of leave of absence on academic tenure, rank, etc.

§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.

§18B-7-5. Faculty and classified employee continuing education and development program.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

(a) All decisions by the appropriate governing board or their agents at state institutions of higher education concerning reductions in work force of full-time classified personnel, whether by temporary furlough or permanent termination, shall be made in accordance with this section. Definitions for terms used in this section shall be in accordance with those provided in section two, article nine of this chapter except that the provisions of this section shall apply only to classified employees whose employment, if continued, shall accumulate to a minimum total of one thousand forty hours during a calendar year and extend over at least nine months of a calendar year.

(b) For layoffs by classification for reason of lack of funds or work, or abolition of position or material changes in duties or organization and for recall of employees so laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the service of the state system of higher
education. In the event that the institution wishes to lay off a more senior employee, the institution must demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that institution in the same job class, or any other equivalent or lower job class for which the senior employee is qualified: Provided, That if an employee refuses to accept a position in a lower job class, such employee shall retain all rights of recall hereinafter provided. If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the institution.

(c) Any employee laid off during a furlough or reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the institution on the basis of seniority. An employee's listing with an institution shall remain active for a period of one calendar year from the date of termination or furlough, or from the date of the most recent renewal. If an employee fails to renew the listing with the institution, the employee's name may be removed from the list. An employee placed upon the preferred list shall be recalled to any position opening by the institution within the classification(s) in which the employee had previously been employed or to any lateral position for which the employee is qualified. An employee on the preferred recall list shall not forfeit the right to recall by the institution if compelling reasons require such employee to refuse an offer of reemployment by the institution.

The institution shall be required to notify all employees maintaining active listings on the preferred recall list of all position openings that from time to time exist. Such notice shall be sent by certified mail to the last known address of the employee. It shall be the duty of each employee listed to notify the institution of any change in address and to timely renew the listing with the institution. No position openings shall be filled by the institution, whether temporary or permanent, until all employees on the preferred recall list have been
properly notified of existing vacancies and have been given an opportunity to accept reemployment.

§18B-7-2. Authority to grant sabbatical leaves.

The appropriate governing board shall have authority to grant sabbatical leaves to faculty members at state institutions of higher education for the purpose of permitting them to engage in graduate study, research or other activities calculated to improve their teaching ability. Such leaves shall be granted only in accordance with a uniform plan adopted by each governing board and shall be subject to such reasonable rules as each governing board may prescribe. Any plan adopted by a governing board shall not provide for the granting of sabbatical leave to any faculty member who has served fewer than six years at the institution where presently employed, nor shall such leave be for more than one half the contract period at full pay or a full contract period at half pay. Any faculty member receiving a sabbatical leave shall be required to return and serve for at least one year at the institution from which the leave was granted or to repay to the institution the compensation received during such leave. Any faculty member returning from leave shall be reinstated at the academic rank held prior to such sabbatical unless promoted to a higher rank and shall be entitled to such salary and any increases thereto appropriate to the rank and years of experience of such faculty member. Compensation to a faculty member on sabbatical leave shall be paid from the regular personal services appropriations of the institution where employed.

§18B-7-3. Effect of leave of absence on academic tenure, rank, etc.

Any other provision of law to the contrary notwithstanding any tenured professional at any state institution of higher education who shall, with the consent of the president or other administrative head of the state institution by which the professional is employed, be absent from duties at such institution to accept employment in any nonelected governmental capacity shall be afforded such benefits of academic tenure, rank and
position as if such person had remained continuously in
the position retained and held at such institutions of
higher education immediately preceding any such
absence: Provided, That such leave of absence shall not
exceed two years: Provided, however, That tenure and
rank may be retained during an absence of more than
two years if the president of the institution from which
such person is on leave of absence submits in writing
during each of such years a request for such retention
to the appropriate governing board, and such board
approves the request for each such year: Provided
further, That any individual who remains in governmen-
tal employment with leave granted in accordance with
this section shall forfeit all rights to academic tenure,
rank and position formerly held at such institution after
the eighth year of such employment.

§18B-7-4. Notice to probationary faculty members of
retention or nonretention; hearing.

(a) The president or other administrative head of each
state institution of higher education shall give written
notice to probationary faculty members concerning their
retention or nonretention for the ensuing academic year
(1) not later than the first day of March for those
probationary faculty members who are in their first
academic year of service; (2) not later than the fifteenth
day of December for those probationary faculty
members who are in their second academic year of
service; and (3) at least one year before the expiration
of an appointment for those probationary faculty
members who have been employed two or more years
with the institution. Such notice to those probationary
faculty members not being retained shall be by certified
mail, return receipt requested.

(b) Upon request of the probationary faculty member
not retained, the president or other administrative head
of the institution shall within ten days, and by certified
mail, inform the probationary faculty member of the
reasons for nonretention. Any probationary faculty
member who desires to appeal the decision may request
a hearing from the appropriate governing board within
ten days after receiving the statement of reasons. The
appropriate governing board shall publish appropriate
rules to govern the conduct of the appeal herein allowed.
Such board shall, by its rules, prescribe either an
unbiased committee of that board or appoint a hearing
examiner to hear such appeals. Such hearing shall be
held at the employing institution and within thirty days
of the request. The rules of evidence shall not strictly
apply. The faculty member shall be accorded substanc-
tive and procedural due process, including the right to
produce evidence and witnesses and to cross-examine
witnesses, and to be represented by counsel or other
representative of that faculty member’s choice. If the
committee of the board or the hearing examiner shall
conclude that the reasons for nonretention are arbitrary
or capricious or without a factual basis, the faculty
member shall be retained for the ensuing academic
year. The decision shall be rendered within thirty days
after conclusion of the hearing.

(c) The term “probationary faculty member” shall be
defined according to rules promulgated by the govern-
ing boards. The rights herein provided to probationary
faculty members are in addition to, and not in lieu of,
other rights afforded them by other rules and other
provisions of law.

§18B-7-5. Faculty and classified employee continuing
education and development program.

Each state institution of higher education shall have
the authority to establish and operate a faculty and
classified employee continuing education and develop-
ment program under rules adopted by the appropriate
governing board. Funds allocated or made available
may be used to compensate and pay expenses for faculty
or classified employees who are pursuing additional
academic study or training to better equip themselves
for their duties at the state institutions of higher
education.

Rules for this activity may include reasonable provi-
sions for the continuation or return of any faculty or
classified employee receiving the benefits of such
education or training, or for reimbursement by the state
for expenditures incurred on behalf of such faculty or classified employee.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

§18B-8-1. Definitions.

§18B-8-2. Higher education minimum salary schedule.

§18B-8-3. Assignment to salary schedule; actual salary.


§18B-8-5. Merit increases and salary adjustment.

§18B-8-6. Additional employment by mutual agreement.

§18B-8-1. Definitions.

1 As used in this article:

2 (a) “Schedule” or “salary schedule” means the grid of minimum salary figures listed in section two of this article;

3 (b) “Academic rank” means the position held by a faculty member as determined by the president, consistent with policy established by the governing board, and includes the positions of professor, associate professor, assistant professor and instructor; all other ranks are excluded from the provisions of this article;

4 (c) “Years of experience” means the actual number of years a person has been a full-time faculty member at an institution of higher education within this state. Employment for nine months shall equal one year of experience, but no faculty member may accrue more than one year of experience during any given academic year. Employment for less than full time, or less than nine months during any fiscal year, shall be prorated. In accordance with rules established by the governing boards, a faculty member may be granted additional years of experience for actual years of work or teaching experience at institutions other than institutions of higher education within this state;

5 (d) “Doctoral institutions” means West Virginia University and Marshall University at Huntington. Doctoral programs at Marshall University shall be selective and nonduplicative of West Virginia University unless an exception is recommended by both
29 institutions and approved by the board of trustees.  
30 “Master’s II institutions” means West Virginia School of  
31 Osteopathic Medicine and the University of West  
32 Virginia College of Graduate Studies; “baccalaureate  
33 and two-year institutions” means Bluefield State  
34 College, Concord College, Fairmont State College,  
35 Glenville State College, Shepherd College, West Liberty  
36 State College, West Virginia Institute of Technology,  
37 West Virginia State College, West Virginia University  
38 at Parkersburg, Southern West Virginia Community  
39 College, West Virginia Northern Community College  
40 and Potomac State College of West Virginia University  
41 and such other institutions as are designated community  
42 colleges by the board of directors;  
43  
44 (e) “Salary” means the total nine-month or ten-month  
45 salary paid from state funds to a full-time faculty  
46 member, or if other than nine or ten months, adjusted  
47 to a nine-month base salary;  
48  
49 (f) “Full-time faculty” means any faculty member  
50 designated as such by the president, consistent with  
51 approved policy of the appropriate governing board, and  
52 those persons with faculty rank who have research or  
53 administrative responsibilities;  
54  
55 (g) “Fiscal year” means twelve calendar months and  
56 begins on the first day of July and ends on the thirtieth  
57 day of June; and  
58  
59 (h) “Merit increases and salary adjustments” means  
60 the amount of additional salary increase allowed on a  
61 merit basis or to rectify salary inequities or accommo-  
62 date competitive market conditions, in accordance with  
63 policy established by the appropriate governing board.  
64  
65 §18B-8-2. Higher education minimum salary schedule.  
66  
67 There is hereby established a state minimum salary  
68 schedule for full-time faculty employed by a governing  
69 board consisting of a minimum salary for each academic  
70 rank in accordance with years of experience: Provided,  
71 That it is the intention of the Legislature to create a  
72 schedule of minimum salary goals in higher education  
73 subject to the availability of funds; and with the
exception of the placement of all full-time faculty members included under the provisions of this article on the schedule at zero years of experience, nothing in this article shall be construed to guarantee payment to any faculty member of the salary indicated on the appropriate schedule at the actual years of experience.

MINIMUM SALARY SCHEDULE FOR FULL-TIME FACULTY AT BACCALAUREATE AND TWO-YEAR INSTITUTIONS

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MINIMUM SALARY SCHEDULE FOR FULL-TIME FACULTY AT MASTER'S II INSTITUTIONS (WEST VIRGINIA SCHOOL OF OSTEOPATHIC MEDICINE AND THE WEST VIRGINIA COLLEGE OF GRADUATE STUDIES)

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### MINIMUM SALARY SCHEDULE FOR FULL-TIME FACULTY AT DOCTORAL INSTITUTIONS (WEST VIRGINIA UNIVERSITY AND MARSHALL UNIVERSITY)

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<th>Professor</th>
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<td>26,835</td>
<td>35,094</td>
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### §18B-8-3. Assignment to salary schedule; actual salary.

(a) On or before the first day of July of each year, each faculty member then employed shall be given notice by the appropriate governing board of the placement on the minimum salary schedule which is appropriate to such faculty member's years of experience and to which such individual has been assigned, notwithstanding the actual salary paid under the provisions of this article.

(b) Each full-time faculty member employed as of the effective date of this section shall receive for full-time employment at the same academic rank during the academic year one thousand nine hundred eighty-nine—ninety, and thereafter, a salary which is no less than the salary being paid such faculty member for the academic year one thousand nine hundred eighty-eight—eighty-nine. No full-time faculty member shall receive a salary which is less than the salary for zero years of experience for the appropriate academic rank as set forth in section two of this article.

(c) Effective the first day of January, one thousand nine hundred ninety, an amount equal to five percent of one-half the amount appropriated and distributed in the fiscal year beginning on the first day of July, one thousand nine hundred eighty-nine, for salaries for full-time faculty members shall be distributed in the following manner: Such amount as may be necessary shall be distributed to each faculty member who is employed on the first day of January, one thousand nine hundred ninety, so that each such employee shall receive for the same employment at the same academic rank a salary which is at least equal to the salary being paid such faculty member during the fiscal year one thousand nine hundred eighty-eight—eighty-nine, and a

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<th>Year</th>
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<th>Salary 1</th>
<th>Salary 2</th>
<th>Salary 3</th>
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<td>20</td>
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<td>46,351</td>
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Note: The table above lists the salaries for different years and experiences, with the highest salary for the year 76 being 41,715, which is also the highest salary listed for any year.
salary increase equal to two and one-half percent of such salary. The Legislature may by general appropriation, or the secretary of the department of education and the arts may allocate through authority set forth under the provisions of chapter five-f of this code, funds to be distributed for the purpose of accommodating market and equity conditions within the system. Any remaining funds shall be applied in accordance with the provisions of subsection (d) of this section.

(d) Funds remaining after meeting the salary of each full-time faculty member in accordance with subsections (b) and (c) of this section shall be used to pay that amount that is the difference between such salary and the appropriate salary for each full-time faculty member's appropriate placement on the schedule: Provided, That such amount may be reduced proportionately based upon the amount of funds available for such purpose: Provided, however, That in the case of Marshall University, the difference between the salary paid a full-time faculty member and the appropriate salary for the faculty member's appropriate placement on the salary schedule shall, for fiscal year one thousand nine hundred eighty-nine—ninety, be calculated using the minimum salary schedule for full-time faculty at master's II institutions set forth in section two of this article.

(e) The salary of any full-time faculty member shall not be reduced by the provisions of this article.

(f) Upon promotion in rank, placement on the minimum salary schedule shall be such as to provide a salary increase of at least ten percent, and shall be at least the amount prescribed for the appropriate academic rank to which promoted at zero years of experience.


Any person hired as a full-time faculty member after the effective date of this section shall be assigned a placement on the minimum salary schedule which is appropriate to such person's academic rank and years of experience, and such person shall have a salary of at lease zero years of experience at the appropriate
§18B-8-5. Merit increases and salary adjustment.

Nothing in this article shall be construed to prohibit merit increases or salary adjustments that rectify inequities or accommodate competitive market conditions in specific areas of specialty, including inequities within the rank of full professors at doctoral and master's level institutions: Provided, That funds for such increases and/or adjustments shall be distributed in accordance with rules of the appropriate governing board and shall be available to all state institutions of higher education on an equitable basis.

§18B-8-6. Additional employment by mutual agreement.

Any employment for greater than a nine-month period, or any responsibilities in excess of full-time duties, shall be only by mutual agreement of the employee and the institutional president or other administrative head, or the designated representative, in accordance with rules of the appropriate governing board. The terms and conditions of any such agreement shall be in writing, signed by both parties, and shall state the maximum number of additional employment days or credit hours or their equivalent to be worked and the amount of compensation to be paid.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-1. Legislative purpose.


§18B-9-4. Establishment of personnel classification system; assignment to classification and to salary schedule.

§18B-9-5. Classified employee salary.

§18B-9-6. Annual review of classifications and classification system; notice and reports required.

§18B-9-7. Conferences regarding personnel classification.

§18B-9-8. Hirings after effective date.

§18B-9-9. Additional employment by mutual agreement; provision for governing board approval.

§18B-9-1. Legislative purpose.

The purpose of the Legislature in the enactment of this article is to require the governing boards to
establish, control, supervise and manage a complete,
uniform system of personnel classification in accordance
with the provisions of this article for all employees other
than faculty and nonclassified employees at state
institutions of higher education.


As used in this article:

(a) "Classified employee or employee" means any
regular full-time or regular part-time employee of a
governing board, including all employees of the West
Virginia network for educational telecomputing and
beginning the first day of July, one thousand nine
hundred ninety, includes employees at the central office
of the governing boards, who hold a position that is
assigned a particular job title and pay grade in
accordance with the personnel classification system
established by the appropriate governing board and
shall include all employees of the West Virginia network
for educational telecomputing;

(b) "Nonclassified employee" means an individual who
is responsible for policy formation at the institutional
level or reports directly to the president: Provided, That
the percentage of personnel placed in the category of
"nonclassified" at any given institution shall not exceed
four percent of the total number of employees of that
institution who are eligible for membership in any state
retirement system of the state of West Virginia or other
retirement plan authorized by the state. Final approval
of such placement shall be with the appropriate
governing board;

(c) "Job description" means the specific listing of
duties and responsibilities as determined by the approp­
riate governing board and associated with a particular
job title;

(d) "Job title" means the name of the position or job
as defined by the appropriate governing board;

(e) "Job classification" means a grouping of job titles
with the same name without regard to their numerical
designations, or any job title for which there is no related title of the same name;

(f) "Grade of classification" means a job title or position with its numerical designation which distinguishes it from other titles in the same classification;

(g) "Merit increases and salary adjustments" means the amount of additional salary increase allowed on a merit basis or to rectify salary inequities or accommodate competitive market conditions in accordance with rules established by the appropriate governing board;

(h) "Pay grade" means the letter grade assigned by the appropriate governing board to a particular job title and refers to the horizontal column heading of the salary schedule established in section three of this article;

(i) "Personnel classification system" means the process of job categorization adopted by the appropriate governing board by which job title, job description, pay grade and placement on the salary schedule are determined;

(j) "Salary" means the amount of compensation paid through the state treasury per month to a classified employee;

(k) "Schedule" or "salary schedule" means the grid of monthly salary figures established in section three of this article; and

(l) "Years of experience" means the number of years a person has been an employee of the state of West Virginia and refers to the vertical column heading of the salary schedule established in section three of this article. For the purpose of placement on the salary schedule pursuant to said section three, employment for nine months or more shall equal one year of experience, but no classified employee may accrue more than one year of experience during any given fiscal year. Employment for less than full time or less than nine months during any fiscal year shall be prorated. For the purpose of determining the amount of annual salary increase pursuant to subsection (b) of section five of this article, employment for less than twelve months during any fiscal year shall be prorated. In accordance with
rules established by the appropriate governing board, a
classified employee may be granted additional years of
experience not to exceed the actual number of years of
prior, relevant work or experience at accredited
institutions of higher education other than state institu-
tions of higher education.

§18B-9-3. Higher education classified employee monthly
salary schedule.

There is hereby established a state monthly salary
schedule for classified employees consisting of a
minimum monthly salary for each pay grade in accor-
dance with years of experience: Provided, That payment
of the minimum salary shall be subject to the availabil-
ity of funds, and nothing in this article shall be
construed to guarantee payment to any classified
employee of the salary indicated on the schedule at the
actual years of experience. The minimum salary herein
indicated shall be prorated for regular part-time
classified employees.

<table>
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<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
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§18B-9-4. Establishment of personnel classification system; assignment to classification and to salary schedule.

1 Before the first day of July, one thousand nine hundred ninety, the governing boards shall establish by rule and implement an equitable system of job classifications, each classification to consist of related job titles and corresponding job descriptions for each position within a classification, together with the designation of an appropriate pay grade for each job title, which system shall be the same for corresponding positions in institutions under both boards. The system of job classifications shall be submitted to the secretary
of education and the arts for review and approval prior to implementation on said date.

By such date and with consideration to recommendations of the institutions, the appropriate governing board shall furnish each classified employee written confirmation of the assignment to the appropriate classification, job title and pay grade and of the proper placement on the salary schedule pursuant to section three of this article notwithstanding the actual salary paid. Such assignment may be appealed in accordance with article twenty-nine of chapter eighteen of this code:

Provided, That nothing herein shall nullify or void any personnel classification system in effect immediately prior to the first day of July, one thousand nine hundred eighty-nine.

§18B-9-5. Classified employee salary.

(a) Each classified employee who is employed by a governing board on the first day of July, one thousand nine hundred eighty-nine, shall receive for the same employment at the same pay grade during the fiscal year commencing on such date and thereafter, a monthly salary which is at least equal to the final monthly salary paid such classified employee for the fiscal year commencing on the first day of July, one thousand nine hundred eighty-eight, to be paid in equal installments within the regular pay periods.

(b) Commencing with the fiscal year beginning on the first day of July, one thousand nine hundred eighty-nine, and each fiscal year thereafter, each classified employee with three or more years of experience shall receive an annual salary increase equal to thirty-six dollars times the employee's years of experience, less any incremental salary increase granted in a prior fiscal year and actually incorporated into and becoming an integral part of base salary prior to fiscal year one thousand nine hundred ninety: Provided, That such annual salary increase shall not exceed the amount granted for the maximum of twenty years of experience. These incremental increases shall be in lieu of any salary increase received pursuant to section two, article five, chapter
five of this code; shall be in addition to any across-the-board, cost-of-living or percentage salary increases which may be granted in any fiscal year by the Legislature; and shall be paid in equal installments within the regular pay periods.

(c) Each classified employee whose monthly salary under subsections (a) and (b) of this section is less than the minimum monthly salary for zero years of experience for the appropriate pay grade as set forth in section three of this article shall receive additional compensation such that the monthly salary is at least the minimum amount prescribed for the appropriate pay grade at zero years of experience: Provided, That such amounts may be reduced proportionately based upon the amount of funds available for such purpose.

(d) Any funds remaining after increasing the monthly salary of each classified employee to at least the minimum amount prescribed for the appropriate pay grade at zero years of experience shall be used to place classified employees on the salary schedule at their appropriate years of experience: Provided, That such amount may be reduced proportionately based upon the amount of funds available for such purpose.

(e) Any classified employee may receive merit increases and/or salary adjustments in accordance with policies established by the board: Provided, That funds for such increases and/or adjustments shall be distributed in accordance with rules of the appropriate governing board and shall be available to all state institutions of higher education on an equitable basis.

(f) The current monthly salary of any classified employee may not be reduced by the provisions of this article nor by any other action inconsistent with the provisions of this article, and nothing in this article shall be construed to prohibit promotion of any classified employee to a job title carrying a higher pay grade if such promotion is in accordance with the provisions of this article and the personnel classification system established by the appropriate governing board.

(g) Effective the first day of January, one thousand
nine hundred ninety, an amount equal to five percent of one half the amount appropriated and distributed in the fiscal year beginning on the first day of July, one thousand nine hundred eighty-nine, for salaries for full-time classified employees shall be distributed in the following manner: Such amount as may be necessary shall be distributed to each classified employee who is employed on the first day of January, one thousand nine hundred ninety, so that each such employee shall receive for the same employment at the same pay grade a monthly salary which is at least equal to the final monthly salary paid such classified employee for the last month of such employee's employment during the fiscal year one thousand nine hundred eighty-eight—eighty-nine, and a salary increase equal to two and one-half percent of such final monthly salary. Any remaining funds shall be applied in accordance with the provisions of this section.

§18B-9-6. Annual review of classifications and classification system; notice and reports required.

Each institution shall review annually each job description in relationship to the assigned duties and responsibilities, current job title and pay grade of each classified employee of that institution. Based upon the data collected through such review, each institution shall determine which, if any, of its classified employees should be recommended for a change in job title in order to conform to the personnel classification system of its governing board: Provided, That any classified employee filling a position or carrying out the duties and responsibilities of a position normally assigned a higher pay grade in accordance with the personnel classification system established by the appropriate governing board shall be recommended for a change in job title or shall be returned immediately to the duties and responsibilities outlined in the appropriate job description.

Each institution shall submit to the appropriate governing board by the first day of September, one thousand nine hundred eighty-nine, and each year thereafter, a report which shall include the steps being
taken to ensure proper employee classification in accordance with the appropriate job titles and pay grades as established by its governing board, any recommended changes in job title, the justification for such recommendations, the effect of such changes on existing personnel, and the fiscal impact thereof.

Each institution also may submit, as a part of its annual report to its governing board, recommendation for alterations in job descriptions or classifications, changes in corresponding pay grades, or creation of new job titles or classifications. Such changes, if approved by its governing board, shall be made a part of the personnel classification system of the governing board and shall be applied uniformly at all institutions: Provided, That, when necessary, the governing board may order changes in classifications or changes in job titles upon its own authority and shall notify the institutions of such changes within thirty days.

Each governing board, upon receipt and review of the annual report submitted by each institution under its control, shall notify the reporting institution by the first day of December, one thousand nine hundred eighty-nine, and each year thereafter, of any action taken in response to recommendations made by the institution. Immediately upon receipt of notification of any changes in the personnel classification system by its governing board, the institution shall post copies of such notice in prominent campus locations. Changes in classification or changes in job title, as approved by the appropriate governing board, shall be effective no later than the first day of July of each year. When such changes affect currently employed personnel, each classified employee so affected shall be notified in writing regarding such change and the effect thereof.

§18B-9-7. Conferences regarding personnel classification.

(a) The president of the institution or the designees charged with responsibility to develop any personnel recommendations for inclusion in the institution's annual report to its governing board shall meet and
confer during development of the recommendations with any classified employee who (1) may be affected by proposed recommendations to its governing board; or (2) has requested a change in job title.

(b) In accordance with the provisions of article twenty-nine, chapter eighteen of this code relating to employee grievance procedures, a classified employee may appeal the initial assignment, any change in the assigned classification or job title, or any change in the system of classification, whether such change is the result of action taken by the appropriate governing board upon its own authority or upon the recommendations of the institutions.

§18B-9-8. Hirings after effective date.

Any individual hired as a full-time classified employee after the effective date of this section shall be assigned by the appropriate governing board, with consideration to any recommendations of the institution, to a placement on the salary schedule which is appropriate to such individual's classification, job title, pay grade and years of experience: Provided, That nothing in this section shall be construed to guarantee to a newly hired classified employee payment of the salary prescribed in section three of this article.

§18B-9-9. Additional employment by mutual agreement; provision for governing board approval.

In accordance with rules established by its governing board and by mutual agreement, the president of an institution, or a designated representative, and a classified employee at such institution may agree on duties to be performed by such employee in addition to those duties listed in the job description. The terms and conditions of any such agreement shall be in writing, signed by both parties, and shall describe the additional duties to be performed, the length of time such agreement shall be in force and the additional compensation to be paid. Such agreement shall be submitted to the appropriate governing board and shall be in effect unless and until the institution receives notice of
Enrollment, tuition and other fees at educational institutions; refund of fees.

(a) Each governing board shall fix tuition and other fees for each school term for the different classes or categories of students enrolling at each state institution of higher education under its jurisdiction and may include among such fees any one or more of the following: (1) Health service fees, (2) infirmary fees, (3) student activities, recreational, athletic and extracurricular fees, which said fees may be used to finance a student's attorney to perform legal services for students in civil matters at such institutions: Provided, That such legal services shall be limited to only those types of cases, programs or services approved by the administrative head of such institution where such legal services are to be performed; and (4) graduate center fees and...
branch college fees, or either, if the establishment and
operations of graduate centers or branch colleges are
otherwise authorized by law. All fees collected at any
graduate center or at any branch college shall be paid
into special funds and shall be used solely for the
maintenance and operation of the graduate center or
branch college at which they were collected: Provided,
however, That the maximum fees to be collected under
this section for resident students shall not exceed five
hundred dollars per semester, and for nonresident
students, one thousand dollars per semester. The
schedule of all fees, and any changes therein, shall be
entered in the minutes of the meeting of the appropriate
governing board, and the board shall file with the
legislative auditor a certified copy of such schedule and
changes.

(b) In addition to the fees mentioned in the preceding
paragraph, each governing board may impose and
collect a student union building fee. All such building
fees collected at an institution shall be paid into a special
student union building fund for such institution, which
is hereby created in the state treasury, and shall be used
only for the construction, operation and maintenance of
a student union building or a combination student union
and dining hall building or for the payment of the
principal of and interest on any bond issued to finance
part or all of the construction of a student union
building or a combination student union and dining hall
building or the renovation of an existing structure for
use as a student union building or a combination student
union and dining hall building, all as more fully
provided in section ten of this article. Any moneys in
such funds not immediately needed for such purposes
may be invested in any such bonds or other securities
as are now or hereafter authorized as proper invest-
ments for state funds.

(c) Refund, as an erroneous payment, may be made of
any such fees upon the voluntary or involuntary
withdrawal from classes of any student until eight
weeks of the school semester or term have expired, but
no refund may be made thereafter.
§18B-10-2. Higher education resource fee.

1 In addition to the fees specifically provided for in section one of this article, all students enrolled for credit at a state institution of higher education shall pay a higher education resource fee. Each governing board shall fix the fee rates for the various institutions and classes of students under its jurisdiction and may from time to time change these rates. The amount of the fee charged at each institution shall be prorated for part-time students. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provision of section one of this article and is not limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

Eighty percent of the total fees collected at each institution pursuant to this section shall be deposited in a special fund in the state treasury for the institution at which the fees are collected and may be used by the institution for libraries and library supplies, including books, periodicals, subscriptions and audiovisual materials, instructional equipment and materials; and for the improvement in quality and scope of student services. The remaining twenty percent of fee collections shall be deposited in a special fund and expended or allocated by the appropriate governing board to meet general operating expenses, excluding personal services, of the state university system or state college system from which the fees were collected: Provided, That the board shall, to the maximum extent practicable, offset the impact, if any, on financially needy students of any potential fee increases under this section by allocating an appropriate amount of such fee revenue to the state scholarship program to be expended in accordance with the provisions of article twenty-two-b of chapter eighteen of this code.

Each governing board shall, on or before the first day of July of each year, provide the legislative auditor with a report of the projected fee collections for the board and each of its institutions and the expenditures proposed for such fee.
§18B-10-3. Faculty improvement fee.

In addition to the fees specifically provided for in sections one and two of this article, all students enrolled for credit at a state institution of higher education shall pay a faculty improvement fee. Each governing board shall fix the fee rates for the various institutions and classes of students under its jurisdiction and may from time to time change these rates: Provided, That the fee for each class of students shall be uniform throughout the state and shall be no less than fifteen dollars per semester for residents and no less than fifty dollars per semester for out-of-state students. The amount of the fee charged at each institution shall be prorated for part-time students. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provisions of section one of this article and is not limited thereby. Refunds of the fee may be made in the same manner as any other fee collected at state institutions of higher education.

All faculty improvement fees collected shall be deposited in a special fund in the state treasury. Each governing board shall use such fees, including any fees on deposit as of the effective date of this section, to the extent available to implement article eight of this chapter.

Each governing board shall, before the first day of July of each year, provide the legislative auditor with a report of the projected fee collections for each of its institutions.

§18B-10-4. Medical education fee.

In addition to the fees specifically provided for in sections one, two and three of this article, all medical students enrolled for credit at the West Virginia University school of medicine, Marshall University school of medicine and the West Virginia school of osteopathic medicine shall pay a medical education fee. The board of trustees shall fix the fee rates for students at each institution and may from time to time change these rates. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the
provisions of section one of this article and is not limited thereby. Refunds of the fee may be made in the same manner as any other fee collected at state institutions of higher education. Medical education fees collected shall be deposited in a special revenue account which is hereby created in the state treasury for the school at which the fees are collected and shall be used by the school to offset general operating costs: Provided, That the board of trustees may deposit a portion of the total fees collected therein into the medical student loan fund account in accordance with the provisions of article two, chapter eighteen of this code. Before the first day of July of each year, the board of trustees shall provide the legislative auditor with a report of the projected fee collections for each of the schools of medicine.

§18B-10-4a. Health professions education fee.

In addition to the fees specifically provided for in sections one, two, three and four of this article, all students enrolled for credit at the West Virginia University health sciences center, Marshall University school of medicine and the West Virginia school of osteopathic medicine, shall pay a health professions education fee. The board of trustees shall fix the amount of the fee and may from time to time change that amount. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provisions of section one of this article and is not limited thereby. Refunds of the fee may be made in the same manner as any other fee collected at state institutions of higher education. All moneys collected from the health professions education fees shall be deposited in a special revenue account for the respective school from which collection is made, said accounts shall be hereby created in the state treasury for the West Virginia health sciences center, Marshall University school of medicine, and the West Virginia school of osteopathic medicine. The moneys in such fund shall be used to offset general operating costs for health sciences education in this state. Before the first day of July

*Clerk's Note: Similar provisions of this section also appear in H. B. 2866, §18-24-11, which passed prior to this act.*
of each year, the board of trustees shall provide the legislative auditor with a report of the projected fee collections during the next fiscal year and a report of fee expenditures for the preceding fiscal year.

§18B-10-5. Fee waivers — Undergraduate schools.

Each governing board may establish, from time to time, fee waivers for students in undergraduate studies at institutions under its jurisdiction entitling recipients to waiver of enrollment, tuition, registration, higher education resource and other fees subject to the following conditions and limitations:

(1) No state educational institution may have in effect at any time undergraduate fee waivers in a number which exceeds five percent of the number of full-time equivalent undergraduate students registered during the fall semester of the immediately preceding academic year.

(2) Each undergraduate fee waiver shall entitle the recipient thereof to attend a designated state educational institution without payment of the enrollment, tuition, registration, higher education resource and other fees as may be prescribed by the governing board and be for a period of time not to exceed eight semesters of undergraduate study.

(3) The governing board shall make rules governing the award of undergraduate fee waivers, the issuance and cancellation of certificates entitling the recipients to the benefits thereof, the use of the fee waivers by the recipients and the rights and duties of the recipients in respect to the fee waivers. These rules may not be inconsistent with the provisions of this section.

(4) The awarding of undergraduate fee waivers shall be entered in the minutes of the meetings of the governing board, and each board shall file with the legislative auditor a copy of the rules governing the award of the fee waivers and a list of the names of the recipients thereof.
§18B-10-6. Same — Professional and graduate schools.

1 In addition to the fee waivers heretofore authorized for undergraduate study by the provisions of section five of this article, each governing board may establish from time to time fee waivers for study in graduate and professional schools under their jurisdiction, including medicine and dentistry, entitling the recipients to waiver of enrollment, tuition, registration, higher education resource and other fees, subject to the following conditions and limitations:

(1) West Virginia University may not have in effect at any time graduate and professional school fee waivers in a number which exceeds ten percent of the number of full-time equivalent graduate and professional students registered during the corresponding fall semester, spring semester and summer term of the immediately preceding academic year. In addition to the above ten percent, all graduate assistants employed by West Virginia University shall be granted a fee waiver. All other institutions of higher education may not have in effect at any time graduate and professional school fee waivers in a number which exceeds five percent of the number of full-time equivalent graduate and professional students registered during the corresponding fall semester, spring semester and summer term of the immediately preceding academic year. In addition to the above five percent, all graduate assistants employed by the other institutions shall be granted a fee waiver.

(2) Each graduate or professional school fee waiver shall entitle the recipient to waiver of the enrollment, tuition, registration, higher education resource and other fees as may be prescribed by the governing boards and be for a period of time not to exceed the number of semesters normally required in the recipient's academic discipline.

(3) The governing boards shall make rules governing the award of graduate and professional school fee waivers, the issuance and cancellation of certificates entitling the recipients to the benefits thereof, the use of the fee waivers by the recipients and the rights and
duties of the recipients in respect to the fee waivers. These rules may not be inconsistent with the provisions of this section.

(4) The awarding of graduate and professional school fee waivers shall be entered in the minutes of the meeting of each governing board, and each board shall file with the legislative auditor a copy of the rules governing the award of the fee waiver and a list of the names of the recipients thereof.

§18B-10-7. Tuition and fee waivers for children and spouses of officers and firefighters killed in the line of duty.

Each state institution of higher education shall permit any person to attend its undergraduate courses and classes if classroom space is available without charging such person any tuition or any fees, including those provided in sections two and three of this article, if such person is the child or spouse of a law-enforcement officer as defined in section one, article twenty-nine, chapter thirty of this code, a correctional officer at a state penal institution, a conservation officer, or a registered firefighter, and such officer or firefighter was killed in the line of duty while employed by the state or any political subdivision thereof, or such firefighter was a member of a volunteer fire department serving a political subdivision of this state: Provided, That the state institution of higher education may require such person to pay special fees, including any laboratory fees, if such fees are required of all other students taking a single or the particular course and may also require such person to pay for parking. The governing boards may promulgate rules for determining the availability of classroom space and other rules as it considers necessary to implement this section, including rules regarding qualifications for attendance, which shall not exceed the qualifications required of other persons.

The governing boards may also extend to persons attending courses and classes under this section any rights, privileges or benefits extended to other students which it considers appropriate.
§18B-10-8. Collection; disposition and use of additional registration fee; creation of special capital improvements funds; revenue bonds.

(a) In addition to all other fees imposed by the governing boards, there is hereby imposed and the governing boards are hereby directed to provide for the collection of an additional registration fee from all students enrolled in any state institution of higher education under its jurisdiction in the amounts hereinafter provided.

For full-time students at each state institution of higher education, the additional registration fee shall be fifty dollars per semester. The governing boards shall have authority to increase such additional registration fee at institutions of higher education under their jurisdiction for students who are nonresidents of this state. For all part-time students and for all summer school students, the governing boards shall impose and collect such fee in proportion to, but not exceeding, that paid by full-time students.

The fee imposed by this section shall be in addition to the maximum fees allowed to be collected under the provision of section one of this article and shall not be limited thereby. Refunds of such fee may be made in the same manner as any other fee collected at state institutions of higher education.

(b) There is created in the state treasury a state system special capital improvements fund into which shall be paid all proceeds of the additional registration fees collected from students at all state institutions of higher education pursuant to this section to be expended jointly by the governing boards for the payment of the principal of or interest on any revenue bonds issued by the board of regents for which such registration fees were pledged prior to the enactment of this section.

At such time as the commingling of such registration fees shall no longer be required, all proceeds shall be paid into the appropriate special capital improvements fund for each governing board for the benefit of any and all state institutions of higher education under the jurisdiction of that governing board.
(c) The governing boards may make expenditures from any of the special capital improvements funds established in this section to finance, in whole or in part, together with any federal, state or other grants or contributions, any one or more of the following projects:

(1) The acquisition of land or any rights or interest therein, (2) the construction or acquisition of new buildings, (3) the renovation or construction of additions to existing buildings, (4) the acquisition of furnishings and equipment for any such buildings, and (5) the construction or acquisition of any other capital improvements or capital educational facilities at such state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of such buildings, capital improvements or capital educational facilities.

Each governing board, in its discretion, may use the moneys in such special capital improvements funds to finance the costs of the above purposes on a cash basis, or may from time to time issue revenue bonds of the state as provided in this section to finance all or part of such purposes and pledge all or any part of the moneys in such special funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Any pledge of such special funds for such revenue bonds shall be a prior and superior charge on such special funds over the use of any of the moneys in such funds to pay for the cost of any of such purposes on a cash basis: Provided, That any expenditures from such special funds, other than for the retirement of revenue bonds, may only be made by the governing board to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in such order of priority as shall have been agreed upon by the governing board and presented to the governor for inclusion in the annual budget bill, and only with the approval of the Legislature as indicated by direct appropriation for the purpose.

Such revenue bonds may be authorized and issued
from time to time by the governing board to finance in whole or in part the purposes provided in this section in an aggregate principal amount not exceeding the amount which the governing board shall determine can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in such special funds.

The issuance of such revenue bonds shall be authorized by a resolution adopted by the governing board, and such revenue bonds shall bear such date or dates, mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have such other terms and provisions as the governing board shall determine. Such revenue bonds shall be signed by the governor and by the president of the governing board authorizing the issuance thereof, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the president of the governing board. Such revenue bonds shall be sold in such manner as the governing board may determine to be for the best interests of the state.

The governing board may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such special funds, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the governing board under the provisions of this section; as to the maintenance or revision of the amounts of such additional registration fees, and the terms and conditions, if any, under which such additional registration
fees may be reduced; and as to any other matters or provisions which are deemed necessary and advisable by the governing board in the best interests of the state and to enhance the marketability of such revenue bonds.

After the issuance of any of such revenue bonds, the additional registration fees at the state institutions of higher education shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds shall be and constitute negotiable instruments under the Uniform Commercial Code of this state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds shall not be deemed to be obligations or debts of the state, and the credit or taxing power of the state shall not be pledged therefor, but such revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

§18B-10-9. Authority to excuse students in certain educational programs from payment of enrollment fees.

Whenever the cost of any institute, workshop, special course, or other educational program is wholly financed by a grant from any federal agency or from any foundation, corporation, or other association or person, except for indirect costs of administration and other overhead expenses, such as the cost of providing classrooms and other facilities, the governing board of the state educational institution administering such program shall have the authority to excuse all students enrolled in such program from the payment of tuition, registration and other enrollment fees.

§18B-10-10. Disposition and use of student union fees; issuance of revenue bonds.

Whenever the term "student union building" is used
in this section, the same shall mean a student union building or a combination student union building and dining hall building; and wherever the term "building fund" is used in this section the same shall mean the respective special student union building funds created as provided in section one of this article for each state educational institution which has imposed student union fees pursuant to section one of this article, to be expended by the appropriate governing board for the benefit of the state institutions of higher education under its jurisdiction.

Each governing board may make expenditures from such building funds at the various state institutions of higher education under its jurisdiction to finance in whole or in part together with any federal, state or other grants or contributions, any one or more of the following purposes:

(1) The construction and acquisition of new student union buildings;

(2) The acquisition, renovation and improvement of existing buildings to be used as student union buildings;

(3) The construction of additions, extensions and improvements to existing student union buildings;

(4) The acquisition of furnishings and equipment for any existing student union buildings or student union buildings to be constructed or acquired, or the construction of any roads, utilities or other properties, real or personal, or for any other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of such student union buildings; and

(5) The payment of the cost of operation and maintenance of such student union buildings, subject however to any covenants or agreements made with the holders of revenue bonds heretofore and hereafter issued pursuant to this section or pursuant to section one of this article.

Each governing board, at its discretion, may use the moneys in such building funds to finance the costs of the above purposes on a cash basis, or may from time to
time issue revenue bonds of the state as provided in this 
section to finance all or part of such purposes and pledge 
all or any part of the moneys in such building funds for 
the payment of the principal of and interest on such 
revenue bonds, and for reserves therefor. Any pledge of 
such building funds for such revenue bonds shall be a 
prior and superior charge on such special funds over the 
use of any of the moneys in such funds to pay for the 
cost of any of such purposes on a cash basis, or for the 
payment of the cost of operation and maintenance, or 
any part thereof, of such student union buildings, under 
such terms and conditions as shall be provided in the 
proceedings which authorized the issuance of such 
revenue bonds.

Such revenue bonds may be authorized and issued 
from time to time by a governing board to finance in 
whole or in part the projects at any state institution of 
higher education under its jurisdiction provided for in 
this section in an aggregate principal amount not 
exceeding the amount which the board shall determine 
can be paid as to both principal and interest and 
reasonable margins for a reserve therefor from the 
moneys in such building funds.

The issuance of such revenue bonds shall be autho-
ized by a resolution adopted by the governing board, 
and such revenue bonds shall bear such date or dates; 
mature at such time or times not exceeding forty years 
from their respective dates; bear interest at such rate 
or rates, not exceeding twelve per centum per annum; 
be in such form either coupon or registered, with such 
exchangeability and interchangeability privileges; be 
payable in such medium of payment and at such place 
or places, within or without the state; be subject to such 
terms of prior redemption at such prices not exceeding 
one hundred five per centum of the principal amount 
thereof; and shall have such other terms and provisions 
as the board shall determine. Such revenue bonds shall 
be signed by the governor and by the president of the 
governing board, under the great seal of the state, 
attested by the secretary of state, and the coupons 
attached thereto shall bear the facsimile signature of the 
president of the governing board. Such revenue bonds
shall be sold in such manner as the governing board may determine to be for the best interests of the state.

The governing board may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such building funds, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds issued by the governing board for the same educational institution under the provisions of this section; as to the maintenance or revision of the amounts of such student union fees, and the terms and conditions, if any, under which any of such student union fees may be reduced; and as to any other matters or provisions which are deemed necessary and advisable by the governing board in the best interests of the state and to enhance the marketability of such revenue bonds.

Any revenues or income derived from the operation of such student union buildings may, in the discretion of the governing board, be used to pay the cost of the operation and maintenance of such student union buildings, or for the debt service on any bonds issued pursuant to this section or pursuant to any other law.

After the issuance of any of such revenue bonds, the student union fees at the state institution of higher education for which such revenue bonds were issued shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds shall be and constitute negotiable instruments under the Uniform Commercial Code of the state and shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds
shall not be deemed to be obligations or debts of the state, and the credit or taxing power of the state shall not be pledged therefor, but such revenue bonds shall be payable only from the student union fees pledged therefor as provided in this section.

The provisions of this section shall constitute an additional, alternative and complete authority for the exercise of the powers and the issuance of the bonds provided for in this section, but shall not prevent the governing boards from exercising similar or related powers or issuing bonds therefor under any other law or laws, but the governing board, in exercising the powers and issuing the bonds provided for in this section, shall only be required to comply with the provisions of this section and shall not be required to comply with or be subject to the provisions of any other law or laws.

§18B-10-11. Fees and money derived from athletic contests.

The directors of athletics at state institutions of higher education may fix and charge admission fees to athletic contests at state institutions of higher education and may enter into contracts and spend and receive money under such contracts for the student athletic teams of state institutions of higher education to contest with other athletic teams inside or outside the state. All money received from such fees and contracts shall be deposited into the athletic accounts of the state institutions of higher education.

All money derived from such fees and under such contracts shall be used to defray the cost of maintaining the athletic department and athletic program of such institutions. The operation of training camps and training tables and providing room accommodations for participants in the athletic program of such institutions shall be recognized and considered as a proper part of such maintenance, but the specific mention of training camps and training tables and providing room accommodations shall not be construed or understood to limit in any way the general power and authority otherwise granted and conferred by this section: Provided, That
(1) one percent of the total gross receipts deposited into the athletic accounts and (2) not less than twenty-five percent of the net receipts from televised athletic events, bowl games and post-season tournaments deposited into the athletic accounts shall be transferred into a separate and distinct special revenue account for each individual state institution of higher education, which special revenue account shall be designated "athletic facilities construction, repair or replacement reserve account," in the state treasury. Such revenues shall be used only for construction, repair or replacement of athletic facilities at the same individual state institution of higher education to which such special revenue account is credited. Notwithstanding any other provision in this section to the contrary, in the year in which they are received, no more than twenty-five percent of the net receipts from televised athletic events, bowl games and post-season tournaments deposited into athletic accounts may be transferred into other accounts of the same state institution of higher education having such receipts for the support of academic programs to meet an occasional rather than recurrent need or expense, and in accord with legislative rules promulgated by the appropriate governing board in accordance with chapter twenty-nine-a of this code, notwithstanding any other provision of this code to the contrary.

§18B-10-12. Student activity fees.

The president or other administrative head of any state institution of higher education may authorize the collection of fees from students for the support of extracurricular activities of the students, and after authorizing the collection of such fees, the president or other administrative head shall file with the state auditor and state budget director a certified detailed statement of the fees authorized to be collected and the purpose for which they are to be spent.

§18B-10-13. Fees from operation of dormitories, faculty homes, dining halls and cafeterias.

The appropriate governing board of each state institution of higher education shall fix the fees to be charged students and faculty members for rooms, board
and meals at the dormitories, faculty homes, dining halls and cafeterias operated by such board at the institution. Such fees shall be commensurate with the complete cost of such services.

All fees collected for such services shall be used first to pay the operating and maintenance costs of the dormitories, faculty homes, dining halls and cafeterias and to meet interest, principal and sinking fund requirements due on any outstanding revenue bonds for which such receipts may have been pledged as security. Any such receipts not needed for these purposes may be expended by the appropriate governing board to defray the costs in whole or in part for the construction of any such facility.


1 The appropriate governing board of each state institution of higher education shall have the authority to establish and operate a bookstore at the institution. The bookstore shall be operated for the use of the institution itself, including each of its schools and departments, in making purchases of books, stationery and other school and office supplies generally carried in college stores, and for the benefit of students and faculty members in purchasing such products for their own use, but no sales shall be made to the general public. The prices to be charged the institution, the students and the faculty for such products shall be fixed by the governing board, shall not be less than the prices fixed by any fair trade agreements, and shall in all cases include in addition to the purchase price paid by the bookstore a sufficient handling charge to cover all expenses incurred for personal and other services, supplies and equipment, storage, and other operating expenses, to the end that the prices charged shall be commensurate with the total cost to the state of operating the bookstore.

All moneys derived from the operation of the store shall be paid into a special revenue fund as provided in section two, article two, chapter twelve of this code. Each governing board shall, subject to the approval of the governor, fix and from time to time change the amount of the revolving fund necessary for the proper and efficient operation of each bookstore.
Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the store. From any balance in the Marshall University bookstore fund not needed for operation and maintenance and replenishing the stock of goods, the governing board of that institution shall have authority to expend a sum not to exceed two hundred thousand dollars for the construction of quarters to house the bookstore in the university center at Marshall University. Until such quarters for housing the bookstore are completed, the governing board of Marshall University and the governor shall take this authorization into account in fixing the amount of the revolving fund for the Marshall University bookstore.

§18B-10-15. Authority of educational institutions to provide special services and programs; collection and disposition of fees therefor.

The appropriate governing board of each state institution of higher education shall have authority to provide special services and special programs at such institutions and may fix and collect special fees or charges therefor. Such special services and special programs may include any one or more of the following:

(1) The conduct of music camps and band, orchestra, or voice clinics for secondary school students or other youth groups, summer tutoring programs for primary and secondary school students, speech therapy clinics and services, educational and psychological testing programs, student guidance programs, and statistical studies and calculations by an electronic computer service.

(2) Rental of lockers or other storage facilities and the maintenance and operation of parking facilities for use by students, faculty, staff, and visitors.

(3) Rental of musical recordings, educational films, slides, and other audiovisual aids.

(4) Microfilming or other mechanical reproduction of records and noncopyrighted library reference materials.
(5) Institutes, conferences, workshops, postgraduate and refresher noncredit courses, and any other special program or special service customarily provided by institutions of higher education.

(6) Motor pools, consisting of motor vehicles for the use of their employees when carrying on the business and affairs of the institutions.

All fees or charges collected for any such special services or programs shall be paid into a special fund and shall be expended solely for the maintenance, operation and support of such services and programs.

Whenever any such special service is provided by one school, division or department of a state institution of higher education for the benefit of any other school, division or department in the same institution, the cost shall be paid by the school, division or department requesting the service and shall be deposited and expended as provided above. Whenever a motor pool is provided by the governing board of a state institution of higher education, such board may charge any school, college, department or division of such institution for which a vehicle is used a reasonable amount for such use, which amount shall be paid by such school, college, department or division and shall be deposited and expended as above provided.

§18B-10-16. Disposition of funds in state treasury.

Except as may be provided for in any bond resolution in effect, funds in the state treasury heretofore collected from any of the sources defined in the foregoing sections shall remain in the state treasury for use by the institution where collected. Any interest revenue generated by a special student fee account shall only be expended at or for the institution where such fee was collected.

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.

§18B-11-1. Center for regional progress created; director powers; mission and purpose.

§18B-11-2. Institute for public affairs; creation and purposes.

§18B-11-3. Institute for international trade development; creation and purpose.
§18B-11-1. Center for regional progress created; director powers; mission and purpose.

(a) There is hereby created an economic development entity known as the "center for regional progress" at Marshall University. The center shall be under the control and supervision of a director, which position is to be filled by an individual qualified by experience and education. The director shall be appointed by the president of Marshall University. The director may employ such staff as is necessary to accomplish the center's mission and purpose. The director shall have administrative control and supervision of the center. The center shall emphasize the creation of new jobs and the retention of existing jobs as the foundation necessary for the economic development of West Virginia. The center shall provide basic and applied research and technical assistance; counseling and referral service; graduate research and cooperative education programs; management and marketing assistance; continuing education, seminars, workshops; courses to meet both employer and employee educational needs; and such other activities as are necessary to carry out the provisions of this article. The center shall provide research and technical assistance to meet the economic and community development needs of local, municipal, county and state governments.

(b) The center shall upon request respond to public policy needs of the Legislature and the executive; and apply for and obtain grants or funds from all available sources, private and public, state, federal, and otherwise. The center shall maintain a roster of faculty and staff at Marshall University and other institutions of higher education from which specific expertise may be drawn.

§18B-11-2. Institute for public affairs; creation and purposes.

(a) There is hereby created as an independent entity the institute for public affairs, to be located and operated at West Virginia University. The institute shall be under the control and supervision of a director, which position is to be filled by an individual whose
Credentials include accomplishments in the interdisciplinary academic fields and government. The director shall be appointed by the president of West Virginia University. The institute shall engage faculty from institutions of higher education throughout the state and shall cooperatively develop a program with other such institutions. The terms of such participation may be by contract, loan, part-time basis or other such arrangement.

(b) The institute is directed to conduct independent research and propose strategies and options on public issues and policies upon its own initiative or as may be requested by the executive or the Legislature.

(c) The institute is directed to seek all other funds, grants, and other sources of assistance from other agencies of government as well as the private sector.

(d) The director shall have administrative control and supervision of the institute.

§18B-11-3. Institute for international trade development; creation and purpose.

There is hereby created as an independent entity the institute for international trade development, to be located and operated at Marshall University. The institute is established to facilitate faculty involvement in the formation and continuation of international market entry and development strategy, to provide assistance to state businesses in exporting and attracting foreign investment, and to engage in other activities designed to promote, develop and stimulate export expansion and foreign direct investment. The institute shall be under the control and supervision of a director, who shall be appointed from among the faculty by the president of Marshall University. The institute shall engage faculty from institutions of higher education throughout the state and shall cooperatively develop an export program with the other such institutions. The terms of such participation may be by contract, loan, part-time basis, or other such arrangement. The institute shall develop with the board of trustees and the governor a program of student internships in international business to place qualified students for academic
credit with businesses in West Virginia to help develop export awareness and potential. The institute shall further provide research and analysis on matters of international trade upon request of the executive or the Legislature; initiate partnership grants, and proposals in the area of international trade in accordance with the provisions of article two-a, chapter five-b of this code; and apply for and obtain grants or funds from all available sources, private and public.

ARTICLE 12. RESEARCH AND DEVELOPMENT AGREEMENTS FOR STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-12-1. Definitions.

§18B-12-2. Legislative findings and purpose.

§18B-12-3. Boards authorized to contract with corporations; characteristics of corporations.

§18B-12-4. Agreement; required provisions.

§18B-12-5. Audit.

§18B-12-6. Conflicts of interest.

§18B-12-7. No waiver of sovereign immunity.

§18B-12-8. Not obligation of the state.

§18B-12-9. Sections and provisions severable.

§18B-12-1. Definitions.

1 The following words used in this article shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) “Agreement” means any agreement being entered into between a governing board and a corporation pursuant to section four of this article.

(b) “Corporation” means a nonstock, not-for-profit corporation established under the general corporation laws of the state which meets the description presented by section three of this article.

(c) “Corporate directors” means the board of directors of a corporation.

§18B-12-2. Legislative findings and purpose.

(a) The Legislature finds and determines that the future economic development in the state will depend in part upon research developed at the state institutions of higher education, and enhanced research opportunities for state institutions of higher education will promote
the general economic welfare of the citizens of the state. In order to enhance the competitive position of state institutions of higher education in the current environment for research and development, expenditures for equipment and material for research projects must be handled in an expeditious fashion, and the acquisition and utilization of research grants can be simplified and expedited through the utilization of corporations.

(b) The interest of the citizens of the state will be best met by agreements entered into and carried out by the governing boards and corporations to provide research assistance for state institutions of higher education. Therefore, in order to facilitate research and development grants and opportunities for state institutions of higher education, it is appropriate to authorize the governing boards to contract with corporations organized for the purpose of providing such services to state institutions of higher education.

§18B-12-3. Boards authorized to contract with corporations; characteristics of corporations.

Each governing board for a state institution of higher education is hereby authorized to enter into agreements and any other contractual relationships with one or more corporations formed with respect to such state institution of higher education, but only if each such corporation meets the following descriptions:

(1) The president and the president's appointees from the institution shall constitute a majority of the voting corporate directors.

(2) The corporation must be organized as a nonprofit, nonstock corporation under the general corporation laws of the state exclusively for charitable, educational or scientific purposes within the meaning of section 501(c) of the Internal Revenue Code of 1986, as amended, to foster and support research at the respective state institution of higher education and to provide evaluation, development, patenting, management and marketing services for inventions of the faculty, staff and students of such state institution of higher education.
(3) The meetings of the corporate directors shall be subject to the provisions of section three, article nine-a, chapter six of this code.

(4) Upon dissolution of the corporation, the assets of the corporation shall be transferred to such entity as the appropriate governing board shall designate for the benefit of the state institution of higher education: Provided, That such recipient shall be an organization operated exclusively for charitable, educational or scientific purposes as shall at such time qualify as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

§18B-12-4. Agreement; required provisions.

(a) Notwithstanding section ten, article three, chapter twelve of this code or any other provision of law to the contrary, each governing board is hereby authorized to enter into an agreement with a corporation, which agreement shall be for the benefit of such state institution of higher education and contain the following provisions, subject to further specification as shall be mutually agreed upon by the appropriate governing board and the corporation:

(1) On the effective date of the agreement, the corporation shall be charged with the responsibility of serving as fiscal agent for sponsored projects conducted by the faculty, staff and students of the state institution of higher education, and grants shall be accepted by the corporation on behalf of the institution and assigned to the corporation for fiscal management.

(2) The corporation shall provide evaluation, development, patenting, licensing, management and marketing services for inventions, processes, trademarks, copyrights or any other intellectual property developed by faculty, staff and students of any state institution of higher education.

(3) The corporation shall have the right to determine the application of the proceeds from any invention, process, trademark, copyright or any other intellectual property developed by the faculty, staff or students of a state institution of higher education among the
corporation, the inventor or developer, and the institution.

(4) The corporation shall have such additional responsibilities related to the administration of research and development at the state institution of higher education as are necessary or desirable to facilitate the development of research at the institution.

(b) Upon termination of the agreement, the funds or grants paid or held by the corporation shall be paid to the state institution of higher education or its designee as the appropriate governing board shall direct.

(c) A corporation may utilize both corporation employees and personnel of the state institution of higher education, provided, however, that the corporation may pay the costs incurred by the state institution of higher education including personnel funded on grants and contracts, fringe benefits of personnel funded on grants and contracts, administrative support costs and other costs which may require reimbursement and may include as costs any applicable overhead and fringe benefit assessments necessary to recover the costs expended by the state institution of higher education pursuant to the terms of the agreement, it being the intention that a board may be reimbursed for expenses incurred by it pursuant to the agreement.

§18B-12-5. Audit.

The operations of the corporation shall be subject to an audit by an independent auditor.

§18B-12-6. Conflicts of interest.

Notwithstanding any other provision of this code to the contrary, officers and employees of a governing board and the affected state institution of higher education may hold appointments to offices of the corporation and be corporate directors or officers or employees of other entities contracting with either the corporation or a governing board of a state institution of higher education. The executive director of the corporation shall have dual appointment with the state institution of higher education. The governing board of a state institution of higher education and the corporate
§18B-12-7. No waiver of sovereign immunity.

Nothing contained in this article shall be deemed or construed to waive or abrogate in any way the sovereign immunity of the state or to deprive a governing board of a state institution of higher education, a state institution of higher education or any officer or employee thereof of sovereign immunity.

§18B-12-8. Not obligation of the state.

Obligations of a corporation shall not constitute debts or obligations of a state institution of higher education, the governing board thereof or the state.

§18B-12-9. Sections and provisions severable.

The sections of this article, and the provisions and parts of said sections, are severable, and it is the intention to enact the whole or any part of the powers provided for in this article, and, if any of said sections, or the provisions or parts of any said sections, or the application thereof to any person or circumstance, are for any reason held unconstitutional or invalid, it is the intention that the remaining sections of this article, and the remaining provisions or parts of any said sections, shall remain in full force and effect.

ARTICLE 13. HIGHER EDUCATION-INDUSTRY PARTNERSHIPS.

§18B-13-1. Legislative purpose.

§18B-13-2. The West Virginia foundation for science and technology.

§18B-13-3. Higher education-industry collaboration and technical assistance.


§18B-13-11. Research park or zone tax exemptions.

§18B-13-12. Use of state property and equipment; faculty.

§18B-13-1. Legislative purpose.

A pressing need exists for collaborative research and development between institutions of higher education
The need also extends to assisting companies to develop and adapt to new technology. A commitment by the state to support cooperative university-industry partnerships will preserve existing jobs and create new jobs; promote development of business enterprises and help them become competitive; and enable West Virginia to achieve the goals of economic growth and full employment by revitalizing and diversifying the West Virginia economy. Focused research and technical assistance efforts related to West Virginia industry will speed such development, improve technology transfer, assist companies in becoming growth leaders and link basic research and technological developments to economic advancement.

It is the purpose of the Legislature to establish the West Virginia foundation for science and technology to have as its goals the movement of the state of West Virginia into the forefront of science and technology by the year two thousand; the attraction of business, federal contracts and industry; and the creation of jobs for the people of this state, through applied science and technology and partnership programs as set forth in this article.

§18B-13-2. The West Virginia foundation for science and technology.

There is hereby created the West Virginia foundation for science and technology for the purpose of developing and implementing the High-Tech 2000 fund as set forth in this article, and for the awarding of grants and other assistance as provided herein. Grants shall concentrate on targeted job-creating industries, processes and research as determined by the High-Tech 2000 board of trustees according to the strategic comprehensive plan and grant program required in this article, but shall include immediate priority for the topics of computer software, federal contract procurement, flexible manufacturing, materials handling and distribution, and hardwood manufacturing.

§18B-13-3. Higher education-industry collaboration and technical assistance.

Institutions of higher education shall develop a plan
to engage in collaborative projects designed to assist business to adapt or develop new technology under this article and shall be eligible to receive financial support through the matching grant programs defined in this article.

The foundation is authorized and empowered to solicit and accept financial support from sources, including federal funds, other than the state. Any institution of higher education making application for financial support from the foundation may deposit all or any part of funds received from the special High-Tech 2000 fund into a special revenue account in the state treasury which may be established.


The High-Tech 2000 board shall have the authority to allocate any funds available to higher education-industry projects operating under the provisions of this article. The amount of the grant may not exceed the level of contribution from all other sources combined.

The High-Tech 2000 board shall negotiate a contract for all grants, the terms of which should, if practicable, provide for payment of negotiated royalties, royalty sharing arrangements, loans, hybrid-debt equity arrangements, stock purchase arrangements or other payments to the fund, established in section five of this article.

The grant program shall bring together, through challenge or matching grants, partners from the business, industry, public and educational sectors to develop and apply technologies which will strengthen existing business and stimulate the formation of new firms and products including:

(1) **Joint partnership research and development projects.**—Such projects shall require a joint effort of a West Virginia business or businesses and an institution of higher education in this state with the purpose of preserving or creating jobs in this state;

(2) **Education and training projects.**—Such projects shall include employment training or retraining, labor
market and occupational analysis, new courses, sharing
of costly equipment, and educational or technical
assistance with small business innovation centers; and
(3) *Entrepreneurial development projects.*—Such pro-
jects shall include technical assistance, development of
business plans, management counseling, technology
transfer, and venture capital assistance, with emphasis
on establishing new projects, processes or services.


There is hereby established a special High-Tech 2000
Fund to which shall be credited any state appropria-
tions, gifts, grants or other moneys available to the fund.


There is hereby created a High-Tech 2000 board
consisting of the governor or a designee, the president
of West Virginia University or a designee, the president
of Marshall University or a designee, the president of
West Virginia Institute of Technology or a designee, the
president of Shepherd College or a designee, the director
of the governor’s office of economic and community
development, or a designee, and four persons from the
private sector who are representative of each of the
congressional districts of the state, and which such
private sector members shall be appointed to staggered
four-year terms by the governor with the advice and
consent of the Senate.

The High-Tech 2000 board shall have the authority to
review and approve all applications for grants or funds
from the special High-Tech 2000 fund established
pursuant to section five of this article and to establish
rules for the administration of the fund.

Board members representing the private sector shall
be reimbursed for all necessary expenses incurred in
connection with the performance of their duties as
members.


The High-Tech 2000 board is hereby authorized and
directed to develop a strategic comprehensive plan and
grant program to attract new science and high technol-
ogy industries, to retain and expand current state industries through technology and other processes, and to increase research grants, contracts, matching funds and procurement arrangements from the federal government, private industry and other agencies. Such initial, and annually updated, strategic comprehensive plan shall be developed and annually filed with the governor and Legislature. The High-Tech 2000 board shall consult with business, labor and other agencies of government, including institutions of higher education, for the purpose of determining such initial, and annually updated, strategic comprehensive plan.

The High-Tech 2000 board shall establish a grant program, to be known as the High-Tech 2000 program, to implement the strategic comprehensive plan.

The High-Tech 2000 board shall establish criteria for the grant program, and applications provided for herein, together with contractual provisions to protect the state's interest and financial commitment to such grant program.

The High-Tech 2000 board shall review the work and projects undertaken by the center of regional progress, the center for economic research, the institute for international trade development and the West Virginia foundation for science and technology.


The director of the foundation shall be appointed by the governor, with the advice and consent of the Senate, from a list of three persons submitted by the High-Tech 2000 board. The High-Tech 2000 board shall appoint a search committee of representatives of the educational, government, business and labor sectors to solicit and interview candidates for the position of director, who shall be qualified by knowledge and experience in the field of business and industry. The search committee shall present a list of three nominations to the governor. The director of the governor's office of community and industrial development shall act as director of the foundation until the governor shall appoint a director.

The High-Tech 2000 board shall establish a salary for
the director at a level sufficient to attract and retain an
individual of knowledge and experience in the field.

1 On the first day of January of each year, the director
2 shall submit a report on the operation of the foundation,
3 including expenditures from the special High-Tech 2000
4 Fund, to the governor and to the Legislature. Such
5 report shall include a summary of the expenditures
6 from the subject fund and a complete statement of
7 grants made hereunder.

1 (a) The governor's office of community and industrial
2 development shall work with the county commissions,
3 the municipalities and local development authorities
4 where state colleges and universities are located, and
5 shall develop a plan and program for the establishment
6 and operation of qualifying High-Tech 2000 research
7 zones, parks and technology centers on or near the
8 campuses of selected universities and colleges to attract
9 local business and industry engaged in science and
10 technology related research.

11 (b) The governor's office of community and industrial
12 development shall coordinate the development of such
13 plan and program, which shall include qualifications for
14 eligible High-Tech 2000 research zones, parks and
15 research centers and which qualifications shall require
16 a minimum partnership commitment from the private
17 sector either in the construction, operation or location of
18 the research parks or zones or technology centers; and
19 the West Virginia economic development authority shall
20 have authority to enter into agreements with state
21 institutions of higher education, private developers or
22 other interested businesses or persons to acquire,
23 finance, construct, operate, own, lease or otherwise
24 manage any research park or zone and to collect rentals
25 or other forms of payment for the operation of the
26 research parks or zones or technology centers.
27 Ownership of the research park or zone shall be in the
28 state of West Virginia, the West Virginia industry and
29 jobs development corporation or a governing board.
The West Virginia economic development authority is hereby authorized either singularly or in conjunction with any county commission, municipality or local development authority, to issue special High-Tech 2000 bonds for the purpose of this section, including, but not limited to, special project revenue bonds and special user bonds limited to the actual cost of construction and start-up of any qualifying and approved research park or zone or technology centers, and improvements necessary thereto, pursuant to article twelve-b, chapter eighteen of this code.

§18B-13-11. Research park or zone tax exemptions.

Notwithstanding any other provision of this code to the contrary relating to any other exemptions or credits to which any business may be entitled under this code, the following exemptions shall apply to any qualified, approved High-Tech 2000 research park or zone or technology center:

(a) The enterprise zone tax exemptions as provided in section five, article two-b, chapter five-b of this code;

(b) A tax credit for qualified business, in the amount of the workers' compensation premium paid in accordance with article two, chapter twenty-three of this code, which credit shall be credited against any corporate net income tax or personal income tax of the qualified business or liability of the owners of the qualified business which is a proprietorship or a partnership;

(c) The deferral for qualified business of all state corporate net income tax, business and occupation tax, telecommunications tax, severance tax, business franchise tax, or other state income tax liability for the start-up period of the business not to exceed three years, and qualified business shall be entitled to an exemption from any such deferred tax if such business both employs at least seven persons on a full-time basis as of the due date of the deferred tax liability, and the qualified business maintains an average employment of at least seven full-time employees over the last two years of the three year start-up period.
§18B-13-12. Use of state property and equipment; faculty.

(a) The governing boards are authorized to provide for the low cost and economical use and sharing of state property and equipment, including computers, research labs and other scientific and necessary equipment to assist any qualified business within an approved research park or zone or technology center. The governing boards shall approve a schedule of nominal or reduced cost reimbursements to the state for such use.

(b) The governing boards shall develop and provide for a program of release time, sabbaticals or other forms of faculty involvement or participation with any qualifying business.

(c) The Legislature finds that cooperation, communication and coordination are integral components of higher education's involvement in economic development. In order to proceed in a manner that is cost effective and time efficient, it shall be the duty of the governing boards to review and coordinate such aspects of the programs administered by the governing boards. Such review and coordination shall not operate so as to adversely affect sources of funding nor shall it affect any statutory characterization of any program as an independent entity. The governing boards shall report on an annual basis to the Legislature and the governor. The report shall contain the following information:

1. The number of seminars and workshops conducted;
2. The subject matter addressed in each seminar and workshop;
3. The number of feasibility studies conducted and the subject matter contained in each study; and
4. An accounting of the cost of all travel expenses, seminars, workshops and feasibility studies.

ARTICLE 14. MISCELLANEOUS.

§18B-14-1. Authorization to sell West Virginia University poultry farm properties located in Morgantown.

§18B-14-2. Authorization to sell West Virginia University vacant lot located in Morgantown and biological research station located in Terra Alta.
§18B-14-1. Authorization to sell West Virginia University poultry farm properties located in Morgantown.

(a) The board of trustees is hereby authorized and empowered to sell those parcels of land situate on the Van Voorhis Road in Monongalia County, West Virginia, bounded and described as follows:

Beginning at a post standing south of the center line of the said Van Voorhis Road, in the line of property now or formerly of Vandervort, 170.0 feet, thence from said post, S. 75 degrees 34' E. 1190.6 feet to a white oak stump, corner to land now or formerly of Gorman, Goodwin, Baker and Hawkins; thence with a line of the said corner to land of J. D. Harless, and with his said line, N. 58 degrees 18' W. 279.7 feet to a point in the center line of said Van Voorhis Road; thence with the center line of said road, S. 56 degrees 25' W. 946.1 feet to a point in the center of said road; thence S. 10 degrees 34' E. 170.0 feet to the place of beginning, containing 15.71 acres, as surveyed and platted by B. W. Reynolds, Surveyor, October 28, 1946.

And, beginning at a stake in a line of Charles Baker and 27.96 feet from the corner of Charles Baker and D. L. Hartman; thence N. 26 degrees 26' E. 150 feet to a stake; thence S. 63 degrees 34' E. 70 feet to a stake; thence S. 26 degrees 26' E. 58' W. 7.29 feet to the place of beginning, containing .28 acres, more or less. And, beginning at a stake in a line of Charles Baker and on a corner of land of Virginia May Burruss and A. J. W. Headlee; thence N. 26 degrees 26' E. 160 feet to a stake; thence S. 63 degrees 34' E. 70 feet to a stake; thence S. 26 degrees 26' W. 160 feet to a stake on a corner of land of Virginia May Burruss and A. J. W. Headlee; thence N. 63 degrees 34' W. 75 feet to the place of beginning, containing .257 acres, more or less.

And, beginning at a stone corner of the lands of W. McClure and L. O. Starkey, and running Southwest a distance of 660 feet (40 poles) to a point or corner of lands of L. O. Starkey and Emma Hill; thence westward a distance of 587.4 feet (35.35 poles) to a white oak tree, corner to lands of the said Emma Hill and Charles M. Baker; thence northwest a distance of 610.5 (37 poles) to a walnut tree, corner to lands of Charles M. Baker
and Martin L. Goodwin; thence in an easterly direction a
distance of 990 feet (60 poles) to the cornerstone herein-
before mentioned as the place of beginning, containing
12 3/4 acres, more or less.

And, beginning at a point in the line of property
formerly belonging to James Gorman, being the prop-
erty formerly occupied by S. S. Ivill, which said
beginning point is N. 9 1/2 degrees W. 739 feet from
the center of Chestnut Ridge Road; thence with the line
of property formerly belonging to Coleman Vandervort
and now belonging to Headlee, and thence with a line
of Headlee, S. 80 degrees E. 535 feet, more or less, to
the corner of Baker; and thence with Baker two lines
in a Southerly direction with the line of Baker, 645 feet
to a point and 576 feet to a point in the line of Baker,
which said last mentioned point is 754 feet in a northerly
direction from the center of said Chestnut Ridge Road;
and thence with an arbitrary line through the property
formerly belonging to Adam W. Thompson in a Wes-
terly direction 570 feet to the place of beginning,
containing 16 acres, more or less; and being the same
real estate conveyed to the grantor, Lee Moore, by deed
from Benjamin G. Reeder and Marie F. Reeder, his
wife, dated February 28, 1956, and recorded in the
office of the clerk of the County of Monongalia, West
Virginia, at a public auction: Provided, That prior to
such action the board of trustees shall have the property
appraised by two licensed appraisers and shall not sell
the property for less than the average of the two
appraisals.

(b) The proceeds from the sale of the property
referred to shall be deposited in a special revenue
account from which the board of trustees is hereby
authorized to expend funds to relocate the West Virginia
University poultry facility with such surplus as may be
left being used for improvements to the college of
agriculture and forestry facilities or deposited in a
special medical school fund heretofore created in the
state treasury under the provisions of section two, article
nineteen, chapter eleven of this code, for educationally
related projects.
§18B-14-2. Authorization to sell West Virginia University vacant lot located in Morgantown and biological research station located in Terra Alta.

(a) The board of trustees is hereby authorized and empowered to sell those parcels of land situate on the Chestnut Ridge Road in Monongalia County, West Virginia, bounded and described as follows:

Beginning at a hub in the edge of the Chestnut Ridge Road along the boundary formerly belonging to Sam Ivill; thence with Ivill, N 10 degrees 01' W 260.04 feet to a hub, corner to the lands of Blanche Sayre found in Deed Book No. 481, at Page 95; thence with Sayre, S 89 degrees 36' E 295.45 feet to a hub, corner to W. V. Board of Regents in Deed Book No. 584, at Page 1; thence with W. V. Board of Regents S O degrees 55' W 255.82 feet to a hub at the northern edge of the Chestnut Ridge Road; thence along the northern edge of the Chestnut Ridge Road, N 89 degrees 36' W 254.00 feet to the place of beginning, containing 1.61 acres, more or less, as surveyed by Triad Engineering Consultants on 6/27/79.

(b) The board of trustees is hereby further authorized and empowered to sell those parcels of land situate in Terra Alta, Preston County, West Virginia, bounded and described as follows:

Those lots or parcels of real estate situated in Portland District, Preston County, West Virginia, containing 48.28 acres recorded under Book 283, Page 217.

(c) Such sale shall be by public auction: Provided, that prior to such action the board of trustees shall have the property appraised by two licensed appraisers and shall not sell the property for less than the average of the appraisals.

(d) The proceeds from the sale of the property referred to shall be deposited in a special revenue account from which the board of trustees is hereby authorized to expend the funds therefrom for development of the Downtown Campus, at West Virginia University, in Morgantown.
ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

§18C-1-1. Administration generally.
§18C-1-2. Definitions.
§18C-1-3. Transfer of obligations.

§18C-1-1. Administration generally.

The senior administrator jointly employed by the chancellors of the board of trustees and the board of directors shall, as provided in section two, article four, chapter eighteen-b of this code, have a ministerial duty to administer, oversee or monitor all state and federal student loan, scholarship and state aid programs which are administered at the state level in accordance with established guidelines, in consultation with and under the direction of the governing boards.

Such programs include, but are not limited to: The guaranteed student loan program under this article, which may be administered by a private nonprofit agency; the medical student loan program under article three of this chapter; the Underwood-Smith teacher scholarship program under article twenty-one, chapter eighteen of this code; the state scholarship program, commonly known as the West Virginia higher education grant program, under article twenty-two-b, chapter eighteen of this code; the higher education student assistance loan program under article twenty-two-d, chapter eighteen of this code; the West Virginia higher education tuition trust act under article thirty, chapter eighteen of this code, which shall be administered by the state treasurer as provided in said article; the state aid programs for students of optometry, under article three of this chapter; the state aid programs for students of veterinary medicine under section six-a, article eleven, chapter eighteen of this code; any reciprocal program and contract program for student aid under sections three and four, article four of chapter eighteen-b of this code; any other state level student aid program under
§18C-1-2. Definitions.

The definitions used in this chapter, unless the context clearly indicates otherwise, shall be the definitions provided in section two, article one, chapter eighteen-b of this code.

The term “board” or “governing board” in the singular or plural as used in this chapter shall be deemed to mean the senior administrator employed by the governing boards when a power or duty assigned to a governing board is delegated by it to the senior administrator.

§18C-1-3. Transfer of obligations.

As of the first day of July, one thousand nine hundred eighty-nine, any obligations of the board of regents pertaining to student loans, scholarships or state aid shall be transferred and deemed the obligations of the governing boards.

ARTICLE 2. GUARANTEED STUDENT LOAN PROGRAM.

§18C-2-1. Purpose of provisions of article relating to guaranteed student loan program; loan program to be administered by senior administrator of governing boards.


§18C-2-3. Authority to buy and sell certain student obligations; undertakings not to constitute state debt; undertakings limited to available funds.

§18C-2-4. Powers and duties of senior administrator regarding loan program.

§18C-2-5. Title to property.

§18C-2-6. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.

§18C-2-7. Terms of acquisitions.

§18C-2-8. Trust fund established; limitations on use of fund; duties of treasurer in connection therewith; special account created.

§18C-2-9. Construction of provisions of article relating to loan program.

§18C-2-1. Purpose of provisions of article relating to guaranteed student loan program; loan program to be administered by senior administrator of governing boards.

The Legislature enacts the provisions of this article which relate to the establishment of the guaranteed
student loan program to continue and encourage
discounted citizens of this state who are in need of
financial assistance, such assistance and education being
for the welfare of this state, and the Legislature hereby
declares such to be a public purpose.

The guaranteed student loan program established and
authorized by this article shall be administered by the
senior administrator of the board of trustees and board
of directors acting under their direction.

As used in this article, the following words and terms
shall have the following meanings, unless the context
shall indicate another or different meaning or intent:

(a) The words "act" or "undertaking" shall mean the
official act of the governing boards, or senior adminis-
trator acting under the direction of the boards, in
connection with the acquisition or disposition of all or
any part of obligations or interest therein which the
governing boards are authorized to buy or sell
hereunder.

(b) The word "obligations" shall mean those evidences
of debt which the governing boards may buy, sell,
endorse, or guarantee under the provisions of this
article.

§18C-2-3. Authority to buy and sell certain student
obligations; undertakings not to constitute
state debt; undertakings limited to available
funds.

In order to facilitate the education of residents in this
state and promote the industrial and economic develop-
ment of the state, the governing boards are hereby
authorized and empowered to buy and sell obligations
of students who are residents of West Virginia, and who
have been residents of this state for at least one year and
are students or have been accepted as students at state
supported or private institutions of higher education, or
vocational schools accredited by a nationally recognized
accrediting agency or by a state agency designated by
the governor and representing loans made to such
students who have met the requirement of financial
need as determined by the governing boards, such loans
having been made for the purpose of an education.
No act or undertaking of the governing boards shall be deemed to constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision, and shall be payable solely from the funds of the governing boards specifically appropriated for the guaranteed student loan program. All such acts and undertakings shall contain on the face thereof a statement to the effect that neither the state nor the governing boards shall be obligated to pay the same or the interest thereon except from revenues of the governing boards and that neither the faith and credit nor the taxing power of the state or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such acts and undertakings.

All expenses incurred in carrying out the provisions of this article dealing with the guaranteed student loan program shall be payable solely from funds provided for the purpose and no liability or obligation shall be incurred by the governing boards hereunder beyond the extent to which money shall have been provided under the applicable provisions of this article for the guaranteed student loan program.

§18C-2-4. Powers and duties of senior administrator regarding loan program.

The senior administrator acting under direction of the governing boards is hereby authorized and empowered:

1. To fix and revise from time to time and charge and collect fees for its acts and undertakings;
2. To establish rules concerning the acts and undertakings;
3. To acquire, hold and dispose of personal property in the exercise of its powers and the performance of its duties;
4. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;
5. To employ in its discretion such employees as it may deem necessary to carry out its powers and duties as enumerated in this article;
(6) To receive and accept from any federal or private agency, corporation, association or person, grants to be expended in accomplishing the objectives of this article and to receive and accept from the state, from any municipality, county or other political subdivision thereof and from any other source, aid or contributions of either money, property, or other things of value to be held, used and applied only for the purposes for which such grants and contributions may be made;

(7) To sue and be sued as provided by law;

(8) To do all other acts and things necessary or convenient to carry out the powers expressly granted by the provisions of this article which relate to the guaranteed student loan program. Nothing in this article shall be construed to empower the governing boards to engage in the business of banking or insurance.

§18C-2-5. Title to property.

Title to any property acquired by the governing boards under the provisions of this article which relate to the guaranteed student loan program shall be taken and held in the name of the governing boards.

§18C-2-6. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.

With funds available to the governing boards for purposes other than the payment of compensation to personnel and the lease or rental of offices or equipment, the governing boards may acquire from any bank or other lending institution of this state a contingent interest in student obligations. The total contingent interest of the governing boards on all such obligations shall not exceed at any one time a sum of twelve and one-half times the total funds which the governing boards can employ to acquire such contingent interests. When a governing board acquires any such contingent interest, it may require the payment to it of a portion of the interest payable upon any such obligation. In each such acquisition, the governing board shall provide that at such time as the obligation becomes delinquent, the bank or other lending institution shall notify the governing board forthwith and shall transfer forthwith to the
governing board, by assignment or otherwise, an
interest in such obligation equal to the contingent
interest of the governing board therein. The bank or
other lending institution and the governing board shall
forthwith take such steps as may be necessary to recover
the balance due upon any such obligation, and such
recovery shall be apportioned between the governing
board and the bank or other lending institution as their
respective interests may appear.

§18C-2-7. Terms of acquisitions.

Each governing board shall prescribe the terms,
conditions and limitations upon which it will acquire a
contingent or direct interest in any obligation and such
terms, conditions and limitations shall include, but
without limiting the generality thereof, the terms for
payment of principal and interest, applicable life or
other insurance which may be required in connection
with any such obligation and who shall pay the premi-
ums thereon, the safekeeping of assets pledged to secure
any such undertaking, and any and all matters in
connection with the foregoing as will protect the assets
of the governing board.

§18C-2-8. Trust fund established; limitations on use of
fund; duties of treasurer in connection
therewith; special account created.

The appropriation made to the governing boards
under the provisions of this article which relate to the
guaranteed student loan program shall be used exclu-
sively for the purpose of acquiring contingent or vested
rights in obligations which it may acquire under this
article, and such appropriation, payments, revenue and
interest, as well as other income received in connection
with such obligations, is hereby established as a trust
fund. Such fund shall be used for the purposes of the
governing boards other than for maintenance and
operation.

The maintenance and operating expenses of the
governing board shall be paid from funds specifically
appropriated for such purposes. No part of the trust
fund established under this section shall be expended for
such purposes.

The governing board shall be the trustee of the trust
fund hereby created, and all investments to be made
from the assets of such trust shall be made by the state
treasurer in the manner provided by law. For the
purposes of this article, there is hereby created in the
treasury of this state a special revolving account for
deposits and withdrawals as herein provided. The state
treasurer shall be the custodian of the assets of the
board. All payments from the accounts thereof shall be
made by the treasurer upon warrants issued by the
auditor and upon vouchers signed by such persons as are
designated by the governing board. A duly attested copy
of a resolution of the governing board designating such
persons shall be filed with the state treasurer as the
authority for issuing warrants upon such vouchers.

§18C-2-9. Construction of provisions of article relating to
loan program.

1 The provisions of this article which relate to the
guaranteed student loan program shall be liberally
construed to the end that its beneficial purposes may be
effectuated.

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN
PROGRAMS.

§18C-3-1. Medical student loan program; establishment;
administration; eligibility; loan forgiveness.

§18C-3-2. State aid for students of optometry.

§18C-3-1. Medical student loan program; establishment;
administration; eligibility; loan forgiveness.

1 (a) There is hereby created a medical student loan
program to be administered by the senior administrator.
The purpose of this program is to provide loans to state
residents who demonstrate financial need, meet aca-
demic standards and are enrolled or accepted for
enrollment at the West Virginia University school of
medicine, Marshall University school of medicine or the
West Virginia school of osteopathic medicine.

(b) There is hereby established a special revolving
fund account under the board of trustees in the state
treasury to be known as the medical student loan fund
which shall be used to carry out the purposes of this
section. The fund shall consist of: (1) Amounts allocated
by the board of trustees from the medical education fee
as established by section four, article ten of chapter
eighteen-b of this code: *Provided,* That the board of trustees may transfer to this fund for student loans an amount not to exceed thirty-three percent of the total collections from the medical education fee in any one year; (2) appropriations provided by the Legislature; (3) principal and interest repaid by medical student loan recipients; and (4) other amounts which may be available from external sources. Balances remaining in the fund at the end of the fiscal year shall not expire or revert. All costs associated with the administration of this section shall be paid from the medical student loan fund.

(c) The board shall promulgate rules for the administration of the medical student loan program. Such rules shall include, but not be limited to, the areas of academic standards, financial need loan amounts, residency requirements, loan repayment requirements, loan forgiveness provisions, interest rates, collection procedures and financial management. Loans shall be awarded at the institutional level in a manner consistent with rules promulgated by the board of trustees.

(d) An individual shall be eligible for loan consideration if the individual is a resident of this state as defined by the trustees, demonstrates financial need, meets established academic standards and is enrolled or accepted for enrollment at one of the aforementioned schools of medicine in a program leading to the degree of medical doctor (M.D.) or doctor of osteopathy (D.O.): *Provided,* That the individual has not yet received one of these degrees and is not in default of any previous student loan.

(e) The board, in conjunction with the state department of health, shall determine qualifying medically underserved areas and medical specialties in which there is a shortage of physicians.

At the end of each fiscal year, any individual who has received a medical student loan and who has actually rendered services as a medical doctor or doctor of osteopathy in this state in a designated medically underserved area or in a designated medical specialty in which there is a shortage of physicians, may submit to the trustees a statement of service on a form provided for that purpose. Upon receipt of such statement in
proper form, the trustees shall cancel appropriate portions of the outstanding loan or loans, in accordance with rules promulgated by the trustees.

§ 18C-3-2. State aid for students of optometry.

The board of trustees is hereby authorized to enter into a contract with an educational institution or institutions outside the state that offer training in optometry, by the terms of which the board of trustees may obligate itself to pay such institution, within the limits of any appropriation made for the purpose, a stated amount per year for each West Virginia student the institution will agree to accept for training in optometry.

The board of trustees shall each year send to any institution with which such contract is made a certified list of all persons applying to the trustees for training in optometry who are bona fide citizens and residents of this state prior to the filing of their applications, and who have completed either within or without the state the course of study required by such institution as a prerequisite to the study of optometry.

Any person who receives state aid under this section shall, upon graduation from an educational institution for study of optometry, be required to practice optometry for a period of two years in this state, or in lieu thereof shall, within sixty days from the date of graduation, reimburse the board of trustees for any tuition advanced to such person by the trustees.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3B. TRESPASS.

§ 61-3B-4. Trespass on student residence premises or student facility premises of an institution of higher education.

(a) For the purposes of this section:

(1) “Residence hall” means housing or a unit of housing provided primarily for students as a temporary or permanent dwelling place or abode and owned, operated or controlled by an institution of higher education.
(2) "Student facility" means a facility owned, operated or controlled by an institution of higher education at which alcoholic liquor or nonintoxicating beer is purchased, sold or served to students enrolled at such institution, but shall not include facilities at which athletic events are regularly scheduled and an admission fee is generally charged.

(3) "Institution of higher education" means any state university, state college or state community college under the control, supervision and management of the West Virginia board of trustees or West Virginia board of directors, or any other university, college or institution of higher education in the state subject to rules for accreditation under the provisions of section seven, article four, chapter eighteen-b of this code.

(4) "Person authorized to have access to a residence hall or student facility" means:

(A) A student who resides or dwells in the residence hall; or

(B) An invited guest of a student who resides or dwells in the residence hall; or

(C) A parent, guardian or person who has legal custody of a student who resides or dwells in the residence hall; or

(D) An employee of the institution of higher education who is required by such employment by such institution to be in the residence hall or student facility and who is acting within the scope of his or her employment; or

(E) A delivery person, repair person or other such person who is not an employee of the institution of higher education but who nonetheless has a legitimate commercial reason to be in the residence hall or student facility and who is acting pursuant to such legitimate commercial reason.

(b) If a person authorized to have access to a residence hall or a student facility enters such residence hall or student facility and by such presence or acts interferes with the peaceful or orderly operation of such residence hall or student facility, such person may be asked to leave such residence hall or student facility. If a person
not authorized to have access to a residence hall or
student facility enters such a residence hall or student
facility, that person may be asked to leave such
residence hall or student facility notwithstanding the
fact that he or she has not interfered with the peaceful
or orderly operation of such residence hall or student
facility or otherwise committed a breach of the peace or
violated any statute or ordinance. Such request to leave
may be made by the president or other administrative
head of the institution of higher education, an employee
designated by the president to maintain order in the
residence hall or student facility, a security officer
appointed pursuant to the provisions of section five,
article four, chapter eighteen-b of this code, or a
municipal police officer, a sheriff or deputy sheriff, or
a member of the department of public safety.

(c) It shall be unlawful for a person to remain in a
residence hall or student facility after being asked to
leave as provided for in subsection (b) of this section.

(d) Any person who violates the provisions of subsec-
tion (c) of this section shall be guilty of a misdemeanor,
and, upon conviction thereof, shall be fined fifteen
dollars. For any second or subsequent conviction for a
violation occurring within one year after a previous
violation for similar conduct, such person shall be fined
an amount not to exceed one hundred dollars.

(e) This section shall not be construed to be in
derogation of the common law, nor shall the provisions
of this section contravene or infringe upon existing
statutes related to the same subject.

CHAPTER 65
(Com. Sub. for H. B. 2697—By Delegates Kiss and Basham)

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

AN ACT to amend and reenact section six, article twenty-two-
a, chapter eighteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
further amend chapter eighteen of said code by adding thereto a new article, designated article twenty-two-e, all relating to higher education; providing for investment by colleges and universities which receive moneys from the eminent scholars endowment fund; providing legislative findings with respect to establishment of distinguished professors trust fund; providing definitions; establishing the distinguished professors endowment trust fund and board of directors; providing corporate powers and duties of board of regents; providing for fund administration and the creation of distinguished professorships; requiring board of regents to establish criteria for selection of distinguished professorships; authorizing solicitation of private funds; and requiring annual reports.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 18. EDUCATION.

Article

ARTICLE 22A. EMINENT SCHOLARS ENDOWMENT TRUST FUND ACT.

§18-22A-6. Administration of fund.

1. (a) The board shall use any state moneys appropriated to the fund solely for the purpose of establishing endowed chairs at state colleges and universities.

4. The board may allocate state Appropriations to an account only when private moneys have also been allocated to that account. The board shall endeavor, whenever possible, to allocate one dollar of state appropriations for every two dollars of private moneys allocated. The board may also allocate only private moneys to an account.
Unless otherwise directed by executive order, the payment of state appropriations to the fund shall be made in twelve equal monthly installments, beginning on the last day of the first month of the fiscal year.

(b) The board may, for purposes of investment, commingle any moneys constituting principal received from whatever source to the extent allowed under the terms of the granting of such moneys and shall endeavor to obtain the highest possible rate of return consistent with the preservation of the principal. Consistent with the terms of the appropriation, grant, gift or bequest, and the provisions of this section, the board may use any income, principal or combination of income and principal as it may deem prudent to finance the establishment of each endowed chair. However, the board shall notify the recipient college or university of any money received for donations to such institution.

(c) The board shall designate endowed chairs at the various colleges and universities as it may deem appropriate. For each chair so established it shall designate a separate account administered by the board to which moneys from the fund shall be deposited. Such moneys may continue to be deemed principal for purposes of investment and commingling pursuant to subsection (b) of this section, and any income, loss or gain, or increase or decrease in value may be allocated by the board on such reasonable basis as is prescribed by the board.

(d) For the purpose of encouraging the donation of private moneys to the fund, the board may designate specific chairs or specific areas of academic study as subjects of challenge grants. A specific chair, or a chair in a designated academic area, shall be established whenever the total amount of principal and interest dedicated to it reaches one hundred fifty thousand dollars, with at least one half of the principal being from private sources. On demand of the college or university where such chair shall be established, the board shall return to it the private funds in the chair's account to be held in an account established in a federally insured depository by such college or university. The private
funds heretofore deposited in accounts in the treasury shall be returned to such college or university: Provided, That regardless whether such moneys are held in the fund established in section three of this article or in accounts established by a college or university pursuant to this subsection, the matching provisions in this article shall apply: Provided, however, That these funds may only be expended in accordance with this article.

When one hundred fifty thousand dollars has accumulated in the account dedicated to any one chair, the board shall notify the president of the appropriate college or university that an appointment to that chair shall be made.

(e) The president of the college or university shall use at least two thirds of the income from moneys allocated to an account to supplement the salary of the person appointed to the endowed chair created by such account. The sum paid from the fund to the person so appointed shall be in addition to the contract salary except as otherwise provided in this section. Such president may allocate one third or any part thereof to provide or assist in providing secretarial or other support services for the endowed chair or may return one third or any part thereof to the board with the direction that such amount be added to the principal amount in the account of the endowed chair from which such income was derived to protect its future yield.

(f) Whenever the endowed chair's salary supplement received pursuant to this subsection equals fifty percent of the contract salary, the president of the college or university may return all or a portion of the excess amount to the fund, and the board shall designate a new account for the purpose of establishing another chair at the same institution or an existing account at the same institution for receipt of the moneys so returned: Provided, That when the principal amount of any chair reaches the sum of one million dollars or more, no state salary may be paid to the holder of the chair, but such person's entire salary shall be paid from the interest income.
(g) When the total allocations designated for a chair from both public and private sources do not equal or exceed one hundred fifty thousand dollars within five years from the date of the establishment of the account, the board may designate a new or existing chair as the recipient of the moneys, regardless of the terms of the appropriation, grant, gift or bequest, except where return of the moneys is required by the terms of the grant, gift or bequest.

(h) The governing body of the institution shall promulgate rules and regulations to insure that any money deposited in any federally insured depository shall be backed by federally guaranteed securities to the extent that the balance in any account in said depository exceeds the amounts guaranteed by the Federal Deposit-Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

ARTICLE 22E. DISTINGUISHED PROFESSORS ENDOwMENT TRUST FUND ACT.

§18-22E-1. Legislative findings.
§18-22E-3. Establishment of fund; corporation to administer; board of directors.
§18-22E-4. Corporate powers.
§18-22E-5. Duties of board of regents.
§18-22E-6. Administration of fund.
§18-22E-7. Selection of distinguished professors.
§18-22E-8. Authorization to solicit private moneys; terms of grants; reports to board of directors; handling of moneys.

§18-22E-1. Legislative findings.

1 The Legislature hereby finds that the essence of excellence in higher education is the attraction and retention of outstanding faculty; that however necessary modern facilities and efficient and effective administration may be, the faculty provides the catalyst by which all the elements of higher education combine to offer a quality education. The Legislature further finds that the attraction and retention of outstanding faculty at all state colleges and universities, particularly those who have attained distinction as scholars and teachers, requires a long-term and permanent commitment from
both public and private sources, that private support
will help strengthen the commitment of citizens and
organizations to the promotion of excellence in higher
education and will provide moneys for salaries compet-
itive with those paid to scholars of similar distinction
working for this country's leading colleges and
universities.

The Legislature further finds that the appropriation
of public moneys to attract and retain outstanding
faculty and to encourage the commitment of private
moneys with a view toward the accumulation of such
moneys in a trust fund for such purposes is a proper
annual expense of the state, and that the establishment
of a distinguished professors trust fund is a proper
means of providing for the advancement of public
higher education in this state.


Whenever the following terms are used in this article,
they have the meanings described below:

(a) "Board of directors" or "board" means the
members of the board of directors of the distinguished
professors endowment trust fund;

(b) "Contract salary" means that portion of the
distinguished professor's financial compensation paid
from state moneys but does not include moneys from the
distinguished professors endowment trust fund;

(c) "Distinguished professorship" means the position
created pursuant to section six of this article to which
a professor is appointed; and

(d) "Fund" means the distinguished professors endow-
ment trust fund.

§18-22E-3. Establishment of fund; corporation to admin-
ister; board of directors.

There is hereby established the distinguished profes-
sors endowment trust fund, a public corporation, for the
purpose of administering the fund described in this
article. The board of directors of this corporation are
those persons appointed and serving as members of the
board of regents.
§18-22E-4. Corporate powers.

(a) The officers of the corporation are the officers of the board of regents. The procedural rules of the board of regents shall be used in conducting meetings.

(b) The corporation is hereby expressly authorized to receive appropriations of public moneys and private or public grants, gifts or bequests. It may hold, invest or reinvest such moneys and expend the income therefrom as hereinafter provided. The board may determine which of the properties and moneys received by it, other than public appropriations, grants, bequests and specific gifts, are income and which are additions to principal.

(c) The board is exempt from liability for any loss or decrease in value of the assets or income of the fund, except as such losses or decreases in value are shown to be the result of bad faith, gross negligence or intentional misconduct.

For the purpose of valuing assets, the board may use any commonly accepted techniques of appraisal or commonly accepted principles of accounting. No agency of government nor any person, natural or corporate, may receive any part of the principal or income from any appropriation, grant, gift or bequest as a fee for the acquisition or administration of the appropriation, grant, gift or bequest.

(d) The board shall adhere at all times to the terms and limitations of any appropriation, grant, gift or bequest received. However, the board may refuse to receive any grant, gift or bequest which incorporates terms and limitations which they deem to be unacceptable.

(e) The board may in its sole discretion borrow money when necessary in order to avoid the untimely sale of assets. At no time, however, may the board incur any debt obligation for such purposes which exceeds twelve months in duration.
§18-22E-5. Duties of board of regents.

The board of regents shall provide to the fund all necessary secretarial services, office space, staff and other assistance required without charge or appropriation therefor.

§18-22E-6. Administration of fund.

(a) Moneys from the general revenue of the state shall be appropriated by separate line item in the budget for faculty endowments to be used solely for the purposes of this article and of article twenty-two-a of this chapter. The board shall allocate the appropriation in accordance with policies which shall be adopted for this purpose, and any funds allocated and not utilized to establish distinguished professorships at state colleges and universities under this article may be reallocated in accordance with such board policies for the sole purpose of establishing endowed chairs for eminent scholars at state colleges and universities pursuant to article twenty-two-a.

The board may allocate state appropriations to an account only when private moneys have also been allocated to that account and shall require a minimum of one private dollar for each dollar of allocation from state appropriation. The board shall endeavor, whenever possible, to allocate one dollar of state appropriations for every two dollars of private moneys allocated. The board may also allocate only private moneys to an account.

Unless otherwise directed by executive order, the payment of state appropriations to the fund shall be made in twelve equal monthly installments, beginning on the last day of the first month of the fiscal year.

(b) The board may, for purposes of investment, commingle any moneys constituting principal received from whatever source to the extent allowed under the terms of the granting of such moneys and shall endeavor to obtain the highest possible rate of return consistent with the preservation of the principal. Consistent with the terms of the appropriation, grant, gift or bequest, and the provisions of this section, the board may use any
income, principal or combination of income and principal as it may deem prudent to finance the establishment of each distinguished professorship.

(c) The board shall designate distinguished professorships at the various colleges and universities as it considers appropriate. For each professorship so established it shall designate a separate account administered by the board to which moneys from the fund shall be deposited. Such moneys may continue to be considered principal for purposes of investment and commingling pursuant to subsection (b) of this section, and any income, loss or gain, or increase or decrease in value may be allocated by the board on such reasonable basis as is prescribed by the board.

(d) For the purpose of encouraging the donation of private moneys to the fund, the board may designate or specify areas as subjects of challenge grants. A specific professorship in a designated academic area shall be established whenever the total amount of principal and interest dedicated to it reaches thirty thousand dollars, with at least one half of the principal being from private sources.

When thirty thousand dollars has accumulated in the account dedicated to any one professorship, the board shall notify the president of the appropriate college or university that an appointment to that professorship may be made.

(e) The president of the college or university may use the income and up to ten percent of that portion of the principal of moneys allocated to an account that is in excess of the amount that is the sum of the total state appropriation to that account plus an equal amount contributed from private sources. The president of the college or university may use such moneys to supplement the salary of the person appointed to the distinguished professorship created by such account. The sum paid from the fund to the person so appointed shall be in addition to the contract salary except as otherwise provided in this section. Such president may allocate an additional ten percent or any part thereof of such excess
principal to provide or assist in providing secretarial or other support services for the distinguished professorship.

(f) Whenever the account for a distinguished professorship equals one hundred fifty thousand dollars, the board, on recommendation of the president of the college or university, may convert the account to an eminent scholars account pursuant to the provisions of article twenty-two-a of this chapter: Provided, That when the principal amount of any account reaches the sum of one million dollars or more, no state salary may be paid to the holder of the professorship, but such person's entire salary shall be paid from the interest income.

(g) When the total allocations designated for a distinguished professorship from both public and private sources do not equal or exceed thirty thousand dollars within five years from the date of the establishment of the account, the board may designate a new or existing professorship at the institution wherein the fund was established as the recipient of the moneys, regardless of the terms of the appropriation, grant, gift or bequest, except where return of the moneys is required by the terms of the grant, gift or bequest.

§18-22E-7. Selection of distinguished professors.

1 The board of regents shall establish criteria for the selection of persons to be appointed as distinguished professors established pursuant to this article. Such professorships may be filled from either within or outside the faculty of the college or university, and outstanding teaching ability shall be part of the criteria for appointment. The board may establish criteria which exceeds the provisions of this section.

§18-22E-8. Authorization to solicit private moneys; terms of grants; reports to board of directors; handling of moneys.

1 Each college and university, and each dean and department chair within each college or university, is hereby authorized to solicit moneys for distinguished professorships pursuant to this article. In order to
maximize the effective use of moneys raised, persons or
institutions soliciting moneys shall endeavor, insofar as
is possible, to secure private grants, gifts or bequests
which are unlimited as to their use. All persons and
institutions engaged in soliciting moneys shall apprise
the board of their actions and provide periodic reports,
at least once each fiscal year, regarding the amounts
secured and, upon receipt of any moneys, shall forward
them forthwith to the board for deposit in accordance
with section six of this article.

The board shall make an annual report to the joint
committee on government and finance of the West Virginia
Legislature no later than the first day of December of each
year setting forth with specificity the sources of all moneys,
the allocations of all moneys and such other information
as the joint committee may require.

CHAPTER 66
(H. B. 2866—By Delegates Farley and Houvouras)
[Passed April 8, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend article twenty-four, chapter eighteen of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, by adding thereto a new section,
designated section eleven, relating to fees and other
money collected at state institutions of higher education;
providing for an additional fee to be imposed upon
health sciences students at West Virginia University,
Marshall University School of Medicine and West
Virginia School of Osteopathic Medicine for offsetting
the cost of health sciences education at these schools of
medicine; and providing for special accounts in the state
treasury and appropriations by the Legislature.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter eighteen of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, be amended by adding thereto a new section,
designated section eleven, to read as follows:
ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-24-11. Health professions education fee.

In addition to the fees specifically provided for in sections one, one-a, one-b and one-c of this article, all students enrolled for credit at the West Virginia University health sciences center, Marshall University School of Medicine and the West Virginia School of Osteopathic Medicine, shall pay a health professions education fee. The board of trustees shall fix the amount of the fee and may from time to time change that amount. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provisions of section one of this article and is not limited thereby. Refunds of the fee may be made in the same manner as any other fee collected at state institutions of higher education. All moneys collected from the health professions education fees shall be deposited in a special revenue account for the respective school from which collection is made, said accounts shall be hereby created in the state treasury for the West Virginia health sciences center, Marshall University School of Medicine, and the West Virginia School of Osteopathic Medicine. The moneys in such fund shall be used to offset general operating costs for health sciences education in this state. Before the first day of July of each year, the board of trustees shall provide the legislative auditor with a report of the projected fee collections during the next fiscal year and a report of fee expenditures for the preceding fiscal year.

*Clerk's Note: Similar provisions of this section also appear in S.B. 420, §18B-10-4a, which passed subsequent to this act.

CHAPTER 67
(H. B. 2293—By Delegate Ashcraft)

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

AN ACT to amend and reenact section three, article twenty-eight, chapter eighteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to standardized testing requirements of nonpublic schools.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 28. PRIVATE, PAROCHIAL OR CHURCH SCHOOLS, OR SCHOOLS OF A RELIGIOUS ORDER.

§18-28-3. Standardized testing requirements.

1 Each private, parochial or church school or school of a religious order or other nonpublic school electing to operate under this statute in lieu of the approval requirements set forth as part of section one, article eight, chapter eighteen, exemption A shall administer on an annual basis during each school year to every child enrolled therein between the ages of seven and sixteen years either the comprehensive test of basic skills, the California achievement test, the Stanford achievement test or the Iowa tests of basic skills/tests of achievement and proficiency, which test will be selected by the chief administrative officer of each school in the subjects of English, grammar, reading, social studies, science and mathematics; and shall be administered under standardized conditions as set forth by the published instructions of the selected test.

Each child's testing results and the school composite test results shall be made available to such child's parents or legal guardians. Upon request of a duly authorized representative of the West Virginia department of education, the school composite test results shall be furnished by the school or by a parents organization composed of the parents or guardians of children enrolled in said school to the state superintendent of schools.

Each school to which this article applies shall:

(a) Establish curriculum objectives, the attainment of which will enable students to develop the potential for becoming literate citizens.
(b) Provide an instructional program that will make possible the acquisition of competencies necessary to become a literate citizen.

If such school composite test results for any single year for English, grammar, reading, social studies, science and mathematics fall below the fortieth percentile on the selected tests, the school as herein described shall initiate a remedial program to foster achievement above that level. If after two consecutive calendar years school composite test results are not above the fortieth percentile level, attendance at the school may no longer satisfy the compulsory school attendance requirement exemption of exemption K, section one, article eight, chapter eighteen, until such time as the percentile standards herein set forth are met.

CHAPTER 68

(Com. Sub. for S. B. 553—By Senators Tucker, Mr. President, J. Manchin and Warner)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]
ARTICLE 31. RESEARCH AND DEVELOPMENT AGREEMENTS FOR STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-31-1. Definitions.
§18-31-2. Legislative findings and purpose.
§18-31-3. Boards authorized to contract with corporations; characteristics of corporations.
§18-31-4. Agreement; required provisions.
§18-31-5. Audit.
§18-31-6. Conflicts of interest.
§18-31-7. No waiver of sovereign immunity.
§18-31-8. Not obligation of the state.

§18-31-1. Definitions.

The following words used in this article shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "Agreement" means any agreement being entered into between a governing board and a corporation pursuant to section four of this article.

(b) "Corporation" means a nonstock, not-for-profit corporation established under the general corporation laws of the state which meets the description presented by section three of this article.

(c) "Corporate directors" means the board of directors of a corporation.

§18-31-2. Legislative findings and purpose.

1 (a) The Legislature finds and determines that the future economic development in the state will depend in part upon research developed at the state institutions of higher education, and enhanced research opportunities for state institutions of higher education will promote the general economic welfare of the citizens of the state.

2 In order to enhance the competitive position of state institutions of higher education in the current environment for research and development, expenditures for equipment and material for research projects must be handled in an expeditious fashion, and the acquisition and utilization of research grants can be simplified and expedited through the utilization of corporations.
(b) The interest of the citizens of the state will be best met by agreements entered into and carried out by the governing boards and corporations to provide research assistance for state institutions of higher education. Therefore, in order to facilitate research and development grants and opportunities for state institutions of higher education, it is appropriate to authorize the governing boards to contract with corporations organized for the purpose of providing such services to state institutions of higher education.

§18-31-3. Boards authorized to contract with corporations; characteristics of corporations.

Each governing board for a state institution of higher education is hereby authorized to enter into agreements and any other contractual relationships with one or more corporations formed with respect to such state institution of higher education, but only if each such corporation meets the following descriptions:

(a) The president and the president's appointees from the institution shall constitute a majority of the voting corporate directors.

(b) The corporation must be organized as a nonprofit, nonstock corporation under the general corporation laws of the state exclusively for charitable, educational or scientific purposes within the meaning of section 501(c) of the Internal Revenue Code of 1986, as amended, to foster and support research at the respective state institution of higher education and to provide evaluation, development, patenting, management and marketing services for inventions of the faculty, staff and students of such state institution of higher education.

(c) The meetings of the corporate directors shall be subject to the provisions of section three, article nine-a, chapter six of this code.

(d) Upon dissolution of the corporation, the assets of the corporation shall be transferred to such entity as the appropriate governing board shall designate for the benefit of the state institution of higher education:
Provided, That such recipient shall be an organization operated exclusively for charitable, educational or scientific purposes as shall at such time qualify as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

§18-31-4. Agreement; required provisions.

(a) Notwithstanding section ten, article three, chapter twelve of this code or any other provision of law to the contrary, each governing board is hereby authorized to enter into an agreement with a corporation, which agreement shall be for the benefit of such state institution of higher education and contain the following provisions, subject to further specification as shall be mutually agreed upon by the appropriate governing board and the corporation:

(1) On the effective date of the agreement, the corporation shall be charged with the responsibility of serving as fiscal agent for sponsored projects conducted by the faculty, staff and students of the state institution of higher education, and grants shall be accepted by the corporation on behalf of the institution and assigned to the corporation for fiscal management.

(2) The corporation shall provide evaluation, development, patenting, licensing, management and marketing services for inventions, processes, trademarks, copyrights or any other intellectual property developed by faculty, staff and students of any state institution of higher education.

(3) The corporation shall have the right to determine the application of the proceeds from any invention, process, trademark, copyright or any other intellectual property developed by the faculty, staff or students of a state institution of higher education among the corporation, the inventor or developer, and the institution.

(4) The corporation shall have such additional responsibilities related to the administration of research and development at the state institution of higher education as are necessary or desirable to facilitate the development of research at the institution.
(b) Upon termination of the agreement, the funds or grants paid or held by the corporation shall be paid to the state institution of higher education or its designee as the appropriate governing board shall direct.

(c) A corporation may utilize both corporation employees and personnel of the state institution of higher education: Provided, That the corporation may pay the costs incurred by the state institution of higher education including personnel funded on grants and contracts, fringe benefits of personnel funded on grants and contracts, administrative support costs and other costs which may require reimbursement and may include as costs any applicable overhead and fringe benefit assessments necessary to recover the costs expended by the state institution of higher education pursuant to the terms of the agreement, it being the intention that a board may be reimbursed for expenses incurred by it pursuant to the agreement.

§18-31-5. Audit.

1 The operations of the corporation shall be subject to an audit by an independent auditor.

§18-31-6. Conflicts of interest.

1 Notwithstanding any other provision of this code to the contrary, officers and employees of a governing board and the affected state institution of higher education may hold appointments to offices of the corporation and be corporate directors or officers or employees of other entities contracting with either the corporation or a governing board of a state institution of higher education. The executive director of the corporation shall have dual appointment with the state institution of higher education. The governing board of a state institution of higher education and the corporate directors must be informed of such appointments annually.

§18-31-7. No waiver of sovereign immunity.

1 Nothing contained in this article shall be deemed or construed to waive or abrogate in any way the sovereign
immunity of the state or to deprive a governing board of a state institution of higher education, a state institution of higher education or any officer or employee thereof of sovereign immunity.

§18-31-8. Not obligation of the state.

Obligations of a corporation shall not constitute debts or obligations of a state institution of higher education, the governing board thereof or the state.


The sections of this article, and the provisions and parts of said sections, are severable, and it is the intention to enact the whole or any part of the powers provided for in this article, and, if any of said sections, or the provisions or parts of any said sections, or the application thereof to any person or circumstance, are for any reason held unconstitutional or invalid, it is the intention that the remaining sections of this article, and the remaining provisions or parts of any said sections, shall remain in full force and effect.

CHAPTER 69
(Com. Sub. for H. 8, 2616—By Delegates Whitt and Reid)

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

AN ACT to amend and reenact section nine, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school principals; providing for the assignment of principals to each school; and restricting the assignment of teaching duties.

Be it enacted by the Legislature of West Virginia:

That section nine, article two, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 2. SCHOOL PERSONNEL.


Upon the recommendation of the county superintendent of schools, the county board of education shall employ and assign, through written contract, public school principals who shall supervise the management and the operation of the school or schools to which they are assigned. Such principals shall hold valid administrative certificates appropriate for their assignments.

Under the supervision of the superintendent and in accordance with the rules and regulations of the county board of education, the principal shall assume administrative and instructional supervisory responsibility for the planning, management, operation and evaluation of the total educational program of the school or schools to which he is assigned.

The principal may submit recommendations to the superintendent regarding the appointment, assignment, promotion, transfer and dismissal of all personnel assigned to the school or schools under said principal's control. Such recommendation shall be submitted in writing as prescribed by the superintendent.

The principal shall perform such other duties as may be assigned by the superintendent pursuant to the rules and regulations of the county board of education.

Upon recommendation of the county superintendent of schools, the county board of education shall, when needed, employ and assign, through written contract, assistant principals who shall work under the direction of the school principal. Such assistant principals shall hold valid administrative certificates appropriate for their assignments.

On or before the first day of July, one thousand nine hundred eighty-nine and continuing thereafter, each county board of education shall assign a certificated principal to each school and no principal may be assigned more than two schools: Provided, That where
enrollment exceeds four hundred students there will be no additional schools assigned to that principal.

No principal assigned to more than one school may be assigned any teaching duties except on a temporary emergency basis. No county shall have more teaching principalships or multi-school principalships than was present on the first day of January, one thousand nine hundred eighty-eight.

On or before the first day of July, one thousand nine hundred ninety-three and continuing thereafter, each county board of education shall employ a full-time supervising principal at each school whose net enrollment equals or exceeds one hundred seventy students. A principal assigned to a school with a net enrollment equal to or greater than one hundred seventy students may not be assigned any teaching duties except on a temporary emergency basis. When a principal is assigned on a full-time basis to a school whose net enrollment is more than seventy-five students but less than one hundred seventy students, such principal shall have a minimum of twenty hours per week for nonteaching duties. A principal assigned on a full-time basis to a school with seventy-five students or less shall have a minimum of ten hours per week for nonteaching duties. *Provided, That nothing in this section prohibits a county board of education from assigning a full-time supervising principal to a school with a net enrollment of less than one hundred seventy students.*

Nothing contained in this section shall be construed to reduce or limit the rights and privileges of principals and assistant principals as teachers under the provisions of section one, article one, chapter eighteen of the code of West Virginia as amended; section one, article one, chapter eighteen-a; and other provisions of this code. *Provided, That on or before the first day of July, one thousand nine hundred ninety-three, the state board of education shall not deny a county board of education the right to place a principal in a school with less than one hundred seventy students.*
AN ACT to amend and reenact sections three, ten, eleven, twenty-two and thirty, article two, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the registration of voters; changing the date by which the county clerk must commence the cancellation of registrations; setting forth the basis for cancellation of registrations; restating the misdemeanor crime for the failure of election officials to perform duties and incorporating the penalty therefor by reference; changing the hours of registration within the county clerk’s office; authorizing the county commission to appoint registrars for purposes other than biennial checkups; setting forth the minimum amount of hours in which temporary registration offices must remain open; authorizing the county commission to establish additional temporary registration offices; and expanding the time in which incomplete postcard registrations may be corrected.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-3. Registration, cancellation and reinstatement; and criminal penalty.
§3-2-10. County commission’s duties and powers; hours during registration period.
§3-2-11. Appointment of registrars; qualifications and duties.
§3-2-22. Registration in clerk’s office; cancellation of registrations of deceased persons; temporary registration offices.
§3-2-30. Time of registration prior to election; changes.

§3-2-3. Registration, cancellation and reinstatement; and criminal penalty.

A permanent registration system shall hereby be
established which shall be uniform throughout the state and all of its subdivisions. No voter so registered shall be required to register again for any election while he continues to reside at the same address, or, having moved from such address, is properly transferred according to the provisions of section twenty-seven or forty-one of this article, unless his registration is canceled as provided in this article.

Within one hundred and twenty days following any election, the clerk of the county commission shall, as evidenced by the presence or absence of signatures on the pollbooks for such election, correct any errors or omissions on the voter registration records pertaining to the election resulting from the poll clerks erroneously checking or failing to check the registration records as required by the provisions of section thirty-four, article one of this chapter.

Within one hundred twenty days following the general election, the clerk shall cancel the registration of each person who has failed to vote at least once in any statewide, special or municipal election held after the statewide general election held four years previously as indicated by his or her registration record. Any clerk failing to perform such duty is guilty of a misdemeanor as provided in section thirty-six of this article. The clerk of the county commission shall notify by mail each person whose registration is canceled for failure to vote. The notice shall inform the voter that:

(a) In order to be reinstated he or she must:

(1) Register again, either in person at the county clerk's office or by mail, according to the provisions of section three or forty-one of this article; or

(2) Execute and file an affidavit of reinstatement of registration at the same residence address not later than thirty days before the next primary or general election, except that reinstatement by affidavit shall not be permitted if the voter registration in question was canceled because the voter failed to make his first vote in person as required by the provisions of subsection (e), section forty-one of this article; and
(b) That the last day to register to vote in any election is thirty days before that election.

A blank copy of the affidavit form shall be included with the notice to the voter.

The clerk shall replace the registration card of any voter who files a completed affidavit of reinstatement in the registration records.

§3-2-10. County commission's duties and powers; hours during registration period.

Subject to the authority of the secretary of state, the county commission shall be chief registration authority in each respective county and all subdivisions therein, and shall supervise the county clerk and registrars in the performance of their respective duties.

The county commission shall have power on its own motion to summon and to interrogate any person concerning the registration of voters, to investigate any irregularities in registration, to summon and examine witnesses, to require the production of any relevant books and papers, and to conduct hearings on any matters relating to registration of voters.

Notwithstanding any provision of any other section of this code, the office of the clerk of the county commission shall remain open from 9:00 a.m. until 8:00 p.m. on the Friday and Monday, and from 9:00 a.m. until 5:00 p.m. on the Saturday prior to the close of the registration periods for statewide primary and general elections.

§3-2-11. Appointment of registrars; qualifications and duties.

The county commission of each county may appoint registrars to make a biennial checkup or to conduct other authorized registration activities allowed by this article. Two persons of opposite political parties shall together serve as registrars for from one to ten precincts.

No person is eligible to be appointed a registrar, or in any way act as such, if he or she has been convicted of a felony; or if he or she holds, or is a candidate for,
any elective or appointive office; or is a public employee, under the laws of this state or of the United States; or cannot read or write the English language. If any registrar fails or refuses to serve or is properly dismissed, the vacancy shall be filled either by the county commission or by the clerk thereof in vacation, in the manner provided for the appointment of registrars. Each registrar, before entering upon the discharge of his or her duties, shall take an oath that he or she will perform the duties of the office to the best of his or her ability, which oath shall be filed in the office of the clerk of the county commission.

An equal number of such registrars shall be selected from the two major political parties. The county commission shall, at least four weeks prior to making such appointment, request the county executive committee of each of the two political parties to submit a list of names, equal to one half of the total number to be appointed, of persons qualified to act as registrars; and the county commission shall, if such lists are submitted, appoint the qualified persons recommended and shall notify each registrar of his or her appointment. Every list so presented shall be filed and preserved for one year by the clerk of the county commission. Any and every act performed by any registrar under the provisions of this article is void unless performed in conjunction with a registrar of the opposite political party at the same time and place.

Before acting, all such registrars shall attend a session, or sessions, of instruction by the clerk of the county commission, or some person designated by him or her, concerning the performance of their duties.

Immediately following such instruction the clerk of the county commission shall give to the registrars a copy of the laws and regulations relating to registration of voters, written instructions for performing their duties, and all necessary forms and other supplies, including maps with municipal precincts superimposed over county precincts in cases where boundaries differ, and a certified list of all registered voters within the precinct or precincts for which such registrars were
51 appointed, upon such form as may be prescribed by the
52 secretary of state. Registrars appointed for the purpose
53 of conducting a biennial checkup shall proceed together
54 to make a house-to-house canvass in their precincts as
55 allowed by section twenty-one of this article. Each
56 biennial checkup shall be completed at least sixty days
57 before the statewide primary election following the
58 appointment of the registrars. In making the checkup
59 the registrars shall not reregister any person who is
60 already registered in such precinct, but shall determine
61 whether or not such person is duly registered and
62 qualified to vote therein. Registrars may be appointed
63 under the provisions of this article to conduct registra-
64 tion at temporary registration offices established
65 throughout the county.
66
67 The registrars shall require valid identification and
68 proof of age of each registrant, and shall inquire and
69 attempt to establish whether the registrant resides
70 within a municipality. The registrars shall have the
71 registrant complete the voter registration form for
72 county-state permanent registration and if the person
73 resides within the limits of a municipality for which a
74 separate registration file is kept, the registrars shall
75 also have the registrant complete the form for municipal
76 registration.

§3-2-22. Registration in clerk's office; cancellation of
registrations of deceased persons; temporary
registration offices.

1 The clerk or any deputy clerk of the county commis-
2 sion may register any qualified person as a voter. The
3 clerk or deputy shall first require valid identification
4 and proof of age, and inquire and attempt to establish
5 whether the voter resides within the limits of a
6 municipality using the map provided by the municipal-
7 ity in accordance with section five, article one of this
8 chapter. The clerk or deputy clerk shall have the person
9 registering fill in and complete the prescribed voter
10 registration form for county-state permanent registra-
11 tion. If the person resides within the limits of a
12 municipality for which a separate registration file is
13 kept, the clerk or deputy shall also have the person
complete the form for municipal registration. The registrant shall sign the form or forms under oath or affirmation. The clerk, upon proper proof, may alter, amend, correct or cancel the registration record of any voter. Such registration or alteration, amendment, correction or cancellation of registration records shall be carried on throughout the year.

During the biennial checkup period of every even-numbered year, the clerk or deputy clerk shall visit every public or private institution, excluding hospitals, in which reside aged, infirm, disabled or chronically ill persons, and every high school to register qualified voters. The clerk shall establish at least one temporary registration office per magisterial or tax district, whichever is more numerous, to register qualified persons or to alter, amend, correct or cancel such registration records. Temporary registration offices shall be open a minimum of four hours each day on at least three days, including one Saturday and one evening, not more than sixty days nor less than thirty days prior to each primary and each general election. The hours shall be posted and advertised as a Class III-O legal advertisement with the publication area being the magisterial district. Additional temporary offices may be established throughout the county for the public convenience. The clerk of the county commission shall also solicit public service advertising of such registration offices and times on radio, television and newspapers serving that county.

Within fifteen days following receipt of a death certificate from the state or local registrar of vital statistics or the publication in a newspaper of the county an obituary clearly identifying a deceased person by name, residence and age, the clerk of the county commission shall cancel the voter registration, if any, of the person shown to be deceased by such certificate or obituary.

Sixty days prior to a general election, the clerk of the county commission shall review each death certificate received by him and shall cancel the voter registration, if any, of each deceased person whose voter registration
has not previously been canceled. By the forty-fifth day
prior to a general election each clerk of a county
commission shall certify to the secretary of state that he
has performed the duty required by this paragraph.

If found necessary, the county commission may order
and direct the clerk of the county commission to
maintain additional office hours in the evening or at
other proper times and places for accommodation of
voter registration.

§3-2-30. Time of registration prior to election; changes.

1 No person may vote in an election when he has
2 registered or his voter registration has been altered,
3 amended or corrected within a period of thirty days next
4 preceding such election: Provided, That postcard
5 registrations containing incomplete information which
6 are received by the county clerk no later than the close
7 of registration may be corrected within four days after
8 the close of registration if such information is available.
9 This inhibition shall not prevent, during such period of
10 thirty days, additional registrations and changes in
11 voter registrations with reference to future elections. If,
12 during such period of thirty days preceding an election,
13 a voter is registered or his voter registration is altered,
14 amended or corrected, he shall not be permitted or
15 qualified to vote at such election.

CHAPTER 71
(Com. Sub. for S. B. 186—By Senator Chafin)

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

AN ACT to amend and reenact sections five, five-c and ten,
article three, chapter three of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, all
relating to voting by absentees; necessity for physician's
and chiropractor's statements deleted in certain cases;
more than four consecutive absentee ballots voted by
mail as a result of being out of the county to be
challenged; exceptions; authorizing county commissions
to adopt a policy extending emergency absentee voting to health care facilities within an adjacent county or within thirty-five miles of the county seat; extending the time in which persons admitted to health care facilities may apply to vote an emergency absent voter's ballot; changing the method by which emergency absent voter’s ballots may be applied for and voted; and updating certain terminology.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-5. Voting an absent voter's ballot by mail; federal postcard application.

§3-3-5e. Procedures for voting an emergency absent voter's ballot by qualified voters.

§3-3-10. Challenging of absent voters' ballots.

§3-3-5. Voting an absent voter's ballot by mail; federal postcard application.

1 A person desiring to vote an absent voter's ballot by mail may, on or after the first day of January prior to the date of any primary, general or special election in the case of any person outside the continental limits of the United States and not more than eighty-four days prior to the date of any primary, general or special election in the case of any other person, make application by mail to the clerk of the circuit court of the county in which he is registered to vote for an official absent voter's ballot or ballots to be voted at such election. The clerk of the circuit court shall not honor any such application for an absent voter's ballot received by him after the fourth day next preceding the date of the election. In computing the fourth day, the day of conducting the election shall be excluded.

16 When a clerk receives a completed application to vote an absent voter's ballot by mail in more than one election in an election year from an applicant eligible
to vote absentee under subdivision (2), section one of this article, the clerk shall, if all legal requirements are met, forward to the applicant the appropriate ballot or ballots for each election held within that jurisdiction. The application to be used by persons who wish to vote an absent voter’s ballot by mail shall be prescribed by the secretary of state and shall be in substantially the following form:

"APPLICATION FOR VOTING AN ABSENT VOTER'S BALLOT BY MAIL"

KNOWING THAT I CAN BE FINED NOT MORE THAN ONE THOUSAND DOLLARS OR IMPRISONED IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE THAN ONE YEAR OR BOTH SUCH FINE AND IMPRISONMENT FOR KNOWINGLY MAKING A FALSE STATEMENT OR REPRESENTATION HEREIN, I, ________________________________, hereby declare that I am now, or will have been, a resident of the state of West Virginia for twelve months, and of the county of ____________, for thirty days, next preceding the date of the ensuing election to be held on the _______________ day of ____________, 19______; that I now reside at ________________________________

(give full address)

in the magisterial district of _____________, in said county; that I am a duly qualified voter entitled to vote in such election; that I am registered in the precinct of my residence as provided by law; that I am registered as a ________________; (state political party if ballot is for primary election) and that (strike out the numbered paragraphs not applicable and complete the numbered paragraph which is applicable):

(1) I will be unable to vote in person at the polls on election day because of ________________, (state particulars of physical disability, illness or injury).

(2) I anticipate commitment to a hospital, institution or other confinement on or about the __________ day of ______________, 19____, for the following medical reasons ________________, as evidenced below by the statement of a duly licensed physician or
59 chiropractor, and by reason thereof will not be able to vote in person at the polls in such election.

(3) I expect to be absent from the aforementioned county in which I am registered to vote during the entire time the polls are open in such election, and I am (check one applicable):

☐ A member of the armed forces in the active service.

☐ A spouse or dependent of a member of the armed forces in active service.

☐ A member of the merchant marine of the United States.

☐ A spouse or dependent of a member of the merchant marine of the United States.

☐ A citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia.

☐ A spouse or dependent residing with or accompanying a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia.

(4) I am required to be absent from the aforementioned county in which I am registered during the entire time the polls are open in such election for the reason or reasons hereafter stated; I am not in any of the categories referred to in paragraph (3) above; I am required to be absent from said county during regular business hours of the clerk of the circuit court of said county throughout the period or throughout the remainder of the period of voting an absent voter's ballot by personal appearance at said office.

(state reason or reasons for required absence from county on election.)

(5) I have been appointed (state whether an election commissioner or poll clerk)
in precinct No. _______ in said election, which precinct is not the precinct in which I am registered to vote.

(6) I will be incarcerated in the county or city jail or other detention facility located in this county on election day but am not under sentence of treason, bribery or a felony, as evidenced below by the statement of the county sheriff, chief of police or authorized deputy.

In consideration of the foregoing qualifications, I hereby make application for an official absent voter's ballot (or ballots if more than one are to be used) to be voted by me at such election, and request that such ballot or ballots be mailed to me at the following address: ____________________________________________

(give full address for mailing purposes)

(Complete the following paragraph only if assistance will be needed in voting absent voter's ballot):

I further declare that I will need assistance in voting an absent voter's ballot for the following reasons: ______
________________________________________________________

(specify illiteracy or exact nature of physical disability, illness or injury)

I hereby declare under the penalties for false swearing as provided in section three, article nine, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, that the statements and declarations contained in this application are true and correct to the best of my knowledge and belief.

________________________
Signature of Applicant

________________________
(or in case the applicant is illiterate he shall make his mark and have it witnessed on the following lines):

________________________
Mark of Applicant

________________________
Signature of Witness"


135 If the person applying for an absent voter's ballot by mail be unable to sign his application because of illiteracy, he shall make his mark on the signature line above provided for an illiterate applicant which mark shall be witnessed.

140 The following declaration must be completed and signed if the reason specified in the above application for being unable to vote in person at such election is anticipated confinement in a hospital, institution or other place for medical reasons.

"STATEMENT OF PHYSICIAN (CHIROPRACTOR)

I, ____________, hereby declare that I am a physician (chiropractor) duly licensed to practice in the state of ____________; that I last examined ____________, the applicant whose signature appears on the application above on the _________ day of ____________, 19____; and that in my opinion:

The applicant will, because of ________________

______________________________

(state for what medical reasons)

______________________________

(specify hospital, institution or other place)

on or about the ______ day of ____________, 19____,

and will because of such reasons not be able to go to the polls on the ______ day of ____________, 19____, the date of the election.

______________________________

Signature of Physician (Chiropractor)"

164 The following declaration must be completed and signed if the reason specified in the above application for being unable to vote in person at the election is incarceration in a facility within the county for other than conviction of treason, bribery or a felony:

"STATEMENT OF SHERIFF, CHIEF OF POLICE OR AUTHORIZED DEPUTY

I, ____________, hereby declare that the applicant whose signature appears on the application above will
be confined in the county or city jail or other detention facility on the _____ day of ____________, 19__, the date of the election, and is not under conviction of treason, bribery or a felony.

SIGNATURE

TITLE

COUNTY”

In lieu of the application for an absent voter's ballot provided above, those persons specified in subdivision (2), section one of this article may use the federal postcard application for absent voter's ballot form issued under authority of the Uniformed and Overseas Citizens Absentee Voting Act of 1986, as amended (Public Law 99-410, 42 U.S.C. 1973, et seq.). Any such federal postcard application does not have to be executed pursuant to oath or attestation. Upon receipt of a properly completed copy of such form, the clerk of the circuit court shall process it the same as any other application for an absent voter's ballot by mail. Any such properly completed copy may be returned only to the clerk of the circuit court of the county in which the applicant is a registered voter.

Immediately upon receipt of a completed application for voting an absent voter's ballot by mail, the clerk of the circuit court shall determine (1) whether the application for voting such ballot has been completed as required by law; (2) whether he has evidence that any of the statements contained in the application are not true; (3) whether the applicant is in fact duly registered in the precinct of his residence as provided by law and insofar as registration is concerned would be permitted to vote at the polls in such election; and (4) whether the applicant has voted absentee by mail as a result of being out of the county more than four consecutive times: Provided, That the determination as to whether the applicant has voted more than four consecutive times shall not apply if the applicant is a citizen residing out
of the United States; or a member, spouse or dependent
of a member serving in the uniformed services; or a
college student living outside his or her home county. If
the determination of the clerk of the circuit court as to
(1) or (3) is in the negative or as to (2) or (4) is in the
affirmative, the clerk shall notify the applicant at the
time he mails the absent voter's ballot to him that he
will challenge the applicant's privilege to vote an absent
voter's ballot by mail for reasons which he shall indicate
and, upon receipt of the applicant's absent voter's ballot,
the clerk shall challenge such ballot. If the challenge is
made under subdivision (4) above, such a challenge shall
be removed upon submission of proof of residence before
the board of canvassers.

Upon determination by the clerk of the circuit court
that the applicant is entitled to vote an absent voter's
ballot by mail or that the applicant will be permitted
to vote an absent voter's ballot by mail with such ballot
to be challenged by the clerk, the clerk shall between
the forty-second day and the fourth day next prior to the
election in which the absent voter's ballot is to be used,
mail to the applicant the following absentee voting
supplies: Provided, That the clerk shall mail such voting
supplies to an applicant whose address is shown to be
outside the continental limits of the United States by
priority airmail on the same day the application is
received in the clerk's office or on the next day
thereafter that he has both an application and a ballot:

(a) One official absent voter's ballot (or ballots if more
than one are to be used) which has been prepared in
accordance with law for use in such election; such ballot
in the case of a primary election shall be of the party
of the applicant's affiliation as indicated on his registra-
tion card or, in the case the applicant is not found to
be registered by the clerk but votes a ballot challenged
by the clerk, the clerk shall send to the applicant an
absent voter's ballot of the party designated by the
applicant in his application;

(b) One Absent Voter's Ballot Envelope No. 1, un-
sealed, which shall have no writing thereon except the
designation "Absent Voter's Ballot Envelope No. 1";
(c) One Absent Voter's Ballot Envelope No. 2, unsealed;

(d) Notice that an absent voter's ballot returned from outside the continental limits of the United States must be mailed priority airmail; and

(e) Notice that absent voters' ballots must be received in the office of the clerk not later than the time of closing of the polls.

Upon receipt of an absent voter's ballot by mail, the voter shall mark the ballot and the voter may have assistance in voting his absent voter's ballot in accordance with the provisions of section six of this article.

After the voter has voted his absent voter's ballot, he shall (1) enclose the same in Absent Voter's Ballot Envelope No. 1, and seal that envelope, (2) enclose sealed Absent Voter's Ballot Envelope No. 1 in Absent Voter's Ballot Envelope No. 2 and seal that envelope, (3) complete and sign the forms, if any, on Absent Voter's Ballot Envelope No. 2 according to the instructions thereon, and (4) mail, postage prepaid and, if from outside the continental limits of the United States, by priority airmail, the sealed Absent Voter's Ballot Envelope No. 2 to the clerk of the circuit court of the county in which he is registered to vote.

Upon receipt of such sealed envelope, the clerk shall (1) enter onto the envelope such information as may be required of him according to the instructions thereon; (2) enter his challenge, if any, to the absent voter's ballot; (3) enter the required information into a record of persons making application for and voting an absent voter's ballot by personal appearance or by mail or otherwise (the form of which record and the information to be entered therein shall be prescribed by the secretary of state); and (4) place such sealed envelope in a secure location in his office, there to remain until delivered to the polling place in accordance with the provisions of this article or, in case of a challenged ballot, to the county commission sitting as a body of canvassers.
§3-3-5c. Procedures for voting an emergency absent voter's ballot by qualified voters.

(a) Notwithstanding any other provision of this chapter, a person qualified to vote an absent voter's ballot, as defined in subdivision (1), section one of this article, who is admitted, on or after the seventh day next preceding the election, to a hospital or other duly licensed health care facility within the county of their residence for emergency medical treatment, and who remains confined and is unable to vote at the polls on election day, may vote an emergency absent voter's ballot under the procedures established in this section. The county commission may adopt a policy extending the emergency absentee voting procedures to hospitals or other duly licensed health care facilities within an adjacent county or within thirty-five miles of the county seat: Provided, That the policy shall be adopted by the county commission at least ninety days prior to the election that will be affected and a copy of such policy shall be filed with the secretary of state.

(b) On or before the first Monday of the month next preceding the date on which any election is to be held the circuit clerk of each county shall notify the county commission of the number of sets of emergency absent voter ballot commissioners which he or she deems necessary to perform the duties and functions hereinafter set forth.

(c) A set of emergency absent voter ballot commissioners at-large shall consist of two persons, appointed by the county commission in accordance with the procedure prescribed for the appointment of election commissioners under the provisions of section twenty-eight, article one of this chapter but without regard to magisterial district or precinct. Emergency absent voter ballot commissioners shall have the same qualifications and rights and take the same oath required under the provisions of this chapter for commissioners of elections. Such commissioners shall be compensated for services and expenses in the same manner as commissioners of election obtaining and delivering election supplies under
the provisions of section forty-four, article one of this chapter.

(d) Upon request of the voter or a member of the voter's immediate family, the circuit clerk, upon receiving a proper request for voting an emergency absent voter's ballot no earlier than the seventh day next preceding the election and no later than noon of election day, shall supply to the emergency absent voter's ballot commissioners the application for voting an emergency absent voter's ballot and the balloting materials. The emergency absent voter ballot application shall be prescribed by the secretary of state and shall be in substantially the following form:

"APPLICATION FOR VOTING AN EMERGENCY ABSENT VOTER'S BALLOT

KNOWING THAT I CAN BE FINED NOT MORE THAN ONE THOUSAND DOLLARS AND IMPRISONED IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE THAN ONE YEAR FOR KNOWINGLY MAKING A FALSE STATEMENT OR REPRESENTATION HEREIN, I, ___________, hereby declare that I am now, or will have been, a resident of the state of West Virginia for twelve months, and of the county of ___________, for thirty days next preceding the date of the ensuing election to be held on the _______ day of __________, 19_____; that I now reside at ____________________________

______________________________
(give full address)
in the magisterial district of ____________, in said county; that I am a duly qualified voter entitled to vote in such election; that I am registered in the precinct of my residence as provided by law; that I am registered as a ________________________;

(1) I will be unable to vote in person at the polls on election day because I have been confined in __________

______________________________
(State name and location of facility)
since ___________________ 
(State date of confinement commenced) 

because of ___________________
(State particulars of illness or injury) 

(2) My treating physician is ___________________

I hereby declare under the penalties for false swearing as provided in section three, article nine, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, that the statements and declarations contained in this application are true and correct to the best of my knowledge and belief.

_____________________________________  
Signature of Applicant 

_____________________________________  
(or in case the applicant is illiterate he shall make his mark and have it witnessed on the following lines):  

_____________________________________  
Mark of Applicant 

_____________________________________  
Signature of Witness”

If the person applying for an emergency absent voter's ballot be unable to sign his application because of illiteracy, he shall make his mark on the signature line above provided for an illiterate applicant which mark shall be witnessed.

The following declaration is to be completed and signed by each of the emergency absent voter's ballot commissioners:

“STATEMENT OF EMERGENCY ABSENT VOTER'S BALLOT COMMISSIONERS

We, ______ and ______, hereby declare that we are the duly appointed emergency absent voter's ballot commissioners and have met the applicant, whose name appears on the application above at his or her place of confinement on the ______ day of ____________,
114 19____; and that in our opinion, the applicant will,
115 because of an emergency medical confinement which
116 commenced at least seven days prior to the election, be
117 unable to go to the polls on the _________day of
118 ______________, 19____, the date of the election.

119 We have determined that the applicant has been
120 confined in ________________________________
121 __________________________________________
122 (State name and location of facility)
123 since ________________________________
124 (State date confinement commenced)
125 because of ______________________________
126 (State particulars of illness or injury)
127 ________________________________________
128 (Date) (Signature of Emergency Absent Voter's
129 Ballot Commissioner)
130 ________________________________________
131 (Date) (Signature of Emergency Absent Voter's
132 Ballot Commissioner)"

133 (e) At least one of the emergency absent voter ballot
134 commissioners receiving the balloting materials shall
135 sign a receipt which shall be attached to the application
136 form. Each of the emergency absent voter ballot
137 commissioners shall deliver the materials to the absent
138 voter, await his or her completion of the application and
139 then the ballot, and return the same to the circuit clerk,
140 and upon delivering the application and the voted ballot
141 to the circuit clerk, sign an oath that no person other
142 than the absent voter voted the ballot. The application
143 and the voted ballot shall be returned to the circuit clerk
144 prior to the close of the polls on election day. Any ballots
145 received by the clerk after the time that delivery may
146 reasonably be made but before the closing of the polls
147 shall be treated as challenged absent voters' ballots in
148 accordance with the provisions of section ten of this
149 article and in addition to those absent voters' ballots
150 subject to challenge as enumerated therein.

151 (f) Upon receiving the application and emergency
152 absent voter's ballot, the clerk of the circuit court shall
153 ascertain whether the application is complete and the
voter is properly registered to vote with the office of the
clerk of the county commission. If the voter is found to
be properly registered in the precinct shown on the
application, the ballot shall be delivered to the precinct
election commissioner pursuant to section seven of this
article. If the voter is found not to be registered, then
the ballot shall be challenged for that reason or any
other provided for in section ten of this article.

(g) If either or both of the emergency absent voter
ballot commissioners should refuse to sign any applica-
tion for voting an emergency absent voter's ballot, then
the voter shall be permitted to vote as an emergency
absent voter and any such ballot shall be treated as a
challenged absent voter's ballot in accordance with the
provisions of section ten of this article and in addition
to those absent voters' ballots subject to challenge as
enumerated therein.

(h) Any voter who receives assistance in voting an
emergency absent voter's ballot shall comply with the
provisions of section six of this article. Any other
provisions of this chapter relating to absent voter's
ballots not altered by the provisions of this section shall
govern the treatment of emergency absent voter's
ballots.

§3-3-10. Challenging of absent voters' ballots.

The clerk of the circuit court may challenge an absent
voter's ballot on any of the following grounds: (1) That
the application for an absent voter's ballot has not been
completed as required by law; (2) that any statement or
declaration contained in the application for an absent
voter's ballot is not true; (3) that the applicant for an
absent voter's ballot is not registered to vote in the
precinct of his residence as provided by law; (4) that the
person voting an absent voter's ballot by personal
appearance in his office had assistance in voting such
ballot when the person was not qualified for such voting
assistance because (a) the affidavit of the person who
received such assistance does not indicate a legally
sufficient reason for such assistance, or (b) the person
who received such assistance did not make an affidavit
as required by this article, or (c) the person who received such assistance is not so illiterate as to have been unable to read the names on the ballot or that he is not so physically disabled as to have been unable to see or mark the absent voter's ballot; (5) that the person who voted an absent voter's ballot by mail and received assistance in voting such ballot was not qualified under the provisions of this article for such assistance; and (6) that the person has voted absentee by mail as a result of being out of the county more than four consecutive times: Provided, That the determination as to whether the person has voted more than four consecutive times shall not apply if the person is a citizen residing out of the United States; or a member, spouse or dependent of a member serving in the uniformed services; or a college student living outside of his or her home county.

Any one or more of the election commissioners or poll clerks in a precinct may challenge an absent voter's ballot on any of the following grounds: (1) That the application for an absent voter's ballot was not completed as required by law; (2) that any statement or declaration contained in the application for an absent voter's ballot is not true; (3) that the person voting an absent voter's ballot is not registered to vote in the precinct of his residence as provided by law; (4) that the signatures of the person voting an absent voter's ballot as they appear on his registration record, his application for an absent voter's ballot, and the absent voter's ballot envelope are not in the same handwriting; (5) that the absent voter's ballot does not have thereon the official seal of the clerk of the circuit court and all signatures of members of the board of ballot commissioners; (6) that the person voting an absent voter's ballot by personal appearance in the office of the clerk of the circuit court had assistance in voting such ballot when the person was not qualified for such assistance because (a) the affidavit of the person who received such assistance does not indicate a legally sufficient reason for such assistance, or (b) the person who received such assistance did not make an affidavit as required by this article, or (c) the person who received such assistance is not so illiterate as to have been unable to read the
names on the ballot or that he was not so physically
disabled as to have been unable to see or mark the
absent voter's ballot; (7) that the person voted an absent
voter's ballot by mail and received assistance in voting
such ballot when not qualified under the provisions of
this article for such assistance; (8) that the person who
voted the absent voter's ballot voted in person at the
polls on election day; (9) that the person voted an absent
voter's ballot under authority of subdivision (3) of section
one of this article and is or was present in the county
in which he is registered to vote between the opening
and closing of the polls on election day; (10) that the
person who voted an absent voter's ballot had died
before election day; (11) that the person voted an absent
voter's ballot under authority of subdivision (1) of section
one of this article and was able to vote at the polls on
election day; and (12) on any other ground or for any
reason on which or for which the ballot of a voter voting
in person at the polls on election day may be challenged.

Any registered voter in the county may challenge an
absent voter's ballot voted under authority of subdivision
(3) of section one of this article on the ground that the
voter of such ballot is or was in the county in which he
is registered to vote between the opening and closing of
the polls on election day and may challenge an absent
voter's ballot voted under authority of subdivision (1) of
section one of this article on the ground that the voter
of such ballot was able to vote at the polls on election
day.

Forms for, and the manner of, challenging an absent
voter's ballot under the provisions of this article shall
be prescribed by the secretary of state.

Absent voters' ballots challenged by the clerk of the
circuit court under the provisions of this article shall be
transmitted by the clerk directly to the county commis-
sion sitting as a board of canvassers; and the absent
voters' ballots challenged by the election commissioners,
poll clerks and registered voters of the county under the
provisions of this article shall not be counted by the
election officials but shall be transmitted by them to the
county commission sitting as a board of canvassers.
Action by the board of canvassers on such challenged absent voters' ballots shall be governed by the provisions of section forty-one, article one of this chapter.

CHAPTER 72
(H. B. 2235—By Delegates Berry and Tribett)

[Passed March 20, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the filing of written statements with the secretary of state designating the treasurer of a political committee or the financial agent of a candidate; enlarging the time period for filing such statement from sixty days prior to an election to twenty-eight days prior to an election; designating the specific time of receipt or postmark requirements; and defining the terms "person" and "financial agent".

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.

(a) No person shall act as the treasurer of any political committee, or as financial agent for any candidate for nomination or election to any office to be filled by the voters of the entire state, or candidates for nomination or election for any office, encompassing an election district larger than a county, or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, encompassing an election district larger than a county, unless a...
written statement designating him as such treasurer or
financial agent shall be filed with the secretary of state,
at least twenty-eight days before the election at which
he is to act, and must be received before midnight,
eastern standard time, of that day, or if mailed, shall
be postmarked before that hour.

(b) No person shall act as treasurer of any such
committee or as financial agent for any candidate to be
nominated or elected by the voters of a county or a
district therein, or as the treasurer or financial agent
for a candidate for the nomination or election to any
other office, or for the passage or defeat of any issue,
thing or item to be voted upon not herein mentioned,
unless a written statement designating him as such
treasurer or financial agent shall be filed with the clerk
of the county commission at least twenty-eight days
before the election at which he is to act, and must be
received before midnight, eastern standard time, of that
day, or if mailed, shall be postmarked before that hour.

(c) Notwithstanding the provisions of subsections (a)
and (b) of this section, a filing designating a treasurer
or financial agent for a state or county political
executive committee may be made anytime before the
committee either accepts or spends funds on behalf of
the committee. Once a designation is made by a state
or county political executive committee, no additional
designations shall be required under this section until
a successor treasurer or financial agent is designated.
A state or county political executive committee may
terminate a designation made pursuant to this section
by making a written request to terminate the designa-
tion and by stating in the request that the committee
has no funds remaining in the committee's account. This
written request shall be made with either the secretary
of state or the clerk of the county commission as
provided by subsections (a) and (b) of this section.

(d) As used in this article:
The term "person" shall include an individual,
partnership, committee, association, corporation, and
any other organization or group of persons; and
The term "financial agent" shall include any person acting for and by himself, or any two or more natural persons acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party or principle at any election, or any proposition submitted to a vote at a public election.

CHAPTER 73
(Com. Sub. for H. B. 2028—By Delegates Love and Ashley)

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

AN ACT to amend and reenact sections three, five, eight, fourteen and twenty-two, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twenty-three, all relating to definitions; emergency medical services advisory council, duties, composition, appointment, meetings, compensation and expenses, and continuation of the council; standards for emergency medical service personnel, adding class of emergency medical services personnel; services that may be performed by emergency medical services personnel, adding class of emergency medical services personnel; transportation of unconscious or otherwise uncommunicative patients.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-3. Definitions.
§16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses.
§16-4C-8. Standards for emergency medical service personnel.
§16-4C-14. Services that may be performed by emergency medical services personnel.
§16-4C-22. Transportation of unconscious or otherwise uncommunicative patients.
§16-4C-23. Authority of the director to make regulations.

§16-4C-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

2 “Ambulance” means any privately or publicly owned vehicle or aircraft which is designed, constructed or modified; equipped or maintained; and operated for the transportation of patients.

3 “Ambulance service” means the transportation, and treatment at the site of pickup and en route, of a patient to or from a place where medical, hospital or clinical service is normally available.

4 “Council” means the emergency medical service advisory council created pursuant to section five of this article.

5 “Director” means the director of health.

6 “Emergency medical services” means all services which are set forth in P.L. 93-154 “The Emergency Medical Services Act of 1973” and those included in and made a part of the emergency medical services plan of the department of health inclusive of, but not limited to, caring for and giving life-saving or life-preserving treatment to a patient.

7 “Emergency medical service personnel” means any person certified by the director to provide emergency medical services as set out in section eight of this article and includes, but is not limited to, emergency medical service attendants, emergency medical technicians, emergency medical technicians-ambulance, emergency medical technicians-intermediate, mobile intensive care paramedics, emergency medical technician-paramedics, physicians, osteopathic physicians, persons certified to provide cardiopulmonary resuscitation, registered
nurses and licensed practical nurses who have been trained in first aid, or other licensed or certified health providers who meet the standards and training requirements as determined by the director.

"Emergency medical service attendant" means a person certified by the director to render such emergency medical services as are authorized for such emergency medical service attendant in section eight of this article.

"Emergency medical technician" means a person certified by the director to render such emergency medical services as are authorized for such emergency medical technician in section eight of this article.

"Emergency medical technician-ambulance" means a person certified by the director to render such emergency medical services as are authorized for such emergency medical technician-ambulance in section eight of this article.

"Emergency medical technician-intermediate" means a person certified by the director to render such emergency medical services as are authorized for such emergency medical technician-intermediate in section eight of this article.

"Emergency medical technician-critical care" means a person certified by the director to render such emergency medical services as are authorized for such emergency medical technician-critical care in section eight of this article.

"Mobile intensive care paramedic" means a person certified by the director to render such emergency medical services as are authorized for such mobile intensive care paramedic in section eight of this article.

"Emergency medical technician-paramedic" means a person certified by the director to render such emergency medical services as are authorized for such emergency medical technician-paramedic in section eight of this article.

"Emergency medical service provider" means any
authority, person, corporation, partnership or other entity, public or private, which owns or operates an ambulance which provides emergency medical service in this state.

"Governing body" has the meanings ascribed to it as applied to a municipality in subdivision (1), subsection (b), section two, article one, chapter eight of this code.

"Line officer" means the emergency medical service personnel, present at the scene of an accident, injury or illness, who has taken the responsibility for patient care.

"Medical command" means the issuing of orders by a physician or osteopathic physician from a medical facility to emergency medical service personnel for the purpose of providing appropriate patient care.

"Municipality" has the meaning ascribed to it in subdivision (1), subsection (a), section two, article one, chapter eight of this code.

"Patient" means any sick, injured, wounded or otherwise incapacitated or helpless person, or an expectant mother who needs medical, hospital or clinical service under an existing or imminent emergency situation.

"Service reciprocity" means the provision of emergency medical services to citizens of this state by emergency medical service personnel certified to render such services by a neighboring state.

"Small emergency medical service provider" means any emergency medical service provider which is made up of less than twenty emergency medical service personnel.

§16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses.

The emergency medical service advisory council, heretofore created and established by former section seven of this article, shall be continued for the purpose of developing, with the director, standards for emergency medical service personnel and for the purpose of
providing advice to the office of emergency medical services and the director thereof, as established by section four of this article with respect to reviewing and making recommendations for and providing assistance to the establishment and maintenance of adequate emergency medical services for all portions of this state.

The council shall have the duty to advise the director in all matters pertaining to his duties and functions in relation to carrying out the purposes of this article.

The council shall be composed of thirteen members appointed by the governor by and with the advice and consent of the Senate. The mountain state emergency medical services association shall submit to the governor a list of six names of representatives from their association and a list of three names shall be submitted to the governor of representatives of their respective organizations by the West Virginia association of county officials, West Virginia state firemen’s association, West Virginia hospital association, West Virginia state medical association, West Virginia chapter of the American college of emergency physicians, West Virginia emergency medical services administrators association and the state department of education. The governor shall appoint from the respective lists submitted two persons who represent the mountain state emergency medical services association, one of whom shall be a paramedic and one of whom shall be an emergency medical technician, and one person from the West Virginia association of county officials, West Virginia state firemen’s association, West Virginia hospital association, West Virginia state medical association, West Virginia chapter of the American college of emergency physicians, West Virginia emergency medical services administrators association and the state department of education. The governor shall in addition appoint one person to represent emergency medical service providers operating within the state, one person to represent small emergency medical service providers operating within this state and two persons to represent the general public. Not more than four of the members shall be appointed from any one congressional
district. No member shall serve more than four consecutive terms.

The council shall choose its own chairman and meet at the call of the director at least twice a year.

The members of such council may be reimbursed for any and all reasonable and necessary expenses actually incurred in the performance of their duties.

After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the emergency medical services advisory council should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the emergency medical services advisory council shall continue to exist until the first day of July, one thousand nine hundred ninety-five.

§16-4C-8. Standards for emergency medical service personnel.

(1) After the first day of January, one thousand nine hundred eighty-five, every ambulance which provides ambulance service or emergency medical services shall carry two persons who are certified as emergency medical service personnel, one of which personnel shall be in the patient compartment at all times when a patient is being transported by such ambulance. As a minimum, of the personnel carried by any ambulance operated by any emergency medical service provider, one shall be trained in cardiopulmonary resuscitation and one shall be certified as an emergency medical service attendant.

(2) After the first day of July, one thousand nine hundred eighty-six, at least one of the emergency medical services personnel referred to in the immediately preceding subsection shall be minimally certified as an emergency medical technician-ambulance on any emergency call and such person shall be in
the patient compartment at all times a patient is being transported.

As a minimum, the training for each class of emergency medical service personnel shall include:

(a) Emergency medical service attendant: Shall have earned and possess valid certificates from the department or by authorities recognized and approved by the director in advanced first aid or equivalent training and cardiopulmonary resuscitation.

(b) Emergency medical technician: Shall have successfully completed the course on emergency care of the sick and injured established by the director or by authorities recognized and approved by the director.

(c) Emergency medical technician-ambulance: Shall have successfully completed the course for certification as an emergency medical technician-ambulance as established by the director or authorities recognized and approved by the director.

(d) Emergency medical technician-intermediate: Shall have successfully completed the course for certification as an emergency medical technician-ambulance and such other course of study and certification as may be established by the director.

(e) Emergency medical technician-critical care: Shall have successfully completed the course for certification as an emergency medical technician-critical care and such other course of study and certification as may be established by the director.

(f) Mobile intensive care paramedic: Shall have successfully completed the course for certification as a mobile intensive care paramedic and such other course of study and certification as may be established by the director.

(g) Emergency medical technician-paramedic: Shall have completed the course for certification as an emergency medical technician-paramedic and such other course of study and certification as may be established by the director.
The foregoing shall not be considered to limit the power of the director to prescribe training, certification and recertification standards.

State and county continuing education and recertification programs for all levels of emergency medical service providers shall be available to emergency medical service providers at a convenient site within the county in which the emergency medical service provider operates, or in an adjacent county within thirty minutes travel time of the provider's primary place of operation. Such continuing education program shall be provided free of charge by the department of health to all nonprofit emergency medical service providers.

(3) Any person desiring emergency medical services personnel certification shall apply to the director using forms and procedures prescribed by the director. Upon receipt of such application, the director shall determine if the applicant meets the requirements for certification and examine the applicant, as in his discretion, is necessary to make such a determination. If it is determined that the applicant meets all of the requirements, the director shall issue an appropriate emergency medical service personnel certificate to the applicant. Emergency medical service personnel certificates issued by the director shall be valid for a period not to exceed three years from the date of their issuance unless sooner suspended or revoked by the director. Certificates may be renewed for additional periods not to exceed three years after review and determination by the director that such holder meets the requirements established for emergency medical service personnel.

(4) The director may issue a temporary emergency medical service personnel certificate to an applicant, with or without examination of the applicant, when he finds such issuance to be in the public interest. Unless sooner suspended or revoked a temporary certificate shall be valid initially for a period not exceeding one hundred twenty days and it shall not be renewed thereafter unless the director finds such renewal to be in the public interest: Provided, That the expiration date of any such temporary certificate issued shall be
extended until the holder of such certificate is afforded
at least one opportunity to take an emergency medical
services personnel training course within the general
area where he serves as an emergency medical service
personnel, but the expiration date shall not be extended
for any longer period of time or for any other reason.

The director may, on petition from an emergency
medical service provider, squad, ambulance authority or
county commission, grant an extension for compliance
with paragraphs (1) and (2) of this section where
circumstances prevent such emergency medical service
provider, squad, ambulance authority or county commis-
sion from meeting the time frames indicated. Such
extension shall be for no longer than twelve calendar
months from the date of the request and the request for
extension must include such information as may be
required by the director to determine if all reasonable
efforts have been made to comply with this section. No
petitioner shall be granted more than one extension
under this section.

§16-4C-14. Services that may be performed by emerg-
gency medical services personnel.

Notwithstanding any other provision of law, emer-
gency medical service personnel, by each class, may
provide the following care:

(1) Emergency medical services attendant—Render
basic first-aid and cardiopulmonary resuscitation and
other services as are established by the director.

(2) Emergency medical technician—Render care
which may be performed by an emergency medical
services attendant and other services as are established
by the director.

(3) Emergency medical technician-ambulance—
Render the care permitted which may be performed by
an emergency medical service attendant and by an
emergency medical technician; and, in addition, other
services as are established by the director.

(4) Emergency medical technician-intermediate—
Render the care permitted which may be performed by
an emergency medical service attendant, emergency medical technician and emergency medical technician-ambulance; and, in addition, upon the order of a medical command physician or surgeon, perform any other services as are established by the director.

(5) Emergency medical technician-critical—Render the care permitted which may be performed by an emergency medical service attendant, an emergency medical technician, emergency medical technician-ambulance, emergency medical technician-intermediate, and, in addition, upon order of a medical command physician or surgeon, perform any other services as are established by the director.

(6) Mobile intensive care paramedic—Render care which may be performed by an emergency medical service attendant, an emergency medical technician, emergency medical technician-ambulance, emergency medical technician-intermediate, emergency medical technician-critical care; and, in addition, upon order of a medical command physician or surgeon, perform any other services as are established by the director.

(7) Emergency medical technician-paramedic—Render care which may be performed by an emergency medical service attendant, an emergency medical technician, an emergency medical technician-ambulance, emergency medical technician-intermediate, emergency medical technician-critical care, mobile intensive care paramedic; and, in addition, upon order of a medical command physician or surgeon, perform any other services as are established by the director.

§16-4C-22. Transportation of unconscious or otherwise uncommunicative patients.

(a) Emergency medical service personnel shall transport critically ill or injured, unconscious or otherwise uncommunicative patients to the medical facility designated by the medical command physician.

(b) No person shall have the right to direct emergency medical service personnel to transport a patient to a specific medical facility unless such person is the legal
§16-4C-23. Authority of the director to make regulations.

The director is hereby authorized and empowered to make regulations pursuant to the procedures established in chapter twenty-nine-a of this code for the purpose of carrying out the purposes of this article.

CHAPTER 74
(H. B. 2162—By Delegates Bradley and Buchanan)

[Passed March 15, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article five, chapter forty-four of said code, all relating to the administration of estates; providing for the apportionment of West Virginia estate taxes; including a reference to the apportionment provision governing estates administered under authority of a fiduciary supervisor within the said estate tax provision; prohibiting certain nonresidents from serving as fiduciaries; setting forth exceptions; permitting nonresidents to serve as administrators of resident decedents' assets; requiring nonresident fiduciaries to give bond and setting forth the minimum amounts thereof; exceptions; appointment of clerk of the county commission as attorney-in-fact for purpose of receiving notice or process; proscribing the procedure by which notice or process may be perfected; prohibiting the removal from this state of estate assets until certain conditions are satisfied; making it a misdemeanor offense to remove estate assets from this state without complying with the appropriate laws; setting forth penalties; and providing for the removal of nonresident fiduciaries.

Be it enacted by the Legislature of West Virginia:
That section twenty-eight, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article five, chapter forty-four of said code be amended and reenacted, all to read as follows:

Chapter
11. Taxation.
44. Administration of Estates and Trusts.

CHAPTER 11. TAXATION.

ARTICLE 11. ESTATE TAXES.

§11-11-28. Apportionment of West Virginia estate taxes; deduction of taxes by the fiduciary from shares of beneficiaries.

1 Whenever there is an estate tax levied or assessed under the provisions of any estate tax law of this state heretofore or hereafter enacted, the amount of the tax so paid shall be prorated among the persons interested in the estate to whom such property is or may be transferred or to whom any benefit accrues in conformity with the provisions of section sixteen-a, article two, and section eighteen, article three-a, chapter forty-four of this code.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

1 (a) Notwithstanding any other provision of law, no individual who is a nonresident of this state nor any nonresident banking institution nor any corporation having its principal office or place of business outside this state may be appointed or act as executor, administrator, curator, guardian or committee in this state, except that:

8 (1) An individual who is a nonresident of this state may be appointed ancillary administrator of a nonresident decedent's assets situate in this state if such
nonresident individual is lawfully acting as executor in
said decedent's state of domicile and submits letters of
probate authenticated by the probate authorities of the
decedent's state of domicile to the clerk of the county
commission of any county of this state wherein ancillary
administration is sought;

(2) An individual who is a nonresident of this state
may be appointed ancillary administrator of a nonres-
ident decedent's assets situate in this state if such
nonresident individual is acting as administrator in said
decedent's state of domicile and submits letters of
administration authenticated by the probate authorities
of the decedent's state of domicile to the clerk of the
county commission of any county of this state wherein
ancillary administration is sought;

(3) An individual who is a nonresident of this state
may be appointed and act as testamentary guardian of
a nonresident infant and thereby exercise dominion and
control over such nonresident infant's assets situate in
this state upon submission of authenticated documenta-
tion that such nonresident testamentary guardian was
so appointed at the place of domicile of the nonresident
infant. Such authenticated documentation shall be
submitted to the clerk of the county commission of any
county of this state wherein assets belonging to such
nonresident infant are situate;

(4) An individual who is a nonresident of this state
and who is named executor by a resident decedent may
qualify and act as executor in this state;

(5) An individual who is a nonresident of this state
may be appointed and act as administrator of a resident
decedent's assets in this state if appointed in accordance
with the provisions of section four, article one of this
chapter;

(6) An individual who is a nonresident of this state
may be appointed as the testamentary guardian of a
resident infant if appointed in accordance with the
provisions of section one, article ten of this chapter;

(7) An individual who is a nonresident of this state
may be appointed as committee of a resident incompetent: Provided, That such appointment is made in accordance with the provisions of section one, article eleven, chapter twenty-seven of this code and if such nonresident individual may otherwise qualify as committee.

(b) Nonresident individuals enumerated in subsection (a) of this section shall give bond with corporate surety thereon, qualified to do business in this state, and the amount of such bond shall not be less than double the value of the personal assets and double the value of any real property authorized to be sold or double the value of any rents and profits from any real property which the nonresident individual is authorized to receive, except that:

(1) Any nonresident individual enumerated in subsection (a) of this section who is the spouse, parent, sibling, lineal descendant or sole beneficiary of a resident or nonresident decedent shall give bond with corporate surety thereon qualified to do business in this state, with such penalty as may be fixed pursuant to the provisions of section seven, article one of this chapter, as approved by the clerk of the county commission;

(2) Where the terms of a decedent's will direct that a nonresident individual enumerated in subdivisions (1), (3), (4) and (6) of subsection (a) of this section named in a decedent's will shall not give bond or give bond at a specified amount, it shall not be required or shall be required only to the extent required under the terms of the will, unless at the time the will is admitted to record or at any time subsequently, on the application of any person interested, or from the knowledge of the commission or clerk admitting the will to record, it is deemed proper that greater bond be given.

(c) When a nonresident individual is appointed as executor, administrator, testamentary guardian or committee pursuant to the provisions of subsection (a) of this section, said individual thereby constitutes the clerk of the county commission wherein such appointment was made as his true and lawful attorney-in-fact.
upon whom may be served all notices and process in any
action or proceeding against him as executor, adminis-
trator, testamentary guardian or committee or with
respect to such estate, and such qualification shall be a
manifestation of said nonresident individual's agree-
ment that any notice or process, which is served in the
manner hereinafter provided in this subsection, shall be
of the same legal force and validity as though such
nonresident was personally served with notice and
process within this state. Service shall be made by
leaving the original and two copies of any notice or
process, together with a fee of five dollars, with the clerk
of such county commission. The fee of five dollars shall
be deposited with the county treasurer. Such clerk shall
thereupon endorse upon one copy thereof the day and
hour of service and shall file such copy in his office and
such service shall constitute personal service upon such
nonresident: Provided, That the other copy of such notice
or process shall be forthwith sent by registered or
certified mail, return receipt requested, deliver to
addressee only, by said clerk to such nonresident at the
address last furnished by him to said clerk and either:
(1) Such nonresident's return receipt signed by him or
(2) the registered or certified mail bearing thereon the
stamp of the post office department showing that
delivery therefor was refused by such nonresident is
appended to the original notice or process filed there-
with in the office of the clerk of the county commission
from which such notice or process was issued. No notice
or process may be served on such clerk of the county
commission or accepted by him less than thirty days
before the return day thereof. The clerk of such county
commission shall keep a record in his office of all such
notices and processes and the day and hour of service
thereof. The provision for service of notice or process
herein provided is cumulative and nothing herein
contained shall be construed as a bar to service by
publication where proper or the service of notice or
process in any other lawful mode or manner.

(d) The personal estate of a resident decedent, infant
or incompetent may not be removed from this state until
the inventory or appraisement of that resident dece-
FARM MANAGEMENT COMMISSION

132 dent's, infant's or incompetent's assets has been filed and
133 any new or additional bond required to satisfy the
134 penalties specified in subsection (b) of this section has
135 been furnished. The liability of a nonresident executor,
136 administrator, testamentary guardian or committee and
137 of any such surety shall be joint and several and a civil
138 action on any such bond may be instituted and main-
139 tained against the surety, notwithstanding any other
140 provision of this code to the contrary, even though no
141 civil action has been instituted against such nonresident.

142 (e) Any such nonresident who removes from this state
143 assets administered in and situate in this state without
144 complying with the provisions of this section, the
145 provisions of article eleven, chapter forty-four of this
146 code or any other requirement pertaining to fiduciaries
147 generally, shall be guilty of a misdemeanor, and, upon
148 conviction thereof, shall be fined not more than one
149 thousand dollars or confined in the county jail for not
150 more than one year, or, in the discretion of the court,
151 by both such fine and imprisonment.

152 (f) If a nonresident appointed pursuant to subsection
153 (a) of this section fails or refuses to file an accounting
154 required by this chapter, and the failure continues for
155 two months after the due date, he may, upon notice and
156 hearing, be removed or subjected to any other approp-
157 riate order by the county commission, and if his failure
158 or refusal to account continues for six months, he shall
159 be removed by the county commission.

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CHAPTER 75
(H. B. 2111—By Delegates Murphy and Shores)

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

AN ACT to amend and reenact section six, article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting the director of the farm management commission the discretion to give surplus foods to
nonprofit charitable organizations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12A. FARM MANAGEMENT COMMISSION.

§19-12A-6. Appointment of farm management director; qualifications; powers and duties.

The commission shall appoint a farm management director who, in addition to qualifications established by the commission, shall have owned, operated or managed a farm for at least five years within ten years immediately prior to his appointment. The farm management director is the chief executive officer of the commission and is responsible for conducting the operations of the farms. He shall prepare an annual report of the farming operations, including a listing of all receipts and expenditures and shall present it to the commission and the Legislature at the end of each fiscal year.

As authorized or directed by the commission, he shall also:

(1) Prepare the annual budget request for the operation of the farm management commission and submit it to the commission for approval and submission to the commissioner of finance and administration.

(2) Receive and approve all requisitions for farm supplies and equipment.

(3) Supervise the operation of all canneries and determine what foods are to be canned.

(4) Recruit and approve assistant farm managers to supervise each farm.

(5) Implement all orders of the commission.

(6) Supervise all other employees of the commission.

(7) Transfer farm supplies, farm equipment, farm facilities, food stuffs and produce from one farm to
another to promote efficiency and improve farm
management.

With the approval of the commission, the farm
management director may rent or lease additional land
for farm use.

From the total amount of food, milk and other
commodities produced by the farm management com-
mission, the farm management director shall provide
each of the institutions under the control of the
department of health and the state commissioner of
corrections, at no cost, a proportionate amount of these
products based on the population and dietary needs of
each institution and each of these institutions shall use
the food, milk and commodities provided by the farm
management director for their annual food require-
ments. By the thirtieth day of September each year,
each institution shall present to the farm management
director a requisition request for the food, milk and
other commodities the institution will need during the
next fiscal year.

If, during the year, an institution finds that it needs
other or additional food, milk or commodities not
included in the requisition request for the year, the
institutional superintendent shall forward a supplemen-
tal request for the additional or other food, milk or
commodities to the farm management director at least
thirty days before the farm management director is to
deliver such other or additional food, milk or commodi-
ties to the institution. An institution may purchase food,
milk or commodities from other sources if the farm
management director certifies in writing that he will be
unable to supply the needed food, milk or commodities
at the time such food, milk or commodities will be
needed by the institution. If the farm management
commission produces more food, milk and other com-
modities than can be consumed by the institutions, the
farm management director first shall sell this surplus
to other state agencies which request it at the wholesale
fair market price for the products. If any surplus
remains after sales to other state agencies, the director
may give such surplus foods to any nonprofit, religious
or charitable organizations which are exempt from taxation under 26 U.S.C. §501(c)(3) or (4), or the director may sell the surplus on the open market. All revenues derived from the sale of any farm product shall be deposited by the farm management director in the general revenue fund of the state.

CHAPTER 76
(Com. Sub. for H. B. 2037—By Delegates Farley and Muresnky)

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

AN ACT to repeal sections ten and eleven, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article one and section three, article two of said chapter, all relating to the submission of a tentative budget; allowing the second quarterly meeting between the joint committee on government and finance and the council of finance and administration to be held in any month during the second quarter of the fiscal year and changing the time for submission of requests for appropriations from August fifteenth to September first.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION

Article
1. Department of Finance and Administration.
2. Budget Division.

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

The council of finance and administration is hereby created and shall be composed of ten members, four of whom shall serve ex officio and six of whom shall be appointed as herein provided. The ex officio members shall be the commissioner of the department of finance and administration, the attorney general or his designee, the state treasurer or his designee and the state auditor or his designee; such designees are authorized to vote. From the membership of the Legislature, the president of the Senate shall appoint three senators as members of the council, not more than two of whom shall be members of the same political party, and the speaker of the House shall appoint three delegates as members of the council, not more than two of whom shall be members of the same political party. Members of the council appointed by the president of the Senate and the speaker of the House shall serve at the will and pleasure of the officer making their appointment. The commissioner of finance and administration shall serve as chairman of the council. Meetings of the council shall be upon call of the chairman or a majority of the members thereof. It shall be the duty of the chairman to call at least four meetings in each fiscal year, one in each quarter, or more often as necessary, and all meetings shall be open to the public: Provided, That the second quarterly meeting in each fiscal year shall be a joint meeting with the joint committee on government and finance of the Legislature called jointly by the president of the Senate, speaker of the House and commissioner of finance and administration and shall be held in November or some other month during the second quarter as mutually agreed upon.

All meetings of the council shall be held at the capitol building in a suitable committee room which shall be made available by the Legislature for such purposes.

The council shall serve the department of finance and administration in an advisory capacity for purposes of reviewing the performance of the administrative and

* Clerk's Note: This section was also amended by H. B. 2860, which passed subsequent to this act.
fiscal procedures of the state, including the oversight of all federal funds, and shall have the following duties:

(1) To advise with the commissioner in respect to matters of budgetary intent and efficiency, including budget bill and budget document detail and format;

(2) To advise with the commissioner concerning such studies of government and administration concerning fiscal policy as it may consider appropriate;

(3) To advise with the commissioner in the preparation of studies designed to provide long-term capital planning and finance for state institutions and agencies; and

(4) To advise with the commissioner in respect to the application for, and receipt and expenditure of, anticipated or unanticipated federal funds.

The appointed, non-ex officio members of the council shall be entitled to receive such compensation and reimbursement for expenses in connection with performance of their duties, during interim periods, if not otherwise receiving the same for such identical periods, as is authorized by the applicable sections of article two-a, chapter four of the code in respect to performance of duties either within the state or, if deemed necessary, out of state. Such compensation and expenses shall be incurred and paid only after approval by the joint committee on government and finance.

ARTICLE 2. BUDGET DIVISION.

§5A-2-3. Requests for appropriations; copies to legislative auditor.

The spending officer of each spending unit, other than the Legislature and the judicial branch of state government, shall on or before the first day of September of each year, submit to the commissioner a request for appropriations for the fiscal year next ensuing. On or before the same date, the spending officer shall also transmit two copies of such request to the legislative auditor for the use of the finance committees of the Legislature.
If the spending officer of any spending unit fails to transmit to the legislative auditor two copies of the request for appropriations within the time specified in this section, the legislative auditor shall notify the commissioner, auditor and treasurer of such failure, and thereafter no funds appropriated to such spending unit shall be encumbered or expended until the spending officer thereof has transmitted such copies to the legislative auditor.

If a spending officer submits to the commissioner an amendment to the request for appropriations, two copies of such amendment shall forthwith be transmitted to the legislative auditor.

AN ACT to amend and reenact section nine, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing volunteer fire departments the privilege of purchasing on statewide contracts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-9. Facilities of department available to local governmental bodies.

The director shall make available the facilities and services of his department to counties; county schools; municipalities; urban mass transportation authorities created pursuant to article twenty-seven, chapter eight of this code; mass transportation divisions of county and municipal governments; volunteer fire departments; and
other local governmental bodies within this state. The actual expenses incurred thereby shall be paid by the local governmental body.

CHAPTER 78
(Com. Sub. for S. B. 273—By Senators Blatnik, et al)
[Passed April 6, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to the designation of a central nonprofit agency to coordinate sales to the state under the provisions of section twelve, article three of said chapter and setting forth its purpose; the creation of a committee for the purchase of commodities and services from the handicapped and setting forth its purpose; the establishment of rule promulgation authority of the committee; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. CENTRAL NONPROFIT COORDINATING AGENCY AND COMMITTEE FOR THE PURCHASE OF COMMODITIES AND SERVICES FROM THE HANDICAPPED.

§5A-3A-1. Purpose.
§5A-3A-2. Central nonprofit agency.
§5A-3A-3. Committee for the purchase of commodities and services from the handicapped.
§5A-3A-4. Responsibilities of the committee for the purchase of commodities and services from the handicapped.

§5A-3A-1. Purpose.
The purpose of this article is to further the state’s policy of encouraging disabled persons to achieve maximum personal independence by engaging in productive activities and in addition to provide state agencies, institutions, and political subdivisions with a method for achieving conformity with purchasing procedures and requirements of nondiscrimination, affirmative action, in employment matters related to disabled persons.

§5A-3A-2. Central nonprofit agency.

A central nonprofit agency approved by the director of the division of rehabilitation services is established for the purpose of coordinating purchases under the provisions of section twelve, article three of this chapter, between various “spending units” of the state and “nonprofit workshops.” This agency shall have the following responsibilities:

(a) Represent qualified nonprofit workshops in dealing with state purchasing agents and the other bodies charged with purchasing responsibilities;

(b) Evaluating the qualifications and capabilities of workshops and entering, as necessary, into contracts with government procuring entities for the furnishing of the commodities or services provided by the workshops;

(c) Overseeing workshops to ensure compliance with contract performance and quality standards; list the commodities and services of participating workshops, research and assist the workshops in developing new products and upgrading existing ones, and shall survey applicable private industry to provide input on fair market prices; and

(d) Present an annual report for each fiscal year concerning the operations of its nonprofit workshops to the director of the division of rehabilitation services.

§5A-3A-3. Committee for the purchase of commodities and services from the handicapped.

(a) The committee for the purchase of commodities
and services from the handicapped is hereby created
and shall be composed of the following six members who
are to be appointed by the governor with the advice and
consent of the Senate: A private citizen who is conver-
sant with the problems incidental to the employment of
handicapped persons; a representative of a producing
nonprofit workshop; a representative of the division of
rehabilitation services; a representative of the depart-
ment of finance and administration; a representative of
private business who is knowledgeable in the activities
involved in the sale of commodities or services to
governmental entities; and a representative of organized
labor who is knowledgeable in matters relating to
employment of the disabled. The governor shall appoint
one member to serve as chairperson.

(b) Members of the committee are appointed to serve
two-year terms expiring on the thirty-first day of
January of odd-numbered years. Members may not
receive compensation for their service on the committee
or reimbursement by the state for expenses incurred in
performing their duties as members.

(c) The committee shall have as an executive secretary
the person charged with program management in
section twelve, article three of this chapter. The
secretary shall be responsible for the day-to-day
management of the committee and shall coordinate with
the central nonprofit agency to perform the duties
outlined in section twelve, article three of this chapter.

§5A-3A-4. Responsibilities of the committee for the
purchase of commodities and services from
the handicapped.

The committee shall have the following duties and
responsibilities:

(a) Determining the fair market price of all commod-
ities, printing and services produced by nonprofit
workshops and offered for sale by the central nonprofit
agency to the various departments and political subdi-
visions of the state. Prices shall be revised periodically
to reflect changing market conditions.
(b) Monitoring the activities of the central nonprofit agency to assure that the interests of the state's handicapped citizens are advanced by the agency. The committee shall make rules necessary to monitor the agency as well as matters related to the state's use of the products and services produced by the handicapped. Except as stated in section twelve, article three of this chapter, rules shall reflect agreement with the policies and procedures established by the state's purchasing units.

(c) Monitoring the performance of the central nonprofit agency to see that the commodities and services produced meet state specifications (or in the absence of specifications meet standards in use by the federal government or industry) as to quality and delivery. The committee shall provide procedures for formal and informal resolution of provider and consumer grievances or complaints.

(d) Maintaining records pertaining to its activities under the act including records of sales, formal grievances, number of handicapped workers employed, a summary of disabilities for workers providing services, a list of workshop products and services, and the geographic distribution of provider workshops. On or before the first day of January of each year the committee shall file with the governor and the presiding officer of each house of the Legislature a written report summarizing the above records and giving a detailed accounting for all funds received and disbursed by the committee during the preceding year.


The committee may adopt rules for the implementation, extension, administration, or improvement of the program authorized by this article.


Exceptions from the operation of the mandatory provisions of section twelve, article three of this code may be made in any case where the commodity or service so produced or provided does not meet the
reasonable requirements of the purchasing unit or
cannot be reasonably provided by a nonprofit workshop
in the opinion of the committee or the central nonprofit
agency. No spending unit may evade the intent of this
section when required goods or services are reasonably
available from nonprofit workshops.

CHAPTER 79
(Com. Sub. for H. B. 2101—By Delegate Farley)

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

AN ACT to repeal section fourteen-a, article twelve, chapter
eight of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; to amend article three,
chapter twenty-nine of said code by adding thereto a
new section, designated section twelve-b; to amend and
reenact section twenty-four of said article three; and to
further amend said chapter by adding thereto a new
article, designated article three-b, all relating to
inspection fee collections by the state fire marshal and
payment of the same into special fund for the state fire
commission; authorizing and setting caps on such
inspection fees; providing for legislative appropriation
of such fees; prohibiting the sale, possession or use of
fireworks without a permit; authorizing the state fire
marshal to adopt rules; fees; bond; proof of financial
responsibility; providing for the licensure of electricians;
providing a declaration of purpose; providing defini­
tions; exemptions; establishing classes of licenses;
setting forth minimum standards to qualify for licenses;
licenses and renewal thereof; providing for applications;
setting fees; providing for examinations; licensure
without examination; denial, suspension or revocation of
licenses; providing that noncompliance is a misdemea­
or offense; providing penalties; providing the state fire
marshal with certain powers; providing for the non‐
applicability of local ordinances in certain cases; and
providing for the disposition of fees.

Be it enacted by the Legislature of West Virginia:
That section fourteen-a, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article three, chapter twenty-nine of said code be amended by adding thereto a new section, designated section twelve-b; that section twenty-four of said article three be amended and reenacted; and that said chapter twenty-nine be further amended by adding thereto a new article, designated article three-b, all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article
3B. Supervision of Electricians.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-12b. Fees.
§29-3-24. Unlawful sale, possession or use of fireworks; permit for public display.

§29-3-12b. Fees.
1. (a) The state fire marshal may establish fees in accordance with the following:

3. (1) For blasting.—Any person storing, selling or using explosives shall first obtain a permit from the state fire marshal. Such permit shall be valid from the first day of July through the thirtieth day of June of the succeeding year beginning on the first day of July, one thousand nine hundred eighty-nine. The state fire marshal may charge a fee not to exceed fifty dollars for such permit.

11. (2) For inspections of schools or day care facilities.—The state fire marshal may charge a fee of up to twenty-five dollars 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 co-located: Provided, however, That any school or day care facility may not be charged for an inspection more than one time per twelve-month period.

20. (3) For inspections of hospitals or nursing homes.—The state fire marshal may charge an inspection fee of
up to one hundred dollars 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 fifty dollars 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 one hundred dollars for each inspection of a residen-
tial 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 one hundred dollars for inspections of mercantile
occupancies: Provided, That if such 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 twenty-five
dollars. This fee shall be returned to the complainant if,
after the state fire marshal has made the inspection, he
finds that the complaint was accurate and justified, and
he shall thereafter collect an inspection fee of up to one
hundred dollars from the mercantile occupancy. If, after
the inspection has been performed, it appears to the
state fire marshal that such complaint was not accurate
or justified, the state fire marshal shall keep the twenty-
five dollar 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.
For business occupancies.—The state fire marshal may charge an inspection fee of up to one hundred dollars 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.

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 fifty dollars; for class B assembly facilities, an inspection fee not to exceed seventy-five dollars; and for class A facilities, an inspection fee not to exceed one hundred dollars.

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 shall have the authority to establish a fee schedule for the fire safety review of plans and specifications for new and existing construction as set forth in this article. Such fee shall be paid by such party or parties receiving the review.

The fee schedule shall be based upon existing and projected workloads as advanced by the state fire marshal and the schedule shall be clearly set forth by rules and regulations promulgated by the state fire commission. In no event may this fee exceed ten dollars.
(c) All fees authorized and collected pursuant to this article and article three-b of this chapter shall be paid to the state fire marshal and thereafter deposited into a special account for the operation of the state fire commission in administering this article and article three-b of this chapter: Provided, That for the fiscal year one thousand nine hundred ninety, expenditures from said account shall be made upon authorization by the governor after submission of an expenditure schedule by the state fire commission. For fiscal years thereafter, the Legislature shall appropriate the moneys in said account by a specific numbered account in the budget bill. Any amounts not expended from such account at the end of a fiscal year shall expire and be transferred to the general fund, unless sooner reappropriated by the Legislature.

(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 such 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 such occupancy the inspection fees set forth above for each inspection trip required.

§29-3-24. Unlawful sale, possession or use of fireworks; permit for public display.

Except as hereinafter provided, no person, firm, copartnership or corporation shall offer for sale, possess, expose for sale, sell at retail, keep with intent to sell at retail, or use or explode any fireworks: Provided, That the state fire marshal may adopt reasonable rules and regulations for the granting of permits for the supervised displays of fireworks by municipalities, fair associations, amusement parks, and other organizations
or groups of individuals. The state fire marshal shall have the authority to charge a fee of ten dollars to each applicant requesting a license to be a pyrotechnic operator as set forth in this article. The state fire marshal shall charge a scaled fee for all applications requesting permits to establish a pyrotechnics display as provided in this section. All fees required to be paid by the provisions of this section shall be paid to the state fire marshal and thereafter deposited by him into a special account for the operation of the state fire commission. Such permits may be granted upon application to said state fire marshal and after approval of the local police and fire authorities of the community wherein the display is proposed to be held as provided herein and the filing of a bond by the applicant as provided hereinafter. Every such display shall be handled by a competent operator licensed or certified as to competency by the state fire marshal and shall be of such composition, character, and so located, discharged or fired as in the opinion of the chief of the fire department, after proper inspection, and of the chief of police as to not be hazardous to property or endanger any person or persons. After such privilege shall have been granted, the sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

The governing body or chief executive authority of the municipality shall require a bond from the licensee in a sum not less than one thousand dollars conditioned on compliance with the provisions of this article and the regulations of the state fire commission: Provided, That no municipality shall be required to file such bond.

Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefor shall furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof, in such amount, character and form
as the state fire marshal determines to be necessary for the protection of the public.

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-1. Declaration of purpose.

This article is enacted 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 electrical work through licensure by the state fire marshal of the state fire commission.

§29-3B-2. Necessity of license; definitions.

After the effective date of this article, no electrical work may be performed, offered or engaged in for compensation or hire within the state of West Virginia by any person, firm or corporation unless such person, firm or corporation possesses a license and a certificate therefor issued by the state fire marshal in accordance with this article, and a copy of such license is posted on any job in which electrical work is being performed for hire.

As used in this article:

(a) "Apprentice electrician" means a person with interest in and an aptitude for performing electrical work but who alone is not capable of installing wires, conduits, apparatus, equipment, fixtures and other appliances.

(b) "Electrical contractor" means a person, firm or corporation who engages in the business of electrical work or employs master electricians, electricians,
apprentice electricians or helpers for the construction, alteration or repair of any electrical wiring, equipment or systems for the purposes of furnishing heat, light or power.

(c) "Electrical work" means the installation of wires, conduits, apparatus, fixtures, other appliances, equipment or systems for transmitting, carrying or using electricity for light, heat or power purposes.

(d) "Journeyman electrician" means a person qualified by at least two years of electrical work experience to do any work installing wires, conduits, apparatus, equipment, fixtures and other appliances subject to supervision by a master electrician.

(e) "License" means a valid and current certificate of competency issued by the state fire marshal.

(f) "Master electrician" means a person with at least five years of electrical work experience, including experience in all phases of electrical wiring and installation, who is competent to instruct and supervise the electrical work of journeyman electricians and apprentice electricians.

§29-3B-3. Exemptions; nonapplicability of license requirements.

This article does not apply to and no license may be required for (a) a person who performs electrical work with respect to any property owned or leased by such person; (b) a person who performs electrical work at any manufacturing plant or other industrial establishment as an employee of the person, firm or corporation operating such plant or establishment; (c) a person who performs electrical work while employed by an employer who engages in the business of selling appliances at retail, so long as such electrical work is performed incident to the installation or repair of appliances sold by the employer; (d) a person who, while employed by a public utility or its affiliate, performs electrical work in connection with the furnishing of public utility service; or (e) any government employee.
§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for license; nontransferability and nonassignability of licenses; expiration of license; renewal.

(a) The following three classes of license may be issued by the state fire marshal: "Master electrician license," "journeyman electrician's license" and "apprentice electrician license."

(b) The state fire marshal shall issue the appropriate class of license to a person, firm or corporation upon a finding that such person, firm or corporation possesses the qualifications for the class of license to be issued.

(c) The qualifications for each class of license to be issued are as follows:

(1) For a "master electrician license" a person must have five years of experience in electrical work of such breadth, independence and quality that such work indicates that the applicant is competent to perform all types of electrical work and can direct and instruct journeyman electricians and apprentice electricians in the performance of electrical work. Such applicant, or a member of a firm or an officer of a corporation if the applicant be a firm or corporation, must also pass the master electrician examination given by the state fire marshal with a grade of eighty percent correct or better;

(2) For a "journeyman electrician's license," a person must have at least two years of experience in performing electrical work under the direction or instruction of a master electrician or must have completed a formal apprentice program providing actual electrical work experience and training conducted by one or more master electricians. Such applicant must also pass the journeyman electrician's examination given by the state fire marshal with a grade of eighty percent correct or better;

(3) For an "apprentice electrician license," a person must pass the apprentice electrician's examination given
by the state fire marshal with a grade of eighty percent
correct or better.

(d) (1) Certificates of license for a master electrician's
license issued by the state fire marshal shall specify the
name of the person, firm or corporation so qualifying
and the name of the person, who in the case of a firm
shall be one of its members and in the case of a
corporation shall be one of its officers, passing the
master electrician examination.

(2) Licenses issued to journeyman electricians and
apprentice electricians shall specify the name of the
person who is thereby authorized to perform electrical
work or, in the case of apprentice electricians, to work
with other classes of electricians to perform electrical
work.

(e) No license issued under this article is assignable
or transferable.

(f) All licenses issued by the state fire marshal shall
expire on the thirtieth day of June following the year
of issue or renewal.

(g) (1) Each expiring license may be renewed without
need for examination and without limit as to the number
of times renewed, for the same class of license previously
issued and for the same person, firm or corporation to
whom it was originally issued upon payment to the state
fire marshal of a renewal fee of fifty dollars if such
application for renewal and payment of such fee is made
before the date of expiration of the license.

(2) In the case of a failure to renew a license on or
before the thirtieth day of June the person named in the
license may, upon payment of the renewal fee and an
additional fee of fifteen dollars, receive from the state
fire marshal a deferred renewal of such license which
shall expire on the thirtieth day of June in the ensuing
year. No person, firm or corporation may perform
electrical work upon expiration of such person's, firm's
or corporation's license until a deferred renewal for such
license is issued by the state fire marshal even if such
person, firm or corporation has applied for the deferred
renewal of such license.
§29-3B-5. Rules; applications and examinations; fees.

(a) The state fire marshal shall promulgate necessary rules pursuant to the provisions of chapter twenty-nine-a of this code to implement the provisions of this article. Rules adopted by the state fire marshal and presently in effect shall remain in effect until and unless the state fire marshal adopts new rules, and the state fire marshal may adopt any or all of the rules presently in effect.

(b) The state fire marshal shall prepare and arrange for the receipt of applications from those who intend to perform electrical work in the state of West Virginia. Such application shall be sufficiently detailed to enable the state fire marshal to determine the presence or absence of an applicant's qualifications for a license of a particular class. The state fire marshal may, if he considers it necessary, require applicants to supply affidavits or other documents attesting to the applicant's qualifications from past employers, other electricians, engineers and others with knowledge of the applicant's qualifications. The state fire marshal may make such other inquiries as he considers necessary to determine the qualifications of the applicant. An applicant expressly consents to such inquiries by the state fire marshal by his application.

(c) The state fire marshal shall prepare and arrange for the giving of examinations to all applicants for licensure as master electricians, journeyman electricians and apprentice electricians. There shall be a separate and different examination for each class of license, appropriate in subject matter, difficulty and depth of understanding for each class. All examinations shall be based on and derived from the national electric code as promulgated from time to time by the national fire protection association. A minimum grade of eighty percent correct for all examinations is necessary for licensure by the state fire marshal. The examinations shall be given at least four times each year. The places, dates and times of such examinations shall be made known by public notice issued by the state fire marshal. The state fire marshal may contract with the bureau of
(d) Each person desiring to take an examination shall make written application therefor at the time designated by and on forms prescribed by the state fire marshal. The applicant shall specify the class of license for which he seeks licensure. The application shall be accompanied by an examination fee of twenty-five dollars for licenses for master electrician or journeyman electrician, or by an examination fee of ten dollars for an apprentice electrician license applicant. The fee is not returnable.

(e) An applicant who fails to make the required passing score on any examination or who lacks qualifications for the class of license desired may retake the examination or change his application to request a license of a lesser class upon the payment to the state fire marshal of a fee of ten dollars together with a new application. Any reexamination may be taken or new application may be submitted as many times as the applicant desires, but each such examination or application requires the payment of the additional fee of ten dollars and the making of a new application to the state fire marshal. When the examination is successfully passed and the requisite qualifications are established by the applicant, the state fire marshal shall issue the appropriate license as provided above.

§29-3B-6. License without examination; fees.

(a) Notwithstanding the foregoing provisions of this article, any applicant for a certificate of license who within ninety days following the effective date of this article furnishes the state fire marshal with satisfactory evidence showing that such applicant is working as a journeyman electrician or master electrician in this state as of the effective date of this article and that he has been working for a period of one year immediately prior to the effective date of this article, or any applicant who gives conclusive evidence of possession of a certificate of competency issued by the state fire marshal prior to the effective date of this article is not
required to take the examination described in section
five of this article. Such applicant shall be issued a
license for the class of license the applicant’s qualifica-
tions establish.

(b) Such applicant who is exempt from testing is
nevertheless required to submit a complete application
on forms prescribed by the state fire marshal accompan-
ied by a license fee of twenty-five dollars.

c) Such license issued by the state fire marshal upon
application without examination expires and is eligible
for renewal as provided in section four of this article.

§29-3B-7. Denial of license; suspension and revocation of
license.

(a) The state fire marshal shall deny a license to any
applicant who fails to make a passing grade on the
examination or who fails to establish or who lacks the
necessary qualifications for a license for the class of
license desired.

(b) The state fire marshal may upon complaint or his
own inquiry, after notice and hearing as provided by
article five, chapter twenty-nine-a of this code, suspend
or revoke the license of any person who holds a license
if:

(1) The license was granted upon an application or
documents supporting such application which mate-
rially misstated the terms of the applicant’s qualifica-
tions or experience;

(2) Such person subscribed or vouched for such
misstatement by an applicant;

(3) Such person incompetently or unsafely performs
electrical work;

(4) Such person violated any statute of the state of
West Virginia, any rule lawfully promulgated by an
agency of the state of West Virginia or any ordinance
of any municipality or county of the state of West
Virginia which protects the consumer or public against
unfair, unsafe, unlawful or improper business practices;
(5) Such person fails to comply with any rule of the
state fire marshal promulgated to fulfill his responsibil-
ities under this article.

(c) Any person aggrieved by an order or decision of
the state fire marshal under this article is entitled to
judicial review as provided by section eighteen, article
three of this chapter and by chapter twenty-nine-a of
this code.

§29-3B-8. Effect of noncompliance with article; failure to
obtain license.

Any person, firm, corporation or employee thereof, or
any representative, member or officer of such firm or
corporation, individually, entering upon or engaging in
the business of performing any electrical work as
defined in this article, without obtaining the required
license or otherwise complying with this article, is for
the first offense guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not more than one
hundred dollars. For a second and each subsequent
offense, the penalty and punishment is a fine of not less
than one hundred dollars nor more than five hundred
dollars.

Each day during which such electrical work is
performed without the required license or while in
noncompliance with any of the provisions of this article,
after official notice that such work is unlawful, is a
separate offense.

Any electrical work performed by a person, firm or
corporation which is determined by the state fire
marshal to constitute a safety or health hazard to
members of the public or any electrical work of an
extensive nature being performed by any person without
the required license or otherwise in noncompliance with
the requirements of this article or contrary to an order
or rule promulgated lawfully by the state fire marshal,
is subject to a civil action in the name of the state in
the circuit court of the county where such work is being
performed for an injunction against such person, firm
or corporation, enjoining such work or violation. A
circuit court by mandatory or prohibitory 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 or state fire commission. The state fire marshal shall be represented in all such proceedings by the attorney general or his assistants.

§29-3B-9. Nonapplicability of local ordinances; exclusive license.

After the effective date of this article no municipality, local government or county may require any license or other evidence of competence as an electrician from any person, firm or corporation who or which holds a valid and current license issued pursuant to this article, as a condition precedent to permission for the performance of electrical work in such municipality, local government jurisdiction or county.

§29-3B-10. Disposition of fees, fines and other receipts.

All fees or other moneys received as a result of actions under this article shall be paid to the state fire marshal. Such receipts shall be deposited by him in a special account with the state treasurer for the use of the state fire marshal in administering this article as provided in subsection (c), section twelve-b, article three of this chapter.

CHAPTER 80
(Com. Sub. for H. B. 2333—By Delegates Otte and Givens)

[Passed April 6, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen-a, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the fire prevention and control act; smoke detectors in one and two-family dwellings; requiring operational smoke detectors in all new one and two-family dwellings completed after the first day of July, one thousand nine hundred ninety; deleting certain provisions with respect
to mobile homes and exempting "manufactured homes" from the provisions thereof; and continuing and increasing the penalties for violations of this section.

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

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

**ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.**

§29-3-16a. Smoke detectors in one and two-family dwellings; penalty.

(a) Within all one and two-family dwellings which are not occupied by the owner thereof, and within all one and two-family dwellings completed after the first day of July, one thousand nine hundred ninety, an operational smoke detector shall be installed outside of each separate sleeping area in the immediate vicinity of the sleeping area: *Provided, That the provisions of this section shall not apply to any "manufactured home" as that term is defined in subsection (j), section two, article nine, chapter twenty-one of this code. Such smoke detector shall be capable of sensing visible or invisible particles of combustion and shall meet the specifications and be installed as provided for in the National Fire Protection Association Standard 74, "Standard for the Installation, Maintenance and Use of Household Fire Warning Equipment," 1984 edition, and in the manufacturer’s specifications. When activated, the smoke detector shall provide an alarm suitable to warn the occupants of the danger of fire.

(b) The owner of each dwelling described in subsection (a) of this section shall provide, install and replace the operational smoke detectors required by this section. So as to assure that the smoke detector continues to be operational, in each dwelling described in subsection (a) which is not occupied by the owner thereof, the tenant in any such dwelling shall perform routine maintenance on the smoke detectors within such dwelling.

(c) Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hearing
impaired, the owner shall, upon written request by or on behalf of such individual, provide and install a smoke detector with a light signal sufficient to warn the deaf or hearing-impaired individual of the danger of fire.

(d) An automatic fire sprinkler system installed in accordance with the National Fire Protection Association Standard 13D, "Standard for the Installation of Sprinkler Systems in Residential Occupancies," 1983 edition, may be provided in lieu of smoke detectors.

(e) After investigating a fire in any dwelling described in subsection (a) of this section, the local investigating authority shall issue to the owner a smoke detector installation order in the absence of the required smoke detectors.

(f) Any person who violates any provision of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars.

(g) A violation of this section shall not be deemed by virtue of such violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

(h) A violation of this section shall not constitute a defense in any civil action or proceeding involving any insurance policy.

(i) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners of any dwelling described in subsection (a) of this section a greater duty with regard to the installation, repair and replacement of the smoke detectors than is required by this section.

(j) Owners of dwellings described in subsection (a) shall comply with the provisions of this section no later than the first day of July, one thousand nine hundred eighty-five, except as may be otherwise specified in said subsection (a).
AN ACT to amend article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-b, relating to enabling the conveyance of Grandview State Park to the National Park Service of the government of the United States of America.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-12b. Conveyance of Grandview State Park to the National Park Service; governor, director of the department of natural resources and director of the department of commerce.

1 The governor and the director of the department of natural resources may convey, within one year of the effective date of this section, the lands and property of Grandview State Park to the National Park Service of the government of the United States of America: Provided, That the National Park Service agrees to accept the conveyance: Provided, however, That the department of natural resources shall hold public hearings prior to making said conveyance. At least one public hearing shall be held in the county where the park is located.

12 The commissioner of the department of commerce shall cooperate with and aid the department of natural resources in the conveyance. The conveyance is subject to the provisions of article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended.
CHAPTER 82
(Com. Sub. for H. B. 2612—By Delegates M. Burke and White)

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

AN ACT to amend article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to conversion of hospital acute beds to skilled nursing beds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-4a. Conversion of hospital acute beds to skilled nursing beds.

(a) Legislative findings and purpose.—The Legislature hereby finds and declares that a need exists for skilled nursing health care beds in this state due to a shortage of existing facilities with adequate bed capacity and lack of willingness to provide such services; that patients in need of skilled nursing services have sometimes been retained in an inappropriate level of care facility; that such practices have resulted in malutilization of health care facilities and resources; that there currently exists a surplus of acute care beds in hospitals, particularly those in rural areas within this state; that the surplus of acute care beds is, for the foreseeable future, permanent in nature; that the same excess capacity of acute care beds promotes economic inefficiencies in operation while failing to meet community needs; that nursing homes are unable under subsection (h), section five of this article, to add intermediate or dually certified beds to skilled nursing beds at the present time in numbers in excess of ten percent or not more than ten beds, whichever is less; and that remedial action by the Legislature is necessary to
effectuate relief of these problems to promote the health and welfare of the citizens of the state by allowing, in certain instances, for the conversion of acute care beds to skilled nursing beds by hospitals, but with no increase in overall hospital bed capacity.

(b) Notwithstanding the provisions of subsection (h), section five of this article, and, further, notwithstanding the provisions of subsection (d), section three of this article, the state agency shall adopt rules pursuant to section eight of this article, to exempt from review the conversion of acute care beds to skilled nursing care beds by a licensed hospital by the state department of health if the hospital meets the following conditions:

(1) It is located in a nonmetropolitan statistical area as defined by the bureau of census of the federal government;

(2) It has experienced an average occupancy rate of less than fifty percent for the twelve months preceding the date of request for this exemption; and

(3) The nursing home service area within which the hospital is located is under the bed ceiling as calculated by the thirty beds per thousand population formula as set forth in the long-term care chapter of the state health plan, except for the purposes of this article existing nursing home beds shall be used in the calculation.

(c) The state agency shall include in its rules requirements that:

(1) In converting beds, the hospital must change one acute care bed into one skilled nursing care bed;

(2) All acute care beds converted shall be permanently deleted from the hospital's acute care bed complement and the hospital may not thereafter add, by conversion or otherwise, acute care beds to its bed complement without satisfying the requirements of subsection (d), section three of this article, for which purposes such an addition, whether by conversion or otherwise, such be considered a substantial change to the bed capacity of the hospital notwithstanding the
(3) The hospital shall meet all applicable federal and state licensing requirements for the provisions of skilled nursing services including a requirement that all skilled care beds created under this exemption shall be located in distinct-part, long-term care units;

(4) No hospital is permitted to convert more than twenty-five percent of its licensed bed capacity in any twenty-four month period pursuant to this exemption; however, in the event that subsection (h), section five of this article, is repealed and to the extent that other methods of converting acute care beds are available under this article, the hospital may request certificate of need approval of such conversions;

(5) The hospital shall undergo substantial compliance review of a conversion under this exemption under such terms and at such a time as set by the state agency in its rules.

(d) Nothing in this section negatively affects the rights of inspection and certification which are elsewhere required by federal law or regulations or by this code or duly adopted regulation of an authorized state entity.

CHAPTER 83
(Com. Sub. for H. B. 2510—By Delegates Riggs and Minard)

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

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-g, relating to federal “WIC” program; requiring banks in the state to accept WIC vouchers or coupons from vendors; requiring state health director to deposit WIC funds in state bank and providing for method of selection of bank; and providing an effective date.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2G. SPECIAL SUPPLEMENTARY FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC).

§16-2G-1. Voucher or coupon redemption and payment.

1 With respect to the vouchers or coupons authorized by the department of health in the administration of the special supplementary food program for women, infants and children, commonly known as the WIC program, under the auspices and guidelines of the United States department of agriculture, such vouchers or coupons, when received by a vendor from a holder thereof in exchange for food, food stuffs, or authorized goods or services, may be deposited by the said vendor in any federally insured bank in this state for collection and payment thereof, and such bank shall accept the same as equivalent to a negotiable instrument from a holder in due course pursuant to chapter forty-six of this code, and shall collect the funds for such vouchers or coupons so received.

All moneys received from the United States department of agriculture under said program, except for moneys to be used for administration, shall be deposited by the state health director in a special account in a federally insured bank in this state. The director shall select the bank by competitive bidding in the same manner as the state treasurer selects depository banks for state funds, subject to applicable federal laws or regulations governing such selection.

The provisions of this section shall take effect on the first day of April, one thousand nine hundred ninety, except that the director shall commence procedures for the selection of the bank and for implementation of the other provisions of this section upon the passage hereof.

Nothing in this section shall make such vouchers or
coupons negotiable instruments for any purpose other
than expressly set forth herein or as permitted by
applicable federal laws or regulations.

CHAPTER 84
(H. B. 2760—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

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

AN ACT to amend and reenact sections six, ten and eleven,
article five-c, chapter sixteen of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended; and to amend and reenact sections two, three,
five and twenty, article twenty-nine-a of said chapter,
relating to nursing home, personal care home and
residential board and care home licensure; application;
fees; duration; renewal; certified beds; reports of
inspections; plans of correction; assessment of penalties
and use of funds derived therefrom; license limitation;
suspension; revocation; continuation of disciplinary
proceedings; closure; transfer of patients; appointment
of temporary management; assessment of interest,
collection thereof; promulgation of regulations to
conform to federal requirements; hearings; powers of
the West Virginia Hospital Finance Authority; defini-
tions of hospitals; and certificates of need.

Be it enacted by the Legislature of West Virginia:

That sections six, ten and eleven, article five-c, chapter
sixteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, be amended and reenacted;
and that sections two, three, five and twenty, article twenty-
ine-a of said chapter be amended and reenacted, all to read
as follows:

CHAPTER 16. PUBLIC HEALTH.

Article
5C. Nursing and Personal Care Homes and Residential Board and
Care Homes.
29A. West Virginia Hospital Finance Authority Act.
ARTICLE 5C. NURSING AND PERSONAL CARE HOMES AND RESIDENTIAL BOARD AND CARE HOMES.

§16-5C-6. License required; application; fees; duration; renewal.
§16-5C-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.
§16-5C-11. License limitation, suspension, revocation; continuation of disciplinary proceedings; closure, transfer of patients; appointment of temporary management; assessment of interest; collection of assessments; promulgation of regulations to conform with federal requirements; hearings.

§16-5C-6. License required; application; fees; duration; renewal.

Subject to the provisions of section seventeen of this article, no person may establish, operate, maintain, offer or advertise a nursing home, personal care home, or residential board and care home within this state unless and until he obtains a valid license therefor as hereinafter provided, which license remains unsuspended, unrevoked and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in, any facility, as defined in section two of this article, which is being operated without a valid license from the director. The procedure for obtaining a license shall be as follows:

(a) The applicant shall submit an application to the director on a form to be prescribed by the director, containing such information as may be necessary to show that the applicant is in compliance with the standards for nursing homes, personal care homes, or residential board and care homes as established by this article and the rules and regulations lawfully promulgated by the board of health hereunder. The application and any exhibits thereto shall provide the following information:

(1) The name and address of the applicant;

(2) The name, address and principal occupation (i) of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the applicant, (ii) of each officer and director of a corporate applicant, (iii) of each trustee and beneficiary of an
applicant which is a trust, and (iv) where a corporation has a proprietary interest of fifty percent or more in an applicant, the name, address and principal occupation of each officer and director of such corporation;

(3) The name and address of the owner of the premises of the facility or proposed facility, if he is a different person from the applicant, and in such case, the name and address (i) of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in such owner, (ii) of each officer and director of a corporate applicant, (iii) of each trustee and beneficiary of such owner if he is a trust, and (iv) where a corporation has a proprietary interest of fifty percent or more in such owner, the name and address of each officer and director of such corporation;

(4) Where the applicant is the lessee or the assignee of the facility or the premises of the proposed facility, a signed copy of the lease and any assignment thereof;

(5) The name and address of the facility or the premises of the proposed facility;

(6) The type of institution to be operated;

(7) The proposed bed quota of the facility and the proposed bed quota of each unit thereof;

(8) (i) An organizational plan for the facility indicating the number of persons employed or to be employed, the positions and duties of all employees, (ii) the name and address of the individual who is to serve as administrator, and (iii) such evidence of compliance with applicable laws and regulations governing zoning, buildings, safety, fire prevention and sanitation as the director may require;

(9) Such additional information as the director may require; and

(10) Assurances that the nursing home was reviewed and found to be needed under the provisions of article two-d of this chapter.

(b) Upon receipt and review of an application for license made pursuant to subdivision (a) of this section,
and inspection of the applicant facility pursuant to section ten of this article, the director shall issue a license if he finds:

1. That an individual applicant, and every partner, trustee, officer, director and controlling person of an applicant which is not an individual, be a person responsible and suitable to operate or to direct or participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department (if any) and lack of revocation of a license during the previous five years;

2. That the facility be under the supervision of an administrator who is qualified by training and experience: Provided, That every facility classified as a nursing home shall have an administrator licensed pursuant to the provisions of article twenty-five, chapter thirty of this code; and

3. That the facility is in substantial compliance with standards established pursuant to section five of this article, and such other requirements for a license as the board of health may establish by regulation under this article.

Any license granted by the director shall state the maximum bed capacity for which it is granted, the date the license was issued, the expiration date, and the rating assigned to the facility pursuant to section five of this article. Such licenses shall be issued for a period not to exceed fifteen months for nursing homes and for a period of not to exceed one year for personal care homes and residential board and care homes: Provided, That any such license in effect for which timely application for renewal, together with payment of the proper fee has been made to the state department of health in conformance with the provisions of this article and the rules and regulations issued thereunder, and prior to the expiration date of such license, shall continue in effect until (a) one year following the expiration date of such license, or (b) the date of the revocation or suspension of such license pursuant to the
provisions of this article, or (c) the date of issuance of
a new license, whichever date first occurs. Each license
shall be issued only for the premises and persons named
in the application and shall not be transferable or
assignable: Provided, however, That in the case of the
transfer of ownership of a facility with an unexpired
license, the application of the new owner for a license
shall have the effect of a license for a period of three
months when filed with the director. Every license shall
be posted in a conspicuous place in the facility for which
it is issued so as to be accessible to and in plain view
of all patients and visitors of the facility.

(c) An original license shall be renewable, conditioned
upon the licensee filing timely application for the
extension of the term of the license accompanied by the
fee, and contingent upon evidence of compliance with
the provisions of this article and regulations promul-
gated by the board of health hereunder: Provided, That
notwithstanding the requirements of other sections of
this article, the director may deem as evidence of
compliance with such provisions and regulations the
certification of nursing home beds under the medicare
or medicaid requirements of titles eighteen or nineteen
of the Social Security Act, Title 42, United States Code,
sections 1395 and 1396, et seq. Any such application for
renewal of a license shall include a report by the licensee
in such form and containing such information as shall
be prescribed by the director, including the following:

(1) A balance sheet of the facility as of the end of its
fiscal year, setting forth assets and liabilities at such
date, including all capital, surplus, reserve, depreciation
and similar accounts;

(2) A statement of operations of the facility as of the
end of its fiscal year, setting forth all revenues,
expenses, taxes, extraordinary items and other credits
or charges; and

(3) A statement of any changes in the name, address,
management or ownership information on file with the
director. All holders of facility licenses as of the effective
date of this article shall include, in the first application
for renewal filed thereafter, such information as is
required for initial applicants under the provisions of subsection (a) of this section.

(d) In the case of an application for a renewal license, if all requirements of section five of this article are not met, the director may in his discretion issue a provisional license, provided that care given in the facility is adequate for patient needs and the facility has demonstrated improvement and evidences potential for substantial compliance within the term of said license: Provided, That a provisional renewal may not be issued for a period greater than one year, shall not be renewed, and that no such license shall be issued to any facility with uncorrected violations of any Class I standard, as defined in subsection (c), section five of this article.

(e) A nonrefundable application fee in the amount of one hundred dollars for an original nursing home license or fifty dollars for an original personal care facility or residential board and care home license shall be paid at the time application is made for such license. Direct costs of initial licensure inspections or inspections for changes in licensed bed capacity shall be borne by the applicant and shall be received by the director prior to the issuance of an initial or amended license. The license fee for renewal of a license shall be at the rate of eight dollars per bed per year for nursing homes, and four dollars per bed per year for personal care homes, and two dollars per bed per year for residential board and care homes, except the annual rate per bed may be assessed for licenses issued for less than one year. The director may annually adjust the licensure fees for inflation based upon the consumer price index. The bed capacity for the holder of each license shall be determined by the director. All such license fees shall be due and payable to the director, annually, and in such manner set forth in the rules and regulations promulgated by the board of health. Such fee and application shall be submitted to the director who shall retain both the application and fee pending final action on the application. All fees received by the director under the provisions of this article shall be deposited in accordance with section thirteen, article one of this chapter.
§16-5C-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to section nine of this article shall be in writing and filed with the director, and shall list all deficiencies in the facility's compliance with the provisions of this article and the regulations adopted by the board of health hereunder. The director shall send a copy of such report to the facility and shall specify a time within which the facility shall submit a plan for correction of such deficiencies, which plan shall be approved, rejected or modified by the director. The surveyors shall allow audio taping of the exit conference for both licensure and certification inspections with all costs directly associated with such taping to be paid by the facility.

(b) With regard to a facility with deficiencies which is not certified under titles eighteen or nineteen of the Social Security Act and upon such facility's failure to submit a plan of correction which is approved by the director, or to correct any deficiency within the time specified in an approved plan of correction, the director may assess civil penalties as hereinafter provided or may initiate any other legal or disciplinary action as provided by this article.

(c) Nothing in this section shall be construed to prohibit the director from enforcing a regulation, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the director, the violation of such regulation jeopardizes the health or safety of patients or where the violation of such regulation is the second or subsequent such violation occurring during a period of twelve full months.

(d) Civil penalties assessed against facilities not certified under titles eighteen or nineteen of the Social Security Act shall be classified according to the nature of the violation as defined in subsection (c), section five of this article and regulations promulgated thereunder by the board of health, as follows: For each violation of a Class I standard, a civil penalty of not less than one
hundred nor more than one thousand dollars shall be imposed; for each violation of a Class II standard, a civil penalty of not less than fifty nor more than one hundred dollars shall be imposed; for each violation of a Class III standard, a civil penalty of not less than twenty-five nor more than fifty dollars shall be imposed. Each day a violation continues, after the date by which correction was required under an approved plan of correction or, if an approved plan of correction is not submitted, the date on which such plan was due, shall constitute a separate violation.

(e) Within thirty days after the completion of an inspection for a facility certified under titles eighteen or nineteen of the Social Security Act, the director may assess civil money penalties against such facility when the facility is not in compliance with federal regulatory level A or B certification requirements as contained in Title 42, Code of Federal Regulations, part 483. In determining whether to assess a penalty, and the amount of penalty to be assessed, the director shall consider how serious the noncompliance with such level A or B requirement is in relation to direct patient care and safety, the number of patients such a noncompliance is likely to affect, whether such a noncompliance was a noncompliance during the previous inspection, the opportunity that the facility has had to correct the noncompliance, and any additional factors that may be relevant. For each day in which a facility is, or was, out of compliance with such level A or B requirements, penalties shall not exceed one hundred dollars for each such level B requirement and shall not exceed five hundred dollars for each such level A requirement. If a facility is out of compliance on two successive inspections with such a level A or B requirement, the director may, and in the case of immediate jeopardy to the health, safety, welfare or rights of patients the director shall, for each day of noncompliance, assess a civil penalty: Not to exceed two hundred dollars for each such level B requirement which is, or was, out of compliance; and, not to exceed one thousand dollars for each such level A requirement which is, or was, out of compliance. If a facility is out of compliance on three
or more successive inspections with such a level A or B requirement, the director shall for each day of noncompliance assess a civil penalty: Not to exceed six hundred dollars for each such level B requirement which is, or was, out of compliance; and, not to exceed three thousand dollars for each such level A requirement which is, or was, out of compliance.

If the director and the United States secretary of health and human services determines that a facility's failure to meet federal medicaid certification requirements under title nineteen of the Social Security Act does not jeopardize the health or safety of its patients and if such secretary establishes one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the state medicaid plan, any civil money penalty assessed under this subsection shall be withdrawn.

(f) The director shall impose a civil penalty of not more than one thousand dollars against an individual who willfully and knowingly certifies under section 1919(b)(3)(B)(i) of title nineteen of the Social Security Act, or under section 1819(b)(3)(B)(i) of title eighteen of such Act, a material and false statement in a patient assessment. Such penalty shall be imposed with respect to each such patient assessment. The director shall impose a civil penalty of not more than five thousand dollars against an individual who willfully and knowingly causes another individual to certify under either such section of the Social Security Act a material and false statement in a patient assessment. Such penalty shall be imposed with respect to each such patient assessment.

(g) The director shall assess a civil penalty not to exceed two thousand dollars against any individual who notifies, or causes to be notified, a facility of the time or date on which an inspection is scheduled to be conducted under this article or under titles eighteen or nineteen of the Social Security Act.

(h) If the director assesses a penalty under this section, the director shall cause delivery of notice of such penalty by personal service or by certified mail. Said
notice shall state the amount of the penalty, the action
or circumstance for which the penalty is assessed, the
requirement that the action or circumstance violates,
and the basis upon which the director assessed the
penalty and selected the amount of the penalty.

(i) The director shall, in a civil judicial proceeding,
recover any unpaid assessment which has not been
contested under section twelve of this article within
thirty days of receipt of notice of such assessment, or
which has been affirmed under the provisions of that
section and not appealed within thirty days of receipt
of the director's final order, or which has been affirmed
on judicial review, as provided in section thirteen of this
article. All money collected by assessments of civil
penalties or interest shall be paid into a special patient
benefit account and shall be applied by the director only
for the protection of the health or property of patients
of facilities operated within the state that the director
or the United States secretary of health and human
services find to be deficient, including payment for the
costs of relocation of patients to other facilities,
operation of a facility pending correction of deficiencies
or closure, and reimbursement of patients for personal
funds lost.

(j) The opportunity for a hearing on an action taken
under this section shall be as provided in section twelve
of this article. In addition to any other rights of appeal
conferred upon a facility pursuant to this section, a
facility shall have the right to request a hearing and
seek judicial review pursuant to sections twelve and
thirteen of this article to contest the citing by the
director of a deficiency on an inspection report,
irrespective of whether the deficiency results in the
imposition of a civil penalty.

§16-5C-11. License limitation, suspension, revocation;
continuation of disciplinary proceedings;
closure, transfer of patients, appointment
of temporary management; assessment of
interest; collection of assessments; promul-
gation of regulations to conform with
federal requirements; hearings.
(a) The director shall by order reclassify a facility, or reduce the bed quota of the facility, or both, where he finds upon inspection of the facility that the licensee is not providing adequate care under the facility's existing classification or quota, and that reclassification, reduction in quota or both would place the licensee in a position to render adequate care. Any notice to a licensee of reclassification, reduction in quota or both shall include the terms of such order, the reasons therefor, and the date set for compliance.

(b) The director may suspend or revoke a license issued under this article if he finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or regulations promulgated pursuant hereto.

(c) Whenever a license is limited, suspended or revoked pursuant to this section, the director shall file a complaint stating facts constituting a ground or grounds for such limitation, suspension or revocation. Upon the filing of the complaint, the director shall notify the licensee in writing of the filing of the complaint, enclosing a copy of the complaint, and shall advise the licensee of the availability of a hearing pursuant to section twelve of this article. Such notice and copy of the complaint shall be served on such licensee by certified mail, return receipt requested.

(d) The suspension, expiration, forfeiture or cancellation by operation of law or order of the director of a license issued by the director, or the withdrawal of an application for a license after it has been filed with the director, may not deprive the director of the director's authority to institute or continue a disciplinary proceeding, or a proceeding for the denial of a license application, against the licensee or applicant upon any ground provided by law or to enter an order denying the license application or suspending or revoking the license or otherwise taking disciplinary action on any such ground.

(e) In addition to other remedies provided in this article, upon petition from the director, a circuit court may determine that a facility's deficiencies under this
article, or under titles eighteen or nineteen of the Social
Security Act, if applicable, constitute an emergency
immediately jeopardizing the health, safety, welfare, or
rights of its patients, and issue an order to:

(1) Close the facility;

(2) Transfer patients in the facility to other facilities;
or

(3) Appoint temporary management to oversee the
operation of the facility and to assure the health, safety,
welfare and rights of the facility's patients, where there
is a need for temporary management while:

(A) There is an orderly closure of the facility, or

(B) Improvements are made in order to bring the
facility into compliance with all the applicable require-
ments of this article and, if applicable, titles eighteen
and nineteen of the Social Security Act.

If the director petitions a circuit court for the closure
of a facility, the transfer of patients, or the appointment
of a temporary management, the circuit court shall hold
a hearing no later than seven days thereafter, at which
time the director and the licensee or operator of the
facility may participate and present evidence.

A circuit court may divest the licensee or operator of
possession and control of a facility in favor of a
temporary management. The temporary management
shall be responsible to the court and shall have such
powers and duties as the court may grant to direct all
acts necessary or appropriate to conserve the property
and promote the health, safety, welfare and rights of the
patients of the facility, including, but not limited to, the
replacement of management and staff, the hiring of
consultants, the making of any necessary expenditures
to close the facility or to repair or improve the facility
so as to return it to compliance with applicable
requirements, and the power to receive, conserve and
expend funds, including medicare, medicaid and other
payments on behalf of the licensee or operator of the
facility. Priority shall be given to expenditures for
current direct patient care or the transfer of patients.
The person charged with temporary management shall be an officer of the court, shall not be liable for conditions at the facility which existed or originated prior to his appointment and shall not be personally liable, except for his own gross negligence and intentional acts which result in injuries to persons or damage to property at the facility during his temporary management.

To administer a nursing home, the temporary management shall employ a person licensed as a nursing home administrator in West Virginia.

No person shall impede the operation of a temporary management. There shall be an automatic stay for a ninety-day period subsequent to the establishment of a temporary management of any action that would interfere with the functioning of the facility, including, but not limited to, cancellation of insurance policies, termination of utility services, attachments to working capital accounts, foreclosures, evictions and repossessions of equipment used in the facility.

A temporary management established for the purpose of making improvements in order to bring a facility into compliance with applicable requirements shall not be terminated until the court has determined that the facility has the management capability to ensure continued compliance with all applicable requirements, except if the court has not made such determination within six months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the facility shall be closed. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court, and after deducting from receipts the costs of the temporary management, expenditures and civil penalties and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the facility.

(f) The assessments for penalties and for costs of actions taken under this article shall have interest
assessed at two percent on the last day of each month after the month in which occurs the thirtieth day after receipt of notice of such assessment or after the month in which occurs the thirtieth day after receipt of the director's final order following a hearing, whichever is later. All such assessments against a facility that are unpaid shall be added to the facility's licensure fee and may be filed as a lien against the property of the licensee or operator of the facility. Funds received from such assessments shall be deposited as funds received in section ten of this article.

(g) The board of health shall have the power to promulgate emergency regulations that expand the power of the director in excess of that provided in this article to the extent required to comply with federal requirements, but any such regulations shall expand the power of the director to the minimum extent required by federal requirements. Such regulations are subject to the provisions of article three, chapter twenty-nine-a of this code.

(h) The opportunity for a hearing on an action by the director taken under this section shall be as provided in section twelve of this article.

ARTICLE 29A. WEST VIRGINIA HOSPITAL FINANCE AUTHORITY ACT.

§16-29A-2. Declaration of policy and responsibility; purpose and intent of article; findings.

§16-29A-3. Definitions.


§16-29A-2. Declaration of policy and responsibility; purpose and intent of article; findings.

1 It is hereby declared to be the public policy of the state of West Virginia and a responsibility of the state of West Virginia, for the benefit of the people of the state and the improvement of their health, welfare and living conditions, to provide hospitals with appropriate means at reasonable cost to maintain, expand, enlarge and establish health care, hospital and other related facilities and to provide hospitals with the ability to
refinance indebtedness. This article shall provide a method to enable hospitals to provide or maintain at reasonable cost pursuant to reasonable terms the facilities, structures and services needed to accomplish the purposes of this article, all to the public benefit and good, to the extent and in the manner provided in this article.

The Legislature finds and hereby declares that the responsibility of the state as outlined above cannot be effectively met without the hospital loan program as provided for in this article.

§16-29A-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(1) “Authority” means the West Virginia hospital finance authority created by section four of this article, the duties, powers, responsibilities and functions of which are specified in this article;

(2) “Board” means the West Virginia hospital finance board created by section four of this article, which shall manage and control the authority;

(3) “Bond” means a revenue bond issued by the authority to effect the purposes of this article;

(4) “Construction” means and includes reconstruction, enlargement, improvement and providing furnishings or equipment;

(5) “Direct provider of health care” means a person or organization whose primary current activity is the provision of health care to individuals and includes a licensed or certified physician, osteopath, dentist, nurse, podiatrist or physician’s assistant or an organization comprised of these health professionals or employing these health professionals;

(6) “Hospital” means a corporation, association, institution or establishment for the care of those who require medical treatment, which may be a public or private corporation or association, or state owned or operated establishment and specifically includes nurs-
(7) “Hospital facilities” means any real or personal property suitable and intended for, or incidental or ancillary to, use by a hospital and includes: Outpatient clinics; laboratories; laundries; nurses, doctors or interns residences; administration buildings; facilities for research directly involved with hospital care; maintenance, storage or utility facilities; parking lots and garages; and all necessary, useful or related equipment, furnishings and appurtenances and all lands necessary or convenient as a site for the foregoing and specifically includes any capital improvements to any of the foregoing. “Hospital facilities” specifically includes office facilities not less than eighty percent of which are intended for lease to direct providers of health care and which are geographically or functionally related to one or more other hospital facilities, if the authority determines that the financing of the office facilities is necessary to accomplish the purposes of this article;

(8) “Hospital loan” means a loan made by the authority to a hospital and specifically includes financings by the authority for hospital facilities pursuant to lease-purchase agreements, installment sale or other similar agreements;

(9) “Note” means a short-term promise to pay a specified amount of money, payable and secured as provided pursuant to this article and issued by the authority to effect the purposes of this article;

(10) “Project costs” means the total of the reasonable or necessary costs incurred for carrying out the works and undertakings for the acquisition or construction of hospital facilities under this article. “Project costs” includes, but is not limited to, all of the following costs: The costs of acquisition or construction of the hospital facilities; studies and surveys; plans, specifications, architectural and engineering services; legal, organization, marketing or other special services; financing, acquisition, demolition, construction, equipping and site
development of new and rehabilitated buildings; rehabilita-
tion, reconstruction, repair or remodeling of existing buildings; interest and carrying charges during construction and before full earnings are achieved and operating expenses before full earnings are achieved or a period of one year following the completion of construction, whichever occurs first, and a reasonable reserve for payment of principal of and interest on bonds or notes of the authority. "Project costs" shall also include reimbursement of a hospital for the foregoing costs expended by a hospital from its own funds or from money borrowed by the hospital for such purposes before issuance and delivery of bonds or notes by the authority for the purpose of providing funds to pay the project costs. "Project costs" also specifically includes the refinancing of any existing debt of a hospital necessary in order to permit the hospital to borrow from the authority and give adequate security for the hospital loan. The determination of the authority with respect to the necessity of refinancing and adequate security for a hospital loan is conclusive;

(11) "Revenue" means any money or thing of value collected by, or paid to, the authority as principal of or interest, charges or other fees on hospital loans, or any other collections on hospital loans made by the authority to hospitals to finance in whole or in part the acquisition or construction of any hospital facilities, or other money or property which is received and may be expended for or pledged as revenues pursuant to this article.


The authority is hereby granted, has and may exercise all the powers necessary or appropriate to carry out and effectuate the purposes of this article, including the following:

(a) To sue and be sued in its own name and plead and be impleaded in its own name; to have a seal and alter the same at its pleasure; to make, execute and deliver contracts, indentures, agreements, conveyances and other instruments necessary or convenient to the exercise of its powers; to adopt and, from time to time,
amend and repeal bylaws necessary and proper for the
legislation of its business and rules and regulations to
implement and make effective its powers and duties,
such rules and regulations to be promulgated in
accordance with the provisions of chapter twenty-nine-
a of this code; and to maintain a principal office. Any
actions against the authority shall be brought in the
circuit court of Kanawha County, in which the principal
office of the authority shall be located. When the cost
under any contract or agreement to be entered by the
authority, other than compensation for personal servi-
ces, involves an expenditure of more than three thou-
sand dollars, the authority shall make a written contract
with the lowest responsible bidder after public notice
published as a Class II legal advertisement in com-
pliance with the provisions of article three, chapter fifty-
nine of this code, the publication area for such publica-
tion to be the county wherein the work is to be be-
performed or which is affected by the contract, which
notice shall state the general character of the work and
the general character of the materials to be furnished,
the place where plans and specifications therefor may
be examined and the time and place of receiving bids:
Provided, That a contract, indenture or agreement for
a hospital loan is not subject to the foregoing require-
ments, and the authority may enter into such contract,
indenture or agreement pursuant to negotiation and
upon such terms and conditions and for such period as
it finds to be reasonable and proper under the circum-
stances and as necessary to best effectuate the purposes
of this article: Provided, however, That a contract or
agreement entered into by a hospital to which any
hospital loan is made is not subject to the foregoing
requirements. The authority may reject any and all bids.
A bond with good and sufficient surety, approved by the
authority, shall be required of all contractors in an
amount equal to at least fifty percent of the contract
price, conditioned upon the faithful performance of the
contract.
(b) To solicit and accept gifts, grants, loans and other
aids from any person, corporation or governmental
agency.
(c) To make hospital loans, to participate in the making of hospital loans, to undertake commitments, to execute and be the beneficiary under deeds of trust, to enter into security agreements, to sell hospital loans and the security therefor at public or private sale, to modify or alter hospital loans and security therefor, to discharge hospital loans and security therefor, to order a trustee’s sale under a deed of trust or commence an action to protect or enforce a right conferred upon it by a law, deed of trust, hospital loan, contract, indenture or other agreement and to bid for and purchase property which was the subject of a deed of trust at a trustee’s sale or at any other sale and to acquire or take possession of that property and in that event complete, administer, pay the principal of and interest on any obligations incurred in connection with such property, dispose of and otherwise deal with the property in a manner necessary or desirable to protect the interest of the authority in the property. The hospital loans made by the authority may be secured by deeds of trust or security agreements, as applicable, or not, as the authority determines.

(d) To lend money to hospitals for the purpose of refinancing any outstanding indebtedness of a hospital if the authority determines the refinancing is necessary to realize the purposes of this article. A hospital loan made pursuant to this subsection shall not exceed the amount of the principal of and interest and redemption premium, if any, on the indebtedness to be refinanced which has not been repaid, plus the marketing, financing, legal and other costs incurred in connection with the refinancing and the issuance of bonds or notes of the authority issued in whole or in part to provide funds to make the hospital loan described in this subdivision, including the costs of funding a bond reserve and paying capitalized interest on the bonds or notes for a period not to exceed one year after the issuance of such bonds or notes. The determination of the authority under this subsection shall be conclusive.

(e) To charge, impose and collect fees and charges in connection with its hospital loans, commitments and
servicing, including reimbursement of the costs of financing by the authority, service charges, insurance premiums and an allocable share of the operating expenses of the authority and to make provision for increasing the same, if necessary, as the authority determines is reasonable and approved by the board.

(f) To acquire, hold and dispose of real or personal property necessary or appropriate for the accomplishment of the purposes of this article.

(g) To procure insurance against a loss in connection with its property, assets or activities.

(h) To borrow money for its purpose, including its initial operating expense and issue its bonds or notes for the money and provide for the rights of the holders of the bonds or notes and to secure the bonds or notes by a deed of trust on or an assignment or pledge of any or all of its properties, including any part of the security for its hospital loans. The state shall not be liable on any bonds or notes of the authority; the bonds or notes shall not be a debt of the state; and each bond or note shall contain on its face a statement to that effect.

(i) To invest any funds not required for immediate use or disbursement, at its discretion, in any of the following:

(1) Direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America;

(2) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan bank system; Export-Import Bank of the United States; federal farm credit banks; federal land banks; federal financing banks; the Federal National Mortgage Association or the Government National Mortgage Association;

(3) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or
contracts with the United States of America; or
temporary notes issued by public agencies or municipal-
ities or preliminary loan notes issued by public agencies
or municipalities, in each case fully secured as to the
payment of both principal and interest by a requisition
or payment agreement with the United States of
America;

(4) Certificates of deposit secured by obligations of the
type specified in subparagraph (1);

(5) Direct obligations of, or obligations the timely
payment of the principal of and interest on which is
guaranteed by, the state of West Virginia;

(6) Direct and general obligations of any other state
within the territorial United States, to the payment of
the principal of and interest on which the full faith and
credit of such state is pledged: Provided, That at the
time of their purchase, such obligations are rated in
either of the two highest rating categories by a
nationally recognized bond-rating agency;

(7) Any fixed interest bond, note or debenture of any
corporation organized and operating within the United
States: Provided, That such corporation has a minimum
net worth of fifteen million dollars and its securities or
its parent corporation’s securities are listed on one or
more of the national stock exchanges: Provided, however,
That (i) such corporation has earned a profit in eight of
the preceding ten fiscal years as reflected in its
statements, (ii) such corporation has not defaulted in the
payment of principal of or interest on any of its
outstanding funded indebtedness during its preceding
ten fiscal years, and (iii) the bonds, notes or debentures
of such corporation to be purchased are rated “AA” or
the equivalent thereof or better than “AA” or the
equivalent thereof by at least two or more nationally
recognized rating services such as Standard and Poor’s,
Dun & Bradstreet or Moody’s;

(8) Fully collateralized or insured bankers acceptan-
tces or time deposits drawn on and accepted by commer-
cial banks; and
(9) Repurchase agreements of commercial banks or trust companies fully secured by obligations of the type specified in subparagraph (1) and having on the date of such agreement a fair market value equal to at least one hundred percent of the principal amount of such repurchase agreement.

(j) To engage necessary personnel and to engage the services of private consultants for rendering professional and technical assistance and advice.

(k) To establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on bonds issued by the authority pursuant to this article.

(l) To lease, or lease with an option to purchase, to others its real or personal property, including hospitals and hospital facilities, for such rentals and upon such terms and conditions as the authority may deem advisable.

(m) To do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.


Before the authority makes a hospital loan to any hospital, and as a condition precedent to the authority's making any such hospital loan, a certificate of need shall be obtained pursuant to article two-d of this chapter, or a determination shall be secured from the agency issuing the certificate of need that a certificate is not necessary for the hospital facilities with respect to which the hospital loan is proposed to be made: Provided, That if a certificate of need is not necessary for a specific project or projects, then the health care cost review authority created by section five, article twenty-nine-b of this chapter must be consulted by the authority concerning the availability of financial resources to both repay the loan and to fund the ongoing operations of the project or projects. The opinion of the health care cost review authority, while not determinative on the question of the issuance of the hospital loan, shall be
entitled to substantial weight before the authority and shall be overcome only by clear and convincing evidence to the contrary. This section shall not apply to refinancing of present indebtedness or to refunding or advance refunding of bonds, notes, or for reimbursement of projects costs.

CHAPTER 85
(Com. Sub. for H. B. 2253—By Delegates Pitrolo and Mezzatesta)

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

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-j, relating to public health; regulation and licensing of clinical laboratories and laboratory technicians and technologists; providing legislative findings; defining phrase “clinical laboratory”; requiring state health director to promulgate rules; providing for certain exemptions; enumerating powers and duties of such director with respect to licensure and inspection; creating an advisory board and providing for appointment, membership and terms of office; providing for hearings and appeals from director’s decisions; creating misdemeanor offense relating to certain solicitation, receipt, delivery or transmission of human material for or to unlicensed laboratories; exceptions thereto; providing a severability clause; providing for licensure and certification of laboratory technicians and technologists and rules and regulations pertaining thereto; exempting technicians and technologists so employed on effective date of act from such requirements; and providing that certain technicians and technologists shall be deemed certified.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-j, to read as follows:
ARTICLE 5J. CLINICAL LABORATORIES QUALITY ASSURANCE ACT.

§16-5J-1. Legislative findings.

The Legislature finds that the diagnosis and treatment of human affliction is or may be largely determined by the results of laboratory testing and that inaccurate laboratory test results endanger the health and lives of the citizens of West Virginia. A due respect for the citizenry of the state requires that all such testing be done under the supervision of qualified and competent persons having sufficient expertise and experience to assure the quality and accuracy of clinical laboratory testing. Further, it is imperative that laboratories be regulated and licensed to ensure that the intent of this article be met.

§16-5J-2. Definition.

The term "clinical laboratory" means any facility or place, however named, for the biological, microbiological, serological, chemical, immuno-hematological, hematological, biophysical, crytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of human beings.

§16-5J-3. Rules; recognized external standards.

The director of the department of health shall promulgate, pursuant to chapter twenty-nine-a of this code, rules required to implement this article, and such rules shall specifically address, among other things, training, education and experience requirements. The
standards to be adopted by the department of health shall be equal to or higher than such standards currently applicable and as established by the college of American pathologists, the center for disease control, American Osteopathic Board of Pathology, American Osteopathic Hospital Association, the medicare program or the joint commission for the accreditation of hospitals: Provided, That any laboratory in this state accredited by or certified by one of these organizations or the medicare program shall be exempt from the requirements of licensure with no further inquiry by the department of health, and any such accredited or certified laboratory shall be exempt from the provisions of this article as long as such laboratories remain so accredited or certified: Provided, however. That all laboratories shall have five years from the effective date of this article to come into compliance.


In addition to promulgating rules specified in section three of this article, the director of the department of health, with the advice of the advisory board created in section five of this article, has the power to:

(a) Adopt rules for clinical laboratory licensure;

(b) Establish rules for continued evaluation of laboratory testing, such rules and evaluations being at least equivalent to the appropriate section of the “Clinical Laboratory Improvement Act of 1967”;

(c) Institute and administer a program of inspection to ensure compliance with standards established in this article and rules established pursuant to this article;

(d) Issue a license to those clinical laboratories which meet requirements for licensure under this article;

(e) Set a reasonable fee for application and licensure;

(f) Withhold, revoke or suspend or restrict the license of any clinical laboratory which fails to meet requirements for licensure or relicensure.

The cost of the initial inspection of any new laboratory
constructed after July one, one thousand nine hundred ninety, shall be the responsibility of the prospective licensee.

Within the limit of available funds, the department of health shall inspect clinical laboratories on a periodic basis to ensure compliance with standards and regulations.

§16-5J-5. Advisory board.

There is hereby created an advisory board which shall be composed of the following persons:

(a) Two board certified pathologists licensed and currently practicing in this state;

(b) A board certified physician or doctor of osteopathy, licensed and currently practicing in this state in a specialty other than pathology;

(c) Two clinical laboratory practitioners who hold professional certification from an agency acceptable to the department of health. These two must have had a minimum of three years experience in a clinical laboratory setting during the five years preceding appointment. One of the two must hold a minimum of a baccalaureate degree;

(d) One lay person to represent the interests of the people of this state.

The advisory board shall be appointed by the governor, with the advice and consent of the Senate. Appointments of professional members shall be made from lists of candidates submitted from among their peers. These lists may be solicited from the West Virginia association of pathology, the West Virginia state society for medical technology, the West Virginia state medical association, the West Virginia society of state American medical technologists and other similar professional organizations. The lists submitted shall contain at least one name in excess of the number of appointments to be made. Appointments shall be for a term of three years beginning the first day of July of the year of appointment, except for the first board appointed, whose terms shall be as follows:
(a) The pathologists and one baccalaureate clinical practitioner shall serve a one-year term;

(b) The nonpathologist physician or doctor of osteopathy, and the other clinical practitioner shall serve for a two-year term;

(c) The lay person shall serve for a three-year term.

Successors to those first board members will serve three-year terms. Board members may succeed themselves once, but may not serve for a total period in excess of six years. In the event of a vacancy on the advisory board the governor shall appoint a successor in the same manner as the original appointment was made. The successor will serve for the unexpired term and may be eligible for reappointment: Provided, That any member shall serve until such time as his or her successor is appointed.

§16-5J-6. Hearing and judicial review.

If a license is withheld, suspended or revoked, the laboratory is entitled to a hearing before representatives of the department of health within sixty days of the withholding, suspension or revocation decision. Such laboratory may be represented at the hearing by counsel and may present evidence in its defense. The final order of the director will be based on a record of the hearing and shall contain findings of fact and conclusions of law. The laboratory may appeal an adverse order to the circuit court of Kanawha County or the circuit court of the county in which the laboratory is located to determine whether the director abused his discretion or exceeded his jurisdiction. The department of health has the power to obtain an injunction during the time preceding the hearing against any laboratory which fails to meet licensure requirements and whose continued operation poses a significant threat to the public health.


This article does not include or apply to any laboratory or laboratories maintained and operated by the federal government or to any laboratory or laboratories
maintained and operated purely for research or teaching purposes nor to any laboratory operated by a primary health care center having tax exempt status and receiving contributions which are deductible to the contributor under provisions of federal law. All county health departments shall be exempt from this article.

§16-5J-8. Unlawful conduct; penalties.

It is a misdemeanor for any person to solicit, receive, accept, deliver or transmit, by mail or otherwise, material originating from the human body on behalf of any person operating a laboratory not in possession of a license under this article regardless of whether such laboratory is located in this state and, upon conviction thereof, such person shall be fined not less than five hundred dollars. The provisions of this section do not apply to transactions with any person operating a laboratory located in another state, which laboratory has been issued a license or permit in conformity with the “Clinical Laboratories Improvement Act of 1967,” and related statutes. Neither does this section apply to transactions with laboratories operated in this state which are exempt from the license requirements of this article.

§16-5J-9. Interpretation of article; severability.

The provisions of this article are severable and if any of its provisions shall be held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of this article. It is hereby declared to be the legislative intent that this article would have been adopted had such unconstitutional provisions not been included herein.

§16-5J-10. Licensure of technicians; fee; rules and regulations.

(a) The director of the department of health shall promulgate rules and regulations for the licensure and certification of lab technicians and lab technologists. All such persons being so employed on the effective date of this article shall be automatically certified and exempt from this requirement: Provided, That any technologist
and technician who is certified by the American medical
technologists or the American society of clinical
pathologists or the national certification agency for
medical laboratory personnel or any federal certification
program shall be considered certified.

(b) All laboratory technicians or technologists shall
pay an annual license fee of twenty-five dollars to the
director of the department of health to cover the costs
of licensure.

(c) All rules and regulations required under this
section or other provisions of this article may not be filed
as emergency rules until after the set of rules is
approved by the Legislature.

(d) All fees and interest earned or collected by the
department under this article shall be used to pay for
the implementation of this article.

CHAPTER 86
(S. B. 388—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

Clerk's Note: It has been determined that S. B. 388, originally styled as
Chapter 86, was incorrectly enrolled and signed by the Governor in an
incorrect form.

Therefore, the Governor not having received and signed a true and correct
copy of the bill as passed by both houses, S. B. 388 did not become law.

The text formerly occupied pages 733 and 734, which have been omitted.

CHAPTER 87
(Com. Sub. for S. B. 576—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

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

AN ACT to repeal section four, article twenty-nine-b, chapter
sixteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; to amend and reenact
section twenty of said article; to further amend chapter
sixteen of said code by adding thereto a new article, designated article twenty-nine-d; to amend and reenact section three, article four, chapter twenty-three of said code; and to amend article twelve, chapter twenty-nine of said code by adding thereto a new section, designated section five-c, all relating to the health care cost review authority; repealing a freeze on rates; repealing certain expedited rate review processes; authorizing the creation of other expedited rate review processes; relating to rate determinations; approval of rate increases for hospitals; providing for regulations regarding reporting requirements; providing legislative findings and legislative purposes; providing definitions for certain articles; providing that pharmacies and pharmacists not be considered health care providers under certain circumstances; providing for cooperation among agencies; providing for the development of plans concerning health care by specified departments or divisions of state government; providing for reports to the Legislature; prohibitions on balance billing and exceptions and termination thereof; providing exceptions for certain health care providers; providing criteria for an acceptable preferred provider contract; providing for rates of reimbursement and exceptions thereto; exemption from and application of antitrust laws; providing civil penalties for violations of the article and provisions for removal as a provider; providing a severability clause for certain articles; authorizing promulgation of rules by certain departments; providing schedules for maximum disbursements for medical, surgical and hospital treatment for workers' compensation; providing for submission of the rate schedule to the Legislature; requiring verification for workers' compensation payments; prohibiting charges in excess of scheduled amounts; providing for employer participation in preferred provider organizations, programs or cost containment relationships; and penalties for violations of article.

Be it enacted by the Legislature of West Virginia:

That section four, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-
one, as amended, be repealed; that section twenty of said article be amended and reenacted; that said chapter sixteen be further amended by adding thereto a new article, designated article twenty-nine-d; that section three, article four, chapter twenty-three of said code be amended and reenacted; and that article twelve, chapter twenty-nine of said code be amended by adding thereto a new section, designated section five-c, all to read as follows:

Chapter
23. Workers' Compensation.
29. Miscellaneous Boards and Officers.

CHAPTER 16. PUBLIC HEALTH.

Article
29B. West Virginia Health Care Cost Review Authority.
29D. State Health Care.

ARTICLE 29B. WEST VIRGINIA HEALTH CARE COST REVIEW AUTHORITY.

§16-29B-20. Rate determination.

(a) Upon commencement of review activities, no rates may be approved by the board nor payment be made for services provided by hospitals under the jurisdiction of the board by any purchaser or third-party payor to or on behalf of any purchaser or class of purchasers unless:

(1) The costs of the hospital's services are reasonably related to the services provided and the rates are reasonably related to the costs;

(2) The rates are equitably established among all purchasers or classes of purchasers within a hospital without discrimination unless federal or state statutes or regulations conflict with this requirement. Equity among classes of purchasers may be achieved by considering demonstrated differences in the financial requirements of hospitals resulting from service, coverage and payment characteristics of a class of purchasers. The provision for differentials in rates among classes of purchasers should be carried out in the context of each hospital's total financial requirements
for the efficient provision of necessary services. The board shall institute a study of objective methods of computing the percentage differential to be utilized for all hospitals in determining appropriate projected gross revenues under subsection (b) of this section. Such study shall include a review and determination of the relevant and justifiable economic factors which can be considered in setting such differential. The differential shall be allowed for only those activities and programs which result in quantifiable savings to the hospital with respect to patient care costs, bad debts, free care or working capital, or reductions in the payments of other payors. Each component utilized in determining the differential shall be individually quantified so that the differential shall equal the value assigned to each component. The board shall consider such matters as coverage to individual subscribers, the elderly and small groups, payment practices, savings in hospital administrative costs, cost containment programs and working capital. The study shall also provide for a method of annual recomputation of the differential and triennial recomputation of all other components. The board may contract with any person or entity to assist the board in the discharge of its duties as herein stated. Whoever obstructs any person or entity conducting a study authorized under the provisions of this section shall be deemed to be in violation of this article and shall be subject to any appropriate actions, including injunctive relief, as may be necessary for the enforcement of this section;

(3) The rates of payment for medicaid are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated hospitals subject to the provisions of this article. The rates shall take into account the situation of hospitals which serve disproportionate numbers of low income patients and assure that individuals eligible for medicaid have reasonable access, taking into account geographic location and reasonable travel time, to inpatient hospital services of adequate quality;

(4) The rates are equitable in comparison to prevail-
(5) In no event shall a hospital's receipt of emergency disaster funds from the federal government be included in such hospital's gross revenues for either rate-setting or assessment purposes.

(b) In the interest of promoting efficient and appropriate utilization of hospital services the board shall review and make findings on the appropriateness of projected gross revenues for a hospital as such revenues relate to charges for services and anticipated incidence of service. The board shall further render a decision as to the amount of net revenue over expenditures that is appropriate for the effective operation of the hospital.

(c) When applying the criteria set forth above, the board shall consider all relevant factors, including, but not limited to, the following: The economic factors in the hospital's area; the hospital's efforts to share services; the hospital's efforts to employ less costly alternatives for delivering substantially similar services or producing substantially similar or better results in terms of the health status of those served; the efficiency of the hospital as to cost and delivery of health care; the quality of care; occupancy level; a fair return on invested capital, not otherwise compensated for; whether the hospital is operated for profit or not for profit; costs of education; and, income from any investments and assets not associated with patient care, including, but not limited to, parking garages, residences, office buildings, and income from foundations and restricted funds whether or not so associated.

(d) Wages, salaries and benefits paid to or on behalf of nonsupervisory employees of hospitals subject to this article shall not be subject to review unless the board first determines that such wages, salaries and benefits may be unreasonably or uncustomarily high or low. Said exemption does not apply to accounting and reporting requirements contained in this article, nor to any that may be established by the board. "Nonsupervisory personnel," for the purposes of this section, means, but
is not limited to, employees of hospitals subject to the provisions of this article who are paid on an hourly basis.

(e) Reimbursement of capital and operating costs for new services and capital projects subject to article two-d of this chapter shall not be allowed by the board if such costs were incurred subsequent to the eighth day of July, one thousand nine hundred seventy-seven, unless they were exempt from review or approved by the state health planning and development agency prior to the first day of July, one thousand nine hundred eighty-four, pursuant to the provisions of article two-d of this chapter.

(f) The board shall consult with relevant licensing agencies and may require them to provide written findings with regard to their statutory functions and information obtained by them in the pursuit of those functions. Any licensing agency empowered to suggest or mandate changes in buildings or operations of hospitals shall give notice to the board together with any findings.

(g) Rates shall be set by the board in advance of the year during which they apply except for the procedure set forth in subsection (c), section twenty-one of this article and shall not be adjusted for costs actually incurred.

(h) All determinations, orders and decisions of the board with respect to rates and revenues shall be prospective in nature.

(i) No hospital may charge for services at rates in excess of those established in accordance with the requirements of and procedures set forth in this article.

(j) Notwithstanding any other provision of this article, the board shall approve all requests for rate increases by hospitals which are licensed for one hundred beds or less and which are not located in a Standard Metropolitan Statistical Area where the rate of increase in the hospital's gross inpatient revenues per discharge for nonmedicare and nonmedicaid payors is equal to or less than the rate of inflation for the hospital industry.
nationally as measured by the most recent hospital
market basket component of the consumer price index
as reported by the United States Bureau of Labor
Statistics applicable to the hospital's fiscal year. The
board may, by regulation, impose reporting require­
ments to ensure that a hospital does not exceed the rate
of increases permitted herein.

(k) Notwithstanding any other provision of this
article, the board shall develop an expedited review
process applicable to all hospitals licensed for more than
one hundred beds or that are located in a Standard
Metropolitan Statistical Area for rate increase requests
which may be based upon a recognized inflation index
for the national or regional hospital industry. The board
shall adopt emergency regulations implementing this
subsection within ninety days after the effective date of
this subsection and shall thereafter submit a proposed
legislative rule to the Legislature for consideration at its
regular session in the year one thousand nine hundred
ninety.

ARTICLE 29D. STATE HEALTH CARE.

§16-29D-1. Legislative findings; legislative purpose.
§16-29D-2. Definitions.
§16-29D-3. Agencies to cooperate and to provide plan; contents of plan;
reports to Legislature; late payments by state agencies and
interest thereon.
§16-29D-4. Prohibition on balance billing; exceptions and termination of
exceptions.
§16-29D-5. Coordination of benefits.
§16-29D-6. Exemption from and application of antitrust laws.
§16-29D-7. Rules.
§16-29D-8. Civil penalties; removal as provider.
§16-29D-9. Severability; supersedes other provisions.

§16-29D-1. Legislative findings; legislative purpose.

(a) The Legislature hereby finds as follows:

1 (1) That a significant and ever-increasing amount of
the state's financial resources are required to assure that
the citizens of the state who are reliant on the state for
the provision of health care services and payment
thereof receive such, whether through the public
employees insurance agency, the state medicaid pro-
gram, the workers' compensation fund, the division of rehabilitation services or otherwise;

(2) That the state has been unable to timely pay for such health care services;

(3) That the public employees insurance agency and the state medicaid program face serious financial difficulties in terms of decreasing amounts of available federal or state dollars by which to fund their respective programs and in paying debts presently owed;

(4) That, in order to alleviate such situation and to assure such health care services, in addition to adequate funding of such programs, the state must effect cost savings in the provision of such health care;

(5) That it is in the best interest of the state and the citizens thereof that the various state departments and divisions involved in such provision of health care and the payment thereof cooperate in the effecting of cost savings; and

(6) That the health and well-being of all state citizens, and particularly those whose health care is provided or paid for by the public employees insurance agency, the state medicaid program, the workers' compensation fund and the division of rehabilitation services, are of primary concern to the state.

(b) This article is enacted to provide a framework within which the departments and divisions of state government can cooperate to effect cost savings for the provision of health care services and the payment thereof. It is the purpose of the Legislature to encourage the long-term, well-planned development of fair, equitable and cost-effective systems for all health care providers paid or reimbursed by the public employees insurance agency, the state medicaid program, the workers' compensation fund or the division of rehabilitation services.

§16-29D-2. Definitions.

(a) "Coordination of benefits" means a provision establishing an order in which two or more insurance
contracts, plans or programs covering the same beneficiary pay their claims, with the effect that there is no duplication of benefits.

(b) The term "health care" or "health care services" means clinically related preventive, diagnostic, treatment, or rehabilitative services whether provided in the home, office, hospital, clinic or any other suitable place either inside or outside the state of West Virginia provided or prescribed by any health care provider or providers. Such services include, among others, medical supplies, appliances, laboratory, preventive, diagnostic, therapeutic and rehabilitative services, hospital care, nursing home and convalescent care, medical physicians, osteopathic physicians, chiropractic physicians, and such other surgical including inpatient oral surgery, nursing, and podiatric services and supplies as may be prescribed by such health care providers but not other dental services.

(c) "Health care provider" means a person, partnership, corporation, facility or institution licensed, certified or authorized by law to provide professional health care services in or outside this state to an individual during this individual's medical care, treatment or confinement. For the sole purpose of this article, pharmacists and pharmacies shall not be considered health care providers.

§16-29D-3. Agencies to cooperate and to provide plan; contents of plan; reports to Legislature; late payments by state agencies and interest thereon.

(a) All departments and divisions of the state, including, but not limited to, the division of employment security, the division of health, the division of human services, and the division of workers' compensation within the department of health and human resources; the public employees insurance agency within the department of administration; the division of rehabilitation services or such other department or division as shall supervise or provide rehabilitation; and the West Virginia board of regents or such other department or division as shall govern the state medical schools, are
authorized and directed to cooperate in order, among
other things, to ensure the quality of the health care
services delivered to the beneficiaries of such depart-
ments and divisions and to ensure the containment of
costs in the payment for such services.

(b) It is expressly recognized that no other entity may
interfere with the discretion and judgment given to the
single state agency which administers the state's
medicaid program. Thus, it is the intention of the
Legislature that nothing contained in this article shall
be interpreted, construed, or applied to interfere with
the powers and actions of the single state agency which,
in keeping with applicable federal law, shall administer
the state's medicaid program as it perceives to be in the
best interest of that program and its beneficiaries.

(c) Such departments and divisions shall develop a
plan or plans to ensure that a reasonable and approp-
riate level of health care is provided to the beneficiaries
of the various programs including the public employees
insurance agency and the workers' compensation fund,
the division of rehabilitation services and, to the extent
permissible, the state medicaid program. The plan or
plans may include, among other things, and the
departments and divisions are hereby authorized to
enter into:

(1) Utilization review and quality assurance
programs;

(2) The establishment of a schedule or schedules of the
maximum reasonable amounts to be paid to health care
providers for the delivery of health care services covered
by the plan or plans. Such a schedule or schedules may
be either prospective in nature or cost reimbursement
in nature, or a mixture of both: Provided, That any
payment methods or schedules for institutions which
provide inpatient care shall be institution-specific and
shall, at a minimum, take into account a disproportionate
share of medicaid, charity care and medical education:
Provided, however, That in no event may any rate set in
this article for an institutional health care provider be
greater than such institution's current rate established
and approved by the health care cost review authority pursuant to article twenty-nine-b of this chapter;

(3) Provisions for making payments in advance of the receipt of health care services by a beneficiary, or in advance of the receipt of specific charges for such services, or both;

(4) Provisions for the receipt or payment of charges by electronic transfers;

(5) Arrangements, including contracts, with preferred provider organizations; and

(6) Arrangements, including contracts, with particular health care providers to deliver health care services to the beneficiaries of the programs of the departments and divisions at agreed upon rates in exchange for controlled access to the beneficiary populations.

(d) The director of the public employees insurance agency shall contract with an independent actuarial company for a review every four years of the claims experience of all governmental entities whose employees participate in the public employees insurance agency program, including, but not limited to, all branches of state government, all state departments or agencies (including those receiving funds from the federal government or a federal agency), all county and municipal governments, or any other similar entities for the purpose of determining the cost of providing coverage under the program, including administrative cost, to each such governmental entity.

(e) Except as provided in subsection (h) of this section, any health care provider who agrees to deliver health care services to any beneficiary of a health care program of a department or division of the state, including the public employees insurance agency, the state medicaid program, the workers' compensation fund and the division of rehabilitation services, the charges for which shall be paid by or reimbursed by any department or division which participates in a plan or plans as described in this section, shall be deemed to have agreed to provide health care services to the
beneficiaries of health care programs of all of the other
departments and divisions participating in a plan or
plans: Provided, That a health care provider shall be in
compliance with this subsection if the health care
provider actually delivers health care services to all
such patients who request such services or if the health
care provider actually delivers health care services to at
least a sufficient number of patients who are beneficiar-
ies under the state's medicaid program to equate to at
least fifteen percent of the health care provider's total
patient population: Provided, however, That the delivery
of health care services immediately needed to resolve an
imminent life-threatening medical or surgical emer-
cency shall not be deemed to be an agreement under this
subsection: Provided further, That nothing contained in
this article may be deemed to, or purport to imply, any
consent by any physician on the staff of any hospital or
other health care institution to accepting or agreeing to
deliver health care services to any beneficiary of a
health care program of a division or department of this
state in any such physician's private office or practice
by virtue of the fact that such physician saw such
patient in connection with such physician's duties as an
on-call staff physician.

(f) The administrators of the division of health,
human services, workers’ compensation, and the public
employees insurance agency shall report to the Legisla-
ture no later than the first day of the regular session
of the Legislature of the year one thousand nine hundred
ninety concerning the plan or plans developed: Provided,
That the plan or plans may be implemented prior to the
delivery of such report.

(g) Nothing in this section shall be construed to give
or reserve to the Legislature any further or greater
power or jurisdiction over the operations or programs
of the various departments and divisions affected by this
article than that already possessed by the Legislature in
the absence of this article.

(h) A health care provider who provides health care
services to any beneficiary of a health care program of
a department or division of the state pursuant to the
plan or plans developed in accordance with this article may withdraw from participation in said plan or plans: Provided, That the health care provider shall provide written notice of withdrawal from participation in said plan or plans to the administrator of the public employees insurance agency: Provided, however, That a provider who has withdrawn from further participation under the plan or plans who are not his or her patients at the time the notice of withdrawal is provided and the provider may continue to provide services to his or her preexisting patients for not more than forty-five days after tendering the notice of withdrawal without obligating his or herself to treat such other beneficiaries.

(i) For the purchase of health care or health care services by a health care provider participating in a plan under this section or in a contract under subsection (d) or (e) of section four of this article on or after the first day of September, one thousand nine hundred eighty-nine, by the public employees insurance agency, the division of rehabilitation services and the division of workers' compensation, a state check shall be issued in payment thereof within sixty-five days after a legitimate uncontested invoice is actually received by such division or agency. Any state check issued after sixty-five days shall include interest at the current rate, as determined by the state tax commissioner under the provisions of section seventeen-a, article ten, chapter eleven of this code, which interest shall be calculated from the sixty-sixth day after such invoice was actually received by the division or agency until the date on which the state check is mailed to the vendor.

§16-29D-4. Prohibition on balance billing; exceptions and termination of exceptions.

(a) Except in instances involving the delivery of health care services immediately needed to resolve an imminent life-threatening medical or surgical emergency, the agreement by a health care provider to deliver services to a beneficiary of any department or division of the state which participates in a plan or plans
developed under section three of this article shall be deemed to also include an agreement by that health care provider:

(1) To accept the assignment by the beneficiary of any rights the beneficiary may have to bill such division or department for, and to receive payment under such plan or plans on account of, such services; and

(2) To accept as payment in full for the delivery of such services the amount specified in plan or plans or as determined by the plan or plans. In such instances, the health care provider shall bill the division or department, or such other person specified in the plan or plans, directly for the services. The health care provider shall not bill the beneficiary or any other person on behalf of the beneficiary and, except for deductibles or other payments specified in the applicable plan or plans, the beneficiary shall not be personally liable for any of the charges, including any balance claimed by the provider to be owed as being the difference between that provider's charge or charges and the amount payable by the applicable department or divisions. The plan or plans may specify what sums are deductibles, copayments or are otherwise payable by the beneficiary and the sums for which the health care provider may bill the beneficiary: In addition, any health care service which is not subject to payment by the plan or plans shall be the responsibility of the beneficiary and for those health care services which are not covered by the plans, there shall be no prohibition against billing the beneficiary directly.

(b) The prohibitions and limitations stated in subsection (a) of this section do not apply to the delivery of health care services immediately needed to resolve an imminent life-threatening medical or surgical emergency. However, once the patient is stabilized, then the delivery of any further health care services shall be subject to subsection (a) of this section for those latter services only.

(c) The exceptions provided in this section for the delivery of health care services immediately needed to
resolve an imminent life-threatening medical or surgical emergency shall not apply to health care providers under contract with a department or division plan or plans.

(d) Subsections (a), (b) and (c) of this section shall not be applicable to those health care providers who are allopathic physicians, osteopathic physicians, or podiatrists and who enter into acceptable preferred provider contracts with the public employees insurance agency insofar as this section would apply to beneficiaries of that agency. The limitations in this subsection do not apply to the beneficiaries of any other program of any other department or division of the state or to any other type of health care provider. An acceptable preferred provider contract for the purpose of this subsection shall be one which meets each and every one of the following factors in addition to the other elements required by a preferred provider arrangement:

(1) The contract shall set the rates of reimbursement for health care services at the eighthieth percentile of the public employees insurance agency's 1988 calendar year experience in paying claims unless, after the thirty first day of December, one thousand nine hundred eighty-nine, the director of the public employees insurance agency determines that continuing to make payments at the eighthieth percentile shall not be consistent with the budgetary restrictions imposed by the Legislature upon the public employees insurance agency. In this later event, the director, after consultation with the advisory committee created under section seven of this article, may cause the rate of reimbursement to be set below the aforesaid eighthieth percentile but in no event may those rates be set below the seventy-fifth percentile. In determining whether continued rates of payment of the eighthieth percentile shall be consistent or inconsistent with the aforesaid budgetary restrictions, the director shall take into consideration only the current claims experience of the health care providers covered by this subsection and shall not consider the effects of the other demands upon the public employees insurance agency's resources. If a reduction in rates is necessary during a
fiscal year, at the start of the following fiscal year and
for the first six months thereafter, the rates of reimbur-
sement shall revert to the aforesaid eightieth percentile;

(2) The contract applies to at least seventy percent, by
the first day of July, one thousand nine hundred eighty-
ine, and eighty percent by the first day of September,
one thousand nine hundred eighty-nine, of the members
of recognized specialties of these health care providers
in the applicable region as defined by the eleven
planning and development council regions authorized by
section five-a, article two-d, chapter sixteen of this code
as those regions exist on the effective date of this article:

Provided, That in determining the percentages stated
above in this subsection, the total number of health care
providers in a given region and specialty shall not
include those providers who are hospital based and who
do not themselves bill or receive a fee for services
delivered by them nor shall the total number include
those providers who decline to deliver health care
services to all beneficiaries of a health care program of
all departments or divisions of the state: Provided,
however, That the director of the public employees
insurance agency may waive this factor for any individ-
ual or group of health care providers if the director
ascerts that a sufficient number of providers or
recognized specialists in a given region are willing to
enter into or to continue with a contract to assure access
to that type of health care service to the local public
employees insurance agency beneficiaries;

(3) The contract provides for a utilization review and
quality assurance program which is satisfactory to the
public employees insurance agency;

(4) The contract provides that the beneficiaries of the
public employees insurance agency shall be individually
responsible for payments only as provided for by the
agency's benefit plan or plans and shall bear no personal
liability for payment for health care services except as
provided for by the plan or plans;

(5) The contract is entered into by the first day of
July, one thousand nine hundred eighty-nine;
(6) The contract shall include incentives to public employees insurance agency beneficiaries to utilize subscriber health care providers and shall also include incentives to health care providers to subscribe to a contract; and

(7) The contract shall provide that, if after the contract is entered into, later developments reveal that one or more of subdivisions (2), (3), (4) or (6) of this subsection are no longer satisfied, then the director of the public employees insurance agency, after approval by the governor, may renegotiate or terminate the contract upon giving notice of no less than thirty days nor more than forty-five days: Provided, That any nonparticipating providers during the continuance of this section shall be permitted to set his or her rates for reimbursement at no greater than one hundred and ten percent of the rates of reimbursement set by the director at the aforesaid eightieth percentile and may make claim against the beneficiary for the balance between the amount paid by the public employees insurance agency and the rate set by the provider as described above: Provided, however, That any nonparticipating provider shall be subject to the provisions of subsections (a), (b) and (c) of this section if the director of the public employees insurance agency determines in any case that a beneficiary of the public employees insurance agency does not have access to a provider who is participating in a preferred provider contract.

(e) This section shall not be applicable to hospitals which enter into prospective contracts with the public employees insurance agency for each state fiscal year insofar as this section would apply to beneficiaries of that agency. The limitations in this subsection do not apply to the beneficiaries of any other program of any other department or division of the state or to any other type of health care provider. Such contracts shall include, in addition to the other elements required by such a contract, the following factors:

(1) The contract provides for a utilization review and quality assurance program which is satisfactory to the public employees insurance agency;
(2) For the first year of the contract, the rates for health care services are determined prospectively based upon the public employees insurance agency's one thousand nine hundred eighty-nine fiscal year experience in paying the charges of each individual hospital, but taking into consideration also any adjustments to that experience that may be necessary to provide for the special concerns and needs of the state's small and rural hospitals; for each succeeding year of the contract, the rates shall be set at no less than that of the first year but may be negotiated for a greater level;

(3) The contract provides that the beneficiaries of the public employees insurance agency shall be individually responsible for payments only as provided for by the agency's benefit plan or plans and shall bear no personal liability for payment for health care services except as provided for by the plan or plans;

(4) The contract is entered into by the first day of July, one thousand nine hundred eighty-nine, unless the director of the public employees insurance agency extends this time limit for good cause;

(5) The contract shall provide by its terms that, if after the contract is entered into, later developments reveal that any one or more of the first four factors set forth in this subsection are no longer satisfied, then the director of the public employees insurance agency, after approval of the governor, may renegotiate or terminate that contract upon reasonable notice which shall not be less than thirty days nor more than forty-five days:

Provided, That any hospital which elects not to enter into a contract shall be subject to the provisions of subsections (a), (b) and (c) of this section.

(f) This section shall terminate without any further action by the Legislature on the thirtieth day of June, one thousand nine hundred ninety-one. On or before the first day of January, one thousand nine hundred ninety-one, the advisory committee created under section seven of this article and the director of the public employees insurance agency shall report to the governor and the Legislature upon the impact of the effects of the
prohibition upon balance billing in this section upon the health care provider community, upon the public employees, and upon the public employees insurance agency.

§16-29D-5. Coordination of benefits.

Coordination of benefits is permitted between two or more insurance contracts or employee benefit plans and shall be included for benefits from the public employees insurance agency and, as appropriate, from the state medicaid program, the workers' compensation fund and the division of rehabilitation services. Notwithstanding the foregoing, the workers' compensation fund shall be considered the primary payor for health care services related to work-related injuries and diseases ruled compensable as provided in article four, chapter twenty-three of this code. In no event shall the state medicaid program be considered a primary insurance contract.

§16-29D-6. Exemption from and application of antitrust laws.

(a) Actions of the departments and divisions of the state, or by officers, administrators, employees, or other agents thereof, shall be exempt from antitrust action as provided in section five, article eighteen, chapter forty-seven of this code. Any actions of health care providers when made in compliance with orders, directives, rules, or regulations issued or promulgated by a department or division which participates in a plan or plans developed under section three of this article shall likewise be exempt.

(b) It is the express intention of the Legislature that the actions specified in subsection (a) of this section by either state-related persons or entities or by health care providers should also be deemed to be state actions for purposes of obtaining exemptions from federal antitrust laws.

(c) Notwithstanding subsections (a) and (b) of this section, any agreement by two or more persons, partnerships, corporations, facilities or institutions licensed, certified or authorized by law to provide professional
health care services in this state to an individual during
this individual's medical care, treatment or confine-
ment, unless any of the foregoing are practicing as a
partnership or are otherwise associated as a joint
venture, to refrain from delivering health care services
to any person or persons, which delivery would be
subject to the provisions of this article, for the purpose
or with the effect of fixing, controlling, or maintaining
their charges for the delivery of health care services or
for the purpose or with the effect of defeating the
purposes of this article shall be deemed to be unlawful
under the provision of subsection (a), section three,
article eighteen, chapter forty-seven of this code and
shall be subject to the remedies and relief provided for
in that article and chapter: Provided, That nothing
contained in this subsection may prevent any physician
on staff of any hospital or other health care institution
from discussing with such hospital or health care
institution the fact that such physician only consents to
see the patient in connection with his or her duties as
a staff on-call physician.

§16-29D-7. Rules.

The secretary of the department of health and human
resources shall promulgate rules to carry out the
provisions of this article. The governor shall establish an
advisory committee consisting of at least five individuals
representing: An administrator of a small rural hospi-
tal; an administrator of a hospital having a dispropor-
tionate share of medicaid or charity care; a registered
professional nurse; a physician licensed in this state; and
beneficiaries of the plan or plans. The majority of this
advisory committee shall consist of health care provid-
ers. The purpose of the advisory committee is to advise
and assist in the establishment of reasonable payment
methods, schedule or schedules and rates. The advisory
committee shall serve without compensation; however,
the members thereof are entitled to reimbursement of
their expenses. The policies and procedures of the rate
schedule process setting forth the methodology for
determination of rates, payments and schedules are
subject to the legislative rule-making procedures of
chapter twenty-nine-a of this code: Provided, That emergency rules may be utilized: Provided, however, That the actual rates, payments and schedules themselves shall not be subject to chapter twenty-nine-a of this code.

§16-29D-8. Civil penalties; removal as provider.

The secretary of the department of health and human resources may assess a civil penalty for violation of this article. In addition to the assessments the secretary may remove the health care provider from any list of providers for whose services a department or division may pay. Upon the secretary determining there is probable cause to believe that a health care provider is knowingly violating any portion of this article, or any plan, order, directive, rule or regulation issued pursuant to this article, the secretary shall provide such health care provider with written notice which shall state the nature of the alleged violation and the time and place at which such health care provider shall appear to show cause why a civil penalty or removal from any list of providers should not be imposed, at which time and place such health care provider shall be afforded an opportunity to cross-examine the secretary's witnesses and afforded the opportunity to present testimony and enter evidence in support of its position. The hearing shall be conducted in accordance with the administrative hearings provisions of section four, article five, chapter twenty-nine-a of this code. The hearing may be conducted by the secretary or a hearing officer appointed by the secretary. The secretary or hearing officer shall have the power to subpoena witnesses, papers, records, documents, and other data in connection with the alleged violations and to administer oaths or affirmations in any such hearing. If, after reviewing the record of such hearing, the secretary determines that such health care provider is in violation of this article or any plan, order, directive, rule, or regulation issued pursuant to this article, the secretary may assess a civil penalty of not less than one thousand dollars nor more than twenty-five thousand dollars, and may remove the health care provider. Any health care
provider assessed or removed shall be notified of the
assessment or removal in writing and the notice shall
specify the reasons for the assessment and its amount
or the reasons for removal. In any appeal by the health
care provider in the circuit court, the scope of the court's
review, which shall include a review of the amount of
the assessment and any removal as a provider, shall be
as provided in section four, article five, chapter twenty-
ine-a of this code for the judicial review of contested
administrative cases. The provider may be removed
from any list of providers, based upon the final orders
of the secretary, pending final disposition of any appeal.
Such removal order or penalty assessment may be
stayed by the circuit court after hearing, but may not
be stayed in any ex parte proceeding. If the health care
provider assessed or removed has not appealed such
assessments or removal and fails to pay the amount of
the assessment to the secretary within thirty days, the
attorney general may institute a civil action in the
circuit court of Kanawha County to recover the amount
of the assessment. Civil action under this section shall
be handled in an expedited manner by the circuit court
and shall be assigned for hearing at the earliest possible
date. The remedies set forth in this section are intended
only for violations of this article and shall not affect any
other contractual relationship between any department
or division and a health care provider.

§16-29D-9. Severability; supersedes other provisions.
1 If, for any reason, any part of this article or the
2 application thereof to any person or circumstances is
3 held unconstitutional or invalid, such unconstitutionality
4 or invalidity shall not affect the remaining parts or their
5 application to any other person or circumstance, and to
6 this end, each and every part of this article is hereby
7 declared to be severable. In the event of any inconsis-
8 tency between the provisions of this article and any
9 other provisions of this code, the provisions of this article
10 shall prevail.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.
§23-4-3. **Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties for violation.**

The commissioner shall establish and alter from time to time as he may determine to be appropriate a schedule of the maximum reasonable amounts to be paid to chiropractic physicians, medical physicians, osteopathic physicians, podiatrists, optometrists, vocational rehabilitation specialists, pharmacists, ophthalmologists, and others practicing medicine and surgery, surgeons, hospitals or other persons, firms or corporations for the rendering of treatment to injured employees under this chapter. The commissioner also, on the first day of each regular session, and also from time to time, as the commissioner may consider appropriate, shall submit the schedule, with any changes thereto, to the Legislature. The promulgation of the schedule is not subject to the legislative rule-making review procedures established in sections eleven through fifteen, article three, chapter twenty-nine-a of this code.

The commissioner shall disburse and pay from the fund for such personal injuries to such employees as may be entitled thereto hereunder as follows:

(a) Such sums for medicines, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices as may be reasonably required.

(b) Payment for such medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices authorized under subdivision (a) hereof may be made to the injured employee, or to the person, firm or corporation who or which has rendered such treatment or furnished any of the items specified above, or who has advanced payment for same, as the commissioner may deem proper, but no such payments or disbursements shall be made or awarded
by him unless duly verified statements on forms prescribed by the commissioner shall be filed with the commissioner within two years after the cessation of such treatment or the delivery of such appliances: Provided, That no payment hereunder shall be made unless such verified statement shows no charge for or with respect to such treatment or for or with respect to any of the items specified above has been or will be made against the injured employee or any other person, firm or corporation, and when an employee covered under the provisions of this chapter is injured in the course of and as a result of his employment and is accepted for medical, surgical, dental or hospital treatment, the person, firm or corporation rendering such treatment is hereby prohibited from making any charge or charges therefor or with respect thereto against the injured employee or any other person, firm or corporation which would result in a total charge for the treatment rendered in excess of the maximum amount set forth therefor in the commissioner's schedule established as aforesaid.

(c) No employer shall enter into any contracts with any hospital, its physicians, officers, agents or employees to render medical, dental or hospital service or to give medical or surgical attention therein to any employee for injury compensable within the purview of this chapter, and no employer shall permit or require any employee to contribute, directly or indirectly, to any fund for the payment of such medical, surgical, dental or hospital service within such hospital for such compensable injury. Any employer violating this section shall be liable in damages to his employees as provided in section eight, article two of this chapter, and any employer or hospital or agent or employee thereof violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not less than one hundred dollars nor more than one thousand dollars or by imprisonment not exceeding one year, or both: Provided, That the foregoing provisions of this subdivision (c) shall not be deemed to prohibit an employer from participating in a preferred provider organization or program or a health
maintenance organization or other medical cost containment relationship with the providers of medical, hospital or other health care: Provided, however, That nothing in this section shall be deemed to restrict the right of a claimant to select a health care provider for treatment of a compensable injury or disease.

(d) When an injury has been reported to the commissioner by the employer without protest, the commissioner may pay, or order an employer who or which made the election and who or which received the permission mentioned in section nine, article two of this chapter to pay, within the maximum amount provided by schedule established by the commissioner as aforesaid, bills for medical or hospital services without requiring the injured employee to file an application for benefits.

(e) The commissioner shall provide for the replacement of artificial limbs, crutches, hearing aids, eyeglasses and all other mechanical appliances provided in accordance with this section which later wear out, or which later need to be refitted because of the progression of the injury which caused the same to be originally furnished, or which are broken in the course of and as a result of the employee's employment. The fund or self-insured employer shall pay for these devices, when needed, notwithstanding any time limits provided by law.

Notwithstanding the foregoing, the commissioner may establish fee schedules, make payments and take other actions required or allowed pursuant to article twenty-nine-d, chapter sixteen of this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12. STATE INSURANCE.

§29-12-5c. Insurance for damages allegedly resulting from obstetric treatment of medicaid patients.

In accordance with the provisions of this article, the state board of risk and insurance management shall provide
appropriate professional or other liability insurance for all medical practitioners who provide obstetric treatment to patients which is reimbursed or reimbursable by state medicaid funds. Said insurance shall cover any claim, demand, action, suit or judgment by reason of alleged negligence or other act in the course of providing such obstetric treatment which results in illness, injury or other compensable damages, if, at the time of the alleged negligence or other act, the practitioner knew or believed that the services which he or she was providing were reimbursable or would be reimbursed by state medicaid funds. Such insurance coverage shall be in an amount to be determined by the state board of risk and insurance management, but in no event less than one million dollars for each occurrence.

The insurance policy shall include a provision for the payment of the cost of attorney's fees in connection with any claim, demand, action, suit or judgment arising from such alleged negligence or other act resulting in illness, injury or other compensable damages under the conditions specified in this section.

The insurance coverage specified in this section shall not apply to any hospital which is the site of the obstetric treatment or to any employee of said hospital, except that a practitioner providing the obstetric treatment who is also an employee of the hospital which is the site of the treatment shall be included in the insurance coverage required by this section.

CHAPTER 88

(Com. Sub. for H. B. 2636—By Mr. Speaker, Mr. Chambers, and Delegate White)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight and nine, article sixteen-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated
sections ten and eleven, all relating to creating the West Virginia health care insurance plan; legislative findings; purpose; planning; development and implementation; West Virginia health care insurance fund; administrative support; rules and regulations; contents; legislative report; availability of data of department of employment security; termination of health care insurance plan; exemption from state antitrust laws and insurance laws; misrepresentation by employee or provider; penalty; and exception.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, eight and nine, article sixteen-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections ten and eleven, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 16A. THE WEST VIRGINIA HEALTH CARE INSURANCE ACT.

§5-16A-1. Short title.
§5-16A-2. Legislative findings.
§5-16A-3. Insurance plan; purpose; planning; development and implementation.
§5-16A-4. West Virginia health care insurance fund; administrative support.
§5-16A-5. Rules; contents.
§5-16A-6. Legislative report.
§5-16A-7. Availability of data of department of employment security.
§5-16A-8. Exemption from state antitrust laws and insurance laws.
§5-16A-10. Misrepresentation by employee or provider; penalty.

§5-16A-1. Short title.

1 This article may be cited as “The West Virginia Health Care Insurance Plan Act.”

§5-16A-2. Legislative findings.
The Legislature hereby finds and declares as follows:

(a) That in excess of three hundred thousand, or nearly sixteen percent, of West Virginians are without health insurance and are not covered by federal or state health care assistance and eighty percent of these persons have incomes below two hundred percent of the federal poverty level and are thus medically indigent;

(b) That this problem is exacerbating as the number of persons so uninsured has increased by thirty thousand, or eleven percent, since the year one thousand nine hundred eighty;

(c) Approximately seventy-six thousand of these uninsured are employed by small businesses. Taking into account dependents, this group accounts for approximately one half of West Virginia's uninsured population;

(d) No relief appears available for the uninsured working citizens of this state in the form of adequate health insurance or access to funds to pay therefor and the health and welfare of these uninsured working citizens and their dependents is increasingly threatened;

(e) Studies show that the numbers of such uninsured persons are rising as a result of changing patterns of employment in which jobs are available in ever enlarging numbers in industries involving service and trade and that these are among the least likely industries to provide health insurance for employees;

(f) The system of cost shifting by providers of uncompensated health care to paying health care consumers creates increasing numbers of persons unable to afford health insurance and has resulted in a climate where the financial stability of health care providers is increasingly threatened; West Virginia taxpayers and private insurance companies provided one hundred thirty million dollars of uncompensated health care in the year one thousand nine hundred eighty-seven, which represents eight and three tenths percent of gross patient revenue, a rate that is twenty-five percent greater than the national average;
(g) Thousands of uninsured working citizens are employed in small businesses many of which do not have available to them affordable group health insurance plans for their employees;

(h) Many small businesses, with only one employee who is considered to be a high risk for medical reasons, are unable to obtain group health insurance for any of their employees;

(i) That the Family Support Act of 1988 provides the state of West Virginia with an opportunity to provide basic health care coverage to families earning below one hundred and eighty-five percent of the federal poverty level; thereby taking full advantage of available federal funds;

(j) That families and individuals without health insurance delay seeking health care which often results in more expensive intensive care at a later date;

(k) That the state of West Virginia presently does not have a "high risk pool" which would provide health insurance to persons not able to purchase health insurance due to medical reasons;

(l) The severity of these problems demands a solution, and projects have been developed in other states which do provide affordable, necessary health insurance coverage through the combining of small employee groups into a larger insurance pool;

(m) To address these problems, the public employees insurance agency created by article sixteen of this chapter is the appropriate logical entity to implement a health care insurance plan to target West Virginians and their dependents without health insurance, and to assist those unable to purchase health insurance with the cooperation and assistance of the legislative task force on uncompensated health care and medicaid expenditures created by article twenty-nine-c, chapter sixteen of this code.

§5-16A-3. Insurance plan; purpose; planning; development and implementation.
On the first day of July, one thousand nine hundred eighty-nine, a health care insurance plan in the state shall be commenced and administered by the public employees insurance agency and the resources available to it solely through the West Virginia health care insurance fund, with the advice and assistance of the legislative task force on uncompensated health care and medicaid expenditures. The purpose of the plan shall be to make available affordable health insurance by pooling in a group for health insurance purposes groups of small businesses to provide for acute and primary health care services to working citizens of the state and their dependents who are without health insurance benefits offered in connection with their employment as well as to any citizen who is unable to obtain health insurance coverage. The public employees insurance agency shall be responsible for the development and implementation of the plan. In so doing, the agency may seek the advice and assistance of the legislative task force on uncompensated health care and medicaid expenditures.

§5-16A-4. West Virginia health care insurance fund; administrative support.

(a) There is hereby created in the state treasury the West Virginia health care insurance fund. The fund shall operate as a revolving fund whereby all appropriations, other payments and interest earned thereon shall be applied and reapplied for the purposes of this article. Any premiums, grants, gifts, legislative appropriations or other income from any source shall be deposited into this fund.

(b) The fund shall be used to provide the subsidization provided in subsections (e) and (g), section five of this article as well as to pay the administrative costs and all other proper costs incurred in implementing the provisions of this article.

(c) The public employees insurance agency is authorized to utilize its administrative staff and resources in administering this article. In no event, however, may any benefit or program entitlement offered to those
eligible under the provisions of article sixteen be affected by the plan established in this article.

§5-16A-5. Rules; contents.

(a) The public employees insurance agency shall develop and implement the plan through rules promulgated in accordance with the provisions of chapter twenty-nine-a of this code. The legislative task force on uncompensated health care and medicaid expenditures shall share with the public employees insurance agency any and all pertinent data, studies, reports, analyses, research, summaries, information collected, filed or developed now or in the future in order to effect the development and implementation of the plan contemplated herein. Upon request, in the planning, development and implementation of the plan the insurance commissioner and the commissioner of human services shall cooperate with advice and assistance.

(b) The rules shall provide for the establishment of an insurance pool for the provision of basic acute and primary health care insurance coverage with measurable cost containment provisions to employers and employees of small businesses and individuals in this state and their respective dependents; shall develop a definition for "small business" which definition shall include nonprofit organizations and nonprofit corporations having nineteen or fewer employees; shall permit bids from qualified and licensed insurance companies or carriers, who may wish to offer plans or reinsurance for the insurance coverage desired; shall address incentives for small business participation in the plan, and a variety of effective cost controls; shall provide for an appropriate application form for participation and procedures for application; shall ensure accurate and appropriate marketing of the health insurance coverage to small businesses throughout the state; and shall establish criteria for monitoring the effectiveness of the insurance pool.

(c) The rules shall provide that the plan will be available to small business employers with nineteen employees or less and to individuals who can demon-
strate that they have been without health insurance coverage for a period of at least six months prior to enrollment, except that persons who are not eligible for the COBRA provisions for the unemployed and who can demonstrate that their lack of health insurance is due to a reduction in workforce will be eligible. Beginning on the first day of April, one thousand nine hundred ninety, families that no longer qualify for AFDC but do qualify for Medicaid under the Family Support Act of 1988 will be eligible to participate in the program, and the plan may include a premium for those families.

(d) The rules shall provide that health care provided pursuant to the plan be through an exclusive provider organization consisting of acute care hospitals, primary care centers, clinics, physician groups and physicians. Inpatient care shall be provided by hospitals at a discounted rate which will be at or below cost. Primary care and outpatient services shall be provided on a per capita basis to be negotiated with providers or provider groups and such payment may be made in advance of services rendered. A formulary prescription drug program shall also be included on a near cost basis. Health care provided outside the exclusive provider organization will generally not be covered by the plan. Outpatient services shall include a quality assurance component to ensure that the level of care is adequate and appropriate. Appropriate provisions may be included to ensure that health care providers participating in the plan do not realize a financial windfall from such participation and that subsequent charges reflect the income received therefrom.

(e) The rules shall provide that benefit design and premium structures be developed with recommendations from the legislative task force on uncompensated health care and medicaid expenditures. The plan shall provide for differing premium and benefit structures based upon the enrollee's level of income. To the extent feasible, the plan will limit enrollment to those individuals who have incomes at or below two hundred percent of the federal poverty level. Premium structures may include cost sharing methods including employer and
employee sharing of cost and a sliding scale based on ability to pay. Provisions shall be included for a minimum two hundred fifty dollar annual deductible for inpatient acute care and a lifetime cap of two hundred fifty thousand dollars, per individual, for all benefits provided under the plan. The plan may provide for the subsidization of premiums for employees and individuals whose income is below the federal poverty rate but above medicaid payment standards. The plan may include such provisions as are necessary to allow full advantage to be taken of the provisions of the Family Support Act of 1988.

(f) The plan shall begin with a three-year pilot program which shall include, at a minimum, two thousand subscribers. The program will be established in two pilot areas in the state. One pilot area will be located in an urban area defined as a metropolitan statistical area and one in a rural area, defined as a nonmetropolitan statistical area. The plan authorized pursuant to this section is a pilot plan only, and may be discontinued or terminated at the end thereof without further liability on behalf of the State of West Virginia or any small businesses that are participating.

(g) The rules may provide that medical underwriting will take place after, rather than prior, to enrollment in the plan, although all participants will be required to complete a medical screen. Those who do not pass the medical screen may be able to participate. Premiums for such individuals may be at a rate higher than those established for other participants. The cost of the high risk participants’ health care insurance premiums may be partially subsidized by the health care insurance fund. The rules shall provide for a schedule of the subsidization, which shall be based on need, cost and funds available.

(h) The rules shall contain provisions that limit any assistance provided pursuant to the plan to that which can be provided within the funds available.

§5-16A-6. Legislative report.

The public employees insurance agency, with the
advice and assistance of the legislative task force on uncompensated health care and medicaid expenditures, shall cooperate to prepare and submit reports to the Legislature before it convenes in the years, one thousand nine hundred ninety, one thousand nine hundred ninety-one and one thousand nine hundred ninety-two, with studies, findings, conclusions and recommendations, including any recommendations for legislation, all relating to the purpose and effect of the health care insurance plan created herein. Said report shall be in addition to any report prepared by the legislative task force on uncompensated health care and medicaid expenditures pursuant to the provisions of article twenty-nine-c, chapter sixteen of this code.

§5-16A-7. Availability of data of department of employment security.

In furtherance of the purposes of this article, the department of employment security shall, notwithstanding the provisions of section eleven, article ten, chapter twenty-one-a of this code, cooperate to make available to the public employees insurance agency and the legislative task force on uncompensated health care and medicaid expenditures such information as they may request for purposes consistent with this article to identify and facilitate contact with small business employers who may be eligible for participation in the plan. The provisions of this section shall be liberally construed by the department of employment security in order to effectuate the development of the health care insurance plan.

Information thus obtained by the public employees insurance agency and the legislative task force on uncompensated health care and medicaid expenditures shall be maintained as strictly confidential and shall be exempt from disclosure to the public.

§5-16A-8. Exemption from state antitrust laws and insurance laws.

The health care insurance plan and those responsible for developing and implementing it under the provisions of this article are exempted from the provisions of
section five, article eighteen, chapter forty-seven of this
code and any otherwise applicable provisions of chapter
thirty-three of this code.

The health care insurance plan shall be terminated
pursuant to the provisions of article ten, chapter four of
this code on the first day of July, one thousand nine
hundred ninety-two, unless continued or reestablished
pursuant to the provisions of that article.

§5-16A-10. Misrepresentation by employee or provider; penalty.
Any person who knowingly secures or attempts to
secure benefits payable under this article to which the
person is not entitled, or willfully misrepresents any
material fact relating to any other information re-
quested by the public employees insurance agency or
who willfully overcharges for services provided, or who
willfully misrepresents the diagnosis or nature of the
service provided, may be found to be overpaid and shall
be civilly liable for any overpayment. In addition to the
civil remedy provided herein, the public employees
insurance agency shall withhold payment of any benefits
due to that person until any overpayment has been
recovered or may directly set off, after holding internal
administrative proceedings to assure due process, any
such overcharges or improperly derived payment
against benefits due such person hereunder. Nothing in
this section shall be construed to limit any other remedy
or civil or criminal penalty provided by law.

Even though a state agency or various state agencies
may implement this insurance program, the employers
and individuals provided insurance coverage by this
article are not entitled to access to health care providers
as presently mandated in article twenty-nine-d, chapter
sixteen of this code.

Health care providers may be given the right to treat
individuals under this plan but shall not be required to
provide health care service to any firm or individual
under the insurance plan provided in this article.
CHAPTER 89
(Com. Sub. for H. B. 2144—By Delegates Spencer and Mezzatesta)

[Passed April 7, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen, relating to creation of a commission for the hearing-impaired, statement of legislative findings, definitions, membership requirements for the commission, terms of office for commission members, goals of the commission, provisions for seminars and training sessions in deaf education, requirement for assistance from other state agencies, duties of the executive director, and provision for payment of expenses of certain members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE HEARING-IMPAIRED.

§5-14-1. Legislative findings.
§5-14-2. Definitions.
§5-14-3. Establishment of commission; membership.
§5-14-4. Terms of office; quorum.
§5-14-5. Powers and duties of the commission; register of hearing-impaired; duty to report to the commission; census; information clearing-house; coordination of interpreters; outreach programs; seminars and training sessions.
§5-14-6. Seminars and training sessions.
§5-14-7. Assistance of other agencies.
§5-14-8. Executive director; staff.
§5-14-9. Reports and recommendations.
§5-14-10. Grants and gifts; contracts.
§5-14-11. Reimbursement for expenses.

§5-14-1. Legislative findings.

1 The Legislature hereby finds and declares that:
(a) There is a need for West Virginia to adequately identify the hearing-impaired population and provide efficient and effective services to such population;

(b) Hearing-impaired people need to be more involved in the decisions and programs that affect their lives by soliciting and seriously considering their collective opinion on appropriate matters;

(c) Cooperation among state and local agencies must be facilitated in an effort to ensure that adequate and appropriate services are available and provided;

(d) In order to further the aforementioned goals it is necessary to determine what services exist and what services can be developed in order to match services to individual needs;

(e) A rubella epidemic from one thousand nine hundred sixty-three to one thousand nine hundred sixty-five caused a number of infants in West Virginia to be born hearing-impaired. These individuals are approaching the ages where they will no longer be eligible for educational services, thus requiring services as young adults. The Legislature, therefore, declares that there is an unprecedented and imperative need to plan and prepare for the multiplicity of services required in order to ensure a life-long continuum of services to this particular population;

(f) There must be more emphasis on the use of interpreters for deaf and hard-of-hearing people and on the quality control of such services;

(g) There must be more emphasis on the use of telecommunication devices for the deaf (tdds) and means to provide them for hearing-impaired people;

(h) Through the implementation of the provisions of this article, the deaf and hard-of-hearing population of West Virginia will be aided in their efforts to live independent and productive lives.

§5-14-2. Definitions.

As used in this article:
“Deaf” means severe to profound impairment of the sense of hearing whereby the understanding of speech is unattainable through the ear alone with or without amplification, and visual communication is used as the primary mode of communication.

“Hard-of-hearing” means significant impairment to the sense of hearing, but not to the extent that the person must rely primarily on visual communication.

“Hearing-impaired” means persons who are either deaf or hard-of-hearing.

§5-14-3. Establishment of commission; membership.

There is hereby established within the executive department a commission to be known as the “West Virginia Commission for the Hearing-Impaired” consisting of fifteen persons, eight of whom shall serve ex officio, to be appointed by the governor within sixty days after the effective date of this article by and with the advice and consent of the Senate. The commission shall meet no less than four times annually. All meetings and activities held by the commission shall be attended by at least two qualified interpreters who shall be hired at the commission’s expense or provided free of charge by agencies, organizations or individuals willing to volunteer qualified interpreters. The members are:

(a) The commissioner, or his or her designee, of the department of human services; the commissioner, or his or her designee, of the department of labor; the director, or his or her designee, of the department of health; the state superintendent of schools, or his or her designee, of the state board of education; the director, or his or designee, of the division of rehabilitation; the director, or his or her designee, of the division of handicapped children’s services in the department of human services; the chairman, or his or her designee, of the advisory council for the education of exceptional children; and the superintendent, or his or her designee, of the West Virginia School for the deaf, all of whom shall serve ex-officio;

(b) Seven persons appointed by the governor, at least
three of whom are deaf or hard-of-hearing, one of whom
is the parent of a deaf child, one of whom is a certified
teacher of the hearing-impaired, one audiologist and one
otolaryngologist. Of the three deaf people, at least two
shall be selected from a list of four people recommended
by the board of the West Virginia association of the deaf.
§5-14-4. Terms of office; quorum.

Members of the commission who do not serve ex
officio shall be appointed for the following terms: Three
members shall be appointed for a term of three years;
three for a term of two years and one for a term of one
year. When a vacancy occurs, an appointment shall be
made for the unexpired term. The members shall
annually elect a chairman. A majority of the members
constitutes a quorum for the transaction of business.

§5-14-5. Powers and duties of the commission; register of
hearing-impaired; duty to report to the com-
mission; census; information clearinghouse;
coordination of interpreters; outreach pro-
grams; seminars and training

The commission shall maintain a complete register of
persons who are deaf or hard-of-hearing in the state. For
each hearing-impaired person, the register shall de-
scribe the condition and cause of the hearing problem,
the person's capacity for education and industrial
training and any other facts the commission considers
valuable. Identifying information contained in the
register is confidential: Provided, That information
collected and maintained in the register will be
available upon request to other government agencies in
order to facilitate services to their hearing-impaired
clients. Every health, educational and social agency, and
physician or other medical professional serving hearing-
impaired individuals shall report to the commission, in
writing, the name, age and residence of persons who are
deaf or hard-of-hearing.

In addition to the register, the commission is respon-
sible for conducting and maintaining a census of both
the deaf and hard-of-hearing populations in West
Virginia. Such census shall contain state, county and
The commission shall maintain a clearinghouse of information, the purpose of which is to aid hearing-impaired persons and others in obtaining appropriate services or information about such services including, but not limited to, education, communication (including interpreters), group home facilities, independent living skills, recreational facilities, employment, vocational training, health and mental health services, substance abuse and other services necessary to assure their ability to function in society. The commission shall consult existing public and private agencies and organizations in compiling and maintaining the clearinghouse.

The commission shall establish, maintain and coordinate a statewide service to provide courts, state and local legislative bodies and others with a list of qualified and certified interpreters for the deaf and a list of qualified and certified teachers of American sign language. To establish and maintain these lists the commission may accept the certification of the National Registry of Interpreters for the Deaf and/or the state established quality assurance evaluation.

The commission shall develop an outreach program to familiarize the public with the rights and needs of hearing-impaired people and of available services.

The commission shall investigate the condition of the hearing-impaired in this state with particular attention to those who are aged, homeless, needy, victims of rubella and victims of abuse or neglect. It shall determine the means the state possesses for establishing group homes for its hearing-impaired citizens and the need for additional facilities. The commission shall also determine the advisability and necessity of providing services to the multihandicapped hearing-impaired.

§5-14-6. Seminars and training sessions.

The commission may establish one or more training sessions or workshops for the teaching of interpretive skills, in-service training and counseling for the deaf and hard-of-hearing. Seminars and training sessions
may be conducted and are encouraged to work with the existing facilities and organizations established to accomplish the same goals.

§5-14-7. Assistance of other agencies.

To effectuate the purposes of this article, the commission may request from any department, board, bureau, commission or other agency of the state, and the same are authorized to provide such assistance, services and data as will enable the commission to properly carry out its powers and duties hereunder.

§5-14-8. Executive director; staff.

There shall be within the commission an executive director who shall be appointed by the commission and whose compensation shall be fixed by the commission within the budgetary appropriation thereof. The executive director shall be in the exempt class of civil service and may not be a member of the commission. The executive director may attend all meetings of the commission, as well as its committees, but has no vote on decisions or actions of the commission or its committees. The executive director shall carry out the decisions and actions of the commission, hire all staff, administer all affairs of the commission in accordance with its policies and discharge such other duties as the commission shall from time to time determine. The commission may employ such other officers, employees and clerical assistants as it considers necessary and may fix their compensation within the amounts made available by appropriation. To the extent possible, the executive director shall be hearing-impaired and shall be proficient in communicating with hearing-impaired individuals using varying communication modes.

§5-14-9. Reports and recommendations.

The commission shall make an annual report to the governor and the Legislature which shall include its recommendations and programs.

§5-14-10. Grants and gifts; contracts.

The commission, with the approval of the governor,
may agree to accept and contract as agent of the state any gift, grant, devise or bequest, including federal grants, for any of the purposes of this article. Any moneys so received may be expended by the commission to effectuate any purpose of this article, subject to the same limitations as to approval of expenditures and audit as are prescribed for state moneys appropriated for the purposes of this article.

The commission may enter into contracts with any person, firm, corporation, municipality or governmental agency to effectuate the purposes of this article.

§5-14-11. Reimbursement for expenses.

The members of the commission, other than its ex officio members, are entitled to reimbursement for their actual and necessary expenses incurred in the performance of official duties.

CHAPTER 90
(Com. Sub. for H. B. 2395—By Delegates Pitrulo and Bradley)

[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight-a, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to horse and dog racing; applications for Sunday racing; local option election procedures; protest procedures against approval; petition calling for a local option election for Sunday racing, and an alternative method for approval or rejection of Sunday racing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

PART V-A. SUNDAY RACING.
§19-23-8a. Applications for Sunday racing; local option election procedures; protest procedures against approval.

(a) A racing association licensed under the provisions of section one of this article and operating a horse or dog racetrack in a county may make application for permission to conduct horse or dog racing on Sunday, between the hours of one p.m. and six p.m., local time.

Such application shall be filed with the racing commission. The racing commission shall prescribe blank forms to be used in making such application.

The racing commission, if it finds such application to be in order, may grant tentative approval of such application and, if it grants tentative approval of the application, shall prepare and publish a notice to the public that the racing commission has granted tentative approval of the application, that the racing commission solicits public comment from the citizens of the county and will hold a public hearing in the county on a date specified in the notice in the county wherein the horse racing track or dog racing track is located, that the racing commission shall take such comment into consideration in deciding whether or not to grant or deny final approval, and that the racing commission will make final approval of such application at the expiration of sixty days from the date of the first publication of such notice, which date shall be specified in said notice, unless within that time in accordance with subsection (c) of this section, the county commission of the county in which such racetrack is located shall order an election. Such notice shall be 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 county in which the racetrack is located: Provided, That prior to granting final approval hereunder, the racing commission shall solicit public comment from the citizens of the county, and hold a public hearing in the county on a date specified in the hearing notice specified above, in the county wherein the horse racing track or dog racing track is located and shall take such comment
into consideration in deciding whether or not to grant
final tentative approval. If no such election is ordered,
the racing commission shall proceed to consider final
approval of the application.

(b) The county commission shall, upon the written
petition of qualified voters residing within the county
equal to at least fifteen percent of the number of persons
who voted in that county in the next preceding general
election, received within the period specified in subsec-
tion (a) of this section, which petition may be in any
number of counterparts, order an election to determine
whether it is the will of the voters of said county that
racing be permitted on Sundays in said county, which
election shall be held at the next primary or general
election held in such county. The racing commission
shall permit such racing pending certification of the
results of the election.

(c) If such election is ordered, the county commission
shall give notice of such election by publication of such
notice as a Class II-0 legal advertisement in accordance
with the provisions of article three, chapter fifty-nine of
this code. Such notice shall be published within twenty-
one consecutive days next preceding the date of said
election.

(d) The ballot, or the ballot labels where voting
machines are used, shall have printed thereon substan-
tially the following:

"Shall the West Virginia Racing Commission be
authorized to approve horse racing on Sundays between
the hours of one p.m. and six p.m. in _________ County,
West Virginia?

□ Yes □ No

(Place a cross mark in the square opposite your
choice.)"

In a county in which dog racing is conducted, the term
"dog racing" shall be substituted for "horse racing" on
the ballot or ballot label.

(e) Each individual qualified to vote in said county
shall be qualified to vote at such election. The votes in said election shall be counted and returns made by the election officers and the results certified by the commissioners of election to said county commission, which shall canvass the ballots, all in accordance with the laws of this state relating to general elections insofar as the same are applicable. The county commission shall, without delay, canvass the votes cast at such election and certify the results thereof to the racing commission, and shall transmit a certified copy of said results to the secretary of state.

(f) After the certification of the results of such election, the racing commission shall: (1) grant final approval of an application for a license which contains racing dates which fall on Sunday if a majority of the voters voting at such election vote yes, and on such racing dates all racing and other activities authorized by this article shall be lawful, any other provisions of this code to the contrary notwithstanding; or (2) deny final approval of an application for a license which contains racing dates which fall on Sunday if less than a majority of the voters voting at such election vote yes.

(g) After an election to determine whether it is the will of the voters of said county that racing be permitted on Sundays in said county, another election on such issue shall not be held for a period of five years.

(h) After five years from such final approval, it shall be the duty of the county commission upon a petition in writing of qualified voters residing within the county equal to at least fifteen percent of the number of persons who voted in that county in the next preceding general election, which petition may be in any number of counterparts, to order an election to determine whether it is the will of the voters of said county that racing on Sundays be discontinued in said county. The provisions of subsections (c) and (e) of this section shall govern said election. The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:
“Shall racing of horses on Sunday in ______ County, West Virginia, be discontinued?

□ Yes    □ No

(Place a cross mark in the square opposite your choice.)

In a county in which dog racing is conducted, the word “dogs” shall be substituted for “horses” on the ballot or ballot label. If it be the will of a majority of the voters of said county that Sunday racing be discontinued in said county, it shall be the duty of the racing commission thereafter, for a period of at least five years and until a subsequent election shall otherwise direct, to deny applications to race on Sundays in said county.

(i) Upon the written petition of qualified voters residing within the county equal to at least thirty percent of the number of persons who voted in that county in the next preceding general election, which petition may be in any number of counterparts, presented to the racing commission within sixty days after the expiration of such publication protesting against such tentative approval, the approval may not become effective and another petition may not be filed for a period of five years.

CHAPTER 91

(Com. Sub. for S. B. 6—By Senators Chernenko and Blatnik)

[Passed March 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting racetrack wagering on property controlled by the racing association that is contiguous to a racetrack, subject to certain requirements.

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12a. Pari-mutuel wagering on interstate and intrastate horse and dog racing.

1. (1) Notwithstanding any other provisions of this code, a racing association licensed in this state to conduct race meetings may, with the consent of the racing commission and the written approval of the authorized representative of a majority of the owners and trainers who hold the permit required by section two of this article at the horse racetrack, contract with any legal wagering entity in this or any other state to accept wagers on any race or races conducted by such legal wagering entity. Unless the wager becomes part of the host licensee's pari-mutuel pool, such wagering shall be conducted within the confines of such licensee's racetrack or at a hotel as defined in section three, article six, chapter sixteen of this code, controlled by such licensee and contiguous to the licensee's property, subject to the following requirements:

(a) That such hotel contain at least one hundred rooms and be in existence on the effective date of this section;

(b) That the licensee shall have invested at least one million dollars in the hotel; and

(c) That such hotel is within one-half mile of the licensee's racetrack surface.

(2) Such horse association shall retain a basic commission not to exceed seventeen and twenty-five one-thousandths percent of all money wagered, plus an additional amount equal to one and seventy-five one-hundredths percent of the amount wagered each day on all multiple wagers determined by a combination of two winning horses, including, but not limited to, the daily double, quinella and perfecta or plus an additional amount equal to seven and seventy-five one-hundredths percent of the amount wagered each day on all trifecta...
wagers or any other multiple wager which involves a single betting interest on three or more horses. Breakage shall be calculated and distributed in the manner provided by subsection (c), section nine of this article.

(3) The commission deducted by any licensee from the pari-mutuel pools on dog racing shall not exceed sixteen and one-fourth percent of the total of such pari-mutuel pools for the day.

(4) Out of the commission retained or deducted by a licensee under the provisions of subsections (2) and (3) of this section, the licensee shall pay one tenth of one percent into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipality’s general fund.

(5) The association shall pay each day a pari-mutuel pools tax calculated under the provisions of section ten of this article.

(6) After deducting the county or municipal share provided for in subsection (4) of this section and the pari-mutuel pools tax required by subsection (5) of this section, and the amount required to be paid under the terms of the contract with the legal wagering entity of this or another state and the cost of transmission, the horse racing association shall make a deposit equal to fifty percent of the remainder into the purse fund established under the provisions of subdivision (b), subsection (1), section nine of this article.

(7) All of the provisions of the “Federal Interstate Horseracing Act of 1978,” also known as Public Law 95-515, section 3001-3007 of title 15, U.S. Code, shall be instructive as the intent of this section.

(8) For the purposes of this section the words “legal wagering entity” shall be limited to any person engaged in horse racing or dog racing pursuant to a license or other permission granted by the state in which such person’s racetrack is situated and conducting race meetings, with a pari-mutuel wagering system permitted under that state’s laws and in which the participants are wagering with each other and not the operator.
CHAPTER 92

(Com. Sub. for H. B. 2516—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

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

AN ACT to amend and reenact sections two, three, four, eight, nine and eleven, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the human rights commission; policy; powers; objects; functions; services; definitions; adding discrimination on the grounds of familial status as an unlawful discriminatory practice; exemptions; complaints; subpoenas and subpoenas duces tecum; hearings; delegation of authority to hearing examiners; commission review of hearing examiner's final decision; conciliation agreements; unlawful discriminatory practices generally; and appeal and enforcement of commission orders.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, eight, nine and eleven, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-2. Declaration of policy.

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§5-11-2. Declaration of policy.

1 It is the public policy of the state of West Virginia to provide all of its citizens equal opportunity for employment, equal access to places of public accommodations, and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public accommodations is hereby declared to be a
human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness or handicap. Equal opportunity in housing accommodations or real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, blindness, handicap, or familial status.

The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness, handicap, or familial status is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

§5-11-3. Definitions.

When used in this article:

(a) The term “person” means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons;

(b) The term “commission” means the West Virginia human rights commission;

(c) The term “director” means the executive director of the commission;

(d) The term “employer” means the state, or any political subdivision thereof, and any person employing twelve or more persons within the state: Provided, That such terms shall not be taken, understood or construed to include a private club;

(e) The term “employee” shall not include any individual employed by his parents, spouse or child, or in the domestic service of any person;

(f) The term “labor organization” includes any organization which exists for the purpose, in whole or in part, for collective bargaining or for dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment;
(g) The term "employment agency" includes any person undertaking with or without compensation to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency;

(h) The term "discriminate" or "discrimination" means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, handicap, or familial status and includes to separate or segregate;

(i) The term "unlawful discriminatory practices" includes only those practices specified in section nine of this article;

(j) The term "place of public accommodations" means any establishment or person, as defined herein, including the state, or any political or civil subdivision thereof, which offers its services, goods, facilities or accommodations to the general public, but shall not include any accommodations which are in their nature private;

(k) The term "housing accommodations" means any building or portion thereof, which is used or intended for use as the residence or sleeping place of one or more persons. Nothing contained in this definition or this article shall apply to the rental of a room or rooms in a boarding house occupied by the owner as a place of residence and containing no more than four rented rooms, or rooms to be rented;

(l) The term "real property" includes real estate, lands, leaseholds, commercial or industrial buildings and any vacant land offered for sale or rent on which the construction of a housing accommodation, commercial or industrial building is intended, and any land operated as a trailer camp or rented or leased for the use, parking or storage of mobile homes or house trailers;

(m) The term "real estate broker" includes any person, firm or corporation who, for a fee, commission
or other valuable consideration, or by reason of a promise or reasonable expectation thereof, lists for sale, sells, exchanges, buys or rents, or offers or attempts to negotiate a sale, exchange, purchase, or rental of real estate or an interest therein, or collects or offers or attempts to collect rent for the use of real estate or solicits for a prospective purchaser or assists or directs in the procuring of prospects or the negotiation or closing of any transaction which does or is contemplated to result in the sale, exchange, leasing, renting or auctioning of any real estate or negotiates, offers or attempts or agrees to negotiate a loan secured or to be secured by mortgage or other encumbrance upon transfer of any real estate for others, or any person who, for pecuniary gain or expectation of pecuniary gain, conducts a public or private competitive sale of lands or any interest in lands. In the sale of lots, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or otherwise to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be a real estate broker;

(n) The term "real estate salesman" includes any person who, for compensation, valuable consideration or commission, or other thing of value, or by reason of a promise or reasonable expectation thereof, is employed by and operates under the supervision of a real estate broker to sell, buy or offer to buy or negotiate the purchase, sale or exchange of real estate, offers or attempts to negotiate a loan secured or to be secured by a mortgage or other encumbrance upon or transfer of real estate for others, or to collect rents for the use of real estate, or to solicit for prospective purchasers or lessees of real estate, or who is employed by a licensed real estate broker to sell or offer to sell lots or other parcels of real estate, at a stated salary, or upon a
commission, or upon a salary and commission, or
otherwise to sell real estate, or any parts thereof, in lots
or other parcels;

(o) The term "purchaser" includes any occupant,
prospective occupant, lessee, prospective lessee, renter,
prospective renter, buyer or prospective buyer;

(p) The term "owner" shall include the owner, lessee,
sublessee, assignee, manager, agents, or other person,
firm or corporation having the right to sell, rent or lease
any housing accommodation or real property within the
state of West Virginia or any agent of any of these;

(q) The term "age" means the age of forty or above;

(r) The term "rooming house" means a house or
building where there are one or more bedrooms which
the proprietor can spare for the purpose of giving
lodgings to such persons as he chooses to receive;

(s) For the purpose of this article, a person shall be
considered to be blind only if his central visual acuity
does not exceed twenty/two hundred in the better eye
with correcting lenses, or if his visual acuity is greater
than twenty/two hundred but is occasioned by a
limitation in the fields of vision such that the widest
diameter of the visual field subtends an angle no greater
than twenty degrees;

(t) The term "handicap" means a person who:

(1) Has a mental or physical impairment which
substantially limits one or more of such person's major
life activities; the term "major life activities" includes
functions such as caring for one's self, performing
manual tasks, walking, seeing, hearing, speaking,
breathing, learning, and working;

(2) Has a record of such impairment; or

(3) Is regarded as having such an impairment.

For the purposes of this article, this term does not
include persons whose current use of or addiction to
alcohol or drugs prevents such individual from perform-
ing the duties of the job in question or whose employ-
ment, by reason of such current alcohol or drug abuse,
would constitute a direct threat to property or the safety
of others.

(u) The term "familial status" means one or more
individuals (who have not attained the age of eighteen
years) being domiciled with:

(1) A parent or another person having legal custody
of such individual or individuals; or

(2) The designee of such parent or other person
having such custody, with the written permission of
such parent or other person. The protections afforded
against discrimination on the basis of familial status
shall apply to any person who is pregnant or is in the
process of securing legal custody of any individual who
has not attained the age of eighteen years. Nothing in
this definition restricts advertisements of dwellings
which are intended and operated for occupancy by older
persons and which constitute housing for older persons.

§5-11-4. Human rights commission continued; status,
powers and objects.

The West Virginia human rights commission, hereto-
fore created, is hereby continued. The commission shall
have the power and authority and shall perform the
functions and services as in this article prescribed and
as otherwise provided by law. The commission shall
encourage and endeavor to bring about mutual under-
standing and respect among all racial, religious and
ethnic groups within the state and shall strive to
eliminate all discrimination in employment and places
of public accommodations by virtue of race, religion,
color, national origin, ancestry, sex, age, blindness or
handicap and shall strive to eliminate all discrimination
in the sale, purchase, lease, rental or financing of
housing and other real property by virtue of race,
religion, color, national origin, ancestry, sex, blindness,
handicap, or familial status.

§5-11-8. Commission powers; functions; services.

The commission is hereby authorized and empowered:
(a) To cooperate and work with federal, state and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups in this state;

(b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the state in programs and campaigns devoted to the advancement of tolerance, understanding and the equal protection of the laws of all groups and peoples;

(c) To receive, investigate and pass upon complaints alleging discrimination in employment or places of public accommodations, because of race, religion, color, national origin, ancestry, sex, age, blindness or handicap, and complaints alleging discrimination in the sale, purchase, lease, rental and financing of housing accommodations or real property because of race, religion, color, national origin, ancestry, sex, blindness, handicap, or familial status, and to initiate its own consideration of any situations, circumstances or problems, including therein any racial, religious or ethnic group tensions, prejudice, disorder or discrimination reported or existing within the state relating to employment, places of public accommodations, housing accommodations and real property;

(d) To hold and conduct public and private hearings in the county where the respondent resides or transacts business or where agreed to by the parties or where the acts complained of occurred, on complaints, matters and questions before the commission and, in connection therewith, relating to discrimination in employment, or places of public accommodations, housing accommodations or real property and during the investigation of any formal complaint before the commission relating to employment, places of public accommodations, housing accommodations or real property to:

(1) Issue subpoenas and subpoenas duces tecum upon the approval of the executive director or the chairperson
42 of the commission; administer oaths; take the testimony
43 of any person under oath; and make reimbursement for
44 travel and other reasonable and necessary expenses in
45 connection with such attendance;
46 (2) Furnish copies of public hearing records to parties
47 involved therein upon their payment of the reasonable
48 costs thereof to the commission;
49 (3) Delegate to a hearing examiner who shall be an
50 attorney, duly licensed to practice law in West Virginia,
51 the power and authority to hold and conduct hearings,
52 as herein provided, to determine all questions of fact and
53 law presented during the hearing and to render a final
54 decision on the merits of the complaint, subject to the
55 review of the commission as hereinafter set forth.
56 Any respondent or complainant who shall feel ag-
57 grieved at any final action of a hearing examiner shall
58 file a written notice of appeal with the commission by
59 serving such notice on the executive director and upon
60 all other parties within thirty days after receipt of the
61 hearing examiner's decision. The commission shall limit
62 its review upon such appeals to whether the hearing
63 examiner's decision is:
64 (a) In conformity with the constitution and the laws
65 of the state and the United States;
66 (b) Within the commission's statutory jurisdiction or
67 authority;
68 (c) Made in accordance with procedures required by
69 law or established by appropriate rules or regulations
70 of the commission;
71 (d) Supported by substantial evidence on the whole
72 record; or
73 (e) Not arbitrary, capricious or characterized by
74 abuse of discretion or clearly unwarranted exercise of
75 discretion.
76 (4) To enter into conciliation agreements and consent
77 orders.
78 Each conciliation agreement shall include provisions
requiring the respondent to refrain from the commission
of unlawful discriminatory practices in the future and
shall contain such further provisions as may be agreed
upon by the commission and the respondent.

If the respondent and the commission agree upon
conciliation terms, the commission shall serve upon the
complainant a copy of the proposed conciliation agree-
ment. If the complainant agrees to the terms of the
agreement or fails to object to such terms within fifteen
days after its service upon him, the commission shall
issue an order embodying such conciliation agreement.
If the complainant objects to the agreement, he shall
serve a specification of his objections upon the commis-
sion within such period. Unless such objections are met
or withdrawn within ten days after service thereof, the
commission shall notice the complaint for hearing.

Notwithstanding any other provisions of this section,
the commission may, where it finds the terms of the
conciliation agreement to be in the public interest,
execute such agreement, and limit the hearing to the
objections of the complainant.

If a conciliation agreement is entered into, the
commission shall serve a copy of the order embodying
such agreement upon all parties to the proceeding.

Not later than one year from the date of a conciliation
agreement, the commission shall investigate whether
the respondent is complying with the terms of such
agreement. Upon a finding of noncompliance, the
commission shall take appropriate action to assure
compliance;

(5) To apply to the circuit court of the county where
the respondent resides or transacts business for enforce-
ment of any conciliation agreement or consent order by
seeking specific performance of such agreement or
consent order;

(6) To issue cease and desist orders against any person
found, after a public hearing, to have violated the
provisions of this article or the rules and regulations of
the commission;
(7) To apply to the circuit court of the county where
the respondent resides or transacts business for an order
enforcing any lawful cease and desist order issued by
the commission;

(e) To recommend to the governor and Legislature
policies, procedures, practices and legislation in matters
and questions affecting human rights;

(f) To delegate to its executive director such powers,
duties and functions as may be necessary and expedient
in carrying out the objectives and purposes of this
article;

(g) To prepare a written report on its work, functions
and services for each year ending on the thirtieth day
of June and to deliver copies thereof to the governor on
or before the first day of December next thereafter;

(h) To do all other acts and deeds necessary and
proper to carry out and accomplish effectively the
objects, functions and services contemplated by the
provisions of this article, including the promulgation of
legislative rules in accordance with the provisions of
article three, chapter twenty-nine-a of this code,
implementing the powers and authority hereby vested
in the commission;

(i) To create such advisory agencies and conciliation
councils, local, regional or statewide, as in its judgment
will aid in effectuating the purposes of this article, to
study the problems of discrimination in all or specific
fields or instances of discrimination because of race,
religion, color, national origin, ancestry, sex, age,
blindness, handicap, or familial status; to foster, through
community effort or otherwise, goodwill, cooperation
and conciliation among the groups and elements of the
population of this state, and to make recommendations
to the commission for the development of policies and
procedures, and for programs of formal and informal
education, which the commission may recommend to the
appropriate state agency. Such advisory agencies and
conciliation councils shall be composed of representative
citizens serving without pay. The commission may itself
make the studies and perform the acts authorized by
this subdivision. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster goodwill and cooperation among all elements of the population of the state;

(j) To accept contributions from any person to assist in the effectuation of the purposes of this section and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this section;

(k) To issue such publications and such results of investigation and research as in its judgment will tend to promote goodwill and minimize or eliminate discrimination: Provided, That the identity of the parties involved shall not be disclosed.


(a) It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the state of West Virginia or its agencies or political subdivisions:

(1) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment if the individual is able and competent to perform the services required even if such individual is blind or handicapped: Provided, That it shall not be unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance, or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subdivision;

(2) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to (A) elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex or age of any applicant for employment or
membership; (B) print or publish or cause to be printed
or published any notice or advertisement relating to
employment or membership indicating any preference,
limitation, specifications or discrimination based upon
race, religion, color, national origin, ancestry, sex or
age; or (C) deny or limit, through a quota system,
employment or membership because of race, religion,
color, national origin, ancestry, sex, age, blindness or
handicap;

(3) For any labor organization because of race,
religion, color, national origin, ancestry, sex, age,
blindness or handicap of any individual to deny full and
equal membership rights to any individual or otherwise
to discriminate against such individual with respect to
hire, tenure, terms, conditions or privileges of employ-
ment or any other matter, directly or indirectly, related
to employment;

(4) For an employer, labor organization, employment
agency or any joint labor-management committee
controlling apprentice training programs to:

(A) Select individuals for an apprentice training
program registered with the state of West Virginia on
any basis other than their qualifications as determined
by objective criteria which permit review;

(B) Discriminate against any individual with respect
to his right to be admitted to or participate in a
guidance program, an apprenticeship training program,
on-the-job training program, or other occupational
training or retraining program;

(C) Discriminate against any individual in his pursuit
of such programs or to discriminate against such a
person in the terms, conditions or privileges of such
programs;

(D) Print or circulate or cause to be printed or
circulated any statement, advertisement or publication,
or to use any form of application for such programs or
to make any inquiry in connection with such program
which expresses, directly or indirectly, discrimination
or any intent to discriminate, unless based upon a bona
fide occupational qualification;
(5) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his race, religion, color, national origin, ancestry, sex, age, blindness or handicap;

(6) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to:

(A) Refuse, withhold from or deny to any individual because of his race, religion, color, national origin, ancestry, sex, age, blindness or handicap, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of such place of public accommodations;

(B) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges or services of any such place shall be refused, withheld from or denied to any individual on account of race, religion, color, national origin, ancestry, sex, age, blindness or handicap, or that the patronage or custom thereat of any individual, belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex or age or who is blind or handicapped, is unwelcome, objectionable, not acceptable, undesired or not solicited;

(7) For the owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign or sublease any housing accommodations or real property or part or portion thereof, or any agent, or employee of any of them; or for any real estate broker, real estate salesman, or employee or agent thereof:

(A) To refuse to sell, rent, lease, assign or sublease or otherwise to deny to or withhold from any person or group of persons any housing accommodations or real property, or part or portion thereof, because of race, religion, color, national origin, ancestry, sex, blindness, handicap or familial status of such person or group of persons: Provided, That this provision shall not require
any person named herein to rent, lease, assign or
sublease any housing accommodations or real property,
or any portion thereof to both sexes where the facilities
of such housing accommodations or real property, or any
portion thereof, are suitable for only one sex;

(B) To discriminate against any person or group of
persons because of the race, religion, color, national
origin, ancestry, sex, blindness, handicap, or familial
status of such person or group of persons in the terms,
conditions or privileges of the sale, rental or lease of any
housing accommodations or real property, or part or
portion thereof, or in the furnishing of facilities or
services in connection therewith;

(C) To print, publish, circulate, issue, display, post or
mail, or cause to be printed, published, circulated,
issued, displayed, posted or mailed any statement,
advertisement, publication, or sign or to use any form
of application for the purchase, rental, lease, assignment
or sublease of any housing accommodations or real
property, or part or portion thereof, or to make any
record or inquiry in connection with the prospective
purchase, rental, lease, assignment or sublease of any
housing accommodations or real property or part or
portion thereof, which expresses, directly or indirectly,
any discrimination as to race, religion, color, national
origin, ancestry, sex, blindness, handicap, or familial
status or any intent to make any such discrimination
and the production of any statement, advertisement,
publicity, sign, form of application, record or inquiry
purporting to be made by any such person shall be
prima facie evidence in any action that the same was
authorized by such person: Provided, That with respect
to sex discrimination, this provision shall not apply to
any person named herein whose housing accommodations
or real property, or any portion thereof, have
facilities which are suitable for only one sex;

(8) For any person or financial institution or lender
to whom application is made for financial assistance for
the purchase, acquisition, construction, rehabilitation,
repair or maintenance of any housing accommodations
or real property, or part or portion thereof, or any agent
or employee thereof to:

(A) Discriminate against any person or group of
persons because of race, religion, color, national origin,
ancestry, sex, blindness, handicap, or familial status of
such person or group of persons or of the prospective
occupants or tenants of such housing accommodations or
real property, or part or portion thereof, in the granting,
withholding, extending, modifying or renewing, or in
the fixing of the rates, terms, conditions or provisions
of any such financial assistance or in the extension of
services in connection therewith;

(B) Use any form of application for such financial
assistance or to make any record of inquiry in connec-
tion with applications for such financial assistance
which expresses, directly or indirectly, any discrimina-
tion as to race, religion, color, national origin, ancestry,
sex, blindness, handicap, or familial status or any intent
to make any such discrimination;

(9) For any person, employer, employment agency,
labor organization, owner, real estate broker, real estate
salesman or financial institution to:

(A) Engage in any form of threats or reprisal, or to
engage in, or hire, or conspire with others to commit
acts or activities of any nature, the purpose of which is
to harass, degrade, embarrass, or cause physical harm
or economic loss or to aid, abet, incite, compel or coerce
any person to engage in any of the unlawful discrimi-
natory practices defined in this section;

(B) Willfully obstruct or prevent any person from
complying with the provisions of this article, or to resist,
prevent, impede or interfere with the commission or any
of its members or representatives in the performance of
duty under this article;

(C) Engage in any form of reprisal or otherwise
discriminate against any person because he has opposed
any practices or acts forbidden under this article or
because he has filed a complaint, testified or assisted in
any proceeding under this article;

(D) Induce or attempt to induce for profit any person
to sell or rent or to not sell or rent any housing
accommodations or real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons who are blind or handicapped or who are of a particular race, religion, color, national origin, ancestry or sex, or a person or persons against whom discrimination on the basis of familial status is prohibited by this article: Provided, That for the purposes of this article it shall not be an unlawful discriminatory practice for any person, employer or owner to refuse to make any unreasonable capital expenditure to accommodate the physical or mental impairment of any handicapped person.

(b) Solely for purposes of familial status, nothing in subdivision (7) of subsection (a) (other than subsection (c)) of this section shall apply to:

(1) Any single-family house sold or rented by an owner: Provided, That such private individual owner does not own more than three such single-family houses at any one time: Provided, however, That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period: Provided further, That such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time: And provided further, That the sale or rental of any such single-family house shall be excepted from the application of this subchapter only if such house is sold or rented (A) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person and (B) without the publication, posting or mailing, after notice of any advertisement or written notice in violation of para-
graph (C), subdivision (7), subsection (a) of this section; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title, or

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(c) For the purposes of subsection (b) of this section, a person shall be deemed to be in the business of selling or renting dwellings if:

(1) He has, within the preceding twelve months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein, or

(2) He has, within the preceding twelve months, participated as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein, or

(3) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(d) (1) Nothing in this article limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this article regarding familial status apply with respect to housing for older persons.

(2) As used in this section “housing for older persons” means housing:

(A) Provided under any state or federal program that is specifically designed and operated to assist elderly persons (as defined in the state or federal program); or

(B) Intended for, and solely occupied by, persons sixty-two years of age or older; or
(C) Intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the commission shall develop regulations which require at least the following factors:

(i) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(ii) That at least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and

(iii) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) Persons residing in such housing as of the first day of July, one thousand nine hundred eighty-nine, who do not meet the age requirements of paragraphs (B) or (C), subdivision (2) of this subsection: Provided, That new occupants of such housing meet the age requirements of paragraphs (B) or (C), subdivision (2) of this subsection; or

(B) Unoccupied units: Provided, That such units are reserved for occupancy by persons who meet the age requirements of paragraphs (B) or (C), subdivision (2) of this subsection.

§5-11-11. Appeal and enforcement of commission orders.

(a) From any final order of the commission, an application for review may be prosecuted by either party to the supreme court of appeals within thirty days from the receipt thereof by the filing of a petition therefor to such court against the commission and the adverse party as respondents, and the clerk of such court shall notify each of the respondents and the
commission of the filing of such petition. The commission shall, within ten days after receipt of such notice, file with the clerk of the court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. And if granted to a nonresident of this state, he shall be required to execute and file with the clerk before such order or review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him thereon. The commission may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the certified question, or until notice that the court has declined to docket the same. If a review be granted or the certified question be docketed for hearing, the clerk shall notify the board and the parties litigant or their attorneys and the commission of the fact by mail. If a review be granted or the certified question docketed, the case shall be heard by the court in the manner provided for other cases: Provided, That in the following cases the appellant may prosecute the appeal in the circuit court of Kanawha County pursuant to section four, article five, chapter twenty-nine-a of this code: (1) Cases in which the commission awards damages other than back pay exceeding five thousand dollars; (2) cases in which the commission awards back pay exceeding thirty thousand dollars; and (3) cases in which the parties agree that the appeal should be prosecuted in circuit court. In such cases the appellee shall respond within thirty days of filing and the court shall make a determination within the following thirty days: Provided, however, That appeals filed erroneously in the circuit court after the first day of April, one thousand nine hundred eighty-seven, and prior to the first day of July, one thousand nine hundred eighty-nine, may be prosecuted in the supreme court of appeals without regard to the time limits specified herein: Provided further, That any party adversely affected by the final judgment of the circuit court of Kanawha
County may seek review thereof by appeal to the supreme court of appeals pursuant to section one, article six, chapter twenty-nine-a of this code filed within thirty days of entry of the final order of the circuit court.

The appeal procedure contained in this subsection shall be the exclusive means of review, notwithstanding the provisions of chapter twenty-nine-a of this code: Provided, That such exclusive means of review shall not apply to any case wherein an appeal or a petition for enforcement of a cease and desist order has been filed with a circuit court of this state prior to the first day of April, one thousand nine hundred eighty-seven.

(b) In the event that any person shall fail to obey a final order of the commission within thirty days after receipt of the same, or, if applicable, within thirty days after a final order of the circuit court or the supreme court of appeals, a party or the commission may seek an order from the circuit court for its enforcement. Such proceedings shall be initiated by filing of a petition in said court, and served upon the respondent in the manner provided by law for the service of summons in civil actions; a hearing shall be held on such petition within sixty days of the date of service. The court may grant appropriate temporary relief, and shall make and enter upon the pleadings, testimony and proceedings such order as is necessary to enforce the order of the commission or supreme court of appeals.

AN ACT to amend article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight; and to further amend said chapter by adding thereto a new article, designated article eight, all relating to establishment of a charity food bank.
advisory committee and assistance fund; requiring local human services offices and the department of human services to provide information and referral service; giving exemption from civil and criminal liability; directing diversion of state surplus food to food banks; establishing collection and distribution centers; setting minimum standards for food banks; directing use of state surplus buildings and equipment for food banks; providing that nonprofit organizations and food stamp programs not be affected; establishing food bank advisory committee and setting method of appointment and terms of members; setting duties of committee; and establishing food bank assistance fund.

Be it enacted by the Legislature of West Virginia:

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

Article 2. Department of Human Services and Office of Commissioner of Human Services; Powers, Duties and Responsibilities Generally.

8. Charity Food Banks.

ARTICLE 2. DEPARTMENT OF HUMAN SERVICES AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-8. Information and referral services.

1. (a) Each local human services office shall compile, maintain and post a current list of charity food banks and other emergency food providers in the area served by the local food stamp office and refer individuals who need food to local programs that may be able to provide assistance.

(b) The department shall utilize its existing statewide toll free telephone number to provide emergency food information and to refer needy individuals to local programs that may be able to provide assistance. The department shall publish the telephone number for
referrals in the emergency telephone numbers section of local telephone books. The department shall display this telephone number in all its offices that issue food stamps.

ARTICLE 8. CHARITY FOOD BANKS.

§9-8-1. Purpose.

The purpose of this article is to address the widespread and growing problem of hunger in this state by improving the distribution of food to the hungry, providing a means of funding agencies which distribute food on an emergency basis, gathering and disseminating information related to the problem of hunger, assuring that distribution activities are responsive to the needs of local charity food banks, facilitating the creation of charity food banks and ensuring maximum access to food banks.

§9-8-2. Donation of food items; exemption from civil and criminal liability.

Any person who makes a good faith donation of prepared or perishable food which appears to be fit for human consumption at the time it is donated to a charitable or nonprofit organization is not liable for damages in any civil action or subject to criminal prosecution for any injury or death due to the condition of such food unless the injury or death is a direct result of the gross negligence, recklessness or intentional misconduct of the donor.
A charitable or nonprofit organization or an officer, employee or volunteer of such an organization that in good faith receives and distributes, without charge, food which appears to be fit for human consumption at the time it is distributed is not liable for damages in any civil action or subject to criminal prosecution for any injury or death due to the condition of such food unless the injury or death is a direct result of the gross negligence, recklessness or intentional misconduct of the organization or its officers, employees or volunteer workers.

This section applies to all good faith donations of perishable food which is not readily marketable due to appearance, freshness, grade, surplus supply or other conditions.

§9-8-3. Definitions.

In this article, unless the context otherwise requires:

"Agricultural product" means any fowl, animal, vegetable or other item, product or article which is customary food or which is proper food for human consumption.

"Charity food bank" means a nonprofit organization that solicits, stores, or redistributes food products to charitable organizations and individuals for the purpose of feeding needy families and individuals.

"Nonprofit charitable organization" means an organization which is organized and operates for a charitable purpose.

§9-8-4. Authorization of donations; diversion of products by directors to organizations.

A person engaged in the business of processing, distributing or selling any agricultural product may donate, free of charge, any agricultural product to a charity food bank.

To assist in accomplishing the purposes of this section, the director of each department of state government shall divert, whenever possible, surplus agricultural products to organizations operating pursuant to this article.
§9-8-5. Surplus food collection and distribution centers.

The department of agriculture shall establish and publicize the services of an information and food collection center for receiving and transmitting information concerning available agricultural products; or what organization desires or needs donated agricultural products to be donated; and for collecting, receiving, handling, storing and distributing donated agricultural products. A nonprofit charitable organization which regularly needs agricultural products may be listed with a food collection center to be notified if agricultural products are available.

§9-8-6. Minimum standards for food banks.

In order to qualify as a charity food bank, an organization shall meet all of the following minimum standards:

(a) Have access to storage facilities and refrigeration equipment for the purpose of collecting, receiving, handling, storing and distributing donated agricultural products;

(b) Be incorporated as a nonprofit tax exempt organization and eligible as a charitable organization under the Internal Revenue Code (26 United States code section 501 (c) (3)) or affiliated with a qualified organization;

(c) Maintain records for the proper control of inventory;

(d) Demonstrate the availability of adequate liability insurance to cover the activities conducted pursuant to this article; and

(e) Show local support through funding sources, letters of endorsement and a board of directors which reflects the community and population to be served.

§9-8-7. State surplus buildings and equipment; availability to charity food banks.

The commissioner of the department of finance and administration shall assist a food bank by locating and
§9-8-8. **Effect of article on other nonprofit organizations.**

Nothing in this article may restrict or limit the operation of any other nonprofit organization which is engaged in the distribution of agricultural products to nonprofit charitable organizations.

§9-8-9. **Application of article to food stamp act.**

Consonant with 7 C.F.R. 273.9(c)(1), programs operated in accordance with this article shall complement and not in any way lessen assistance to families and individuals pursuant to the Food Stamp Act of 1977 as amended, (7 U.S.C. 2011 through 7 U.S.C. 2026).

§9-8-10. **Charity food bank advisory committee; terms; compensation; officers; duties.**

A charity food bank advisory committee is established. The members shall be appointed by the governor with the advice and consent of the Senate. The committee shall consist of five members who shall serve staggered three year terms. Vacancies occurring shall be filled in the same manner for the balance of the unexpired term.

The committee shall consist of three members who have been active members of a food bank, one food industry representative and one member who is actively engaged in agriculture. The committee shall select a chairman and vice chairman. The committee shall meet at the call of the chairman, but at least four times a year. The initial meeting shall be called by the governor within sixty days after the committee has been appointed.

The committee shall:

(a) Provide information to the citizens of this state regarding food bank programs;

(b) Review procedures that assure that storage, transportation and distribution activities conducted
under the authority of this article are efficiently carried
out and are responsive to the needs of local food banks
and community organizations involved in food
distribution;

(c) Review procedures that assure maximum access
for food banks and community organizations involved in
food distribution to all available federal, state, county
and city surplus food, supplies and equipment and to all
potential private contributions;

(d) Review procedures that assure that necessary
technical assistance is available to facilitate the creation
of food banks in areas of this state in which they are
needed and to facilitate food banks and community
organizations in obtaining and effectively utilizing
surplus agricultural commodities; and

(e) Submit an annual report to the governor, speaker
of the House of Delegates and president of the Senate
on or before the first day of January of each year.

§9-8-11. Charity food bank assistance fund; restriction.

A charity food bank assistance fund is established
which shall consist of moneys provided by appropria-
tion. A charity food bank which meets the minimum
standards for food banks may qualify, subject to
available moneys, for assistance from this fund for any
of its operations.

Assistance granted pursuant to this article shall be
administered by the commissioner of the department of
human services. No more than five percent of the
assistance granted to a charity food bank pursuant to
this article may be used for administrative purposes.
section sixteen-a, relating to the department of human services and medicaid-certified nursing homes; requiring screening of persons applying for admission to or residing in such nursing homes to determine if they have mental illness or mental retardation; and providing for reimbursement of hospitals for certain days required for such screening.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-16a. Medicaid-certified nursing homes; screening of applicants and residents for mental illness; reimbursement of hospitals.

1. (a) The department of human services and department of health shall cause individuals applying for admission to or residing in a medicaid-certified nursing home to be screened as required by the Omnibus Budget Reconciliation Act of 1987.

2. (b) Effective the first day of April, one thousand nine hundred eighty-nine, hospitals shall receive administrative day payment at a rate set by the medicaid agency to reimburse the hospitals for days required for the screening of medicaid eligible patients required by subsection (a) of this section.

3. (c) The secretary of the department of health and human resources is authorized to promulgate rules and regulations to fully implement this section.

CHAPTER 95

(H. B. 2571—By Mr. Speaker, Mr. Chambers, and Delegate Martin)

[Passed March 15, 1989; in effect from passage. Approved by the Governor.]
section twenty-two, to provide that business facilities and projects acquired, constructed or financed, in whole or in part, by the West Virginia industry and jobs development corporation shall not be included in any definition in the code of the term “public improvement.”

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. WEST VIRGINIA INDUSTRY AND JOBS DEVELOPMENT CORPORATION.

§5C-1-22. Projects not to be considered public improvements.

1 No project, enterprise or business facility which 2 conducts as its primary activity a manufacturing 3 process or other nongovernmental or nonpublic activity 4 may be deemed to be a “public improvement” within the 5 meaning of the provisions of article five-a, chapter 6 twenty-one of this code.

CHAPTER 96

(Com. Sub. for H. B. 2417—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

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

AN ACT to amend and reenact section eight, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article twenty of said chapter; to amend and reenact section six, article twenty-four of said chapter; to amend and reenact section eight, article twenty-five of said chapter; and to amend section eight, article twenty-five-a of said chapter, all relating to extending of the rate and form filings review period on all rate and form filings involving insurance to sixty days; and notice of rate increase requests.
established pursuant to subdivision (2), subsection (c), section three of this article, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use for casualty insurance to which this article applies.

(2) Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule and every modification of any of the foregoing which it proposes to use for fire and marine insurance to which this article applies. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

(b) Every such filing shall state the proposed effective date thereof and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of this article, he shall require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include (1) the experience or judgment of the insurer or rating organization making the filing, (2) the experience or judgment of the insurer or rating organization in the territorial rate areas established by subdivision (2), subsection (c), section three of this article, (3) its interpretation of any statistical data it relies upon, (4) the experience of other insurers or rating organizations or (5) any other relevant factors. A filing and any supporting information shall be open to public inspection as soon as the filing is received by the commissioner. Any interested party may file a brief with the commissioner supporting his position concerning the filing. Any person or organization may file with the commissioner a signed statement declaring and
supporting his or its position concerning the filing. Upon
receipt of such statement prior to the effective date of
the filing, the commissioner shall mail or deliver a copy
of such statement to the filer, which may file such reply
as it may desire to make. This section shall not be
applicable to any memorandum or statement of any kind
by any employee of the commissioner.

(c) An insurer may satisfy its obligation to make such
filing by becoming a member of, or a subscriber to, a
licensed rating organization which makes such filings,
and by authorizing the commissioner to accept such
filings on its behalf: Provided, That nothing contained
in this article shall be construed as requiring any
insurer to become a member of or a subscriber to any
rating organization.

(d) The commissioner shall review filings as soon as
reasonably possible after they have been made in order
to determine whether they meet the requirements of this
article.

(e) Subject to the exceptions specified in subsections
(f) and (g) of this section, each filing shall be on file for
a waiting period of sixty days before it becomes
effective. Upon written application by such insurer or
rating organization, the commissioner may authorize a
filing which he has reviewed to become effective before
the expiration of the waiting period. A filing shall be
deemed to meet the requirements of this article unless
disapproved by the commissioner within the waiting
period.

(f) Any special filing with respect to a surety bond
required by law or by court or executive order or by
order, rule or regulation of a public body, not covered
by a previous filing, shall become effective when filed
and shall be deemed to meet the requirements of this
article until such time as the commissioner reviews the
filing and so long thereafter as the filing remains in
effect.

(g) Specific inland marine rates on risks specially
rated by a rating organization shall become effective
when filed and shall be deemed to meet the require-
m ents of this article until such time as the commissioner
reviews the filing and so long thereafter as the filing
remains in effect.

(h) Under such rules and regulations as he shall adopt
the commissioner may, by written order, suspend or
modify the requirement of filing as to any kind of
insurance, subdivision or combination thereof, or as to
classes of risks, the rates for which cannot practicably
be filed before they are used. Such orders, rules and
regulations shall be made known to insurers and rating
organizations affected thereby. The commissioner may
make such examination as he may deem advisable to
ascertain whether any rates affected by such order meet
the standards set forth in subsection (b), section three
of this article.

(i) Upon the written application of the insured,
stating his reasons therefor, filed with and approved by
the commissioner, a rate in excess of that provided by
a filing otherwise applicable may be used on any specific
risks.

(j) No insurer shall make or issue a contract or policy
except in accordance with the filings which are in effect
for said insurer as provided in this article or in
accordance with subsection (h) or (i) of this section. This
subsection shall not apply to contracts or policies for
inland marine risks as to which filings are not required.

(k) In instances when an insurer files a request for an
increase of automobile liability insurance rates in the
amount of fifteen percent or more, the insurance
commissioner shall provide notice of such increase with
the office of the secretary of state to be filed in the state
register and shall provide interested persons the
opportunity to comment on such request up to the time
the commissioner approves or disapproves such rate
increase.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL
SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.
§33-24-6. Commissioner to enforce article; approval of contracts, forms, rates and fees.

1 (a) It shall be the duty of the commissioner to enforce the provisions of this article.

2 (b) No such corporation shall deliver or issue for delivery any subscriber's contract, changes in the terms of such contract, application, rider or endorsement, until a copy thereof and the rates pertaining thereto have been filed with and approved by the commissioner. All such forms filed with the commissioner shall be deemed approved after the expiration of sixty days from the date of such filing unless the commissioner shall have disapproved the same, stating his reasons for such disapproval in writing. Such forms may be used prior to the expiration of such periods if written approval thereof has been received from the commissioner.

3 (c) No rates to be charged subscribers shall be used or established by any such corporation unless and until the same have been filed with the commissioner and approved by him. The procedure for such filing and approval shall be the same as that prescribed in subsection (b) of this section for the approval of forms. The commissioner shall approve all such rates which are not excessive, inadequate or unfairly discriminatory.

4 (d) The commissioner shall pass upon the actuarial soundness of the schedule of fees to be paid hospitals, physicians, dentists and other health agencies.

ARTICLE 25. HEALTH CARE CORPORATIONS.

*§33-25-8. Commissioner to enforce article; approval of contracts, forms and rates; reserve fund; membership fee.

1 (a) It shall be the duty of the commissioner to enforce the provisions of this article.

2 (b) No such corporation shall deliver or issue for delivery any subscriber's contract, changes in the terms of such contract, application, rider or endorsement until

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*Clerk's Note: This section was also amended by H. B. 2588, which passed subsequent to this act.
a copy thereof and the rates pertaining thereto have been filed with and approved by the commissioner. All such forms filed with the commissioner shall be deemed approved after the expiration of sixty days from the date of such filing unless the commissioner shall have disapproved the same, stating his reasons for such disapproval in writing. Such forms may be used prior to the expiration of such periods if written approval thereof has been received from the commissioner.

(c) No rates to be charged subscribers shall be used or established by any such corporation unless and until the same have been filed with the commissioner and approved by him. The procedure for such filing and approval shall be the same as that prescribed in subsection (b) of this section for the approval of forms. The commissioner shall approve all such rates which are not excessive, inadequate, or unfairly discriminatory.

(d) The commissioner shall pass upon the actuarial soundness of all direct health care services plans.

(e) The corporation shall accumulate a fund to be derived from a minimum of two percent of every subscriber's monthly premium which shall be known as a contingency and liability reserve fund except that the same shall not exceed an amount equal to three months' average obligation of said corporation, nor shall it fall below a minimum of one month's average obligation of said corporation. Said fund shall be expended by the corporation according to rules and regulations to be promulgated by the commissioner.

In addition to the above requirements, every subscriber shall pay into the corporation a membership fee equal to one monthly premium. The membership fee shall be collected in full by said corporation within ninety days of said subscriber's application for membership.

(f) Each such rate filing and each such form filing made with the commissioner pursuant to this section is subject to the filing fee of section thirty-four, article six of this chapter.
ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8. Evidence of coverage; charges for health care services; cancellation of contract by enrollee.

(1) (a) Every enrollee is entitled to evidence of coverage in accordance with this section. The health maintenance organization or its designated representative shall issue the evidence of coverage.

(b) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the form of the evidence of coverage, or amendment thereto, has been filed with and approved by the commissioner.

(c) An evidence of coverage shall contain a clear, concise and complete statement of (i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled; (ii) any exclusions or limitations on the services, kind of services, benefits, or kind of benefits, to be provided, including any copayments; (iii) where and in what manner information is available as to how services, including emergency and out-of-area services, may be obtained; (iv) the total amount of payment and copayment, if any, for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or an indication whether the plan is contributory or noncontributory with respect to group certificates; and (v) a description of the health maintenance organization’s method for resolving enrollee complaints.

(d) Any subsequent approved change in an evidence of coverage shall be issued to each enrollee.

(e) A copy of the form of the evidence of coverage to be used in this state, and any amendment thereto, shall be subject to the filing and approval requirements of subdivision (b), subsection (1) of this section, unless the commissioner promulgates a regulation dispensing with this requirement or unless it is subject to the jurisdiction of the commissioner under the laws governing health
insurance or, hospital or medical service corporations, in which event the filing and approval provisions of such laws shall apply. To the extent, however, that such provisions do not apply, the requirements in subdivision (c), subsection (1) of this section shall be applicable.

(2) Such charges may be established in accordance with actuarial principles: Provided, That premiums shall not be excessive, inadequate, or unfairly discriminatory. A certification by a qualified actuary, to the appropriateness of the charges based on reasonable assumptions shall accompany the filing along with adequate supporting information. In determining whether such charges are reasonable, the commissioner shall consider whether such health maintenance organization has (a) made a vigorous, good faith effort to control rates paid to health care providers; (b) established a premium schedule, including copayments, if any, which encourages enrollees to seek out preventive health care services; and (c) has made a good faith effort to secure arrangements whereby basic services can be obtained by subscribers from all local providers to the extent that such providers offer such services.

(3) The commissioner shall within a reasonable period approve any form if the requirements of subsection (1) are met and any schedule of charges if the requirements of subsection (2) are met. It shall be unlawful to issue such form or to use such schedule of charges until approved. If the commissioner disapproves of such filing, he shall notify the filer promptly. In the notice, the commissioner shall specify the reasons for his disapproval and the findings of fact and conclusions which support his reasons. A hearing will be granted by the commissioner within fifteen days after a request in writing, by the person filing, has been received by the commission. If the commissioner does not disapprove any form or schedule of charges within sixty days of the filing of such forms or charges, they shall be deemed approved.

(4) The commissioner may require the submission of whatever relevant information in addition to the schedule of charges which he deems necessary in
determining whether to approve or disapprove a filing made pursuant to this section.

(5) An enrollee shall be allowed to cancel a contract with a health maintenance organization at any time for any reason provided that a health maintenance organization may require that he or she give sixty days notice of disenrollment to such organization.

CHAPTER 97

(H. B. 2588—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

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

AN ACT to amend and reenact section thirty-four, article six; sections two and sixteen, article twenty-two; section two, article twenty-three; section four, article twenty-four; section eight, article twenty-five; section twenty-two, article twenty-five-a; section six, article thirty-one; and section three, article thirty-two, all of chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article twenty-five by adding thereto a new section, designated section eighteen; to further amend said article twenty-five-a by adding thereto a new section, designated section twenty-nine; and to further amend said chapter thirty-three by adding thereto a new article, designated article thirty-three, all relating to domestic insurers, and requiring annual examinations by independent certified public accountants; increasing fees on rate and form filings; requiring farmers mutual fire insurance companies to pay form filing fees with annual reports; and subjecting certain other corporations and organizations to the rate and form filing fees.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 33. INSURANCE.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-34. Fee for form and rate filing.

A fee of twenty-five dollars for every form filing and twenty-five dollars for every rate filing shall be submitted with each filing. If a form filing or rate filing is made on behalf of more than one insurer, other than a filing made by a rating organization licensed by the commissioner pursuant to section six, article twenty of this chapter, the fee shall be submitted as if the filing were made by each individual insurer. Fees submitted pursuant to this section shall not be refunded if the form filing or rate filing, for which the fee was submitted, is disapproved in whole or in part by the commissioner. The refiling of a form filing or rate filing previously disapproved by the commissioner shall be considered a new filing for the purposes of the filing fee: Provided, That any request by the commissioner for additional information pertaining to a form filing shall not be considered a new filing for purposes of the filing fee. All fees collected pursuant to this section shall be used by
§33-22-16. Fees.

1 Such company at the time of making its annual report shall pay to the commissioner a filing fee of twenty-five dollars, all fees so collected to be used for the purposes specified in section thirteen, article three of this chapter.

No other fees or taxes shall be levied against such companies except the agent's license fee, the form filing fee required by the provisions of section thirty-four,
article six of this chapter and the expenses of examination thereof by the commissioner.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

*§33-23-2. Other provisions of chapter applicable.

Every fraternal benefit society shall be governed and be subject, to the same extent as other insurers transacting like kinds of insurance, to the following articles of this chapter: Article one (definitions), article two (insurance commissioner), article four (general provisions), article six, section thirty (fee for form and rate filing), article ten (rehabilitation and liquidation), article eleven (unfair trade practices), article twelve (agents, brokers, solicitors and excess lines), article thirteen (life insurance), article fifteen-a (long-term care insurance), and article thirty-three (annual audited financial report).

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

**§33-24-4. Exemptions; applicability of other laws.

Every such corporation is hereby declared to be a scientific, nonprofit institution and as such exempt from the payment of all property and other taxes. Every such corporation, to the same extent such provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner) except that under section nine of article two examinations shall be conducted at least once every four years, article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article six, section thirty-four (fee for form and rate filing), article ten (rehabilitation and liquidation),

*Clerk's Notes: This section was also amended by H. B. 2526 and H. B. 2286, which passed prior to this act.

**This section was also amended by S. B. 252 and H. B. 2526, which passed prior to this act.
article eleven (unfair practices and frauds), article
twelve (agents, brokers and solicitors) except that the
agent's license fee shall be five dollars, article fifteen-
a (long-term care insurance), section three-c, article
sixteen (group accident and sickness insurance), section
three-d, article sixteen (medicare supplement), section
three-f, article sixteen (treatment of temporomandibular
joint disorder and craniomandibular disorder), article
twenty-eight (individual accident and sickness insurance
minimum standards) and article thirty-three (annual
audited financial report); and no other provision of this
chapter shall apply to such corporations unless specif-
ically made applicable by the provisions of this article.
If, however, any such corporation shall be converted into
a corporation organized for a pecuniary profit, or if it
shall transact business without having obtained a license
as required by section five of this article, it shall
thereupon forfeit its right to these exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8. Commissioner to enforce article; approval of contracts, forms and
rates; reserve fund; membership fee.

*§33-25-8. Commissioner to enforce article; approval of
contracts, forms and rates; reserve fund; membership fee.

(a) It shall be the duty of the commissioner to enforce
the provisions of this article.

(b) No such corporation shall deliver or issue for
delivery any subscriber's contract, changes in the terms
of such contract, application, rider or endorsement until
a copy thereof and the rates pertaining thereto have
been filed with and approved by the commissioner. All
such forms filed with the commissioner shall be deemed
approved after the expiration of thirty days from the
date of such filing unless the commissioner shall have
disapproved the same, stating his reasons for such
disapproval in writing, except that such period may be
extended for an additional period not to exceed fifteen
days upon written notice thereof from the commissioner
to the applicant. Such forms may be used prior to the

*Clerk's Note: This section was also amended by H. B. 2417, which passed
prior to this act.
expiration of such periods if written approval thereof
has been received from the commissioner.

(c) No rates to be charged subscribers shall be used
or established by any such corporation unless and until
the same have been filed with the commissioner and
approved by him. The procedure for such filing and
approval shall be the same as that prescribed in
subsection (b) of this section for the approval of forms.
The commissioner shall approve all such rates which are
not excessive, inadequate, or unfairly discriminatory.

(d) The commissioner shall pass upon the actuarial
soundness of all direct health care services plans.

(e) The corporation shall accumulate a fund to be
derived from a minimum of two percent of every
subscriber's monthly premium which shall be known as
a contingency and liability reserve fund except that the
same shall not exceed an amount equal to three months'
average obligation of said corporation, nor shall it fall
below a minimum of one month's average obligation of
said corporation. Said fund shall be expended by the
corporation according to rules and regulations to be
promulgated by the commissioner.

In addition to the above requirements, every subscriber
shall pay into the corporation a membership fee equal to
one monthly premium. The membership fee shall be
collected in full by said corporation within ninety days
of said subscriber's application for membership.

(f) Each such rate filing and each such form filing
made with the commissioner pursuant to this section is
subject to the filing fee of section thirty-four, article six
of this chapter.


Every health care organization organized under the
laws of this state is subject to the provisions of article
thirty-three of this chapter.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

Every health maintenance organization subject to this article shall pay to the commissioner the following fees:
- For filing an application for a certificate of authority or amendment thereto, two hundred dollars; for each form filing and for each rate filing, the fee as provided in section thirty-four, article six of this chapter; and for filing each annual report, twenty-five dollars. Fees charged under this section shall be for the purposes set forth in section thirteen, article three of this chapter.


Every health maintenance organization organized under the laws of this state is subject to the provisions of article thirty-three of this chapter.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-6. Formation of captive insurance companies in this state.

(a) A pure captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(b) An association captive insurance company or an industrial insured captive insurance company may be incorporated:

(1) As a stock insurer with its capital divided into shares and held by the stockholders; or

(2) As a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

(c) A captive insurance company shall have at least one incorporator who shall be a resident of this state.

(d) Before the articles of association are transmitted to the secretary of state, the incorporators shall petition the commissioner to issue a certificate setting forth his finding that the establishment and maintenance of the proposed corporation will promote the general good of
the state. In arriving at such finding the commissioner shall consider:

(1) The character, reputation, financial standing and purpose of the incorporators;

(2) The character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors; and

(3) Such other aspects as the commissioner shall deem advisable.

(e) The articles of association, such certificate and the organization fee shall be transmitted to the secretary of state, who shall thereupon record both the articles of incorporation and the certificate.

(f) The capital stock of a captive insurance company incorporated as a stock insurer shall be issued at not less than par value.

(g) At least one of the members of the board of directors of a captive insurance company incorporated in this state shall be a resident of this state.

(h) Captive insurance companies formed under the provisions of this chapter shall have the privileges and be subject to the provisions of the general corporation law as well as the applicable provisions contained in this chapter. Captive insurance companies are subject to the provisions of article thirty-three of this chapter. In the event of conflict between the provisions of said general corporation law and the provisions of this chapter, the latter shall control.

ARTICLE 32. RISK RETENTION ACT.

§33-32-3. Risk retention groups chartered in this state.

A risk retention group seeking to be chartered in this state must be chartered and licensed as a liability insurance company authorized by the insurance laws of this state and, except as provided elsewhere in this article, must comply with all of the laws, rules, regulations and requirements applicable to such insurers chartered and licensed in this state and with section
four of this article to the extent such requirements are not a limitation on laws, rules, regulations or requirements of this state. Risk retention groups are subject to the provisions of article thirty-three of this chapter. Before it may offer insurance in any state, each risk retention group shall also submit for approval to the insurance commissioner of this state a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance.

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

§33-33-1. Declaration of policy and purpose.
§33-33-2. Definitions.
§33-33-3. Filing and extensions for filing of annual audited financial reports.
§33-33-5. Designation of independent certified public accountant.
§33-33-6. Qualifications of independent certified public accountant.
§33-33-7. Consolidated or combined audits.
§33-33-8. Scope of examination and report of independent certified public accountant.
§33-33-10. Evaluation of accounting procedures and system of internal control.
§33-33-11. Definition, availability and maintenance of certified public accountant (CPA) workpapers.
§33-33-12. Examinations.

§33-33-1. Declaration of policy and purpose.

The purpose of this article is to improve the insurance commissioner's surveillance of the financial condition of domestic insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial condition and the results of operations of insurers.

This article shall not prohibit or preclude or in any way limit the commissioner from performing examinations of insurers as specified in section nine, article two of this chapter or such other examinations as the commissioner may be authorized to perform by this chapter.

§33-33-2. Definitions.
(a) "Accountant," "certified public accountant (CPA)"
and "independent public accountant" means an inde-
pendent certified public accountant or accounting firm
who has a license to practice issued by the state in which
he resides or has his principal place of business.

(b) "Annual statement" means the annual financial
statement required to be filed by insurers with the
commissioner pursuant to the provisions of this chapter.

(c) "Audited financial report" means and includes
those items specified in section four of this article.

(d) "Insurer" for purposes of this article means any
domestic insurer as defined in section six, article one of
this chapter, and includes any domestic stock insurance
company, mutual insurance company, reciprocal insu-
rance company, farmers' mutual fire insurance com-
pany, fraternal benefit society, hospital service corpora-
tion, medical service corporation, health care corpora-
tion, health maintenance organization, captive insurance
company or risk retention group.

§33-33-3. Filing and extensions for filing of annual
audited financial reports.

(a) Annual audited financial reports must be filed by
all insurers with the commissioner on or before the first
day of June for the year ending the thirty-first day of
December immediately preceding.

(b) Extensions of the filing date on the first day of
June may be granted by the commissioner for thirty-day
periods upon showing by the insurer and its independent
certified public accountant the reasons for requesting
such extension and determination by the commissioner
of good cause for an extension. A request for extension
must be submitted in writing not less than ten days
prior to the due date in sufficient detail to permit the
commissioner to make an informed decision with respect
to the requested extension.


(a) The annual audited financial report shall report
the financial condition of the insurer as of the end of the
most recent calendar year and the results of its operations, changes in financial position and changes in capital and surplus for the year then ended in conformity with statutory accounting practices for preparation of the annual statement or as otherwise permitted by the commissioner.

(b) The annual audited financial report shall include the following:

(1) Report of independent certified public accountant;

(2) Balance sheet reporting admitted assets, liabilities, capital and surplus;

(3) Statement of gain or loss from operations or statement of revenue and expenses;

(4) Statement of changes in financial position or cash flow statement;

(5) Statement of changes in capital and surplus;

(6) Notes to financial statements. These notes shall be those required by generally accepted accounting principles and shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement with a written description of the nature of these differences;

(7) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner; and:

(A) The financial statement shall be comparative, presenting the amounts as of the thirty-first day of December of the current year and the amounts as of the immediately preceding thirty-first day of December. (However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted);

(B) Amounts may be rounded to the nearest thousand dollars;

(8) Supplementary data and information. This shall
include any additional clarifying information or data
which the commissioner may require to be disclosed.

§33-33-5. Designation of independent certified public
accountant.

(a) Each insurer required by this article to file an
annual audited financial report must, within sixty days
after becoming subject to such requirements, register
with the commissioner in writing the name and address
of the certified public accountant or accounting firm
(generally referred to in this article as the "account-
ant") retained to conduct the annual audit set forth in
this article.

(b) The insurer shall obtain a letter from such
accountant, and file a copy with the commissioner
stating that the accountant is aware of the provisions of
this code and rules that relate to accounting and
financial matters and affirming that he will express his
opinion on the financial statements in terms of their
conformity to the statutory accounting practices pres-
cribed or otherwise permitted by the commissioner
specifying such exceptions as he may believe
appropriate.

(c) If an accountant who was not the accountant for
the immediately preceding filed audited financial report
is engaged to audit the insurer's financial statements,
the insurer shall within thirty days of the date the
accountant is engaged notify the commissioner of this
event. The insurer shall also furnish the commissioner
with a separate letter stating whether in the twenty-four
months preceding such engagement there were any
disagreements with the former accountant on any
matter of accounting principles or practices, financial
statement disclosure, or auditing scope or procedure,
which disagreements, if not resolved to the satisfaction
of the former accountant, would have caused him to
make reference to the subject matter of the disagree-
ment in connection with his opinion. The insurer shall
also in writing request such former accountant to
furnish it a letter addressed to the insurer stating
whether the accountant agrees with the statements
contained in the insurer's letter and, if not, stating the
reasons for which he does not agree; and the insurer
shall furnish such responsive letter from the former
accountant to the commissioner together with its own.

§33-33-6. Qualifications of independent certified public accountant.

(a) The commissioner shall not recognize any person
as an independent certified public accountant who does
not meet the requirements for the definition of "account-
tant" under section two of this article.

(b) The commissioner may hold a hearing to deter-
mine whether a certified public accountant is independ-
ent and considering the evidence presented, may rule
that the accountant is not independent for purposes of
expressing his opinion on the financial statements in the
audited financial report made pursuant to this article
and require the insurer to replace the accountant with
another whose relationship with the insurer is independ-
ent within the meaning of this article.

§33-33-7. Consolidated or combined audits.

(a) The commissioner may, upon written application,
permit any insurer that is a member of an insurance
holding company system to file audited, consolidated or
combined financial statements in lieu of separate annual
audited financial statements if the commissioner, in his
discretion, deems such method of filing reasonable and
appropriate. Consolidated or combined filings will be
considered reasonable and appropriate if the commis-
sioner determines that the audit work performed under
a consolidated filing is adequate to ascertain the
financial condition of the insurer. If such approval is
granted, a columnar consolidating or combining work-
sheet shall be filed with the report incorporating the
following:

(1) Amounts shown on the consolidated or combined
audited financial report shall be shown on the
worksheet;

(2) Amounts for each insurer subject to this section
shall be stated separately;
(3) Noninsurance operations may be shown on the worksheet on a combined or individual basis;

(4) Explanations of consolidating and eliminating entries shall be included; and

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

(b) The commissioner shall require any insurer to file separate annual audited financial statements although permission had previously been given to file on a consolidated basis or combined basis if the commissioner determines the reasons or circumstances given for approval of the consolidated audit, pursuant to subsection (a) of this section, no longer exist.

§33-33-8. Scope of examination and report of independent certified public accountant.

The examination of the insurer's financial statements by the independent certified public accountant shall be conducted in accordance with generally accepted auditing standards and such other procedures illustrated in the examiners' handbook promulgated by the national association of insurance commissioners as the independent certified public accountant deems necessary. The commissioner may from time to time prescribe that additional auditing procedures be observed by the accountant in the examination of the financial statements of insurers pursuant to this article.


The independent certified public accountant shall immediately notify, in writing, an officer or director of the insurer and the commissioner of any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the thirty-first day of December immediately preceding, or of any determination that the insurer does not meet the applicable minimum capital and surplus requirement of this chapter or in the case of an insurer not subject to capital and surplus requirement, that the surplus of the insurer
is less than one hundred thousand dollars as of the thirty-first day of December immediately preceding. For purposes of this article, material misstatement shall mean a misstatement that overstates the surplus as regards policyholders in single financial statement items by five percent or more, or when taken together with all financial statement items, the surplus as regards policyholders is overstated by ten percent or more.

§33-33-10. Evaluation of accounting procedures and system of internal control.

(a) In addition to the annual audited financial reports, each insurer shall furnish the commissioner with a report of evaluation performed by the accountant, in connection with his examination, of the accounting procedures of the insurer and its system of internal control.

(b) A report of the evaluation by the accountant of the accounting procedures of the insurer and its system of internal control, including any remedial action taken or proposed, shall be filed annually by the insurer with the commissioner at the time of filing of the annual audited financial report.

(c) This report shall follow generally the form for reports on internal control based on audits as prescribed in the then current volume of the professional standards of the American institute of certified public accountants.

§33-33-11. Definition, availability and maintenance of certified public accountant (CPA) workpapers.

(a) Workpapers shall be kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained and the conclusions reached pertinent to this examination of the financial statements of an insurer. Workpapers shall include work programs, analyses, memoranda, letters of conformation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his examination of the financial
statements of an insurer and which support his opinion thereon.

(b) Every insurer required to file an audited financial report pursuant to this article shall require the accountant to make available for review by the commissioner the workpapers prepared in the conduct of his examination. The insurer shall require that the accountant retain the audit workpapers for a period of not less than five years after the period reported thereon.

(c) In the conduct of the aforementioned periodic review by the commissioner, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the commissioner.

§33-33-12. Examinations.

Examinations of insurers conducted by the commissioner pursuant to section nine, article two of this chapter may, at the discretion of the commissioner, include and be supplemented by audit procedures performed by an independent certified public accountant as herein provided.


Upon written application by an insurer, the commissioner may grant an exemption from compliance with this article if the commissioner finds, upon review of the application, that compliance with this article would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days of a denial of an insurer's written request for an exemption from this article, such insurer may request in writing a hearing on its application for an exemption.

CHAPTER 98

(Com. Sub. for S. B. 264—By Senators Tucker, Mr. President, and Harman, By Request of the Executive)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code West
Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-b, relating to providing a mechanism to regulate the declination of automobile liability policies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6B. DECLINATION OF AUTOMOBILE LIABILITY INSURANCE.

§33-6B-1. Purpose of article.

The purpose of this article is to regulate the declination of automobile liability policies.

§33-6B-2. Definitions.

"Declination" means either the refusal of an insurer to issue an automobile liability insurance policy upon receipt of a written nonbinding application or written request for coverage from its agent or an applicant. For the purposes of this article, the offering of insurance coverage with a company within an insurance group which is different from the company requested on the nonbinding application or written request for coverage, or the offering of policy coverage or rates substantially less favorable than requested in the nonbinding application or written request for coverage, shall not be considered a declination. Further, for the purposes of this article "declination" shall include the cancellation of an automobile liability policy which has been in effect less than sixty days and the nonrenewal of an automobile liability policy which has been in effect less than two years.
§33-6B-3. Declinations; prohibited reasons.

The declination of an application for a policy of automobile liability insurance by an insurer, agent or broker is prohibited if the declination is:

(a) Based upon the race, religion, nationality, or ethnic group, of the applicant or named insured;

(b) Based solely upon the lawful occupation or profession of the applicant or named insured, unless such decision is for a business purpose which is not a mere pretext for unfair discrimination: Provided, That this provision shall not apply to any insurer, agent or broker which limits its market to one lawful occupation or profession or to several related lawful occupations or professions;

(c) Based upon the principal location of the insured motor vehicle unless such decision is for a business purpose which is not a mere pretext for unfair discrimination;

(d) Based solely upon the age, sex or marital status of an applicant or an insured, except that this subsection shall not prohibit rating differentials based on age, sex or marital status;

(e) Based upon the fact that the applicant has previously obtained insurance coverage with a substandard insurance carrier;

(f) Based upon the fact that the applicant has not previously been insured;

(g) Based upon the fact that the applicant did not have insurance coverage for a period of time prior to the application;

(h) Based upon the fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism;

(i) Based upon the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.
Nothing in this section shall be construed as prohibiting an insurer, agent, or broker from using legitimate, documented, underwriting data in making their own independent risk assessment of an applicant for insurance.

§33-6B-4. Notification.

In the event of a declination, the insurer shall, within thirty days of the receipt of the written nonbinding application or written request for coverage, provide the applicant reasons for such declination.

§33-6B-5. Hearings and administrative procedure.

Hearings for the violation of any provision of this article, and the administrative procedure prior to, during, and following these hearings, shall be conducted in accordance with the provisions of article two of this chapter.

§33-6B-6. Sanctions.

If the commissioner determines in a final order that:

(a) An insurer has violated section three or four of this article, he may require the insurer to:

(1) Accept the application or written request for insurance coverage at a rate and on the same terms and conditions as are available to its other risks with similar characteristics; or

(2) Reinstate insurance coverage to the end of the policy period; or

(3) Continue insurance coverage at a rate and on the same terms and conditions as are available to its other risks with similar characteristics.

(b) Any person has violated any provision of this article, he may:

(1) Issue a cease and desist order to restrain the person from engaging in practices which violate this article;

(2) Assess a penalty against the person of up to five
§33-6B-7. Severability.

If any provision of this article or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

CHAPTER 99

(S. B. 440—By Senators Tucker, Mr. President, and Harman, By Request of the Executive)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-five, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article twelve by adding thereto a new section, designated section twenty-five-a, all relating to insurance; agents, brokers, solicitors and excess line; revocation, suspension or refusal to renew license; civil penalty; and notice of termination to represent insurer.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-25. Revocation, suspension or refusal to renew license; penalty in lieu thereof.

§33-12-25a. Termination of authority to represent insurer.

§33-12-25. Revocation, suspension or refusal to renew license; penalty in lieu thereof.

(a) The commissioner may revoke or suspend the
license of any agent, solicitor, broker or excess line
broker if, after notice to the licensed person and
hearing, the commissioner determines such person has:

(1) Violated any insurance law or any lawful rule,
regulation, or order of the commissioner;

(2) Improperly withheld, misappropriated, or con-
verted to his own use any money received in the course
of business and belonging to policyholders, insurers,
beneficiaries, or others;

(3) Misrepresented the terms of any existing or
proposed insurance contract to the detriment of the
applicant or insured;

(4) Engaged in any pattern of unfair method of
competition or unfair or deceptive acts or practices in
the business of insurance as defined in article eleven of
this chapter;

(5) Forged another person's name to an application
for insurance or to any other document or fraudulently
procured a forged signature to an insurance application
or any other document, knowing such signature to be
forged;

(6) Knowingly and willfully made or permitted a false
or fraudulent statement or misrepresentation in or
relative to an application for a policy of insurance;

(7) Been convicted of or pleaded nolo contendre to any
felony;

(8) Been convicted of or pleaded nolo contendre to a
misdemeanor in connection with his activities as an
agent, solicitor, broker or excess line broker;

(9) Obtained the license for the purpose of writing
controlled business, as described in subsection (d),
section two, article twelve of this chapter;

(10) Had an agent's or broker's license suspended or
revoked in any other state, district, or territory of the
United States or any province of Canada;

(11) Not demonstrated trustworthiness and compet-
ency in his activities as an agent, solicitor, broker or excess line broker; or

(12) Obtained the license through misrepresentation, fraud, or any other act for which issuance of the license could have been refused had it been known to the commissioner at the time of issuance.

(b) In lieu of revoking or suspending such license, the commissioner may in his discretion order such licensee to pay to the state of West Virginia a penalty in a sum not to exceed one thousand dollars and upon the failure of such licensee to pay such penalty by delivery of such sum to the commissioner within thirty days of notice thereof, the commissioner shall revoke or suspend such license.

§33-12-25a. Termination of authority to represent insurer.

(a) An insurer shall give to the commissioner and the agent, on a form prescribed by the commissioner, written notice of the termination of an agent’s authority to represent the insurer within five working days of the termination. The notice of termination shall state the cause and circumstances of such termination.

(b) In the absence of fraud or bad faith, there shall be no liability on the part of, and a cause of action of any nature shall not arise against the commissioner or his employees, or an insurer or its employees for any information furnished pursuant to this section.

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CHAPTER 100

(S. B. 523—By Senators Spears, Rundle, Blatnik, Pritt, Lucht and Boley)

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

AN ACT to amend article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-c; to amend article sixteen, chapter thirty-three of said code by adding thereto a
new section, designated section three-g; to amend article twenty-four of said chapter thirty-three by adding thereto a new section, designated section seven-b; to amend article twenty-five of said chapter by adding thereto a new section, designated section eight-a; and to amend article twenty-five-a of said chapter by adding thereto a new section, designated section eight-a, all relating to insurance; and requiring third party reimbursement for mammography and pap smear testing.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-c; that article sixteen, chapter thirty-three of said code be amended by adding thereto a new section, designated section three-g; that article twenty-four of said chapter be amended by adding thereto a new section, designated section seven-b; that article twenty-five of said chapter be amended by adding thereto a new section, designated section eight-a; and that article twenty-five-a of said chapter be amended by adding thereto a new section, designated section eight-a, all to read as follows:

CHAPTER 33. INSURANCE.

Article
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4c. Third party reimbursement for mammography or pap smear testing.

1 Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, whenever reimbursement or indemnity for laboratory or X-ray services are covered, reimbursement or indemnification shall not be denied for mammograms or pap smears when performed for cancer
screening or diagnostic purposes, at the direction of a person licensed to practice medicine and surgery by the board of medicine: (1) A baseline mammogram for women age thirty-five to thirty-nine, inclusive; (2) a mammogram for women age forty to forty-nine, inclusive, every two years or more frequently based on the woman's physician's recommendation; (3) a mammogram every year for women age fifty and over; (4) a pap smear annually or more frequently based on the woman's physician's recommendation for women age eighteen or over. A policy, provision, contract, plan or agreement may apply to mammograms or pap smears, the same deductibles, coinsurance and other limitations as apply to other covered services.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3g. Third party reimbursement for mammography or pap smear testing.

Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, whenever reimbursement or indemnity for laboratory or X-ray services are covered, reimbursement or indemnification shall not be denied for mammograms or pap smears when performed for cancer screening or diagnostic purposes, at the direction of a person licensed to practice medicine and surgery by the board of medicine: (1) A baseline mammogram for women age thirty-five to thirty-nine, inclusive; (2) a mammogram for women age forty to forty-nine, inclusive, every two years or more frequently based on the woman's physician's recommendation; (3) a mammogram every year for women age fifty and over; (4) a pap smear annually or more frequently based on the woman's physician's recommendation for women age eighteen or over. A policy, provision, contract, plan or agreement may apply to mammograms or pap smears, the same deductibles, coinsurance and other limitations as apply to other covered services.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.
§33-24-7b. Third party reimbursement for mammography or pap smear testing.

Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, whenever reimbursement or indemnity for laboratory or X-ray services are covered, reimbursement or indemnification shall not be denied for mammograms or pap smears when performed for cancer screening or diagnostic purposes, at the direction of a person licensed to practice medicine and surgery by the board of medicine:

1. A baseline mammogram for women age thirty-five to thirty-nine, inclusive;
2. A mammogram for women age forty to forty-nine, inclusive, every two years or more frequently based on the woman's physician's recommendation;
3. A mammogram every year for women age fifty and over;
4. A pap smear annually or more frequently based on the woman's physician's recommendation for women age eighteen or over.

A policy, provision, contract, plan or agreement may apply to mammograms or pap smears, the same deductibles, coinsurance and other limitations as apply to other covered services.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8a. Third party reimbursement for mammography or pap smear testing.

Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, whenever reimbursement or indemnity for laboratory or X-ray services are covered, reimbursement or indemnification shall not be denied for mammograms or pap smears when performed for cancer screening or diagnostic purposes, at the direction of a person licensed to practice medicine and surgery by the board of medicine:

1. A baseline mammogram for women age thirty-five to thirty-nine, inclusive;
2. A mammogram for women age forty to forty-nine, inclusive, every two years or more frequently based on the woman's physician's recommendation;
3. A mammogram every year for women age fifty and over;
4. A pap smear annually or more frequently based on the woman's physician's recommendation;
woman’s physician’s recommendation for women age eighteen or over. A policy, provision, contract, plan or agreement may apply to mammograms or pap smears, the same deductibles, coinsurance and other limitations as apply to other covered services.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8a. Third party reimbursement for mammography and pap smear testing.

Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, whenever reimbursement or indemnity for laboratory or X-ray services are covered, reimbursement or indemnification shall not be denied for mammograms or pap smears when performed for cancer screening or diagnostic purposes, at the direction of a person licensed to practice medicine and surgery by the board of medicine: (1) A baseline mammogram for women age thirty-five to thirty-nine, inclusive; (2) a mammogram for women age forty to forty-nine, inclusive, every two years or more frequently based on the woman’s physician’s recommendation; (3) a mammogram every year for women age fifty and over; (4) a pap smear annually or more frequently based on the woman’s physician’s recommendation for women age eighteen or over. A policy, provision, contract, plan or agreement may apply to mammograms or pap smears, the same deductibles, coinsurance and other limitations as apply to other covered services.

CHAPTER 101

(H. B. 2526—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

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

AN ACT to amend and reenact section two, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article twenty-four of
said chapter; to further amend said chapter by adding thereto a new article, designated article fifteen-a; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all relating to the West Virginia long-term care insurance act; short title; declaration of policy and purpose; applicability; definitions; extraterritorial jurisdiction; group long-term care insurance; disclosure and performance standards for long-term care insurance; and severability.

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

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

**CHAPTER 33. INSURANCE.**

Article.

15A. West Virginia Long-Term Care Insurance Act.

23. Fraternal Benefit Societies.

24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.


**ARTICLE 15A. WEST VIRGINIA LONG-TERM CARE INSURANCE ACT.**


1. This article may be known and cited as the West Virginia Long-Term Care Insurance Act.


1. The purpose of this act is to promote the public
interest, to promote the availability of long-term care insurance policies, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to establish standards for long-term care insurance, to facilitate public understanding and comparison of long-term care insurance policies, and to facilitate flexibility and innovation in the development of long-term care insurance coverage.


The requirements of this act shall apply to policies delivered or issued for delivery in this state on or after the effective date of this act. This act is not intended to supersede the obligations of entities subject to this act to comply with the substance of other applicable insurance laws insofar as they do not conflict with this act, except that laws and regulations designed and intended to apply to medicare supplement insurance policies shall not be applied to long-term care insurance.


(a) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered or designed to provide benefits for not less than twenty-four consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis; for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services, provided in a setting other than an acute care unit of a hospital. Such term includes group and individual policies or riders whether issued by insurers; fraternal benefit societies; nonprofit health, hospital, and medical service corporations; prepaid health plans; health maintenance organizations or any similar organization. Any insurance policy which is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage which also
contains long-term care insurance benefits for at least six months shall comply with the provisions of this act.

(b) “Applicant” means:

(1) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits, and

(2) In the case of a group long-term care insurance policy, the proposed certificate holder.

(c) “Certificate” means, for the purposes of this act, any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this state.

(d) “Commissioner” means the insurance commissioner of this state.

(e) “Group long-term care insurance” means a long-term care insurance policy which is delivered or issued for delivery in this state and issued to:

(1) One or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations; or

(2) Any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association:

(A) Is composed of individuals all of whom are or were actively engaged in the same profession, trade or occupation; and

(B) Has been maintained in good faith for purposes other than obtaining insurance; or

(3) An association or a trust or the trustee(s) of a fund established, created or maintained for the benefit of members of one or more associations. Prior to advertising, marketing or offering such policy within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the
commissioner that the association or associations have at
the outset a minimum of one hundred persons and have
been organized and maintained in good faith for the
purposes other than that of obtaining insurance; have
been in active existence for at least one year; and have
a constitution and by-laws which provide that:

(A) The association or associations hold regular
meetings not less than annually to further purposes of
the members;

(B) Except for credit unions, the association or
associations collect dues or solicit contributions from
members; and

(C) The members have voting privileges and repre-
sentation on the governing board and committees.

Thirty days after such filing the association or
associations will be deemed to satisfy such organiza-
tional requirements, unless the commissioner makes a
finding that the association or associations do not satisfy
those organizational requirements.

(4) A group other than as described in subdivisions
(1), (2) and (3), subsection (e) of this section, subject to
a finding by the commissioner that:

(A) The issuance of the group policy is not contrary
to the best interest of the public;

(B) The issuance of the group policy would result in
economies of acquisition or administration;

(C) The benefits are reasonable in relation to the
premiums charged.

(f) "Policy" means, for the purposes of this act, any
policy, contract, subscriber agreement, rider or endorse-
ment delivered or issued for delivery in this state by an
insurer; fraternal benefit society; nonprofit health,
hospital, or medical service corporation; prepaid health
plan; health maintenance organization or any similar
organization.

§33-15A-5. Extraterritorial jurisdiction—Group long-
term care insurance.

(a) No group long-term care insurance coverage may
be offered to a resident of this state under a group policy
issued in another state to a group described in subdi-
vision (4), subsection (e), section four of this article
unless this state or another state having statutory and
regulatory long-term care insurance requirements
substantially similar to those adopted in this state has
made a determination that such requirements have been
met.

(b) Any such group policy form and any group
certification form issued under the group, shall be filed
with the commissioner for informational purposes with
evidence of the determination required by subsection (a)
of this section.

§33-15A-6. Disclosure and performance standards for
long-term care insurance.

(a) The commissioner may adopt rules and regula-
tions that include standards for full and fair disclosure
setting forth the manner, content and required disclo-
sures for the sale of long-term care insurance policies,
terms of renewability, initial and subsequent conditions
of eligibility, nonduplication of coverage provisions,
coverage of dependents, preexisting conditions, termina-
tion of insurance, continuation or conversion, probation-
ary periods, limitations, exceptions, reductions, elimination
periods, requirements for replacement, recurrent
conditions and definitions of terms.

(b) No long-term care insurance policy may:

(1) Be canceled, nonrenewed or otherwise terminated
on the grounds of the age or the deterioration of the
mental or physical health of the insured individual or
certificate holder; or

(2) Contain a provision establishing a new waiting
period in the event existing coverage is converted to or
replaced by a new or other form within the same
company, except with respect to an increase in benefits
voluntarily selected by the insured individual or group
policyholder; or

(3) Provide coverage for skilled nursing care only or
provide significantly more coverage for skilled care in
a facility than coverage for lower levels of care.
(c) Preexisting condition:

(1) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group as defined in subdivision (1), subsection (e), section four of this article shall use a definition of "preexisting condition" which is more restrictive than the following: Preexisting condition means a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within six months preceding the effective date of coverage of an insured person.

(2) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group as defined in subdivision (1), subsection (e), section four of this article may exclude coverage for a loss or confinement which is the result of a preexisting condition unless such loss or confinement begins within six months following the effective date of coverage of an insured person.

(3) The commissioner may extend the limitation periods set forth in subdivisions (1) and (2), subsection (c) of this section as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

(4) The definition of "preexisting condition" does not prohibit an insurer from using an application form designed to elicit a complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subdivision (2), subsection (c) of this section expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subdivision (2), subsection (c) of this section.
(d) Prior hospitalization/institutionalization:

(1) Effective July 1, 1990, no long-term care insurance policy may be delivered or issued for delivery in this state if such policy:

(A) Conditions eligibility for any benefits on a prior hospitalization requirement; or

(B) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care.

(2) Effective July 1, 1990, a long-term care insurance policy containing any limitations or conditions for eligibility other than those prohibited above in paragraph (1) shall clearly label in a separate paragraph of the policy or certificate entitled “Limitations or Conditions on Eligibility for Benefits” such limitations or conditions, including any required number of days of confinement.

(A) A long-term care insurance policy containing a benefit advertised, marketed or offered as a home health care or home care benefit may not condition receipt of benefits on a prior institutionalization requirement.

(B) A long-term care insurance policy which conditions eligibility of noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty (30) days for which benefits are paid.

(3) No long-term care insurance policy which provides benefits only following institutionalization shall condition such benefits upon admission to a facility for the same or related conditions within a period of less than thirty days after discharge from the institution.

(e) The commissioner may adopt regulations establishing loss ratio standards for long-term care insurance policies provided that a specific reference to long-term care insurance policies is contained in the regulation.

(f) Right to return-free look:

(1) Individual long-term care insurance policyholders
shall have the right to return the policy within ten days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder shall have the right to return the policy within ten days of its delivery and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

(2) A person insured under a long-term care insurance policy issued pursuant to a direct response solicitation shall have the right to return the policy within thirty days of its delivery and to have the premium refunded if, after examination, the insured person is not satisfied for any reason. Long-term care insurance policies issued pursuant to a direct response solicitation shall have a notice prominently printed on the first page or attached thereto stating in substance that the insured person shall have the right to return the policy within thirty days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.

(g) Outline of coverage:

(1) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose.

(A) The commissioner shall prescribe a standard format, including style, arrangement and overall appearance, and the content of an outline of coverage.

(B) In the case of agent solicitations, an agent must deliver the outline of coverage prior to the presentation of an application or enrollment form.

(C) In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form.
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(2) The outline of coverage shall include:

(A) A description of the principal benefits and coverage provided in the policy;

(B) A statement of the principal exclusions, reductions, and limitations contained in the policy;

(C) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage shall be specifically described;

(D) A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contain governing contractual provisions;

(E) A description of the terms under which the policy or certificate may be returned and premium refunded; and

(F) A brief description of the relationship of cost of care and benefits.

(h) A certificate issued pursuant to a group long-term care insurance policy which policy is delivered or issued for delivery in this state shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the principal exclusions, reductions and limitations contained in the policy; and

(3) A statement that the group master policy determines governing contractual provisions.

(i) Any policy advertising, marketing or offering long-term care or nursing home insurance benefits shall comply with the provisions of this act.


If any provision of this act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the act and application of
such provision to other persons or circumstances shall not be affected thereby.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

*§33-23-2. Other provisions of chapter applicable.

Every fraternal benefit society shall be governed and be subject, to the same extent as other insurers transacting like kinds of insurance, to the following articles of this chapter:

Article one [33-1-1 et seq.] (definitions), article two [33-2-1 et seq.] (insurance commissioner), article four [33-4-1 et seq.] (general provisions), article ten [33-10-1 et seq.] (rehabilitation and liquidation), article eleven [33-11-1 et seq.] (unfair trade practices) article thirteen [33-13-1 et seq.] (life insurance) and article fifteen-a [33-15A-1 et seq.] (long-term care insurance).

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

**§33-24-4. Exemptions; applicability of other laws.

Every such corporation is hereby declared to be a scientific, nonprofit institution and as such exempt from the payment of all property and other taxes. Every such corporation, to the same extent such provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions, as hereinbelow indicated, of the following articles of this chapter: Article two [33-2-1 et seq.] (insurance commissioner) except that under section nine [33-2-9] of article two examinations shall be conducted at least once every four years, article four [33-4-1 et seq.] (general provisions) except that section sixteen [33-4-16] of article four shall not be applicable thereto, article ten

*Clerk's Note: This section was also amended by H. B. 2286 and H. B. 2588, which passed prior to this act.

**Clerk's Note: This section (§33-24-4) was also amended by S. B. 252 and H. B. 2588, which passed subsequent to this act.
[33-10-1 et seq.] (rehabilitation and liquidation), article
eleven [33-11-1 et seq.] (unfair practices and frauds),
article twelve [33-12-1 et seq.] (agents, brokers and
solicitors) except that the agent’s license fee shall be five
dollars, article fifteen-a [33-15A-1 et seq.] (long-term
care insurance), section three-c [33-16-3c], article sixteen
(group accident and sickness insurance), section three-
d [33-16-3d], article sixteen (medicare supplement) and
article twenty-eight [33-28-1 et seq.] (individual accident
and sickness insurance minimum standards); and no
other provision of this chapter shall apply to such
corporations unless specifically made applicable by the
provisions of this article. If, however, any such corpo-
ration shall be converted into a corporation organized
for a pecuniary profit, or if it shall transact business
without having obtained a license as required by section
five [33-24-5] of this article, it shall thereupon forfeit its
right to these exemptions.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-24. Statutory construction and relationship to
other laws.

(1) Except as otherwise provided in this article,
provisions of the insurance law and provisions of
hospital or medical service corporation laws shall not be
applicable to any health maintenance organization
granted a certificate of authority under this article. This
provision shall not apply to an insurer or hospital or
medical service corporation licensed and regulated
pursuant to the insurance laws or the hospital or
medical service corporation laws of this state except
with respect to its health maintenance corporation
activities authorized and regulated pursuant to this
article.

(2) Factually accurate advertising or solicitation
regarding the range of services provided, the premiums
and copayments charged, the sites of services and hours
of operation, and any other quantifiable, nonprofessional
aspects of its operation by a health maintenance
organization granted a certificate of authority, or its

*Clerk’s Note: This section was also amended by S. B. 252, which passed
subsequent to this act.
representative shall not be construed to violate any provision of law relating to solicitation or advertising by health professions: Provided, That nothing contained herein shall be construed as authorizing any solicitation or advertising which identifies or refers to any individual provider, or makes any qualitative judgment concerning any provider.

(3) Any health maintenance organization authorized under this article shall not be deemed to be practicing medicine and shall be exempt from the provision of chapter thirty of this code, relating to the practice of medicine.

(4) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article fifteen-a of this chapter.

CHAPTER 102

(Com. Sub. for S. B. 252—By Senators Jackson, Tomblin, Jones and Lucht)

AN ACT to amend and reenact section four, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-four, article twenty-five-a of said chapter; and to amend article sixteen of said chapter by adding thereto a new section, designated section three-f, all relating to insurance policies; hospital service corporations, medical service corporations and dental service corporations; exemptions; health maintenance organizations; and requiring the insurance commissioner to promulgate rules and regulations for the treatment of temporomandibular joint disorder and craniomandibular disorder.

Be it enacted by the Legislature of West Virginia:

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

Article
16. Group Accident and Sickness Insurance.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3f. Required policy provisions—Treatment of temporomandibular joint disorder and craniomandibular disorder.

(a) The Legislature hereby finds that there is a need to provide guidelines regarding the coverage of temporomandibular joint disorder and craniomandibular disorder in policies issued pursuant to this article and article fifteen of this chapter, in order to provide for the health of our citizens. The purpose of this section is to require the insurance commissioner to develop standards regarding temporomandibular joint disorder and craniomandibular disorder and to require that all insurers writing accident and sickness policies which are covered by this article or article fifteen of this chapter, and the public employees insurance agency as set forth in article sixteen of chapter five make available this coverage to the policyholder or sponsor of each such policy. For purposes of this section, the public employees insurance agency is the policyholder.

(b) The insurance commissioner shall promulgate rules and regulations regarding the diagnosis and treatment for temporomandibular joint disorder and craniomandibular disorder coverage in accident and sickness policies covered by this article and article fifteen of this chapter. Such regulations shall prescribe the manner by which such coverage shall be offered to the policyholder or sponsor; that benefits shall apply whether administered by a physician or dentist, and findings regarding the projected actuarial costs of implementing said regulations.
(c) The regulations shall be developed by the insurance commissioner with the advice of a six-member panel to be appointed by the commissioner. Such panel shall consist of a general practicing dentist who shall be recommended by the West Virginia Dental Association, an oral and maxillofacial surgeon who shall be recommended by the West Virginia Society for Oral and Maxillofacial Dentists, a physician who shall be recommended by the West Virginia State Medical Association, a member from a Health Services Corporation who shall be recommended by the Health Services Corporation in this state, a member representing commercial health insurers who shall be recommended by the association representing accident and sickness insurance, and a representative of the Public Employees Insurance Association.

The insurance commissioner shall make his appointments to the panel based solely upon said recommendations thirty days after this section takes effect.

(d) This section shall only apply to policies of insurance which provide hospital, surgical or major medical expense insurance or any combination of these coverages.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

*§33-24-4. Exemptions; applicability of other laws.*

Every such corporation is hereby declared to be a scientific, nonprofit institution and as such exempt from the payment of all property and other taxes. Every such corporation, to the same extent such provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions, as hereinbelow indicated, of the following articles of this chapter: Article two (insurance commissioner) except that under section nine of article two

*Clerk's Note: This section was also amended by H. B. 2526, which passed April 4, 1989, and H. B. 2588, which passed subsequent to this act.*
examinations shall be conducted at least once every four years, article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article ten (rehabilitation and liquidation), article eleven (unfair practices and frauds), article twelve (agents, brokers and solicitors) except that the agent's license fee shall be five dollars, section three-c, article sixteen (group accident and sickness insurance), section three-d, article sixteen (medicare supplement), article sixteen, section three-f, (treatment of temporo-mandibular joint disorder and craniomandibular disorder), and article twenty-eight (individual accident and sickness insurance minimum standards); and no other provision of this chapter shall apply to such corporations unless specifically made applicable by the provisions of this article. If, however, any such corporation shall be converted into a corporation organized for a pecuniary profit, or if it shall transact business without having obtained a license as required by section five of this article, it shall thereupon forfeit its right to these exemptions.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(1) Except as otherwise provided in this article, provisions of the insurance law and provisions of hospital or medical service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this article. This provision shall not apply to an insurer or hospital or medical service corporation licensed and regulated pursuant to the insurance laws or the hospital or medical service corporation laws of this state except with respect to its health maintenance corporation activities authorized and regulated pursuant to this article.

(2) Factually accurate advertising or solicitation regarding the range of services provided, the premiums

* Clerk's Note: This section was also amended by H. B. 2526, which passed prior to this act.
and copayments charged, the sites of services and hours
of operation, and any other quantifiable, nonprofessional
aspects of its operation by a health maintenance
organization granted a certificate of authority, or its
representative shall not be construed to violate any
provision of law relating to solicitation or advertising by
health professions: *Provided,* That nothing contained
herein shall be construed as authorizing any solicitation
or advertising which identifies or refers to any individ-
ual provider, or makes any qualitative judgment
concerning any provider.

(3) Any health maintenance organization authorized
under this article shall not be deemed to be practicing
medicine and shall be exempt from the provision of
chapter thirty of this code, relating to the practice of
medicine.

(4) The provisions of section three-f of article sixteen
of this chapter concerning treatment of temporomandib-
ular disorder and craniomandibular disorder shall be
applicable to any health maintenance organization
granted a certificate of authority under this article.

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CHAPTER 103

(H. B. 2391—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

[Passed April 5, 1989; in effect ninety days from passage. Approved by the Governor.]}

AN ACT to amend chapter thirty-three of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new article, designated
article sixteen-b, relating to providing for a mechanism
for approval or disapproval of premium rate charges for
accident and sickness insurance policies; exceptions.

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

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

ARTICLE 16B. ACCIDENT AND SICKNESS RATES.

§33-16B-1. Filing and approval of accident and sickness rates.
§33-16B-2. Ratemaking standards.
§33-16B-3. Exceptions.

§33-16B-1. Filing and approval of accident and sickness rates.

1 Premium rate charges for any individual accident and
2 sickness insurance policy or for any group accident and
3 sickness insurance policy issued pursuant to this chapter
4 shall be filed with the commissioner for a waiting period
5 of sixty days before such charges become effective. At
6 the expiration of such sixty days the premium rate
7 charges so filed shall be deemed approved unless prior
8 thereto the charges have been affirmatively approved or
9 disapproved by the commissioner.

10 The commissioner shall disapprove accident and
11 health insurance premium rates which are not in
12 compliance with the requirements of this chapter or any
13 rule promulgated by the commissioner pursuant to
14 section two of this article. The commissioner shall send
15 written notice of such disapproval to the insurer. The
16 commissioner may approve the premium rates before
17 the sixty-day period expires by giving written notice of
18 approval.

§33-16B-2. Ratemaking standards.

1 Premium rates charged for any individual accident
2 and health insurance policy or for any group accident
3 and health insurance policy issued pursuant to this
4 chapter shall be reasonable in relation to the benefits
5 available under the policy. The commissioner shall
6 promulgate rules pursuant to chapter twenty-nine-a to
7 establish minimum ratemaking standards in accordance
8 with accepted actuarial principles and practices.

§33-16B-3. Exceptions.

1 This article shall not apply to group accident and
2 health insurance plans upon which premiums are
3 negotiated with the individual policyholder and are
4 based on the historic and projected loss experience of the
5 group to be insured.

CHAPTER 104
(S. B. 296—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twenty-a,
chapter thirty-three of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to providing that insurers and not insureds be charged
with a deficit incurred by the West Virginia essential
insurance association as the result of loss due to any rate
plan pursuant to the plan of operation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20A. WEST VIRGINIA ESSENTIAL INSURANCE COVERAGE ACT.

§33-20A-5. General powers.

1 (a) The association has, for purposes of this article and
to the extent approved by the commissioner, the general
powers and authority granted under the laws of this
state to insurers licensed to transact the kinds of
insurance as defined in chapter thirty-three, article one
of this code.

7 (b) The association may take any necessary action to
make available necessary insurance including, but not
limited to, the following:

10 (1) Assess participating insurers amounts necessary
to pay the obligations of the association, administration
expenses, the cost of examinations and other expenses
authorized under this article. The assessment of each
member insurer for the kind or kinds of insurance
designated in the plan shall be in the proportion that
the net direct written premiums of the member insurer
for the preceding calendar year bear to the net direct
written premiums of all members for the preceding
calendar year. A member insurer may not be assessed
in any year an amount greater than five percent of his
net direct written premiums for the preceding calendar
year. Each member insurer shall be allowed a premium
tax credit at the rate of twenty percent per year for five
successive years following termination of the association.
Each member insurer shall be allowed a premium tax
credit at the rate of twenty percent per year for five
successive years following payment of the assessment by
the member insurer for any deficit in the plan.

(2) Enter into such contracts as are necessary or
proper to carry out the provisions and purposes of the
provisions of this article.

(3) Sue or be sued, including taking legal action
necessary to recover any assessments for, on behalf of,
or against participant insurers.

(4) Investigate claims brought against the fund and
adjust, compromise, settle, and pay covered claims to the
extent of the association's obligation and deny all other
claims. Claims may be processed through the associa-
tion's employees or through one or more member
insurers or other persons designated as servicing
facilities. Designation of a service facility is subject to
the approval of the commissioner, but such designation
may be declined by a member insurer.

(5) Classify risks as may be applicable and equitable.

(6) Establish appropriate rates, rate classifications
and rating adjustments, and file such rates with the
commissioner as may be required. Rates, rating plans
and any provision for recoupment shall be based upon
the association's loss and expense experience and
investment income from unearned premium and loss
reserves. Premium rates, including initial premiums,
shall be on an actuarially sound basis and shall be
calculated to be self-supporting.

(7) Administer any type of reinsurance program for
or on behalf of the association or any participating carriers.

(8) Pool risks among participating carriers.

(9) Issue and market through agents, policies of insurance providing coverage required by this article in its own name or on behalf of participating carriers.

(10) Administer separate pools, separate accounts, or other plans as may be deemed appropriate for separate carriers or groups of carriers.

(11) Invest, reinvest and administer all funds and moneys held by the association.

(12) Borrow funds needed by the association to effect the purposes of this section.

(13) Develop, effectuate and promulgate any loss prevention programs aimed at the best interests of the association and the insured public.

(14) Operate and administer any combination of plans, pools, reinsurance arrangements or other mechanisms as deemed appropriate to best accomplish the fair and equitable operation of the association for the purposes of making available essential insurance coverage.

(15) Provide for the method of recoupment of deficits that may be incurred by any plan pursuant to the plan of operation. In no event shall a deficit incurred by the association be charged directly or indirectly to any person other than insurers under its fire and extended coverage or essential insurance policy. The provisions of article seventeen, section nine of this chapter shall not apply to this article.

CHAPTER 105

(Com. Sub. for H. B. 2286—By Delegate Ashcraft)

[Passed April 7, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact sections two and thirty-three, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, relating to requiring fraternal benefit societies to adhere to the provisions of article twelve of chapter thirty-three which deals with agents, brokers, solicitors and excess lines; and to requiring agents of such societies to be licensed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-2. Other provisions of chapter applicable.


*§33-23-2. Other provisions of chapter applicable.

1 Every fraternal benefit society shall be governed and be subject, to the same extent as other insurers transacting like kinds of insurance, to the following articles of this chapter: Article one (definitions); article two (insurance commissioner); article four (general provisions); article ten (rehabilitation and liquidation); article eleven (unfair trade practices); article twelve (agents, brokers, solicitors and excess lines); and article thirteen (life insurance).


1 Commencing on the first day of June, one thousand nine hundred eighty-nine, agents for fraternal benefit societies shall be required to be licensed pursuant to chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended: Provided, That any person who was acting as or serving in the role of an agent for a fraternal benefit society on or before the first day of July, one thousand nine hundred eighty-nine, shall be exempt from the examination requirement of subsection (e), section two, article twelve of this chapter: Provided, however, That any person who is a salaried officer, employee or member of a fraternal benefit society and who as an occasional

* Clerk's Note: This section was also amended by H. B. 2526 which passed prior to this act and by H. B. 2588, which passed subsequent to it.
and incidental duty of such position may solicit a
fraternal insurance contract from a member of such
fraternal benefit society such person shall be exempt
from the continuing education requirements otherwise
made subject to insurance agents by this chapter and
the examination requirements of subsection (e), section
two, article twelve of this chapter if such person receives
no commission or other compensation based directly on
such solicitation of fraternal insurance contracts and if
such person makes no solicitation of insurance of any
kind to or from persons who are not members of such
fraternal benefit society. For the purpose of this article
the solicitation of a fraternal insurance contract by such
salaried officer, employee, or member from a new
member of such society simultaneously with such new
member's joining such society shall be deemed the
solicitation of a member.

CHAPTER 106
(S. B. 621—Originating in the Committee on Small Business)

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

AN ACT to amend and reenact sections one, two, five and
seven, article one-a, chapter twelve of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended; to amend and reenact sections three, four, six,
ten and fifteen, article six of said chapter twelve; to
further amend said article by adding thereto a new
section, designated section nine-c; and to amend and
reenact section four, article twenty-two-d, chapter
eighteen of said code, all relating to the linked deposit
program and to the West Virginia state board of
investments; providing definition of director;
recognizing importance of involving state treasurer and
director of governor's office of community and industrial
development in linked deposit program to maximize
impact of program; requiring director's approval of all
linked deposit loan packages; providing that state, state
treasurer and director not liable to any lending institu-
tion for payment of principal and interest on loans; expanding the membership of the West Virginia state board of investments; providing for appointment of members to the board by the governor; the qualifications for appointed members; the term of office for appointed members; providing for a support staff for the board; the compensation for said staff; the creation of a special revenue account; allowing the board to make a charge against the earnings of the funds managed by the board; providing for yearly appropriations by the Legislature, and yearly reports to the Legislature by the board with respect to the status of the special revenue account; providing that any excess in the special revenue account after appropriations be disbursed to fund participants on a pro-rata basis; to authorize the participation of various entities in an investment company or investment trust registered under 15 U.S.C. §80a; providing for semiannual internal audits and annual external audits; and to limit linked deposits as provided for in section four, article twenty-two-d, chapter eighteen of the code of West Virginia, to two million dollars annually and in an aggregate amount of twenty million dollars.

Be it enacted by the Legislature of West Virginia:

That sections one, two, five and seven, article one-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three, four, six, ten and fifteen, article six of said chapter twelve be amended and reenacted; that said article six be further amended by adding thereto a new section, designated section nine-c; and that section four, article twenty-two-d, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter
18. Education.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article
1A. Linked Deposit Program.
6. West Virginia State Board of Investments.
ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.

§12-1A-2. Legislative findings.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

§12-1A-7. Liability of state, state treasurer and director.

§12-1A-1. Definitions.

(a) "Director" means the director of the governor's office of community and industrial development.

(b) "Eligible small business" means any business which employs two hundred or less employees or has gross annual receipts of four million dollars or less.

(c) "Eligible lending institution" means a financial institution that is eligible to make commercial loans, is a public depository of state funds and agrees to participate in the linked deposit program.

(d) "Linked deposit" means a certificate of deposit placed by the state treasurer with an eligible lending institution at up to three percent below current market rates, as determined and calculated by the state treasurer, provided the institution agrees to lend the value of such deposit, according to the deposit agreement provided for by this article, to eligible small businesses at three percent below the present borrowing rate applicable to each specific business at the time of the deposit of state funds in the institution.

§12-1A-2. Legislative findings.

The Legislature finds that many small businesses throughout the state are experiencing economic stagnation or decline, that high interest rates have caused small businesses in this state to suffer disproportionately in profitability and competition and that such high interest rates have fostered a serious increase in unemployment. The linked deposit program provided for by this article is intended to provide a statewide availability of lower cost funds for lending purposes that will materially contribute to the economic revitalization of this state. Accordingly, it is declared to be the public policy of the state through the linked deposit program to create an availability of lower-cost funds to inject
needed capital into the business community, sustain or improve business profitability, protect the jobs of citizens of this state and assist businesses located in any county declared to be a federal disaster area by the Federal Emergency Management Agency. The Legislature further finds that the involvement of both the state treasurer and the director in determining which businesses will receive the benefits of the linked deposit program is necessary in order for state funds to be used in the most effective manner possible in assisting small businesses throughout the state and thereby maximizing the impact of the program.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

(a) The state treasurer may accept or reject a linked deposit loan package or any portion thereof, based on the ratio of state funds to be deposited to jobs sustained or created: Provided, That notwithstanding any provision of this article to the contrary, the state treasurer may not accept any linked deposit loan package or any portion thereof unless the same has been reviewed and approved by the director in his sole discretion.

(b) The state treasurer shall reject any linked deposit loan package if the small business requesting such loan is not in good standing with the state tax department, department of employment security and the workers' compensation fund, and these agencies shall provide the state treasurer with such information as to the standing of each small business loan applicant, notwithstanding any provision of this code to the contrary.

(c) Any linked deposit loan package that is being made to refinance an existing debt, or any portion thereof, must meet one of the following criteria:

(1) The small business can demonstrate in good faith that it is experiencing a substantial loss in its current (fiscal or calendar) tax year period;

(2) The small business recently experienced a natural disaster and suffered unreimbursable casualty losses;

(3) The small business has filed to recover under the
Federal Bankruptcy Act and meets the criteria in (1) above; or

(4) The small business can provide compelling information to the state treasurer that jobs will be saved and/or created as a result of loan refinancing.

(d) Upon acceptance of the linked deposit loan package or any portion thereof by the state treasurer and the director, the state treasurer may place certificates of deposit with the eligible lending institution at three percent below current market rates, as determined and calculated by the state treasurer. Upon acceptance of the linked deposit loan package for flood victims or any portion thereof, the state treasurer may place certificates of deposit with the eligible lending institution at five percent below current market rates, as determined and calculated by the state treasurer. When necessary, the treasurer may place certificates of deposit prior to acceptance of a linked deposit loan package.

(e) The eligible lending institution shall enter into a deposit agreement with the state treasurer, which shall include requirements necessary to carry out the purposes of this article. Such requirements shall reflect the market conditions prevailing in the eligible lending institution’s lending area. The agreement may include a specification of the period of time in which the lending institution is to lend funds upon the placement of a linked deposit and shall include provisions for the certificates of deposit to be placed for up to two-year maturities that may be renewed for up to an additional two years. Interest shall be paid at the times determined by the state treasurer.

§12-1A-7. Liability of state, state treasurer and director.

The state, the state treasurer and the director are not liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible small business. Any delay in payment or default on the part of an eligible small business does not in any manner affect the deposit agreement between the eligible lending institution and the state treasurer.
ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-3. State board of investments continued; body corporate; members; appointment of certain members; qualifications and term of office.

(a) The state board of investments is hereby continued as a body corporate of the state authorized to exercise all of the powers and functions granted to it pursuant to this article. There shall be seven members of the state board of investments. The governor, or his designee, state treasurer and state auditor shall be the members of the board. There shall be four members appointed by the governor: Provided, That no more than three such appointed members may belong to the same political party.

(b) The members appointed by the governor shall be appointed from a list of twelve persons submitted jointly by the governor, the state treasurer, and the state auditor. No more than two names submitted by the governor may be appointed as members to the board. Of the members appointed by the governor, two shall be members of the financial community, one shall be a certified public accountant, and one shall be an attorney with experience in finance and investment matters. Appointments shall be made by the governor with the advice and consent of the Senate.

(c) Appointed members shall serve for a term of six years and may be reappointed at the expiration of their terms. In the event of a vacancy among appointed members, an appointment shall be made to fill the unexpired term.

(d) Appointed members of the board shall serve without compensation, but shall be entitled to their reasonable and necessary expenses actually incurred in discharging their duties under this article.
§12-6-4. Officers; organization; surety bonds for members and employees.

(a) The governor shall be the chairman and the custodian of all funds, securities and assets held by the board and the board shall elect an executive secretary to serve for a term of six years, such election to be held at the board's first meeting after the effective date of this article. The office of the state treasurer shall act as a depository for all funds that may, from time to time, from whatever source, be made available to the board for investment. The office of the state treasurer shall act as staff agency for the board.

(b) The board shall meet quarterly and may include in its bylaws procedures for the calling and holding of additional meetings.

(c) Each member of the board shall give a separate and additional fidelity bond from a surety company qualified to do business within this state in a penalty amount of two hundred fifty thousand dollars for the faithful performance of his duties as a member of the board. In addition, the board will purchase a blanket bond for the faithful performance of its duties in the amount of five million dollars in excess of the two hundred fifty thousand dollar individual bond required of each member by the provisions of this section. The board may require a fidelity bond from a surety company qualified to do business in this state for any person who has charge of, or access to, any securities, funds or other moneys held by the board, and the amount of such fidelity bond shall be fixed by the board. The premiums payable on all fidelity bonds shall be an expense of the board.

§12-6-6. Costs and expenses; fees for services.

(a) The board shall make a charge against the earnings of the various funds managed by the board for all necessary expenses of the board. Such charge shall be on a pro-rata basis of actual earnings of the various funds managed by the board. Such charge shall be payable into a special revenue account hereby created in the state treasury and named the “board management
The board is authorized to expend the moneys deposited in this account for all costs and expenses of the board, including fees of professional consultants, advisors and auditors, brokerage commissions, and all other necessary expenses of the board incurred in the performance of its functions: Provided, That during any fiscal year in which the board anticipates spending any money from the special account, it shall submit to the executive department during the budget preparation period prior to the Legislature convening, before that fiscal year for inclusion in the executive budget document and budget bill, the request for appropriations: Provided, however, That no funds may be expended from this account unless appropriated by the Legislature.

(b) The board shall make an annual report to the Legislature on the status of the board management account, including the previous year's expenditures and projected expenditures for the next year. Any amounts remaining in the special account after yearly appropriations by the Legislature shall be distributed on a pro-rata basis, taking into account average daily balances, to the participants of the various funds managed by the board.

§12-6-9c. Authorization of additional investments.

Notwithstanding the restrictions which may otherwise be provided by law with respect to the investment of funds, each board, commission, department, official or agency charged with the administration of state funds, all administrators, custodians or trustees of pension funds, each political subdivision of this state and each county board of education is authorized to invest funds in the securities of or any other interest in any investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. §80a, the portfolio of which is limited to direct obligations of or obligations guaranteed as to the payment of both principal and interest by the United States of America and to repurchase agreements fully collateralized by United States Government obligations: Provided, That the investment company or investment trust takes
delivery of the collateral either directly or through an authorized custodian.

§12-6-10. Restrictions on investments.

Moneys on deposit in the consolidated fund and the consolidated pension fund shall be invested as permitted by section nine of this article subject to the restrictions and conditions contained in this section:

(1) At no time shall more than seventy-five percent of the portfolio of either fund be invested in securities described in subdivision (g) of said section nine;

(2) At no time shall more than twenty percent of the portfolio of either fund be invested in securities described in said subdivision (g) which mature within one year from the date of issuance thereof;

(3) At no time shall more than three percent of the portfolio of either fund be invested in securities issued by a single private corporation or association.

For the purpose of making the computations required by this section, securities shall be valued in accordance with generally accepted accounting principles.

§12-6-15. Audits.

There shall be a continuous postaudit conducted by the legislative auditor of the investment transactions of the board, and a copy thereof for the preceding calendar year shall be furnished to each member of the Legislature on or before the first day of February of each year. The board shall further cause to be conducted a semiannual internal audit of all investment transactions of the board and an annual external audit of all investment transactions of the board: Provided, That the board shall on a monthly basis provide to each political subdivision, state agency and any other entity investing moneys in the consolidated investment fund an itemized account reflecting the portfolio value of each said political subdivision, state agency and any other entities' investments in the consolidated investment fund. The board shall further provide a monthly statement reflecting the interest earned by each said political
subdivision, state agency or other investing entity and
the method by which said interest has been calculated.

CHAPTER 18. EDUCATION.

ARTICLE 22D. HIGHER EDUCATION STUDENT ASSISTANCE
LOAN PROGRAM.

§18-22D-4. Limitations on investment in linked deposits.

The state treasurer shall invest in linked deposits as
identified by the board through an approved applica-
tion, provided that at the time of placement of the linked
deposit, exclusive of the linked deposit program pro-
vided for in article one-a, chapter twelve of this code,
not more than two percent of the state's total investment
portfolio is so invested. The total amount initially
deposited in any one year shall not exceed two million
dollars, and the total amount so deposited at any one
time shall not exceed, in the aggregate, twenty million
dollars.

CHAPTER 107
(H. B. 2236—By Delegates Moore and Reid)

[Passed March 3, 1989; in effect from passage. Approved by the Governor.]
the person affected thereby and the time within which such orders are to be served; providing for judicial review of orders and the venue of such appeals; the time within which such appeals must be taken and certain bonding and other requirements with respect thereto; prohibiting the threatening of or interfering with person authorized to enforce the provision of these sections; and providing penalties for violations.

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

That sections fourteen and fifteen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 5. WAGE PAYMENT AND COLLECTION.**


§21-5-15. Violations; cease and desist orders and appeals therefrom; criminal penalties.


1  (a) *Bond required.*—With the exception of those who have been doing business in this state actively and actually engaged in construction work, or the severance, production or transportation of minerals for at least five consecutive years next preceding the posting of the bond required by this section, every employer, person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation (excluding railroads and water transporters) of minerals, shall, prior to engaging in any construction work, or the severance, production or transportation of minerals, furnish a bond on a form prescribed by the commissioner, payable to the state of West Virginia, with the condition that the person, firm or corporation pay the wages and fringe benefits of his or its employees when due. The amount of the bond shall be equal to the total of the employer's gross payroll for four weeks at full capacity or production, plus fifteen percent of the said total of employer's gross payroll for four weeks at full capacity or production. The amount of the bond shall increase or decrease as the employer's payroll increases or decreases: *Provided,* That the
amount of the bond shall not be decreased, except with
the commissioner's approval and determination that
there are not outstanding claims against the bond.

(b) Waiver.—The commissioner shall waive the post-
ing of any bond required by subsection (a) of this section
upon his determination that an employer is of sufficient
financial responsibility to pay wages and fringe benefits.
The commissioner shall promulgate rules and regula-
tions according to the provisions of chapter twenty-nine-
a of this code which prescribe standards for the
granting of such waivers.

(c) Form of bond; filing in office of circuit clerk.—The
bond may include, with the approval of the commis-
sioner, surety bonding, collateral bonding (including
cash and securities), letters of credit, establishment of
an escrow account or a combination of these methods.
The commissioner shall accept an irrevocable letter of
credit in lieu of any other bonding requirement. If
collateral bonding is used, the employer may deposit
cash, or collateral securities or certificates as follows:
Bonds of the United States or its possessions, or of the
federal land bank, or of the homeowner's loan corpora-
tion; full faith and credit general obligation bonds of the
state of West Virginia or other states, and of any county,
district or municipality of the state of West Virginia or
other states; or certificates of deposit in a bank in this
state, which certificates shall be in favor of the state.
The cash deposit or market value of such securities or
certificates shall be equal to or greater than the sum of
the bond. The commissioner shall, upon receipt of any
such deposit of cash, securities or certificates, promptly
place the same with the state treasurer whose duty it
shall be to receive and hold the same in the name of the
state in trust for the purpose for which such deposit is
made. The employer making the deposit shall be entitled
from time to time to receive from the state treasurer,
upon the written approval of the commissioner, the
whole or any portion of any cash, securities or certifi-
cates so deposited, upon depositing with him in lieu
thereof, cash or other securities or certificates of the
classes herein specified having value equal to or greater
than the sum of the bond. The commissioner shall cause a copy of the bond to be filed in the office of the clerk of the county commission of the county wherein the person, firm or corporation is doing business to be available for public inspection.

(d) Employee cause of action.—Notwithstanding any other provision in this article, any employee, whose wages and fringe benefits are secured by the bond, as specified in subsection (c) of this section, has a direct cause of action against the bond for wages and fringe benefits that are due and unpaid.

(e) Action of commissioner.—Any employee having wages and fringe benefits unpaid, may inform the commissioner of the claim for unpaid wages and fringe benefits and request certification thereof. If the commissioner, upon notice to the employer and investigation, finds that such wages and fringe benefits or a portion thereof are unpaid, he shall make demand of such employer for the payment of such wages and fringe benefits. If payment for such wages and fringe benefits is not forthcoming within the time specified by the commissioner, not to exceed thirty days, the commissioner shall certify such claim or portion thereof, and forward the certification to the bonding company or the state treasurer, who shall provide payment to the affected employee within fourteen days of receipt of such certification. The bonding company, or any person, firm or corporation posting a bond, thereafter shall have the right to proceed against a defaulting employer for that part of the claim the employee paid. The procedure specified herein shall not be construed to preclude other actions by the commissioner or employee to seek enforcement of the provisions of this article by any civil proceedings for the payment of wages and fringe benefits or by criminal proceedings as may be deemed appropriate.

(f) Posting and reporting by employer.—With the exception of those exempt under subsection (a) of this section, any employer who is engaged in construction work or the severance, production or transportation (excluding railroad and water transporters) of minerals
shall post the following in a place accessible to his or its employees:

1. A copy of the bond or other evidence of surety specifying the number of employees covered as provided under subsection (a) of this section, or notification that the posting of a bond has been waived by the commissioner; and

2. A copy of the notice in the form prescribed by the commissioner regarding the duties of employers under this section. During the first two years that any person, firm or corporation is doing business in this state in construction work, or in the severance, production or transportation of minerals, such person, firm or corporation shall on or before the first day of February, May, August and November of each calendar year file with the department a verified statement of the number of employees, or a copy of the quarterly report filed with the department of employment security showing the accurate number of employees, unless the commissioner waives the filing of the report upon his determination that the person, firm or corporation is of sufficient stability that the reporting is unnecessary.

(g) Termination of bond.—The bond may be terminated, with the approval of the commissioner, after an employer submits a statement, under oath or affirmation lawfully administered, to the commissioner that the following has occurred: The employer has ceased doing business and all wages and fringe benefits have been paid, or the employer has been doing business in this state for at least five consecutive years and has paid all wages and fringe benefits. The approval of the commissioner will be granted only after the commissioner has determined that the wages and fringe benefits of all employees have been paid. The bond may also be terminated upon a determination by the commissioner that an employer is of sufficient financial responsibility to pay wages and fringe benefits.

§21-5-15. Violations; cease and desist orders and appeals therefrom; criminal penalties.

1. Any person, firm or corporation who knowingly
and willfully fails to provide and maintain an adequate
bond as required by section fourteen of this article is
guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not less than two hundred dollars nor
more than five thousand dollars, or imprisoned in the
county jail not more than one month, or both fined and
imprisoned.

(b) Any person, firm or corporation who knowingly,
willfully and fraudulently disposes of or relocates assets
with intent to deprive employees of their wages and
fringe benefits is guilty of a felony, and, upon conviction
thereof, shall be fined not less than five thousand dollars
nor more than thirty thousand dollars, or imprisoned in
the penitentiary not less than one nor more than three
years, or both fined and imprisoned.

(c) (1) At any time the commissioner determines that
a person, firm or corporation has not provided or
maintained an adequate bond, as required by section
fourteen of this article, the commissioner shall issue a
cease and desist order which is to be issued and posted
requiring that said person, firm or corporation either
post an adequate bond or cease further operations in this
state within a period specified by the commissioner;
which period shall be not less than five nor more than
fourteen days. The cease and desist order may be issued
by the commissioner at his own instance or at his
direction, with or without application to or the approval
of any other officer, agent, department or employee of
the state or application to any court for approval thereof.
Any person, firm or corporation who continues to
engage in construction work or the severance, produc-
tion or transportation of minerals without an approved
bond after such specified period shall be guilty of a
felony, and, upon conviction thereof, shall be fined not
less than five thousand dollars nor more than thirty
county jail not more than one nor more than three years, or both fined
and imprisoned. Any cease and desist order issued by
the commissioner pursuant to this subsection may be
directed by the commissioner to the sheriff of the county
wherein the business activity of which the order is the
subject, or to any officer or employee of the department, commanding such sheriff, officer or employee to serve such order upon the business in question within seventy-two hours and to make proper return thereof.

(2) Any other provision of law to the contrary notwithstanding, any person against whom a cease and desist order has been directed shall be entitled to judicial review thereof by filing a verified petition taking an appeal therefrom within fifteen days from the date of service of such order. Such verified petition shall be filed in the circuit court of the county wherein service of the order was completed, at the option of the petitioner, or, in the circuit court of Kanawha County, West Virginia. If the appeal is not perfected within such fifteen day period, the cease and desist order shall be final and shall not thereafter be subject to judicial review. No appeal shall be deemed to have been perfected except upon the filing with the clerk of the circuit court of the county wherein the appeal is taken, of a bond or other security to be approved by the court, in an amount of not less than the amount of the bond otherwise required to be posted under the provisions of section fourteen of this article. The person so filing a petition of appeal shall cause a copy of the petition and bond or other posted security to be served upon the commissioner by certified mail, return receipt requested, within seven days after the date upon which the petition for appeal is filed.

(d) Any person who threatens any officer, agent or employee of the department or other person authorized to assist the commissioner in the performance of his duties under any provision of section fourteen of this article or of this section or who shall interfere with or attempt to prevent any such officer, agent, employee or other person in the performance of such duties shall be guilty of a felony, and, upon conviction thereof, shall be fined in an amount of not less than one thousand dollars nor more than three thousand dollars or imprisoned in the penitentiary not less than one nor more than three years, or both such fine and imprisonment.
AN ACT to amend and reenact section seventeen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article five by adding thereto a new section, designated section eighteen, relating to prohibiting employers from discharging employees for time lost by volunteer firemen in performing emergency services in connection with hazardous and toxic materials spills and cleanups; and prohibiting employers from discharging employees for time lost as emergency medical service personnel.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article five be further amended by adding thereto a new section, designated section eighteen, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen.

§21-5-18. Employers prohibited from discharging employees for time lost as emergency medical service personnel.

§21-5-17. Employers prohibited from discharging employees for time lost as volunteer firemen.

1 No employer may terminate an employee who is a member of a volunteer fire department and who, in the line of emergency duty as a volunteer fireman, responds to an emergency call prior to the time he is due to report for work and which emergency results in a loss of time from his employment.
Any time lost from employment as provided in this section may be charged against the employee’s regular pay.

At the request of an employer, any employee losing time as provided herein shall supply his employer with a statement from the chief of the volunteer fire department stating that the employee responded to an emergency call and the time thereof.

As used in this section, “emergency” shall mean going to, attending to or coming from (1) an actual fire call to prevent the imminent loss of life or property, or (2) a hazardous or toxic materials spill and cleanup. The term “employer” includes any individual, partnership, association, corporation, business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to any employee.

Any employer who willfully and knowingly violates the provisions of this section shall be required to reinstate such employee to his former position and shall be required to pay such employee all lost wages and benefits for the period between termination and reinstatement. Any action to enforce the provisions of this section shall be commenced within a period of one year after the date of violation and such action shall be commenced in the circuit court of the county wherein the place of employment is located.

§21-5-18. Employers prohibited from discharging employees for time lost as emergency medical service personnel.

No employer may terminate an employee who is a member of an emergency medical service and who, in the line of emergency duty as an emergency medical service member, responds to an emergency call prior to the time he is due to report for work and which emergency results in a loss of time from his employment.

Any time lost from employment as provided in this section may be charged against the employee’s regular pay.
At the request of an employer, any employee losing time as provided herein shall supply his employer with a statement from the director of health stating that the employee responded to an emergency call and the time thereof.

As used in this section, “emergency” shall mean going to or coming from an actual medical emergency to prevent the imminent loss of life. The term “employer” includes any individual, partnership, association, corporation, business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to any employee.

Any employer who willfully and knowingly violates the provisions of this section shall be required to reinstate such employee to his former position and shall be required to pay such employee all lost wages and benefits for the period between termination and reinstatement. Any action to enforce the provisions of this section shall be commenced within a period of one year after the date of violation and such action shall be commenced in the circuit court of the county wherein the place of employment is located.

CHAPTER 109
(Com. Sub. for S. B. 251—By Senator Pritt)

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

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-d, relating to parental leave generally; legislative findings; definitions; scope; position upon return from leave; seniority and employment benefits; and notice.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5D. THE PARENTAL LEAVE ACT.

§21-5D-1. Legislative findings.
§21-5D-4. Family leave.
§21-5D-5. Certification.
§21-5D-6. Position upon return from leave.
§21-5D-7. Seniority and employment benefits.

§21-5D-1. Legislative findings.
1 The Legislature hereby finds that there is a growing crisis in this country and state affecting the stability of our families, that the family unit is being torn apart due to the need for families to have two income producing parents. In order to address this situation and to provide for the love, nurturing and education of our children, the Legislature hereby enacts "The Parental Leave Act."

1 As used in this article:
2 (a) "Commissioner" means the commissioner of the department of labor.
3 (b) "Dependent" means any person who is living with or dependent upon the income of any employee whether related by blood or not.
4 (c) Employee.—
5 (1) "Employee" means any individual, hired for permanent employment, who has worked for at least twelve consecutive weeks performing services for remuneration within this state for any department, division, board, bureau, agency, commission or other unit of state government, or any county board of education in the state.
6 (2) "Employee" does not include:
(A) Individuals employed by persons who are not "employers" as defined by this article;

(B) Elected public officials or the members of their immediate personal staffs;

(C) Principal administrative officers of any department, division, board, bureau, agency, commission or other unit of state government, or any county board of education in the state; or

(D) A person in a vocational rehabilitation facility certified under federal law who has been designated an evaluatee, trainee or work activity client.

(d) "Employer."—"Employer" includes any department, division, board, bureau, agency, commission or other unit of state government and any county board of education in the state.

(e) "Employment benefits" means all benefits, other than salary or wages, provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits and pensions, regardless of whether such benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974.

(f) The term "health care" or "health care services" means clinically related preventive, diagnostic, treatment or rehabilitative services whether provided in the home, office, hospital, clinic or any other suitable place, provided or prescribed by any health care provider or providers. Such services include, among others, drugs and medical supplies, appliances, laboratory, preventive, diagnostic, therapeutic and rehabilitative services, hospital care, nursing home and convalescent care, medical physicians, osteopathic physicians, chiropractic physicians, and such other surgical, dental, nursing, pharmaceutical, and podiatric services and supplies as may be prescribed by such health care providers.

(g) "Health care provider" means a person, partner-
ship, corporation, facility or institution licensed, certified or authorized by law to provide professional health care services in this state to an individual during this individual's medical care, treatment or confinement.

(h) "Parent" means a biological, foster or adoptive parent, a stepparent or a legal guardian.

(i) "Serious health condition" means a physical or mental illness, injury or impairment which involves:

(1) Inpatient care in a hospital, hospice or residential health care facility; or

(2) Continuing treatment, health care or continuing supervision by a health care provider.

(j) "Son" or "daughter" means an individual who is a biological, adopted or foster child, a stepchild or a legal ward, and is (1) under eighteen years of age; or (2) eighteen years of age or older and incapable of self-care because of mental or physical disability.

(k) "Spouse" means any person legally married to an "employee" covered under this article.


Nothing in this article prohibits an employer from providing employees with rights to family leave which are more generous to the employee than the rights provided under this article.

§21-5D-4. Family leave.

(a) An employee shall be entitled to a total of twelve weeks of unpaid family leave, following the exhaustion of all his or her annual and personal leave, during any twelve-month period:

(1) Because of the birth of a son or daughter of the employee;

(2) Because of the placement of a son or daughter with the employee for adoption; or
(3) In order to care for the employee's son, daughter, spouse, parent or dependent who has a serious health condition.

(b) In the case of a son, daughter, spouse, parent or dependent who has a serious health condition, such family leave may be taken intermittently when medically necessary.

(c) An employee may take family leave on a part-time basis and on a part-time leave schedule, but the period during which the number of work weeks of leave may be taken may not exceed twelve consecutive months, and such leave shall be scheduled so as not to disrupt unduly the operations of the employer.

(d) (1) If a leave because of birth or adoption is foreseeable, the employee shall provide the employer with two weeks written notice of such expected birth or adoption.

(2) If a leave under this section is foreseeable because of planned medical treatment or supervision, the employee:

(A) Shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee's son, daughter, parent or dependent; and

(B) Shall provide the employer with two weeks written notice of the treatment or supervision.

(e) This article shall not be construed as granting an employee the family leave rights provided in this section if he or she is entitled to such family leave rights under any other provision of this code.

§21-5D-5. Certification.

(a) If an employee requests family leave to care for a family member with a serious health condition as authorized in this article, the employer may require the employee to provide certification by a health care provider of the health condition.
(b) The certification shall be sufficient if it contains the following:

1. That the child, dependent, parent or employee has a serious health condition;
2. The date the serious health condition commenced and its probable duration; and
3. The medical facts regarding the serious health condition.

§21-5D-6. Position upon return from leave.

(a) The position held by the employee immediately before the leave is commenced shall be held upon a period not to exceed the twelve-week period of the parental leave and the employee shall be returned to that position: Provided, That the employer may employ a temporary employee or temporary employees to fill said position for the period of the parental leave.

(b) No employer may, because an employee received family leave or medical leave, reduce or deny any employment benefit or seniority which accrued to the employee before his or her leave commenced.

§21-5D-7. Seniority and employment benefits.

(a) Nothing in this section entitles any returning employee to the accrual of any seniority or employment benefits during any period of family leave.

(b) During any family leave by an employee, the employer shall continue group health insurance coverage for such employee: Provided, That the employee shall pay the employer the premium costs of such group health insurance coverage.


No person may interfere with, restrain or deny the exercise of any right provided under this article.


Each employer shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth an employee's rights under this article.
CHAPTER 110

(H. B. 2853—By Delegate Humphreys)

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

AN ACT to amend and reenact chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legislative authorization of legislative rules proposed by various executive agencies following review by the legislative rule-making review committee and recommended by the legislative rule-making review committee as filed, with modifications as filed, as amended, or as directed and authorized; declaration by the Legislature of legislative rules authorized as complying with the intent of the statute under which the legislative rule was proposed.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 64. LEGISLATIVE RULES.

Article
2. Executive Agency Authorization to Promulgate Legislative Rules.

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.
§64-1-2. Effective date of rules.
§64-1-3. Technical deficiencies waived.

§64-1-1. Legislative authorization.

1 Under the provisions of article three, chapter twenty-nine-a of the code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in article two of this chapter, subject only to the limitations set forth with respect to each such rule in the section or sections of this chapter authorizing its promulgation. The Legislature further declares that all rules now or hereafter authorized under article two of this chapter are within the legislative intent of the
§64-1-2. Effective date of rules.

The effective date of the legislative rules authorized in article two of this chapter shall be governed by the provisions of section thirteen, article three, chapter twenty-nine-a, unless the agency promulgating the rules establishes an effective date which is earlier than that provided by section thirteen, article three, chapter twenty-nine-a, in which case the effective date established by the agency shall control, unless the Legislature in the bill authorizing the rules establishes an effective date for such rules in which case the effective date established by the Legislature shall control.

§64-1-3. Technical deficiencies waived.

The Legislature further declares each legislative rule now or hereafter authorized under article two of this chapter to have been validly promulgated notwithstanding any failure to comply with any requirement of chapter twenty-nine-a for the promulgation of rules at any stage of the promulgation process prior to authorization by the Legislature in article two of this chapter.

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. State board of health; director of health.
§64-2-5. Commissioner of highways.
§64-2-7. Department of natural resources.
§64-2-8. Department of energy.
§64-2-10. Insurance commissioner.
§64-2-12. West Virginia library commission.
§64-2-17. Teachers retirement board.
§64-2-20. Water resources board.
§64-2-25. Secretary of state.
§64-2-26. West Virginia state board of registration for professional engineers.
§64-2-28. State boards of examination or registration; West Virginia board of chiropractic examiners.
§64-2-29. Radiologic technology board of examiners.
§64-2-30. Board of medicine.
§64-2-31. Board of embalmers and funeral directors.
§64-2-32. Board of examiners for registered professional nurses.
§64-2-33. West Virginia board of examiners for licensed practical nurses.
§64-2-34. West Virginia housing development fund.
§64-2-38. Board of risk and insurance management.
§64-2-39. Department of human services; director of the child advocate office.
§64-2-40. Public employees insurance board.
§64-2-41. Employee suggestion award board.
§64-2-42. Commissioner of commerce.
§64-2-43. West Virginia industrial and trade jobs development corporation.
§64-2-44. Alcohol beverage control commission.
§64-2-46. Nursing home administrators licensing board.
§64-2-47. Board of examiners of psychologist.
§64-2-49. State athletic commission.
§64-2-54. Commissioner of the department of corrections.
§64-2-55. Governor's committee on crime, delinquency and corrections.
§64-2-56. Structural barriers compliance board.
§64-2-57. Department of finance and administration.
§64-2-59. Board of barbers and beauticians.

§64-2-1. State board of health; director of health.

(a) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (waste water treatment works operations) are authorized.

(b) The legislative rules filed in the state register on
the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (laboratory reporting of syphilis and gonorrhea) are authorized.

(c) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (public water supply operators) with the modification of §11.02 as presented to the legislative rule-making review committee on the ninth day of November, one thousand nine hundred eighty-two, are authorized.

(d) The legislative rules filed in the state register on the twenty-second day of October, one thousand nine hundred eighty-two, relating to the state board of health (sewage systems) with the modification presented to the legislative rule-making review committee on the sixth day of December, one thousand nine hundred eighty-two, are authorized except lines ten through seventeen, page eight of the rules shall be stricken in their entirety and the remaining paragraphs renumbered.

(e) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (approval of laboratories) are authorized.

(f) The legislative rules filed in the state register on the twenty-fourth day of November, one thousand nine hundred eighty-two, relating to the state board of health (permit fees) are authorized.

(g) The legislative rules filed in the state register on the third day of June, one thousand nine hundred eighty-two, relating to the state board of health (certificate of need) are authorized.

(h) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred eighty-two, relating to the state board of health (eyes of newborn children) are authorized.

(i) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, and filed with amendments on the eleventh
day of January, one thousand nine hundred eighty-three, relating to the state board of health (nursing home licensure), are authorized with the amendment of §5.15.02 of those rules as set forth below:

By striking the word “and” at the end of subdivision (f), by changing the period at the end of subdivision (g) to a semicolon, and by adding the following after subdivision (g): “(h) one (1) member who represents social work services.”

(j) The legislative rules filed in the state register on the twenty-fourth day of November, one thousand nine hundred eighty-two, relating to the state board of health (guardianship service), are authorized with the exception of section 9.3 of those rules which may not be promulgated.

(k) The legislative rules filed in the state register on the third day of June, one thousand nine hundred eighty-two, relating to the state board of health (controlled substances research program and certification) are authorized.

(l) The legislative rules filed in the state register on the fifth day of November, one thousand nine hundred eighty-two, relating to the state board of health (chemical test for intoxication) are authorized.

(m) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the state board of health (birthing center licensure) are authorized.

(n) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-three, relating to the state board of health (licensure of behavioral health centers), are authorized with the amendments set forth below:

Page 45, §12.8.2. In the first sentence delete the words “without delay” and insert in lieu thereof the words “within twenty-four hours after receiving a report of a complaint.”

(o) The legislative rules filed in the state register on
the nineteenth day of December, one thousand nine
hundred eighty-three, relating to the state board of
health (procedures for recovery of corneal tissue for
transplant) are authorized.

(p) The legislative rules filed in the state register on
the seventh day of September, one thousand nine
hundred eighty-three, relating to the state board of
health (well water regulations) are authorized with the
amendments set forth below:

§4.1. In the first sentence delete the word “obtaining”
and insert in lieu thereof the words “applying for.” In
the second sentence after “4.3” add “and 4.5.”

§4.2. At the end of the second sentence, strike the
period and add the words “unless emergency conditions
prevail as noted under §4.3.”

With the balance of §4.2 and create a new §4.3 with
the following changes: In the first sentence delete the
word “deadline” and insert in lieu thereof the word
“requirements.” Add after the first sentence the
sentence, “Emergency conditions and unavoidable
circumstances are those conditions involving acts of God,
water outages or disruption of water service, unsatisfac-
tory water quality or quantity or public health threats.”
In the third sentence delete the word “exceed” and insert
in lieu thereof the words “be made in excess of.”

Renumber §4.3 as §4.4 and add the following two
sentences at the end of the section: “Such standards shall
constitute the minimum standards for the installation,
the alteration or the deepening of water wells. Any plans
approved by the director pursuant to these regulations
shall be in substantial compliance with the heretofore
mentioned standards.”

Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7,
§4.7 as §4.8 and §4.8 as §4.9.

§5.2. Delete the words “four (4)” and insert in lieu
thereof the words “two (2)” and delete the words “active,
continuous.”

(q) The legislative rules filed in the state register on
the third day of October, one thousand nine hundred eighty-four, relating to the state board of health (trauma center or facility designation), are authorized.

(r) The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the state board of health (reportable diseases) are authorized.

(s) The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the state board of health (licensure of medical adult day care centers) are authorized.

(t) The legislative rules filed in the state register on the third day of October, one thousand nine hundred eighty-four, relating to the state board of health (retail food store sanitation) are authorized.

(u) The legislative rules filed in the state register on the seventeenth day of December, one thousand nine hundred eighty-five, modified by the director of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred eighty-six, relating to the director of health (adult group home licensure) are authorized.

(v) The legislative rules filed in the state register on the twenty-ninth day of October, one thousand nine hundred eighty-five, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of December, one thousand nine hundred eighty-five, relating to the state board of health (licensure of hospice care programs) are authorized.

(w) The legislative rules filed in the state register on the thirty-first day of October, one thousand nine hundred eighty-five, modified by the director of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of December, one thousand nine
hundred eighty-five, relating to the director of health
(rules governing emergency medical services) are
authorized with the amendments set forth below:

On page 3, §3.9 shall read as follows:

"3.9 Quorum—When applied to the EMSAC, a major-
ity of the members thereof, except in the instance when
at any meeting of the EMSAC, where a quorum is not
present and the director causes to be deposited in the
United States mail, postage prepaid, return receipt
requested, to each member of the EMSAC within three
days, a notice calling a meeting of the EMSAC at some
convenient place in the state of West Virginia two weeks
after the meeting at which no quorum was present.
Quorum means any number of members of the EMSAC
who attend such subsequent meeting. Any member
missing two consecutive meetings shall be removed from
the EMSAC."

On page 6, §4.7.1 shall be deleted in its entirety, and

On page 7, §4.10.1 shall read as follows:

"4.10.1 every applicant for certification as an EMSP
prior to such certification, shall demonstrate his or her
knowledge and ability by undergoing a written exam-
ination and a demonstration of skills, and by attaining
a passing score on the same. Passing score shall be the
same for all testing programs.

(x) The legislative rules filed in the state register on
the fifth day of September, one thousand nine hundred
eighty-five, relating to the state department of health
(revising the list of hazardous substances) are
authorized.

(y) The legislative rules filed in the state register on
the thirteenth day of August, one thousand nine hundred
eighty-six, modified by the director of the department
of health to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the sixteenth of October, one thousand nine
hundred eighty-six, relating to the director of the
department of health (hazardous material treatment
information repository), are authorized.
(z) The legislative rules filed in the state register on the seventeenth day of July, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of October, one thousand nine hundred eighty-six, relating to the state board of health (methods and standards for chemical tests for intoxication) are authorized.

(aa) The legislative rules filed in the state register on the twenty-first day of November, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine hundred eighty-six, relating to the state board of health (licensure of behavioral health centers), are authorized.

(bb) The legislative rules filed in the state register on the eighteenth day of April, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of October, one thousand nine hundred eighty-six, relating to the state board of health (hospital licensure), are authorized.

(cc) The legislative rules filed in the state register on the ninth day of December, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of December, one thousand nine hundred eighty-six, relating to the state board of health (hospital licensure and allowing hospitals to have licensed hospital professionals, other than licensed physicians, on their medical staff), are authorized.

(dd) The legislative rules filed in the state register on the ninth day of December, one thousand nine hundred eighty-six, modified by the state board of health to meet the objections of the legislative rule-making review
committee and refiled in the state register on the
twenty-third day of December, one thousand nine
hundred eighty-six, relating to the state board of health
(vital statistics), are authorized.

(ее) The legislative rules filed in the state register on
the eleventh day of September, one thousand nine
hundred eighty-seven, relating to the director of the
department of health (immunization criteria for
transfer students) are authorized.

(ff) The legislative rules filed in the state register on
the sixteenth day of November, one thousand nine
hundred eighty-seven, relating to the director of the
department of health (hazardous substances) are auth-
orized with the amendment set forth below:

Page 33, section 8, line 8 (unnumbered) by adding at
the end of section 8 the following proviso: "Provided,
That the owner's or operator's submissions are based on
the threshold reporting requirements contained in
section 5, article 31, chapter 16."

(gg) The legislative rules filed in the state register on
the eighteenth day of November, one thousand nine
hundred eighty-seven, relating to the director of the
department of health (trauma center or facility desig-
nation) are authorized.

(hh) The legislative rules filed in the state register on
the twenty-second day of June, one thousand nine
hundred eighty-eight, modified by the state board of
health to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the fifteenth day of September, one thousand
nine hundred eighty-eight, relating to the state board of
health (licensure of hospice care programs) are
authorized.

(ii) The legislative rules filed in the state register on
the fifteenth day of September, one thousand nine
hundred eighty-eight, modified by the state board of
health to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the third day of November, one thousand
nine hundred eighty-eight, relating to the state board of health (water wells) are authorized with amendment set forth below:

On page 2, §3.8, shall read as follows:

> 3.8 Water Well—Any excavation or penetration in the ground, whether drilled, bored, cored, driven or jetted that enters or passes through an aquifer for purposes that may include but are not limited to: a water supply, exploration for water, dewatering or heat pump wells, except that this definition shall not include ground water monitoring activities and all activities for the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources which are regulated under chapter 22, 22a or 22b of the code.

(jj) The legislative rules filed in the state register on the twenty-second day of June, one thousand nine hundred eighty-eight, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of September, one thousand nine hundred eighty-eight, relating to the state board of health (plumbing requirements) are authorized.

(kk) The legislative rules filed in the state register on the twenty-second day of June, one thousand nine hundred eighty-eight, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of September, one thousand nine hundred eighty-eight, relating to the state board of health (public water supply operators) are authorized.

(ll) The legislative rules filed in the state register on the nineteenth day of October, one thousand nine hundred eighty-eight, modified by the state board of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of December, one thousand nine hundred eighty-eight, relating to the state board of health (volatile synthetic organic chemicals) are authorized.

(a) The legislative rules filed in the state register on the fifth day of January, one thousand nine hundred eighty-four, relating to the state tax commissioner (appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes), are authorized with the amendments set forth below:

Page 8, section 11.04 (b)(2), definition of “Active Mining Property,” at the end of the first paragraph following the “period,” by adding the following: “In the application of the herein provided valuation formula on ‘active mining property,’ the appropriate formula calculation will be based upon the actual market to which the coal from that tract and seam is currently being sold, whether it is ‘metallurgical’ or ‘steam’.”

Page 9, section 11.04 (b)(3), definition of “Active Reserves,” at the end of the subsection, following the “period,” by adding the following: “In the application of the herein provided valuation formula on ‘active reserves,’ the appropriate formula calculation will be based upon the actual market to which the coal from that tract and seam is currently being sold, whether it is ‘metallurgical’ or ‘steam’.”

Page 11, section 11.04 (b)(11), definition of “Mineable Coal,” by striking the subsection and substituting in lieu thereof the following: “(11) Mineable Coal. Coal which can be mined under present day mining technology and economics.”

Page 25, section 11.04 (c)(2)(C), entitled “Property Tax Component,” by striking the subsection and inserting in lieu thereof the following: “(C) Property Tax Component—This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property.”

Page 30, section 11.04 (c)(4), entitled “Valuation of Mined-Out/Unmineable/Barren Coal Properties,” by striking the numbers “$5.00” and inserting in lieu thereof the following: “$1.00.”

Page 31, section 11.04 (c)(5)(B), by striking the words
and numbers “Five Dollars ($5.00)” and inserting in lieu thereof the following: “One Dollar ($1.00).”

Page 53, section 11.05 (h) by striking the symbol and figures “($5.00)” and inserting in lieu the following: “($1.00).”

Page 73, section 11.06 (h) by striking the symbol and figures “$5.00” and inserting in lieu the following: “$1.00.”

Page 81, section 11.07 (e)(15)(B)(4) at the end of the second sentence remove the period after the word “property” and insert the words “unless the land is used for some other purpose in which case it will be taxed according to its actual use.”

Page 86, section 11.07 (k) delete all of subsection (k).

Page 110, section 11.08 (c)(4) by striking the symbol and figures “$5.00” and inserting in lieu thereof the following: “$1.00.”

Page 111, section 11.08 (c)(5)(B) by striking the symbol and figures “$5.00” and inserting in lieu thereof the following: “$1.00.”

Page 115, section 11.09 (a)(3) in the first sentence, insert after the word “land” the words “excluding farm land.”

(b) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-four, relating to the state tax commissioner (estimated personal income tax), are authorized with the amendments set forth below:

55.02(a)(2)(on page 182.2) line 18, after the word “profession” strike the words “on his own account” and the comma(.)

55.12(b)(1)(page 182.35) at the end of the section, change the period to a comma, and add the following language: “and in the case of a court appointed agent, a copy of the court order of appointment is sufficient.”

55.12(c)(page 182.36) after the word “for,” strike the word “erroneous.”
(c) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-four, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of November, one thousand nine hundred eighty-four, and on the twenty-first day of March, one thousand nine hundred eighty-five, relating to the state tax commissioner (estimated corporation net income tax), are authorized.

(d) The legislative rules filed in the state register on the twelfth day of March, one thousand nine hundred eighty-five, relating to the state tax commissioner (identification and appraisal of farmland subsequent to the base year of statewide reappraisal) are authorized and directed to be promulgated with the following amendments:

Title page, Subject; following the word “Farmland,” insert the words “and of Structures Situated Thereon.”

Page i, Subject; following the word “Farmland,” insert the words “and of Structures Situated Thereon.”

Page i, TABLE OF CONTENTS, Section 10; following the words “Valuation of Farmland” add the words “and of Structures Situated Thereon.”

Page 10.1, Title; following the word “FARMLAND” insert the words “AND STRUCTURES SITUATED THEREON.”

Page 10.1, Section 10, Title; following the word “Farmland” add the words “and Structures Situated Thereon.”

Page 10.1, Section 10.01(b); following the word “farmland” insert the words “and structures situated thereon.”

Page 10.2, Section 10.02(a), first sentence; following the word “farmland” insert the words “and structures situated thereon.”

Page 10.3, Section 10.02(b), first sentence; following the word “farmland” insert the words “and structures
situated thereon.” Delete the words “for purposes of the statewide reappraisal.”

Page 10.3, Section 10.02(b), last sentence; following the word “farmland” insert the words “and structures situated thereon.”

Page 10.8, Section 10.04(5)(B), last sentence; delete the period and add “or the incapability to be adapted to alternative uses.”

Page 10.9, Section 10.04(6), first sentence; following the words “land currently being used” insert the words “as part of a farming operation.”

Page 10.9, Section 10.04(6), following the last sentence; add the sentence “For the purposes of this definition, ‘contiguous tracts’ are farmlands which are in close proximity, but not necessarily adjacent: Provided, That all such contiguous tracts are operated as part of the same farm management plan.”

Page 10.10, Section 10.04(8), is amended to read in its entirety as follows:

“(8) Farm buildings.—The term ‘farm buildings’ shall mean structures which directly contribute to the operation of the farm, and shall include tenant houses and quarters furnished farm employees without rent as a part of the terms of their employment.”

Page 10.11, Section 10.04; delete the word “November” and insert in lieu thereof the word “September.” Delete the period following the word “valuation” and add the words “for the assessment year beginning July first of each year.”

Page 10.11, Section 10.04, insert the following subdivision; “(12) Application Form: The application form required to be filed with the assessor on or before September first of each year shall require certification that the farm complies with criteria set forth in Section 10.05(c) of these regulations, and renewal applications from year to year shall be sufficient upon statement certifying that no change has been made in the use of farm property which would disqualify ‘farm use’
classification for assessment purposes.” Renumber the subdivisions of Section 10.04 following the new 10.04(12); formerly 10.04(12) through 10.04(28), to 10.04(13) through 10.04(29) respectively.

Page 10.14, Section 10.04(28) (formerly 10.04(27)); following the words “woodland products” insert a comma and the words “such as nuts or fruits harvested” and add a comma following the words “human consumption” on Page 10.15.

Page 10.16, Section 10.05, subsection (a), following the words “land is used for farm purposes” by striking the period and inserting in lieu thereof a colon and the following: “Provided, That the true and actual value of all farm 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.”

Page 10.16, Section 10.05(b), first clause; following the words “following factors shall be” insert the words “indicative of but not conclusive” and delete the word “considered.”

Page 10.16, Section 10.05(b)(2); delete the period and add the words “such as soil conservation, farmland preservation or federal farm lending agencies.”

Page 10.17, Section 10.05(b)(7); delete the section and insert in lieu thereof the words “(7) Whether or not the farmer practices ‘custom farming’ on the land in question.”

Page 10.17, Section 10.05(b)(9); following the word “type” add a comma and insert the word “utility.”

Page 10.17, Section 10.05(b)(11), first sentence;
following the word "sales" insert the words "for nonfarm uses."

Page 10.17, Section 10.05(b)(12)(A); following the words "part of" insert the words "or appurtenant to."

Page 10.17, Section 10.05(b)(12)(B); following the words "contiguous to" insert the words "or operated in common with."

Page 10.18, Section 10.05, subsection (c), the first sentence of which is amended in its entirety to read as follows: "Qualifying farmland and the structures situated thereon shall be subject to farm use valuation, with primary consideration being given to the income which the property might be expected to earn, in the locality wherein situate, if rented."

Page 10.18, Section 10.05(b)(12)(B); delete the semicolons and the words "it was purchased at the same time as the tract so used." Delete the period following the word "purposes" and add the words "or any nonfarm use."

Page 10.19, Section 10.05(c)(2); following the words "Provided, That no" delete the word "reason" and insert in lieu thereof the words "individual event."

Page 10.20, Section 10.05(c)(4)(C); following the words "(1,000) minimum production value" insert the words "or the small farm five hundred dollars ($500) minimum production and sale."

Page 10.23, Section 10.05(d)(3)(B), third sentence; following the word "If" insert the words "timber from."

Delete the period following the word "purpose" and add the words "or is being converted to farm production uses."

Page 10.26, Section 10.05(f)(2) is amended in its entirety to read as follows:

"(2) Farm buildings.—Rental value of farm buildings and other improvements on the farmland shall be valued by determining the replacement cost of the building or structure by usual farm construction practices, and farm labor standards and subtracting therefrom
Both of these determinations shall be made in accordance with the tax department's real property appraisal manual as filed in the state register in accordance with chapter 29A of the code of West Virginia, 1931, as amended, and as it relates to agricultural buildings and structures. One (1) acre of land shall be assigned to all buildings as a unit situate on the property, regardless of the actual acreage occupied by such buildings and shall be appraised at its farm-use valuation based on the highest class of farmland present on the farm.

Page 10.28, Section 10.05(f)(3)(B)(1); following the words "or more of the" insert the word "usual."

Page 10.28, Section 10.05(f)(3)(B)(2); following the words "(50%) of the" insert the word "usual."

Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the words "(50%) or more of the" insert the word "usual."

Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the words "(50%) of the" insert the word "usual."

Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the last sentence insert the sentence "An individual employed other than in farming is not an unincorporated business."

Page 10.35, Section 10.07, Title; following the word "Farmland" insert the words "and Structures Situated Thereon."

Page 10.35, Section 10.07(a), first sentence; following the word "farmland" insert the words "and structures situated thereon."

Page 10.46, Subject; following the word "Farmland" insert the words "and Structures Situated Thereon."

(e) The legislative rules filed in the state register on the twenty-second day of May, one thousand nine hundred eighty-five, relating to the state tax commissioner (rules governing the operation of a statewide electronic data processing system network, to facilitate administration of the ad valorem property tax on real and personal property) are authorized.
(f) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, relating to the state tax commissioner (listing of interests in natural resources for the first statewide reappraisal; provision for penalties), are authorized.

(g) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (review of appraisals by county commissions sitting as administrative appraisal review boards), are authorized.

(h) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (review of appraisals by a circuit court on certiorari), are authorized with the following amendment:

On page 3, §18.3.1 is stricken in its entirety and a new §18.3.1 is inserted in lieu thereof to read as follows:

"18.3.1 Who May Request Review.—The property owner, Tax Commissioner, protestor or intervenor may request the county commission to certify the evidence and remove and return the record to the circuit court of the county on a writ of certiorari. Parties to the proceeding wherein review by the circuit court is sought shall pay costs and fees as they are incurred: Provided, That the circuit court upon rendering judgment or making any order may award costs to any party in accordance with the provisions of W. Va. Code §53-3-5."

(i) The legislative rules filed in the state register on the twenty-sixth day of March, one thousand nine
hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (administrative review of appraisals by the state tax commissioner), are authorized.

(j) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of February, one thousand nine hundred eighty-seven, relating to the state tax commissioner (additional review and implementation of property appraisals), are authorized.

(k) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, relating to the state tax commissioner (guidelines for assessors to assure fair and uniform personal property values), are authorized.

(l) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of December, one thousand nine hundred eighty-six, relating to the state tax commissioner (registration of transient vendors), are authorized.

(m) The legislative rules filed in the state register on the fourth day of February, one thousand nine hundred eighty-six, modified by the state tax commissioner to meet the objection of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred eighty-seven, relating to the state tax commissioner (business and occupation tax), are authorized.

(n) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine
hundred eighty-seven, modified by the state tax commis-
sioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the fourth day of November, one thousand
nine hundred eighty-seven, relating to the state tax
commissioner (telecommunications tax) are authorized.

(o) The legislative rules filed in the state register on
the fourteenth day of August, one thousand nine
hundred eighty-seven, relating to the state tax commis-
sioner (business franchise tax) are authorized.

(p) The legislative rules filed in the state register on
the seventeenth day of August, one thousand nine
hundred eighty-seven, modified by the state tax commis-
sioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-second day of January, one
thousand nine hundred eighty-eight, relating to the state
tax commissioner (consumers sales and service tax and
use tax) are authorized.

(q) The legislative rules filed in the state register on
the fourteenth day of August, one thousand nine
hundred eighty-seven, modified by the state tax commis-
sioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the thirteenth day of January, one thousand
nine hundred eighty-eight, relating to the state tax
commissioner (appraisal of property for periodic
statewide reappraisals for ad valorem property tax
purposes) are authorized.

(r) The legislative rules filed in the state register on
the fourteenth day of August, one thousand nine
hundred eighty-seven, modified by the state tax commis-
sioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twelfth day of January, one thousand
nine hundred eighty-eight, relating to the state tax
commissioner (severance tax) are authorized.

(s) The legislative rules filed in the state register on
the second day of September, one thousand nine
hundred eighty-eight, modified by the state tax commis-
session to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-fourth day of February, one
thousand nine hundred eighty-nine, relating to the state
tax commissioner (solid waste assessment fee) are
authorized.

(t) The legislative rules filed in the state register on
the twelfth day of August, one thousand nine hundred
eighty-eight, modified by the state tax commissioner to
meet the objections of the legislative rule-making review
committee and refiled in the state register on the
twenty-first day of September, one thousand nine
hundred eighty-eight, relating to the state tax commis-
sioner (electronic data processing system network for
property tax administration) are authorized.

(u) The legislative rules filed in the state register on
the nineteenth day of September, one thousand nine
hundred eighty-eight, modified by the state tax commis-
sioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the twenty-fourth day of February, one
thousand nine hundred eighty-nine, relating to the state
tax commissioner (exemption of property from ad
valorem property taxation) are authorized.

(v) The legislative rules filed in the state register on
the sixteenth day of September, one thousand nine
hundred eighty-eight, modified by the state tax commis-
sioner to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the thirteenth day of January, one thousand
nine hundred eighty-nine, relating to the state tax
commissioner (consumers sales and service tax and use
tax) are authorized.


1 (a) The legislative rules filed in the state register on
the third day of January, one thousand nine hundred
eighty-four, relating to the state board of investments
(selection of state depositories for disbursement accounts
through competitive bidding) are authorized.
6 (b) The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state board of investments (administration of the consolidated fund) are authorized.


1 (a) The legislative rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-three, relating to the health care cost review authority (limitation on hospital gross patient revenue) are authorized.

(b) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the health care cost review authority (freeze on hospital rates and granting temporary rate increases) are authorized.

(c) The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the health care cost review authority (implementation of the utilization review and quality assurance program) are authorized.

(d) The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred eighty-four, relating to the health care cost review authority (hospital cost containment methodology), are authorized.

(e) The legislative rules filed in the state register on the twenty-fifth day of November, one thousand nine hundred eighty-five, modified by the West Virginia health care cost review authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the West Virginia health care cost review authority (interim standards for lithotripsy services) are authorized.

(f) The legislative rules filed in the state register on the third day of September, one thousand nine hundred eighty-seven, modified by the West Virginia health care
cost review authority to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the twenty-seventh day of January,
one thousand nine hundred eighty-eight, relating to the
West Virginia health care cost review authority (exemptions
from certificate of need review) are authorized.

(g) The legislative rules filed in the state register on
the nineteenth day of September, one thousand nine
hundred eighty-eight, modified by the health care cost
review authority to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the twenty-first day of February, one
thousand nine hundred eighty-nine, relating to the
health care cost review authority (financial disclosure)
are authorized.

§64-2-5. Commissioner of highways.

(a) The legislative rules filed in the state register on
the twenty-first day of October, one thousand nine
hundred eighty-three, relating to the commissioner of
highways (transportation of hazardous waste by highway
transporters) are authorized with the amendments
set forth below:

Pages 3 and 7 after “40 CFR part 262” add the words
“as amended through March 8, 1986,”

Page 7 after “49 CFR parts 171-179” add the words
“as amended through March 8, 1986,” and

Page 11 after “49 CFR part 171.16” add the words “as
amended through March 8, 1986.”

(b) The legislative rules filed in the state register on
the tenth day of August, one thousand nine hundred
eighty-four, relating to the commissioner of highways
(construction and reconstruction of state roads), are
authorized with the amendments set forth below:

Page 16, Sec. 8.08, line 21 (unnumbered), by inserting
after the word “all” the following language: “reasonable
and necessary” and after the word “project” inserting
the following language: “by the Railroad”.

Page 16, Sec. 8.08, line 22, (unnumbered), after the
word “the” by striking the words “Railroad’s Chief”.
Page 19, Sec. 8.08, line 25, (unnumbered), by striking "Railroad's Chief" and adding the following new language:

Any approval by the Department of any activity by the Contractor upon the right-of-way or premises of any Railroad which is provided for in this Section (8.08) (including, but not limited to, approval of work, methods, or procedures of work to be done, and the condition of premises after completion of work by the Contractor) shall in no way create any liability by the Department to the Railroad except to the extent provided otherwise by law and the Contractor shall, during all periods of construction and thereafter, indemnify and save harmless the department from any and all liability to the Railroad or any third parties for any damages as a result of the work of the Contractor, the methods and procedures for performing work, the failure of the Contractor to properly remove equipment, surplus material and other debris upon the Railroad premises, or the condition of the premises of the Railroad during construction or after completion of construction by the Contractor as approved by the Department or otherwise.

Page 18, Sec. 8.08, subdivision (a), line 22, (unnumbered), by striking the words “single limit” and inserting in lieu thereof the following language: “per occurrence”.

Page 19, Sec. 8.08, subdivision (b), line 8, (unnumbered), by striking the words “single limit” and inserting in lieu thereof the following language: “per occurrence”.

Page 19, Sec. 8.08 (c), line 18, (unnumbered), by inserting after the word “occurrence” the following language: “of”; and after the word “injury” insert a comma and strike the word “or”.

(c) The legislative rules filed in the state register on the seventh day of September, one thousand nine hundred eighty-four, modified by the commissioner of
highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred eighty-four, relating to the commissioner of highways (transportation of hazardous waste) are authorized with the amendment set forth below:

Page 5, by amending §3.01 by adding thereto a new subsection, designated subsection (4), to read as follows:

“(4) Before accepting hazardous waste from a rail transporter, a highway transporter must sign and date the manifest and provide a copy to the rail transporter.”

(d) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-four, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred eighty-four, relating to the commissioner of highways (disqualification and suspension of prequalified contractors) are authorized.

(e) The legislative rules filed in the state register on the twelfth day of December, one thousand nine hundred eighty-five, relating to the commissioner of highways (transportation of hazardous wastes by vehicle upon the roads and highways of this state) are authorized with the amendments set forth below:

On page 18, the first line of §3.03 shall read as follows:

“3.03. Transporters who only accept Hazardous Waste from”.

(f) The legislative rules filed in the state register on the first day of December, one thousand nine hundred eighty-seven, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred eighty-eight, relating to the commissioner of highways (traffic and safety rules and regulations) are authorized with the amendment set forth below:
On page 8, section 7.2, line 9, (unnumbered), by striking everything after the word “structures”.

(g) The legislative rules filed in the state register on the first day of December, one thousand nine hundred eighty-seven, relating to the commissioner of highways (construction and reconstruction of state roads) are authorized.

(h) The legislative rules filed in the state register on the twenty-fifth day of February, one thousand nine hundred eighty-seven, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred eighty-seven, relating to the commissioner of highways (transportation of hazardous wastes upon the roads and highways) are authorized.


(a) The legislative rules filed in the state register on the second day of December, one thousand nine hundred eighty-two, relating to the commissioner of motor vehicles (denial of driving privileges), are authorized with the amendments set forth below:

By inserting the words “licensed in the United States” after the phrase “physician of the applicant’s choice,” on page five, line two, and page seven, line one; and by striking out the words “licensed vision specialist” and inserting in lieu thereof the words “an optometrist or ophthalmologist licensed in the United States,” on page five, line three, and on page seven, line two.

(b) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-three, relating to the commissioner of motor vehicles (driving under the influence, drivers’ license revocation administrative hearings) are authorized.

(c) The legislative rules filed in the state register on the fifteenth day of December, one thousand nine hundred eighty-three, relating to the department of motor vehicles (safety and treatment program) are authorized.
(d) The legislative rules filed in the state register on the sixteenth day of June, one thousand nine hundred eighty-three, relating to the commissioner of motor vehicles (compulsory insurance) are authorized.

(e) The legislative rules filed in the state register on the twentieth day of November, one thousand nine hundred eighty-four, relating to the commissioner of motor vehicles (titling a vehicle), are authorized.

(f) The legislative rules filed in the state register on the tenth day of September, one thousand nine hundred eighty-four, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred eighty-four, relating to the commissioner of motor vehicles (compulsory motor vehicle liability insurance) are authorized.

(g) The legislative rules filed in the state register on the fifth day of August, one thousand nine hundred eighty-five, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of October, one thousand nine hundred eighty-five, relating to the commissioner of motor vehicles (eligibility for reinstatement following suspension or revocation of driving privileges), are authorized.

(h) The legislative rules filed in the state register on the fifth day of August, one thousand nine hundred eighty-five, relating to the commissioner of motor vehicles (the administration and enforcement of motor vehicle inspections) are authorized.

(i) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-six, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of October, one thousand nine hundred eighty-six, relating to the commissioner of
motor vehicles (seizure of a driver's license and issuance of a temporary driver's license), are authorized.

(j) The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-six, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of October, one thousand nine hundred eighty-six, relating to the commissioner of motor vehicles (federal safety standards inspection program), are authorized.

(k) The legislative rules filed in the state register on the seventeenth day of August, one thousand nine hundred eighty-seven, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of September, one thousand nine hundred eighty-seven, relating to the commissioner of motor vehicles (denial, suspension, revocation or renewal of driving privileges) are authorized with the amendment set forth below:

On page 7, section 7.2 after the words "75 m.p.h.," add the words "except on highways where the established speed limit is 65 m.p.h., and conviction was in excess of 80 m.p.h."

And,

On page 14, section 8.1 by inserting the words "not to exceed fifteen hours" after the word "course" and in section 8.2 by inserting the words "not to exceed fifteen hours" after the word "course".

(l) The legislative rules filed in the state register on the twenty-second day of November, one thousand nine hundred eighty-eight, modified by the commissioner of motor vehicles to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred eighty-nine, relating to the commissioner of motor vehicles (denial, suspension, revocation or nonrenewal of driving privileges) are authorized.
§64-2-7. Department of natural resources.

1 (a) The legislative rules filed in the state register on the eighth day of December, one thousand nine hundred eighty-three, relating to the department of natural resources (surface mining) are authorized with the amendments set forth below:

Page 3-4, §3E.01 by adding after the word “engineer” the words “or licensed land surveyor.”

Page 3-5, §3E.02, subsection (a), by adding after the word “mining” the words “or civil.”

Page 3-5, §3E.02, subsection (b), by adding after the first sentence—“Those persons who have been approved to date need not make said demonstration.”

(b) The legislative rules filed in the state register on the twentieth day of January, one thousand nine hundred eighty-four, relating to the department of natural resources (solid waste management) are authorized with the amendments set forth below:

Page 9, section 4.04, line five, add the following paragraph:

“Upon request of any applicant, the division shall meet with the applicant for prefiling review of the application. The division, with the cooperation of the solid waste authority, shall assist the applicant in preparing a complete and proper application which would not be rejected as incomplete.”

On page 15, section 6.03 (c) (1) in the first full sentence, after the word “cease”, strike the remainder of the sentence and insert in lieu thereof the words “within fifteen (15) days of receipt of an order of suspension” and in the second sentence strike the word “recommence” and insert the words “continue beyond fifteen (15) days”; (c)(2) in the first full sentence, after the word “cease” by striking out the remainder of the sentence and insert in lieu thereof the words “immediately upon receipt of an order of revocation.”

(c) The legislative rules filed in the state register on the twenty-sixth day of September, one thousand nine hundred eighty-four, relating to the department of
natural resources (public use of state parks, forests, hunting and fishing areas), are authorized.

(d) The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-four, relating to the department of natural resources (surface mining reclamation) are authorized.

(e) The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-four, relating to the department of natural resources (coal refuse disposal) are authorized.

(f) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-four, relating to the department of natural resources (transfer of the state national pollutant discharge elimination system program), are authorized with the amendments set forth below:

Page 10-5, by striking § 10B.19 and inserting in lieu thereof a new § 10B.19, to read as follows: “‘Effluent limitations guidelines’ means a regulation published by the Administrator under Section 304(b) or Section 301(b)(1)(B) of the CWA to adopt or revise effluent limitations or levels of effluent quality attainable through the application of secondary or equivalent treatment. For the coal industry these regulations are published at 40 C.F.R. Parts 434 and 133. (See: Appendix G and H)”

(g) The legislative rules filed in the state register on the twenty-eighth day of August, one thousand nine hundred eighty-four, relating to the department of natural resources (small arms hunting) are authorized.

(h) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-four, relating to the department of natural resources (hazardous waste management), are authorized.

(i) The legislative rules filed in the state register on the third day of December, one thousand nine hundred eighty-four, modified by the department of natural
resources to meet the objections of the legislative rule-
making review committee and refiled in the state
register on the thirteenth day of February, one thousand
nine hundred eighty-five, relating to the department of
natural resources (hazardous waste management), are
authorized.

(j) The legislative rules filed in the state register on
the tenth day of October, one thousand nine hundred
eighty-five, relating to the department of natural
resources (hazardous waste management: small quantity
generators and waste minimization certification), are
authorized with the amendments set forth below:

On page 1, §3.1.4b, delete the word “or” in the
reference to “paragraph (g) or (j)” and insert in lieu
thereof the words “and, if applicable.”

(k) The legislative rules filed in the state register on
the ninth day of September, one thousand nine hundred
eighty-five, relating to the department of natural
resources (WV/NPDES regulations for the coal mining
point source category and related sewage facilities), are
authorized.

(l) The legislative rules filed in the state register on
the eleventh day of December, one thousand nine
hundred eighty-five, modified by the department of
natural resources to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the twentieth day of February, one thousand
nine hundred eighty-six, relating to the department of
natural resources (hazardous waste management), are
authorized.

(m) The legislative rules filed in the state register on
the twenty-sixth day of September, one thousand nine
hundred eighty-six, modified by the department of
natural resources to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the ninth day of December, one thousand
nine hundred eighty-six, relating to the department of
natural resources (hazardous waste management regu-
lations), are authorized.
(n) The legislative rules filed in the state register on the seventh day of August, one thousand nine hundred eighty-six, relating to the director of the department of natural resources (procedures for transporting and dealing in furbearing animals), are authorized.

(o) The legislative rules filed in the state register on the thirtieth day of December, one thousand nine hundred eighty-six, relating to the department of natural resources (WV/NPDES program for coal mines and preparation plants, and the refuse and waste therefrom), are authorized with the amendments set forth below:

On page four, § 1.9.1.a by inserting the words "five thousand dollars or" after the words "'significant portion of income' means" and

On page four, § 1.9.1.a by inserting the words "whichever is less," after the words "ten percent or more of gross personal income for a calendar year".

(p) The legislative rules filed in the state register on the fifth day of March, one thousand nine hundred eighty-six, relating to the department of natural resources (hazardous waste management), are authorized.

(q) The legislative rules filed in the state register on the twelfth day of August, one thousand nine hundred eighty-seven, relating to the department of natural resources (WV/NPDES regulations for coal mining facilities) are authorized.

(r) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-seven, relating to the director of the department of natural resources (outfitters and guides) are authorized.

(s) The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regulations), are authorized.
(t) The legislative rules filed in the state register on the fifth day of March, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regulations, series 35), are authorized.

(u) The legislative rules filed in the state register on the seventh day of December, one thousand nine hundred eighty-seven, relating to the department of natural resources (hazardous waste management regulations, series 35) are authorized.

(v) The legislative rules filed in the state register on the sixteenth day of December, one thousand nine hundred eighty-seven, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, one thousand nine hundred eighty-eight, relating to the department of natural resources (solid waste management) are authorized.

(w) The legislative rules filed in the state register on the twenty-eighth day of July, one thousand nine hundred eighty-seven, modified by the director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of August, one thousand nine hundred eighty-seven, relating to the director of the department of natural resources (boating regulations) are authorized with the amendment set forth below:

On page 16, section 6.2, line 3 by inserting following the period “This regulation does not apply to licensed outfitters and guides.” These rules were proposed by the director of the department of natural resources pursuant to section seven, article one and section twenty-two, article seven, chapter twenty of this code.

(x) The legislative rules filed in the state register on the second day of September, one thousand nine hundred eighty-eight, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state
register on the seventeenth day of October, one thousand nine hundred eighty-eight, relating to the department of natural resources (hazardous waste management) are authorized.

(y) The legislative rules filed in the state register on the thirty-first day of August, one thousand nine hundred eighty-eight, relating to the director of the department of natural resources (boating) are authorized.

(z) The legislative rules filed in the state register on the eighth day of March, one thousand eight hundred eighty-eight, modified by director of the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of August, one thousand nine hundred eighty-eight, relating to the director of the department of natural resources (commercial sale of wildlife) are authorized.

(aa) The legislative rules filed in the state register on the twenty-seventh day of January, one thousand nine hundred eighty-eight, relating to the director of the department of natural resources (catching and selling bait fish) are authorized.

(bb) The legislative rules filed in the state register on the twenty-fifth day of March one thousand nine hundred eighty-eight, relating to the director of the department of natural resources (West Virginia public hunting and fishing areas) are authorized with the following amendment:

On page three, section 3.8.4, by inserting after the word “vehicle” the following “, all terrain vehicle (ATV)”.

§64-2-8. Department of energy.

(a) The legislative rules filed in the state register on the thirty-first day of March, one thousand nine hundred eighty-two, relating to the department of mines (energy) (mine safety program), are authorized.

(b) The legislative rules filed in the state register on...
the seventeenth day of August, one thousand nine
hundred eighty-three, relating to the department of
energy (governing the safety of those employed in and
around surface mines), are authorized.

(c) The legislative rules filed in the state register on
the seventh day of December, one thousand nine
hundred eighty-three, relating to the office of oil and
gas, department of mines (energy), (oil and gas and
other wells) are authorized with the amendment set
forth below:

Page viii, place an * in front of section 32.02.

Page ix, after section 35.04 add the following:

"*35.05 Extra Powers of the Administrator ...... 64."

Page 1, section 1.03 in the list of additional regula-
tions, add 35.05; in the list of revised regulations, add
32.02, 32.03 and 33.00.

Page 52 section 32.04 and section 32.05 add at the end
of (ii) the words “and (iii) definition of proration unit”.

Page 53 section 33 After the word “definitions” add
the following sentence: “The following definitions are
applicable to these regulations used for purposes of
implementing the Natural Gas Policy Act of 1978 and
are not intended to be used in any other context.”

Page 55, section 33.02 (b)(16) after the word “forma-
tions” in the third lines of (i) and (ii), add the words “for
which a well has been.”

Page 64, after section 35.04 add the following section:
35.05 Extra powers of the Administrator.

“The administrator may also certify or provide a
waiver for a well located within a proration unit as
declared in 32.02 (b)(16) or any other well sought to be
certified under these regulations after notice and
hearing.”

(d) The legislative rules filed in the state register on
the eleventh day of August, one thousand nine hundred
eighty-six, modified by the director of the division of oil
and gas of the department of energy to meet the
objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (oil and gas wells and other wells), are authorized.

(e) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the oil and gas division of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (certification of gas wells), are authorized.

(f) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (underground injection control), are authorized.

(g) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (state national pollutant discharge elimination system (NPDES) program), are authorized.

(h) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-six, modified by the commissioner of the
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department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (standards for certification of coal mine electricians), are authorized with the following amendments:

"Page one, §2.1, subsection (a), following the second word, 'electrician' by striking the colon and inserting the following: 'under the supervision required by section 4.1(d) of these rules' and a colon.

Page one, §2.1, subsection (a), by deleting all of subdivision (6) and renumbering the subsequent subdivisions.

Page two, §2.1, subsection (a), by deleting all of subdivision (9).

Page two, §2.1, subsection (b), by deleting all of subdivision (14) and inserting in lieu thereof a new subdivision (14) to read as follows: '(14) Replace blown fuses on trolley poles and nips.'

Page five, §4.1, subsection (d), line three, following the words 'certified electrician prior' by inserting the words 'to any work being performed and again prior'.”

(i) The legislative rules filed in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of January, one thousand nine hundred eighty-seven, relating to the commissioner of the department of energy (safety training program for prospective underground coal miners in West Virginia), are authorized.

(j) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand
nine hundred eighty-six, relating to the commissioner of
the department of energy (miscellaneous water pollution
control), are authorized.

(k) The legislative rules filed in the state register on
the eleventh day of August, one thousand nine hundred
eighty-six, modified by the commissioner of the depart-
ment of energy to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the fifteenth day of December, one thousand
nine hundred eighty-six, relating to the commissioner of
the department of energy (dam control), are authorized.

(l) The legislative rules filed in the state register on
the eleventh day of August, one thousand nine hundred
eighty-six, modified by the commissioner of the depart-
ment of energy to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the fifteenth day of December, one thousand
nine hundred eighty-six, relating to the commissioner of
the department of energy (solid waste management), are
authorized.

(m) The legislative rules filed in the state register on
the eleventh day of August, one thousand nine hundred
eighty-six, modified by the commissioner of the depart-
ment of energy to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the fifteenth day of December, one thousand
nine hundred eighty-six, relating to the commissioner of
the department of energy (hazardous waste manage-
ment), are authorized.

(n) The legislative rules filed in the state register on
the twentieth day of April, one thousand nine hundred
eighty-seven, relating to the commissioner of the
department of energy (roof control) are authorized.

(o) The legislative rules filed in the state register on
the third day of April, one thousand nine hundred
eighty-seven, relating to the department of energy
(standards for certification of underground belt examin-
ers for underground coal mines), are authorized.

(p) The legislative rules filed in the state register on
the ninth day of April, one thousand nine hundred eighty-seven, relating to the commissioner of the department of energy (performance standards for blasting on surface mines) are authorized.

(q) The legislative rules filed in the state register on the twelfth day of January, one thousand nine hundred eighty-seven, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, one thousand nine hundred eighty-seven, relating to the commissioner of the department of energy (state national pollutant discharge elimination system (NPDES) for mines and minerals), are authorized.

(r) The Legislature hereby authorizes and directs the department of energy to promulgate the procedural rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-seven, relating to the department of energy (requests for information) with the amendments set forth below:

On page two, subsection 3.1, by striking subdivision (d) and renumbering the remaining subdivisions, and

On page three, section 6, by striking all of subsection 6.1 and inserting in lieu thereof, the following:

"6.1 The department shall establish fixed rate fees for reproduction of documents, records, and files on the basis of the actual cost of such reproduction and shall document such costs: Provided, That where total costs are less than five dollars, no fee shall be charged."

(s) The legislative rules filed in the state register on the twelfth day of May, one thousand nine hundred eighty-seven, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of August, one thousand nine hundred eighty-seven, relating to the commissioner of the department of energy (blasters certification for surface coal mines and surface areas of coal mines) are authorized.
(t) The legislative rules filed in the state register on the twentieth day of January, one thousand nine hundred eighty-eight, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of November, one thousand nine hundred eighty-eight, relating to the commissioner of the department of energy (abandoned mine reclamation) are authorized.


(a) The legislative rules filed in the state register on the tenth day of May, one thousand nine hundred eighty-two, relating to the commissioner of labor (steam boiler rules) as modified by the legislative rule-making review committee are authorized.

(b) The legislative rules filed in the state register on the seventh day of December, one thousand nine hundred eighty-three, relating to the department of labor (hazardous chemical substances) are authorized.

(c) The legislative rules filed in the state register on the second day of February, one thousand nine hundred eighty-four, relating to the department of labor (polygraph examinations) are authorized.

(d) The legislative rules filed in the state register on the twenty-second day of December, one thousand nine hundred eighty-seven, relating to the commissioner of labor (West Virginia occupational safety and health act) are authorized.

(e) The legislative rules filed in the state register on the twenty-second day of December, one thousand nine hundred eighty-seven, modified by the commissioner of labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred eighty-eight, relating to the commissioner of labor (wage payment and collection act) are authorized.

(f) The legislative rules filed in the state register on the sixteenth day of November, one thousand nine hundred eighty-eight, relating to the commissioner of labor (steam boiler rules) are authorized.
hundred eighty-seven, relating to the commissioner of the department of labor (standards for weights and measures inspectors—adoption of NBS Handbook 130, 1987) are authorized.

(g) The legislative rules filed in the state register on the twelfth day of January, one thousand nine hundred eighty-eight, relating to the commissioner of labor (steam boiler inspection fee schedule) are authorized.

(h) The legislative rules filed in the state register on the thirteenth day of September, one thousand nine hundred eighty-eight, modified by the department of labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of December, one thousand nine hundred eighty-eight, relating to the department of labor (amusement rides and amusement attractions safety act) are authorized.

§64-2-10. Insurance commissioner.

(a) The legislative rules filed in the state register on the eighteenth day of October, one thousand nine hundred eighty-three, relating to the insurance commissioner (excess line brokers), are authorized.

(b) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the insurance commissioner to meet the objection of the legislative rule-making review committee and refiled in the state register on the twelfth day of December, one thousand nine hundred eighty-six, relating to the insurance commissioner (examiners' compensation, qualification and classification), are authorized.

(c) The legislative rules filed in the state register on the twentieth day of February, one thousand nine hundred eighty-seven, relating to the insurance commissioner (West Virginia essential property insurance association) are authorized.

(d) The legislative rules filed in the state register on the twenty-ninth day of May, one thousand nine hundred eighty-seven, relating to the insurance commissioner
(e) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred eighty-seven, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of November, one thousand nine-hundred eighty-seven, relating to the insurance commissioner (medical malpractice loss experience and loss expense reporting requirements) are authorized.

(f) The legislative rules filed in the state register on the thirtieth day of November, one thousand nine hundred eighty-eight, modified by the insurance commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of February, one thousand nine hundred eighty-nine, relating to the insurance commissioner (transitional requirements for the conversion of medicare supplement insurance benefits and premiums to conform to medicare program revisions) are authorized.


(a) The legislative rules filed in the state register on the sixth day of December, one thousand nine hundred eighty-four, relating to the attorney general (third party dispute mechanisms) are authorized.

(b) The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the attorney general (fair treatment of crime victims and witnesses) are authorized.

(c) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred eighty-six, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of December, one thousand nine hundred eighty-six, relating to the attorney general (prevention of unfair or
deceptive acts or practices in home improvement and
home construction transactions), are authorized. These
rules were proposed by the attorney general pursuant
to section one hundred three, article six and section one
hundred two, article seven of chapter forty-six-a of this
code with the following amendments:

"Amending the title to the proposed legislative rule
wherever said title may appear, on lines three and four
thereof, by striking the words 'and home construction'.

On the index page following '3.' by striking the words
'and home construction'.

On page 1, §1.2, line three, after the first word
'transactions' on line three, by striking the comma and
the words 'and home construction transactions' and on
line five, by striking the period and inserting the words
'but shall not cover new construction of single-family
dwellings or rebuilding all or substantially all of an
existing or preexisting single-family dwelling.'

Page 2, section 2.2 by striking all of lines seven and
eight and inserting in lieu thereof the following:

'unless: (a) it appears in printed or typed face larger
than the largest type used in the written contract,
apart'.

On page 2, section 2.4, by striking all of section 2.4
and inserting in lieu thereof a new section 2.4, to read
as follows:

'2.4 "Home Construction" means, for the purpose of
this Rule, the repair, remodeling or the building of
additions to existing single-family dwelling units,
including single-family homes, condominium units or
any other dwelling unit to be used by any person
primarily for personal or family use, but shall not
include new single-family home construction or the
rebuilding of all or substantially all of an existing or
preexisting single-family dwelling.'

Page 3, section 2.6, on line two thereof, after the
second comma by inserting the word 'replacement'.

Page 3, section 3., by striking the words 'and home
construction' from the section heading.
Page 3, section 3.1, lines one and two, by striking the words ‘or home construction’.

Page 4, section 3.1.4, on lines one and two thereof, by striking the words ‘or home construction’.

Page 4, section 3.1.8, on line two thereof, by striking the words ‘or home construction’.

Page 4, section 3.1.9, on lines two and three thereof, by striking the words ‘or home construction’.

Page 5, section 3.1.12, on lines one and two thereof, by striking the words ‘or home construction’.

Page 6, section 3.1.26, by striking all of section 3.1.26 and renumbering the subsequent subsections.

Page 7, section 3.1.29, on lines one and two thereof, by striking the words ‘or home construction’.

Page 7, section 3.1.29, on line six thereof, following the word ‘contract’ by inserting a period and striking the remainder of the section.

Page 7, following section 3.1.29 by adding a new section to be designated section 3.1.29, to read as follows:

‘failed to file a certificate in the office of the Clerk of the County Commission in the county in which the principal place of business of the seller is located, setting forth the assumed name in or by which the business is being conducted in conformity with the provisions of Chapter 47, Article 8, Section 2 of the Code of West Virginia, 1931, as amended.’

Page 7, section 3.2, on lines two and three thereof, by striking the words, ‘or home solicitation sale of home construction’ and the comma on line three.

Page 9, section 4.1, on line eight thereof, by deleting the period and inserting the following:

‘to the extent permitted by statute’ and a period.”

Page 10, section 4.2, on line 9 thereof, by striking the period and inserting the following:

“to the extent permitted by statute” and a period.
(d) The legislative rules filed in the state register on the twenty-third day of September, one thousand nine hundred eighty-six, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the first day of December, one thousand nine hundred eighty-six, relating to the attorney general (prevention of unfair or deceptive acts or practices in the sale of damaged goods or products), are authorized.

(e) The legislative rules filed in the state register on the twenty-third day of September, one thousand nine hundred eighty-seven, modified by the attorney general to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of November, one thousand nine hundred eighty-seven, relating to the attorney general (administration of preneed burial contracts) are authorized with the following amendments set forth below:

On page 9, section 8.2 by striking the words “within thirty days after the death of a contract beneficiary,” and inserting in lieu thereof the following: “On or before the first day of January and the first day of July of each year,” and after the word “provided” by striking the comma and inserting in lieu thereof “after the death of any contract beneficiary during the previous six-month period,”

And,

On page 12, section 9.7 by striking all of 9.7,

And,

Beginning on page 15, by striking the entirety of section 15,

And,

Beginning on page 18, by striking the entirety of section 16, and by renumbering the remaining sections.

§64-2-12. West Virginia library commission.

The legislative rules filed in the state register on the twenty-second day of October, one thousand nine
hundred eighty-five, modified by the West Virginia library commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of November, one thousand nine hundred eighty-five, relating to the West Virginia library commission (designating a grace period for the return of library materials) are authorized.


The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state treasurer (establishment of imprest funds) are authorized.


(a) The legislative rules filed in the state register on the twenty-third day of September, one thousand nine hundred eighty-three, relating to the department of public safety (general orders) are authorized with the amendment set forth below:

Page 23, §9.10 remove the period at the end of the sentence and add the words “or municipalities.”

(b) The legislative rules filed in the state register on the twenty-second day of June, one thousand nine hundred eighty-four, modified by the department of public safety to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, one thousand nine hundred eighty-four, relating to the department of public safety (commission on drunk driving) are authorized.


(a) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, relating to the air pollution control commission (series VII), are authorized.

(b) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, relating to air pollution control commission (series XIX), are authorized.
(c) The legislative rules filed in the state register on the sixteenth day of November, one thousand nine hundred eighty-three, relating to the air pollution control commission (emission standards for hazardous air pollutants) (series XV) are authorized.

(d) The legislative rules filed in the state register on the sixteenth day of November, one thousand nine hundred eighty-three, relating to the air pollution control commission (standards of performance for new stationary sources) (series XVI) are authorized.

(e) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-four, relating to the air pollution control commission (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities) (series XXV), are authorized with the amendments set forth below:

Page 3, §1.06, change the § title from “Enforcement” to “Procedure”; place an “(a)” in front of the existing paragraph and add the following:

“(b) Permit applications filed pursuant to this regulation shall be processed in accordance with the permitting procedures as set forth in code §20-5E of this regulation. Permit procedures set forth in code §16-20 and any other regulation of this commission are not applicable to any permit application filed pursuant to this regulation.”

Such rules shall also include a section which shall read as follows:

“The commission shall report to the legislative rule-making review committee as required by that committee, but in no event later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty-five. Such report shall include information regarding the commission’s data gathering efforts, the development of compliance programs, the progress in implementation, and such other matters as the committee may require, pertaining to the regulations hereby authorized.”
(f) The legislative rules filed in the state register on the ninth day of January, one thousand nine hundred eighty-four, relating to the air pollution control commission (permits for construction and modification of stationary sources of air pollution for the prevention of significant deterioration) (series XIV) are authorized.

(g) The legislative rules filed in the state register on the thirtieth day of December, one thousand nine hundred eighty-eight, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the air pollution control commission (prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities) are authorized.

(h) The legislative rules filed in the state register on the thirtieth day of December, one thousand nine hundred eighty-eight, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the air pollution control commission (good engineering practice as applicable to stack heights) are authorized.

(i) The legislative rules filed in the state register on the thirtieth day of December, one thousand nine hundred eighty-eight, modified by the air pollution control commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the air pollution control commission (TP-2, compliance test procedures for regulation 2—to prevent and control particulate air pollution from combustion of fuel in indirect heat exchangers) are authorized.


1 The legislative rules filed in the state register on the
tenth day of June, one thousand nine hundred eighty-six, modified by the West Virginia hospital finance authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-seven, relating to the West Virginia hospital finance authority (establishment of fee schedule and cost allocation applicable to issuance of bonds), are authorized.

§64-2-17. Teachers retirement board.

The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-two, relating to the teachers retirement board, are authorized with the following amendments:

Section VI, subsection 6, D, (a)(ii) of the rules is to be amended on line two by striking out the words “(3) thru (7)” and inserting in lieu thereof the words “(3) thru (13)”; Section VII, subsection 7, B, (c) of the rules is to be amended on line three after the word “100” by striking out the word “consecutive,” and by redesignating the subsection as subsection “(a)”; and Section X, subsection 10, A, (c), of the rules is to be amended on line one after the word “physicians,” by striking out the words “of member’s choice,” and inserting in lieu thereof the words “one selected by the Board and one selected by the member.”


(a) The legislative rules filed in the state register on the sixth day of April, one thousand nine hundred eighty-three, relating to the commissioner of agriculture (schedule of charges for inspection services: fruit) are authorized.

(b) The legislative rules filed in the state register on the third day of August, one thousand nine hundred eighty-three, relating to the commissioner of agriculture (licensing of auctioneers) are authorized.

(c) The legislative rules filed in the state register on the eighth day of February, one thousand nine hundred eighty-four, relating to the commissioner of agriculture
(d) The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (feeding untreated garbage to swine) are authorized.

(e) The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (registration, taxation and control of dogs) are authorized.

(f) The legislative rules filed in the state register on the first day of November, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (public markets) are authorized.

(g) The legislative rules filed in the state register on the tenth day of September, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (noxious weed rules) are authorized.

(h) The legislative rules filed in the state register on the fourth day of June, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (animal disease control) are authorized.

(i) The legislative rules filed in the state register on the fifth day of January, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (use of certain picloram products), are authorized.

(j) The legislative rules filed in the state register on the eighth day of March, one thousand nine hundred eighty-five, relating to the commissioner of agriculture (increasing certain fees by rules and regulations) are authorized.

(k) The legislative rules filed in the state register on the thirteenth day of January, one thousand nine hundred eighty-six, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirty-first day of January, one thousand
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nine hundred eighty-six, relating to the commissioner of agriculture (licensing of livestock dealers) are authorized.

(l) The legislative rules filed in the state register on the eighteenth day of June, one thousand nine hundred eighty-six, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of January, one thousand nine hundred eighty-seven, relating to the commissioner of agriculture (West Virginia pesticide use and application act), are authorized.

(m) The legislative rules filed in the state register on the eighteenth day of August, one thousand nine hundred eighty-six, modified by the director of the division of forestry of the department of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of January, one thousand nine hundred eighty-seven, relating to the director of the division of forestry of the department of agriculture (ginseng), are authorized.

(n) The legislative rules filed in the state register on the tenth day of April, one thousand nine hundred eighty-seven, relating to the commissioner of agriculture (schedule of charges for inspection services: fruit) are authorized.

(o) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-seven, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of September, one thousand nine hundred eighty-seven, relating to the commissioner of agriculture (animal disease control) are authorized.

(p) The legislative rules filed in the state register on the fifteenth day of September, one thousand nine hundred eighty-eight, relating to the commissioner of agriculture (sale and distribution of commercial fertilizer) are authorized.
(q) The legislative rules filed in the state register on the fifteenth day of September, one thousand nine hundred eighty-eight, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of October, one thousand nine hundred eighty-eight, relating to the commissioner of agriculture (animal disease control) are authorized.


(a) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 795), are authorized.

(b) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 819), are authorized.

(c) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 107), are authorized.

(d) The legislative rules filed with the legislative rule-making review committee on the tenth day of January, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 471), are authorized.

(e) The legislative rules filed in the state register on the tenth day of January, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 526), are authorized.

(f) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 107) greyhound racing, are authorized.

(g) The legislative rules filed in the state register on the twentieth day of September, one thousand nine
Following the word “Association” insert a period and strike the remainder of the sentence.

(i) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 392) greyhound racing, are authorized.

(j) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 455) greyhound racing are authorized.

(k) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 609A) greyhound racing are authorized.

(l) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 627) greyhound racing are authorized.

(m) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 845) thoroughbred racing are authorized.

(n) The legislative rules filed in the state register on
the ninth day of November, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing — Rule 628), are authorized.

(o) The legislative rules filed in the state register on the twenty-fifth day of September, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing — Rule 672) are authorized.

(p) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (thoroughbred racing — Rule 808), are authorized.

(q) The legislative rules filed in the state register on the twenty-fifth day of September, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (thoroughbred racing — Rule 843), are authorized.

(r) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing — Rule 845-1) are authorized.

(s) The legislative rules filed in the state register on the third day of September, one thousand nine hundred eighty-seven, modified by the West Virginia racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of December, one thousand nine hundred eighty-seven, relating to the West Virginia racing commission (greyhound racing) are authorized.

(t) The legislative rules filed in the state register on the thirty-first day of July, one thousand nine hundred eighty-seven, modified by the West Virginia racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of December, one
thousand nine hundred eighty-seven, relating to the West Virginia racing commission (thoroughbred racing) are authorized with the amendments set forth below:

On page fifty-five, Section 61.3(f), by striking all of subsection (f) and inserting in lieu thereof the existing provisions of subsection (f) as contained in 178 CSR 1, which reads as follows:

All moneys held by any licensee for the payment of outstanding and unredeemed pari-mutuel tickets, if not claimed within ninety (90) days after the close of the horse race meeting in connection with which the tickets were issued, shall be turned over by the licensee to the Racing Commission within fifteen (15) days after the expiration of such ninety (90) day period and the licensee shall give such information as the Racing Commission may require concerning such outstanding and unredeemed tickets; viz. The outs ledger enumerating all outstanding tickets at the close of each meeting, to contain a record of all tickets redeemed in the ninety (90) day following period, together with all redeemed tickets which shall bear the stamp of the cashier(s) making redemption: A stamp indicating “Outs Ticket.”

In addition, a statement to accompany said ledger and tickets, setting forth the quantity and amount of each denomination redeemed in the ninety (90) day period, with a grand total indicating the sum paid in “Outs.”

This sum subtracted from the outs on the closing day to equal the remittance of the Association in settlement of the “Out” account for the meeting.

(u) The legislative rules filed in the state register on the ninth day of September, one thousand nine hundred eighty-eight, relating to the West Virginia racing commission (thoroughbred racing) are authorized.

(v) The legislative rules filed in the state register on the eighteenth day of January, one thousand nine hundred eighty-nine, modified by the West Virginia racing commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of February, one thousand nine hundred eighty-nine, relating to the West
Virginia racing commission (greyhound racing) are authorized.

§64-2-20. Water resources board.

(a) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-three, relating to the state water resources board (underground injection control program), are authorized.

(b) The legislative rules filed in the state register on the fifteenth day of November, one thousand nine hundred eighty-three, relating to the state water resources board (special regulations), are authorized.

(c) The legislative rules filed in the state register on the third day of August, one thousand nine hundred eighty-three, relating to the state water resources board (groundwater protection standards), are authorized.

(d) The legislative rules filed in the state register on the fifteenth day of November, one thousand nine hundred eighty-three, relating to the state water resources board (state national pollutant discharge elimination system (NPDES) program), are authorized.

(e) The Legislature hereby authorizes and directs the state water resources board to promulgate rules relating to water quality standards in exact conformity with the rules relating to water quality standards tendered to the secretary of state on the seventh day of March, one thousand nine hundred eighty-four, by the executive secretary of the state water resources board, to be received and filed for inclusion in the state register by the secretary of state.

(f) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, and modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (special regulations), are authorized.
(g) The legislative rules filed in the state register on the seventh day of January, one thousand nine hundred eighty-five, modified by the water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of February, one thousand nine hundred eighty-five, relating to the water resources board (water quality standards), are authorized.

(h) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred eighty-seven, and further modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (water quality standards), are authorized.

(i) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred eighty-seven, and further modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one thousand nine hundred eighty-seven, relating to the state water resources board (state national pollutant discharge elimination system (NPDES) program), are authorized.

(j) The legislative rules filed in the state register on the seventeenth day of October, one thousand nine hundred eighty-five, and modified by the state water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of February, one
thousand nine hundred eighty-seven, relating to the
state water resources board (underground injection
control program), are authorized.

(k) The legislative rules filed in the state register on
the seventeenth day of October, one thousand nine
hundred eighty-five, and modified by the state water
resources board to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the twenty-fourth day of February, one
thousand nine hundred eighty-seven, relating to the
state water resources board (special regulations), are
authorized.

(l) The legislative rules filed in the state register on
the thirtieth day of June, one thousand nine hundred
eighty-seven, relating to the water resources board
(water quality standards) are authorized.

(m) The legislative rules filed in the state register on
the fourteenth day of October, one thousand nine
hundred eighty-eight, relating to the water resources
board (water quality standards) are authorized.


(a) The legislative rule filed in the state register on
the fourteenth day of November, one thousand nine
hundred eighty-three, relating to the workers' compensa-
tion commissioner (employers' excess liability fund)
are authorized.

(b) The legislative rules filed in the state register on
the twenty-fifth day of October, one thousand nine
hundred eighty-four, relating to the workers' compensa-
tion commissioner (time limits for the administrative
proceedings of adjudications and awards) are
authorized.

(c) The legislative rules filed in the state register on
the twenty-fifth day of October, one thousand nine
hundred eighty-four, modified by the workers' compensa-
tion commissioner to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the ninth day of January, one
thousand nine hundred eighty-five, relating to the
workers' compensation commissioner (self-insured employers) are authorized.

(d) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, modified by the workers' compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, one thousand nine hundred eighty-four, relating to the workers' compensation commissioner (payment of attorney's fees) are authorized.

(e) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred eighty-five, relating to the workers' compensation commissioner (standards for medical examination in occupational pneumoconiosis claims) are authorized with the amendments set forth below:

On page 1, the second and third unnumbered paragraphs on page one are amended to read as follows:

When two or more ventilatory function tests performed in reasonably close proximity in time produce differing but acceptable results, the Commissioner, at the request of the O. P. Board, may direct the parties to furnish additional evidence and/or order additional testing at the laboratory utilized by the O. P. Board or other laboratories, all for the purpose of determining whether any of the results are unreliable or incorrect or are clearly attributable to some identifiable disease or illness other than occupational pneumoconiosis.

When blood gas studies are performed and abnormal values are obtained and thereafter new blood gas studies are performed and normal or significantly higher values are further obtained, the Commissioner, at the request of the O. P. Board, may direct the parties to furnish additional evidence and/or order additional studies at the laboratory utilized by the O. P. Board or other laboratories, all for the purpose of determining whether any of the values are unreliable or incorrect or are clearly attributable to some identifiable disease or illness other than occupational pneumoconiosis.
And on page 7, paragraph (11) is amended to read as follows:

(11) It is recognized that arterial blood gas studies done in laboratories throughout this state are obtained at different altitudes. Only by "standardizing" for altitude can an equitable assessment be made of impairment when values of arterial oxygen are being measured at remarkably different altitudes. Therefore, the results reported from laboratories should include the name of the laboratory and the date and time of the testing, altitude of the laboratory and barometric pressure at the laboratory on the day the samples were collected. The O. P. Board will evaluate the arterial blood gas values by converting those values to the average altitude of Charleston, West Virginia. For this purpose, it shall be sufficient to add 1 mmHg to each arterial oxygen tension for each 300 feet or fraction thereof that the testing laboratory is located above the average altitude of Charleston, because the relationship of barometric pressure (altitude) and alveolar oxygen is approximately linear up to 4,000 feet as long as the subject breathes room air.

As an example, Bluefield is located approximately 2,600 feet above sea level. Charleston is approximately 600 feet above sea level. Thus, arterial oxygen values obtained in Bluefield should have 6.67 mmHg added to them before applying the table to them to obtain "percent impairment." The calculations are as follows:

"Bluefield (2,600') minus Charleston (600') equals 2,000' differential 2,000' divided by 300' altitude equals 6.67

6.67 multiplied by 1 mmHg per 300' altitude equals 6.67 mmHg."

(f) The legislative rules filed in the state register on the ninth day of August, one thousand nine hundred eighty-five, modified by the workers' compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred eighty-six, relating to the workers'
compensation commissioner (administration of the coal-workers' pneumoconiosis fund) are authorized.


The legislative rules filed in the state register on the twenty-first day of April, one thousand nine hundred eighty-seven, modified by the state lottery commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of August, one thousand nine hundred eighty-seven, relating to the state lottery commission (state lottery) are authorized.


(a) The legislative rules filed in the state register on the third day of January, one thousand nine hundred eighty-four, relating to the state fire commission (state fire code) are authorized with the amendments set forth below:

Page 1, section 106, line 1, after the word "to" add the words "personal care homes caring for five or less patients or"; and

Page 26, section 11.06 (3) A. (3). Strike the period at the end of the sentence and add the words "except for existing sleeping rooms owned by the state and located in dormitories or state parks."

(b) The legislative rules filed in the state register on the first day of August, one thousand nine hundred eighty-six, modified by the state fire commission to meet the objection of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of October, one thousand nine hundred eighty-six, relating to the state fire commission (hazardous substance emergency response training program), are authorized.

(c) The legislative rules filed in the state register on the sixth day of September, one thousand nine hundred eighty-eight, modified by the state fire commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth
day of December, one thousand nine hundred eighty-eight, relating to the state fire commission (state building code) are authorized.


(a) The legislative rules filed in the state register on the nineteenth day of November, one thousand nine hundred eighty-six, modified by the civil service commission to meet the objection of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the civil service commission (civil service system), are authorized.

(b) The legislative rules filed in the state register on the first day of November, one thousand nine hundred eighty-eight, modified by the civil service commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of February, one thousand nine hundred eighty-nine, relating to the civil service commission (civil service system) are authorized with the amendments set forth below:

On page fifteen, section 5.05(d), after the words “established in” by striking out the remainder of the sentence and inserting in lieu thereof the words “Chapter 29-6A of the Code of West Virginia, as amended.”

On page fifteen, section 5.06, after the words “established in” by striking out the remainder of the sentence and inserting in lieu thereof the words “Chapter 29-6A of the Code of West Virginia, as amended.”

And

On pages sixteen and seventeen by deleting all of section 5.07.

And,

On page 46, section 13(f) line 2 by striking the words “previously held”.

§64-2-25. Secretary of state.
(a) The legislative rules filed in the state register on the fifteenth day of April, one thousand nine hundred eighty-five, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of October, one thousand nine hundred eighty-five, relating to the secretary of state (standard size and format for rules and related documents filed in the secretary of state's office) are authorized.

(b) The legislative rules filed in the state register on the seventeenth day of August, one thousand nine hundred eighty-seven, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred eighty-seven, relating to the secretary of state (standard size and format for rules and publication of the state register or parts of the state register) are authorized.

§64-2-26. West Virginia state board of registration for professional engineers.

(a) The legislative rules filed in the state register on the twenty-ninth day of November, one thousand nine hundred eighty-five, modified by the West Virginia state board of registration for professional engineers to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the West Virginia state board of registration for professional engineers (legislative rules governing the West Virginia state board of registration for professional engineers) are authorized.

(b) The legislative rules filed in the state register on the twenty-third day of December, one thousand nine hundred eighty-seven, modified by the West Virginia state board of registration for professional engineers to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of January, one thousand nine hundred eighty-eight, relating to the West Virginia state board
of registration for professional engineers (rules of the
West Virginia state board of registration for profes-
sional engineers) are authorized.


The legislative rules filed in the state register on the
thirty-first day of July, one thousand nine hundred
eighty-seven, modified by the state board of examiners
of land surveyors to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the twenty-eighth day of January, one
thousand nine hundred eighty-eight, relating to the state
board of examiners of land surveyors (practice of land
surveying in West Virginia) are authorized.

§64-2-28. State boards of examination or registration;
West Virginia board of chiropractic
examiners.

The legislative rules filed in the state register on the
twenty-sixth day of October, one thousand nine hundred
eighty-seven, modified by the West Virginia board of
chiropractic examiners to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the twenty-seventh day of January,
one thousand nine hundred eighty-eight, relating to the
West Virginia board of chiropractic examiners (West
Virginia board of chiropractic examiners) are autho-
rized.

§64-2-29. Radiologic technology board of examiners.

The legislative rules filed in the state register on the
twenty-fourth day of January, one thousand nine
hundred eighty-four, relating to the radiologic technol-
ogy board of examiners are authorized.

§64-2-30. Board of medicine.

(a) The legislative rules filed in the state register on
the twelfth day of May, one thousand nine hundred
eighty-three, relating to the board of medicine (licens-
ing, disciplinary and complaint procedures; podiatry;
physicians assistants) are authorized with the modifica-
tions set forth below:
§24.12.  
(b) It shall be the responsibility of the supervising physician to obtain consent in writing from the patient before Type A physician assistants employed in a satellite clinic may render general medical or surgical services, except in emergencies.

§24.16.  
(c) No physician assistant shall render nonemergency outpatient medical services until the patient has been informed that the individual providing care is a physician assistant."

(b) The legislative rules filed in the state register on the twenty-sixth day of November, one thousand nine hundred eighty-five, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of January, one thousand nine hundred eighty-six, relating to the board of medicine (licensing, disciplinary and complaint procedures; podiatry; physicians assistants) are authorized.

(c) The legislative rules filed in the state register on the eighth day of March, one thousand nine hundred eighty-five, modified by the West Virginia board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of December, one thousand nine hundred eighty-five, relating to the West Virginia board of medicine (rules governing the approval of medical schools not accredited by the liaison committee on medical education) are authorized.

(d) The legislative rules filed in the state register on the third day of June, one thousand nine hundred eighty-seven, relating to the board of medicine (fees for services rendered by the board of medicine) are authorized.

(e) The legislative rules filed in the state register on the sixteenth day of September, one thousand nine hundred eighty-eight, modified by the board of medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the
twenty-fourth day of February, one thousand nine hundred eighty-nine, relating to the board of medicine (dispensing of legend drugs by physicians and podiatrists) are authorized with the following amendments:

Section 2.6 to read as follows: Dispense means to deliver a legend drug to an ultimate user or research subject by or pursuant to the lawful order of a physician or podiatrist, including the prescribing, packaging, labeling, administering or compounding necessary to prepare the drug for that delivery.

Section 3.3 to read as follows: Physicians or podiatrists who are not registered with the Board as dispensing physicians may not dispense legend drugs. However, the following activities by a physician or podiatrist shall be exempt from the requirements of section 3 through 8 applicable to dispensing physicians:

a. Legend drugs administered to the patient, which are not controlled substance when an appropriate record is made in the patient's chart.

b. Professional samples distributed free of charge by a physician or podiatrist or certified physician assistant under his or her supervision to the patient when an appropriate record is made in the patient's chart; or

c. Legend drugs which are not controlled substances provided by free clinics or under West Virginia state authorized programs, including the medicaid, family planning, maternal and child health, and early and periodic screening and diagnosis and treatment programs: Provided, That all labeling provisions of section 8 shall be applicable except the requirements of section 8.3 (a).

§64-2-31. Board of embalmers and funeral directors.

(a) The legislative rules filed in the state register on the twenty-seventh day of July, one thousand nine hundred eighty-four, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the
(b) The legislative rules filed in the state register on the sixteenth day of October, one thousand nine hundred eighty-five, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of July, one thousand nine hundred eighty-six, relating to the board of embalmers and funeral directors (governing the board of embalmers and funeral directors), are authorized.

§64-2-32. Board of examiners for registered professional nurses.

The legislative rules filed in the state register on the thirteenth day of September, one thousand nine hundred eighty-three, relating to the board of examiners for registered professional nurses (qualifications of graduates of foreign nursing schools for admission to the professional nurse licensing examination) are authorized.

§64-2-33. West Virginia board of examiners for licensed practical nurses.

(a) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred eighty-six, modified by the West Virginia 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 the thirtieth day of September, one thousand nine hundred eighty-six, relating to the West Virginia board of examiners for licensed practical nurses (policies relating to licensure of the licensed practical nurse), are authorized.

(b) The legislative rules filed in the state register on the thirtieth day of July, one thousand nine hundred eighty-six, relating to the West Virginia board of examiners for licensed practical nurses (legal standards of nursing practice for the licensed practical nurse), are authorized.

(c) The legislative rules filed in the state register on
§64-2-34. West Virginia housing development fund.

The legislative rules filed in the state register on the twenty-seventh day of December, one thousand nine hundred eighty-two, relating to the West Virginia housing development fund (single-family mortgage loans), are authorized.


(a) The legislative rules filed in the state register on the fifth day of November, one thousand nine hundred eighty-seven, relating to the jail and prison standards commission (West Virginia minimum standards for construction, operation, and maintenance of jails) are authorized.

(b) The legislative rules filed in the state register on the ninth day of May, one thousand nine hundred eighty-eight, modified by the jail and prison standards commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of February, one thousand nine hundred eighty-nine, relating to the jail and prison standards commission (West Virginia minimum standards for construction, operation and maintenance of holding facilities) are authorized.

(c) The legislative rules filed in the state register on the eighteenth day of March, one thousand nine hundred eighty-eight, modified by the jail and prison standards commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of February, one thousand nine hundred eighty-nine, relating to the jail and prison standards commission (West Virginia minimum standards for construction, operation and maintenance of prisons) are authorized.

(d) The Legislature hereby authorizes and directs the jail and prison standards commission to amend its rules
relating to West Virginia minimum standards for construction, operation, and maintenance of jails which were filed in the code of state regulations (95 CSR 1) on the fifth day of April, one thousand nine hundred eighty-eight, with the following amendments set forth below:

On page 7, §8.10 by striking out in the first sentence, after the word "house", the following words: "no less than four (4) and

On page 30 by adding a new section 17.21 to read as follows:

17.21 Visitation to Home County. To the extent that the previous subsections provide requirements for visitation with inmates housed in regional jail facilities, it is the intent that such requirements apply only to visitation provided in a regional jail facility. When visitation with family and friends is required to be provided to a person incarcerated in a regional jail facility in a location other than the regional jail, the following provisions shall apply:

17.21.1 The regional jail need not assume the responsibility for transportation to the home county seat of a person incarcerated in the regional jail facility for visitation with their family and friends unless that person has had no visits from family and friends in the previous three months.

17.21.2 In providing any transportation under subsection 17.21.1 the regional jail has the right to schedule such transportation for visits with family and friends of the person incarcerated in a manner which would utilize to the utmost the regional jail's regularly scheduled trips to each of the respective counties it serves, including the scheduling of round-trips, so long as a minimum of 30 minutes is available for visitation.

17.21.3 The regional jail need not assume any responsibility for transportation under subsection 17.21.1 when the distance from the regional jail to the respective county seat is less than two hour's driving time.

(a) The legislative rules filed in the state register on the eleventh day of June, one thousand nine hundred eighty-two, relating to commissioner of banking (communication terminals and interchange systems), are authorized.

(b) The legislative rules filed in the state register on the fifteenth day of December, one thousand nine hundred eighty-three, relating to the commissioner of banking (consumer credit sales), are authorized.

(c) The legislative rules filed in the state register on the nineteenth day of August, one thousand nine hundred eighty-three, relating to the commissioner of banking (legal lending limit) are authorized.

(d) The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-six, modified by the commissioner of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-six, relating to the commissioner of banking (implementing the West Virginia community reinvestment act), are authorized.

(e) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-eight, modified by the commissioner of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of December, one thousand nine hundred eighty-eight, relating to the commissioner of banking (subsidiary bank holding the stock of its parent company as collateral) are authorized.


(a) The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-three, relating to the state auditor, securities commissioner (broker-dealers, agents and investment and advisors) are authorized with the amendments set forth below:

Section 14.06 Delete the words “as subsequently
amended” and reinsert the words “as amended March 30, 1982.”

Section 14.07 Place a period after “1976” and delete the words “as subsequently amended.”

(b) The legislative rules filed in the state register on the eighteenth day of January, one thousand nine hundred eighty-five, relating to the state auditor, securities commissioner (filing fee) are authorized.

§64-2-38. Board of risk and insurance management.

(a) The legislative rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-three, relating to the board of risk and insurance management (mine subsidence) are authorized.

(b) The legislative rules filed in the state register on the twenty-sixth day of November, one thousand nine hundred eighty-five, modified by the state board of risk and insurance management to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-six, relating to the state board of risk and insurance management (mine subsidence insurance program), are authorized.

§64-2-39. Department of human services; director of the child advocate office.

(a) The Legislature hereby authorizes and directs the director of the child advocate office of the department of human services to promulgate rules relating to guidelines for child support awards in exact conformity with the rules relating to guidelines for child support awards tendered to the secretary of state by the Senate committee on the judiciary on the twelfth day of March, one thousand nine hundred eighty-eight.

(b) The legislative rules filed in the state register on the twenty-seventh day of May, one thousand nine hundred eighty-eight, modified by the director of the child advocate office of the department of human services to meet the objections of the legislative rule-
making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred eighty-eight, relating to the director of the child advocate office of the department of human services (interstate income withholding) are authorized.

(c) The legislative rules filed in the state register on the twenty-seventh day of May, one thousand nine hundred eighty-eight, modified by the director of the child advocate office of the department of human services to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred eighty-eight, relating to the director of the child advocate office of the department of human services (obtaining support from federal and state income tax refunds) are authorized.

(d) The legislative rules filed in the state register on the twenty-seventh day of May, one thousand nine hundred eighty-eight, modified by the director of the child advocate office of the department of human services to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred eighty-eight, relating to the director of the child advocate office of the department of human services (termination of income withholding) are authorized.

(e) The legislative rules filed in the state register on the twenty-seventh day of May, one thousand nine hundred eighty-eight, modified by the director of the child advocate office of the department of human services to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred eighty-eight, relating to the director of the child advocate office of the department of human services (providing information to credit reporting agencies) are authorized.

§64-2-40. Public employees insurance board.
(a) The legislative rules filed in the state register on the sixteenth day of May, one thousand nine hundred eighty-three, relating to the public employees insurance board (public employees insurance plan) are authorized with the amendments set forth below:

§6.03. — In the second sentence delete the words "Executive Secretary" and insert the word "Board."

(b) The legislative rules filed in the state register on the twenty-seventh day of September, one thousand nine hundred eighty-four, modified by the public employees insurance board to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of March, one thousand nine hundred eighty-five, relating to the public employees insurance board (credit for accrued sick/annual leave and optional life insurance) are authorized.

(c) The legislative rules filed in the state register on the twelfth day of September, one thousand nine hundred eighty-four, relating to the public employees insurance board (late enrollment in the public employees insurance program) are authorized with the amendments set forth below:

§2.01(b) shall read as follows:

"(b) ‘children’ shall mean unmarried children between birth and age nineteen and shall include: (1) The employee’s natural children, (2) legally adopted children, including children living with the employee during the period of probation, (3) stepchildren residing in the employee’s household and (4) other children fully dependent upon the employee for support and maintenance and residing in the household of which the employee is head and actually being supported by the employee. Children may be included after the attainment of age nineteen, but not beyond the attainment of age twenty-five, if they are enrolled as full-time students, are unmarried, and are dependent upon the employee for support. Children may also be included after the attainment of age nineteen while incapable of self-support because of mental illness, mental retardation or a permanent physical disability, if the child was
dependent upon the employee for support and maintenance at the onset of the mental illness, mental retardation or permanent physical disability. For the purpose of this section, mental illness includes addiction as defined in Code 27-1-11 as is defined as a manifestation in a person of significantly impaired capacity to maintain acceptable levels of functioning in the areas of intellect, emotion and physical well-being, only if such impairment renders the person dangerous to himself or others or such person is substantially unable to protect himself from significant hazard: Provided, That children included because of addiction as hereinbefore defined shall not be included beyond the attainment of age twenty-five.”

On page six, at 4.01(g)(2) shall read as follows:

The end of any 12 month period after enrollment during which no diagnosis or treatment is received, and no expenses are incurred for care of the injury, illness or related conditions.

Also, insert a new section, designated section 5.07, to read as follows:

“5.07. — Coverage for dependents shall terminate at the end of the month in which they no longer meet the definition of ‘dependent’ as set forth in section 2.01 of these rules.”

§64-2-41. Employee suggestion award board.

The legislative rules filed in the state register on the twenty-third day of July, one thousand nine hundred eighty-two, relating to the employee suggestion award board (public employee suggestion program), are authorized.

§64-2-42. Commissioner of commerce.

The legislative rules filed in the state register on the eighteenth day of February, one thousand nine hundred eighty-seven, modified by the commissioner of commerce to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of October, one thousand nine
hundred eighty-seven, relating to the commissioner of
commerce (public use of West Virginia state parks,
forests, and hunting and fishing areas) are authorized
with the amendments as set forth below:

On page 1, section 2.1 after the words “fishing area.”
add “This rule does not apply to the erection of
temporary blinds or tree stands in public hunting
areas.”

And, on page 3, section 2.12 after the word “guests”
by adding “licensed hunters and fishermen while
hunting or fishing”.

And, on page 5, section 2.22 by adding at the end of
the section the following sentence: “Any person may
apply to the Superintendent of the park for a special
event permit and pay an application fee for use of
firearms during historical reenactments, or the use of
hay, straw, boughs, pine needles or similar materials for
special events. The Park Superintendent may issue a
permit to limit areas of use of any of these exceptions
and require damage assessments, if necessary.”

On page 8, section 4.5 by deleting the word “water”
and inserting in lieu thereof the word “swimming pool”
and on page 9 section 4.5 after the word “water.” add
the following “These restrictions do not apply to
swimming areas which are natural bodies of water.”

§64-2-43. West Virginia industrial and trade jobs develop-
ment corporation.

The legislative rules filed in the state register on the
fifteenth day of October, one thousand nine hundred
eighty-six, modified by the West Virginia industrial and
trade jobs development corporation to meet the objec-
tions of the legislative rule-making review committee
and refiled in the state register on the twelfth day of
January, one thousand nine hundred eighty-seven,
relating to the West Virginia industrial and trade jobs
development corporation (general administration of the
West Virginia capital company act and establishment of
application procedures to implement the act), are
authorized.
§64-2-44. Alcohol beverage control commission.

(a) The legislative rules filed in the state register on the thirtieth day of December, one thousand nine hundred eighty-two, relating to the alcohol beverage control commission (transportation of alcoholic beverages), are authorized.

(b) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, relating to the alcohol beverage control commissioner (lighting of licensed premises), are authorized.

(c) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, relating to the alcohol beverage control commissioner (kitchen and dining facilities), are authorized.

(d) The legislative rules filed in the state register on the twenty-fourth day of August, one thousand nine hundred eighty-two, relating to the alcohol beverage control commissioner (refusal to license private clubs), are authorized with the exception of subsection (a) of the rules which shall be promulgated as set forth below in this section as follows:

(a) For purposes of this regulation, the commissioner may refuse to grant any license if he has reasonable cause to believe, as indicated by documented evidence, that the applicant, or any officer, director or manager thereof, or shareholder owning twenty percent or more of its capital stock, beneficial or otherwise, or other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or part:

(1) Is not a person of good moral character or repute;

(2) Has maintained a noisy, loud, disorderly or unsanitary establishment;

(3) Has demonstrated, either by his police record or by his record as former licensee under chapter sixty or chapter eleven, article sixteen of the West Virginia code,
a lack of respect for law and order, generally, or for the
laws and rules governing the sale and distribution of
alcoholic beverages or nonintoxicating beer;

(4) Has the general reputation of drinking alcoholic
beverages to excess, or is addicted to the use of
narcotics;

(5) Has misrepresented a material fact in applying to
the commissioner for a license.

For purposes of this regulation, the commissioner
shall refuse to grant any license if he has reasonable
cause to believe, as indicated by documented evidence
that the applicant, or any officer, director or manager
thereof, or shareholder owning twenty percent or more
of its capital stock, beneficial or otherwise, or other
person conducting or managing the affairs of the
applicant or of the proposed licensed premises, in whole
or part:

(1) Is not eighteen years of age or older;

(2) Has been convicted of a felony or other crime
involving moral turpitude, and, upon such conviction,
the applicant shall not be eligible for licensure within
five years next preceding successful completion of all
conditions of probation, discharge from parole supervi-
sion or expiration of sentence;

(3) Has been convicted of violating the liquor laws of
any state or the United States, and, upon such convic-
tion, the applicant shall not be eligible for licensure
within five years next preceding successful completion
of all conditions of probation, discharge from parole
supervision or expiration of sentence;

(4) Has had any license revoked under the liquor laws
of any state or the United States within five years next
preceding the filing date of the application;

(5) Is not the legitimate owner of the business
proposed to be licensed, or other persons have ownership
interests in the business which have not been disclosed;

(6) Is a person to whom alcoholic beverages may not
be sold under the provisions of chapter sixty of the West
Virginia code;
(7) Has been adjudicated an incompetent;

(8) Is an officer or employee of the alcohol beverage control commissioner of West Virginia; or

(9) Is violating or allowing the violation of any provision of chapter sixty, chapter sixty-one or chapter eleven, article sixteen of the code in its establishment at the time its application for a license is pending.


The legislative rules filed in the state register on the twenty-sixth day of November, one thousand nine hundred eighty-five, modified by the West Virginia board of hearing aid dealers to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the West Virginia board of hearing aid dealers (rules governing the West Virginia board of hearing aid dealers) are authorized.

§64-2-46. Nursing home administrators licensing board.

The legislative rules filed in the state register on the eighteenth day of October, one thousand nine hundred eighty-five, modified by the nursing home administrators licensing board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of January, one thousand nine hundred eighty-six, relating to the nursing home administrators licensing board (governing nursing home administrators) are authorized.

§64-2-47. Board of examiners of psychologist.

(a) The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-four, relating to the board of examiners of psychologist (examination fee) are authorized.

(b) The legislative rules filed in the state register on the sixteenth day of September, one thousand nine hundred eighty-eight, modified by the board of examin-
ers of psychologists to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred eighty-eight, relating to the board of examiners of psychologists (penalties and fees) are authorized.


The legislative rules filed in the state register on the second day of October, one thousand nine hundred eighty-four, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the board of pharmacy (parenteral/enteral compounding) are authorized.

§64-2-49. State athletic commission.

The legislative rules filed in the state register on the twentieth day of February, one thousand nine hundred eighty-five, relating to the state athletic commission (professional and amateur boxing) are authorized.


(a) The legislative rules filed in the state register on the fourteenth day of September, one thousand nine hundred eighty-four, relating to the archives and history commission (certified local government program) are authorized with the following amendments:

§4.02, subsections a,b,c,d,e,g and i are amended in their entirety to read as follows:

“a. The local government shall have created a historic landmark commission or commission, consisting of five (5) members, to carry out the provisions of the ordinance or order.”

“b. HLC or commission membership shall be drawn from among persons with demonstrated interest, competence, or knowledge in historic preservation and local history. To the extent available in the community, members of the HLC shall be preservation-related professionals (including the professions of history,
architecture, architectural history, planning, real estate, American studies, geography, landscape architecture, law, engineering, or archaeology). When a discipline is not represented in the Commission membership, commissioners shall seek expertise in this area when reporting on National Register nominations and other actions that will impact properties which are normally evaluated by a professional in such discipline. This may be accomplished through consultation with universities or colleges. Prior to the consultation process, the Commission must notify the State Historic Preservation Officer in writing that the appropriate professional assistance has been obtained and identified.”

c. The local government, be certified without the minimum number or types of professional disciplines, must report to the SHPO's satisfaction that it has made a reasonable effort to fill those positions. The requirements for professional representation on the Commission shall not exceed those of the State Review Board.”

d. Commission meetings shall be held at regular intervals at least four times each year, advertised in advance, and open to the public. The Commission shall establish rules of procedure or bylaws including a code of conduct.”

e. The Commission shall transmit an annual report of its activities to the State Historic Preservation Officer. Such reports shall include, at a minimum, new designations made, progress on survey activities, and attendance records. Reports shall be submitted within sixty days after the end of the fiscal year for the local government or portion of the fiscal year in the first year of the establishment of the commission. These reports will be reviewed and evaluated by the SHPO to ensure that the Commission's activities are consistent with the State Historic Preservation Plan.”

“g. Records of proceedings shall be transmitted to the State Historic Preservation Officer at the same time they are transmitted to members of the Commission.”

“i. Commission responsibilities must be complementary to and carried out in coordination with those of the
§5.01, subsections a and d are amended to read in their entirety as follows:

"a. A written assurance by the chief elected official that the local government does fulfill all the standards for certification outlined above."

"d. Resumes of each of the members of the historic landmark commission including credentials of member expertise in fields related to historic preservation. Where no professional members have been appointed an explanation and information demonstrating good faith efforts to obtain such members shall be included."

§5.03 is amended in its entirety to read as follows:

"5.03 — Determination that Local Government Fulfills Requirements for Certification—if the State Historic Preservation Officer determines that the local government fulfills the requirements for certification, the State Historic Preservation Officer will prepare a written certification agreement with the local government that lists the specific responsibilities of the local government where certified. These responsibilities will include those powers and duties as stated in 4.02. The SHPO will notify the United States Secretary of the Interior, or designee and furnish a copy of the approved request and the certification agreement and shall respond to the local government within fifteen days of the Secretary's response."

The fourth line of §5.04 is amended to read as follows:

"Secretary of the Interior within 15 working days. The certification"

The last line of §6 is amended to read as follows:

"(National Historic Preservation Act, Section 101(c)(2))"

The section heading to §6.01 is amended in its entirety
to read as follows: "6.01 Notification of Commission by SHPO of National Register Nomination of Property Within Local Government Jurisdiction—"

The last three lines of §6.01 are amended in their entirety to read as follows: "101(a) of the National Historic Preservation Act, as amended. The State may expedite such process with the concurrence of the certified local government."

The first line after the section heading of §6.02 is amended to read as follows: "(National Historic Preservation Act, Sec. 101(c)(2)(b). If" and the third sentence of said §6.02 is amended in its entirety to read as follows: "If such an appeal is filed, the State shall follow the procedures for making a nomination pursuant to established procedures (section 101(a) of the Act)."

The second sentence of §6.03 is amended in its entirety to read as follows: "If an HLC or commission does not have a professional member with the necessary federal qualifications in the area, the HLC can obtain the opinion of a qualified professional in the area and consider their opinion in their recommendation."

§6.04 is amended in its entirety to read as follows:

"6.04—Commission Qualifications for Federal Pass Through Funds—Federal regulations also require that commissions possess certain qualifications in order to receive federal pass through funds. These are explained in Section 4.02."

§7.01 is amended in its entirety to read as follows:

"7.01—Performance Review of Certified Local Government by SHPO—The SHPO will review the commission's annual report to ensure that the performance of the local government is consistent with the State Historic Preservation Plan. If the SHPO determines that the performance of a certified local government is not in conformance with the certification agreement and the State Historic Preservation Plan the State Historic Preservation Officer shall document that determination and recommend to the certified local government steps which may be taken to improve their
performance. The Historic Preservation Officer shall also review the administration of funds allocated from the Historic Preservation Fund and other documents as necessary. The SHPO shall maintain written records for all SHPO evaluation of CLG's so that they may be available to the Secretary at any time.”

The last sentence of §7.03 is amended in its entirety to read as follows: “This closeout will follow procedures specified in National Register Programs Guidelines.”

The first sentence of §8.01 is amended in its entirety to read as follows: “A minimum of 10% of the state’s annual apportionment from the Historic Preservation Fund of the Department of the Interior will be set aside for transfer to qualified CLG’s in accordance with the National Historic Preservation Act as amended. In any year in which the total Historic Preservation Fund appropriation exceeds sixty-five (65) million dollars, one-half (1/2) of the amount over sixty-five (65) million dollars will also be transferred to CLG according to procedures to be provided by the Secretary.”

The third line of the first sentence of §8.04 is amended in its entirety to read as follows: “consistent with 35(FR61.7(f)(1) which states that the amount awarded to.”

§8.05 is amended in its entirety to read as follows:

“8.05—Application and Selection Criteria—Project application forms and selection criteria will be made available through individual notification and public advertisement from the SHPO of the West Virginia Department of Culture and History in June of each year. The criteria will be coordinated with those used to select survey and planning grants during the fiscal year. Funds must be applied for by August 30 of each year. Funding in any prior year does not guarantee continued funding. The project schedule and deadlines may vary from year to year and is dependent upon the time frame in which the Secretary of the Interior notifies the state of its apportionment from the annual Historic Preservation Fund.”
The third sentence of §8.06 is amended in its entirety to read as follows: “The SHPO is responsible for proper accounting of Historic Preservation Fund grants to CLG's in accordance with Office Management and Budget Circular A-102, Attachment P Audit Requirement.”

(b) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred eighty-eight, modified by the director of the division of archives and history of the department of culture and history to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of December, one thousand nine hundred eighty-eight, relating to the director of the division of archives and history of the department of culture and history (standards and procedures for administering state historic preservation programs) are authorized with the amendment set forth:

Section 3.2.b.A after the word “days” by inserting the words “after receipt of actual notice.”


(a) The legislative rules filed in the state register on the thirtieth day of August, one thousand nine hundred eighty-four, relating to the water development authority (hardship grant funds), are authorized.

(b) The legislative rules filed in the state register on the fourteenth day of August, one thousand nine hundred eighty-six, relating to the water development authority (requirements governing disbursements of loans and grants to governmental agencies for the acquisition or construction of water development projects), are authorized.


The legislative rules filed in the state register on the nineteenth day of April, one thousand nine hundred eighty-five, relating to the beef industry self-improvement assessment board (beef industry self-improvement assessment program) are authorized.

The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-six, modified by the commercial whitewater advisory board to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of January, one thousand nine hundred eighty-seven, relating to the commercial whitewater advisory board (commercial whitewater outfitters), are authorized with the following amendments:

"On page 1, §2.1, by striking all of §2.1 and inserting in lieu thereof the following: '2.1 Commercial whitewater outfitter means any person, partnership, corporation or other organization, or any combination thereof, duly authorized and operating from within or from without the state, which for monetary profit or gain, provides whitewater expeditions or rents whitewater craft or equipment for use in whitewater expeditions on any river, portions of rivers or waters of the state.'"

§64-2-54. Commissioner of the department of corrections.

(a) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-eight, modified by the commissioner of the department of corrections to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand nine hundred eighty-nine, relating to the commissioner of the department of corrections (parole supervision) are authorized.

(b) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-eight, modified by the commissioner of the department of corrections to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand nine hundred eighty-nine, relating to the commissioner of the department of corrections (furlough programs for inmates under the custody and control of the commissioner of the department of corrections) are authorized.
§64-2-55. Governor's committee on crime, delinquency and corrections.

1 The legislative rules filed in the state register on the twenty-fifth day of July, one thousand nine hundred eighty-eight, modified by the governor's committee on crime, delinquency and corrections to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of September, one thousand nine hundred eighty-eight, relating to the governor's committee on crime, delinquency and corrections (basic training academy, annual in-service and biennial in-service training standards) are authorized.

§64-2-56. Structural barriers compliance board.

1 The legislative rules filed in the state register on the twenty-fourth day of August, one thousand nine hundred eighty-eight, modified by the structural barriers compliance board to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of January, one thousand nine hundred eighty-nine, relating to the structural barriers compliance board (elimination of structural barriers in public buildings) are authorized.

§64-2-57. Department of finance and administration.

1 The legislative rules filed in the state register on the eighteenth day of November, one thousand nine hundred eighty-eight, modified by the director of the purchasing division of the department of finance and administration to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of January, one thousand nine hundred eighty-nine, relating to the director of the purchasing division of the department of finance and administration (purchasing division) are authorized.


1 The legislative rules filed in the state register on the twenty-sixth day of October, one thousand nine hundred eighty-eight, modified by the enterprise zone authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the
twenty-third day of February, one thousand nine hundred eighty-nine, relating to the enterprise zone authority (creation of enterprise zone authority to designate certain enterprise zones and provide for tax benefits within those zones) are authorized.

§64-2-59. Board of barbers and beauticians.

(a) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the board of barbers and beauticians (minimum curriculum for schools of barbering) are authorized with the amendment set forth below:

On page 9, by inserting a new section, designated section 3-6-14, to read as follows:

"§3-6-14. Repeal of rule—This rule will automatically be repealed on July 1, 1991, unless extended prior to that date by an act of the Legislature."

(b) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the board of barbers and beauticians (qualifications, training, examination and registration of instructors in barbering and beauty culture) are authorized with the amendment set forth below:

On page 6, by inserting a new section, designated section 3-2-9, to read as follows:

"§3-2-9. Repeal of rule—This rule will automatically be repealed on July 1, 1991, unless extended prior to that date by an act of the Legislature."

(c) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians...
beauticians to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the board of barbers and beauticians (operation of barber shops and schools of barbering) are authorized with the amendment set forth below:

On page 5, by inserting a new section, designated section 3-3-6, to read as follows:

"§3-3-6. Repeal of rule—This rule will automatically be repealed on July 1, 1991, unless extended prior to that date by an act of the Legislature."

(d) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the board of barbers and beauticians (curriculum and minimum requirements, subjects and hour schedule, rules and regulations for schools of beauty culture operation in West Virginia: joint barbers and beauticians license) are authorized with the amendments set forth below:

On page 7, by inserting a new section, designated section 3-1-11, to read as follows:

"§3-1-11. Repeal of rule—This rule will automatically be repealed on July 1, 1991, unless extended prior to that date by an act of the Legislature."

(e) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the board of barbers and beauticians (operation of beauty shops and schools of beauty culture) are authorized with the amendments set forth below:
On page 4, by inserting a new section, designated section 3-4-6, to read as follows:

"§3-4-6. Repeal of rule—This rule will automatically be repealed on July 1, 1991, unless extended prior to that date by an act of the Legislature."

And,

On page 4, by inserting a new subsection, designated section 3.25, to read as follows:

"3.25 Notwithstanding any law to the contrary or interpretation of law to the contrary, any licensed beautician may trim beards or mustaches."

(f) The legislative rules filed in the state register on the tenth day of June, one thousand nine hundred eighty-eight, modified by the board of barbers and beauticians to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of December, one thousand nine hundred eighty-eight, relating to the board of barbers and beauticians (licensing schools of barbering or beauty culture) are authorized with the amendments set forth below:

On page 2, subsection 4.1, by deleting subdivision (b) and relettering the remaining subdivisions.

On page 6, by inserting a new section, designated section 3-5-8, to read as follows:

"§3-5-8. Repeal of rule—This rule will automatically be repealed on July 1, 1991, unless extended prior to that date by an act of the Legislature."

CHAPTER 111
(Com. Sub. for S. B. 341—By Senator Loehr)

(Passed April 8, 1989; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact section eight, article two, chapter sixty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to authorizing the commissioner of the department of
energy to promulgate legislative rules relating to West
Virginia surface mining reclamation regulations
(repealer).

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PRO-
MULGATE LEGISLATIVE RULES.

§64-2-8. Department of energy.

1 (a) The legislative rules filed in the state register on
the thirty-first day of March, one thousand nine hundred
eighty-two, relating to the department of mines (energy)
(mine safety program), are authorized.

5 (b) The legislative rules filed in the state register on
the seventeenth day of August, one thousand nine
hundred eighty-three, relating to the department of
energy (governing the safety of those employed in and
around surface mines), are authorized.

10 (c) The legislative rules filed in the state register on
the seventh day of December, one thousand nine
hundred eighty-three, relating to the office of oil and
gas, department of mines (energy), (oil and gas and
other wells) are authorized with the amendment set
forth below:

Page viii, place an * in front of section 32.02.

Page ix, after section 35.04 add the following:

“*35.05 Extra Powers of the Administrator …… 64.”

Page 1, section 1.03 in the list of additional regu-
lations, add 35.05; in the list of revised regulations, add
32.02, 32.03 and 33.00.

Page 52 section 32.04 and section 32.05 add at the end
of (ii) the words “and (iii) definition of proration unit”.
Page 53 section 33 after the word "definitions" add the following sentence: "The following definitions are applicable to these regulations used for purposes of implementing the Natural Gas Policy Act of 1978 and are not intended to be used in any other context."

Page 55, section 33.02 (b)(16) after the word "formations" in the third lines of (i) and (ii), add the words "for which a well has been."

Page 64, after section 35.04 add the following section:

35.05 Extra powers of the Administrator.

"The administrator may also certify or provide a waiver for a well located within a proration unit as defined in 32.02 (b)(16) or any other well sought to be certified under these regulations after notice and hearing."

(d) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (oil and gas wells and other wells), are authorized.

(e) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the oil and gas division of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (certification of gas wells), are authorized.

(f) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil
and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (underground injection control), are authorized.

(g) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-six, modified by the director of the division of oil and gas of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of December, one thousand nine hundred eighty-six, relating to the director of the division of oil and gas of the department of energy (state national pollutant discharge elimination system (NPDES) program), are authorized.

(h) The legislative rules filed in the state register on the fourteenth day of November, one thousand nine hundred eighty-six, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of December, one thousand nine hundred eighty-six, relating to the commissioner of the department of energy (standards for certification of coal mine electricians), are authorized with the following amendments:

"Page one, §2.1, subsection (a), following the second word, 'electrician' by striking the colon and inserting the following: 'under the supervision required by section 4.1(d) of these rules' and a colon.

Page one, §2.1, subsection (a), by deleting all of subdivision (6) and renumbering the subsequent subdivisions.

Page two, §2.1, subsection (a), by deleting all of subdivision (9).

Page two, §2.1, subsection (b), by deleting all of
subdivision (14) and inserting in lieu thereof a new
subdivision (14) to read as follows: '(14) Replace blown
fuses on trolley poles and nips.'

Page five, §4.1, subsection (d), line three, following the
words 'certified electrician prior' by inserting the words
'to any work being performed and again prior.'"
nine hundred eighty-six, relating to the commissioner of
the department of energy (solid waste management), are
authorized.

(m) The legislative rules filed in the state register on
the eleventh day of August, one thousand nine hundred
eighty-six, modified by the commissioner of the depart-
ment of energy to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the fifteenth day of December, one thousand
nine hundred eighty-six, relating to the commissioner of
the department of energy (hazardous waste manage-
ment), are authorized.

(n) The legislative rules filed in the state register on
the twentieth day of April, one thousand nine hundred
eighty-seven, relating to the commissioner of the
department of energy (roof control) are authorized.

(o) The legislative rules filed in the state register on
the third day of April, one thousand nine hundred
eighty-seven, relating to the department of energy
standards for certification of underground belt examin-
ers for underground coal mines), are authorized.

(p) The legislative rules filed in the state register on
the ninth day of April, one thousand nine hundred
eighty-seven, relating to the commissioner of the
department of energy (performance standards for
blasting on surface mines) are authorized.

(q) The legislative rules filed in the state register on
the twelfth day of January, one thousand nine hundred
eighty-seven, modified by the commissioner of the
department of energy to meet the objections of the
legislative rule-making review committee and refiled in
the state register on the twentieth day of February, one
thousand nine hundred eighty-seven, relating to the
commissioner of the department of energy (state
national pollutant discharge elimination system
(NPDES) for mines and minerals), are authorized.

(r) The Legislature hereby authorizes and directs the
department of energy to promulgate the procedural
rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-seven, relating to the department of energy (requests for information) with the amendments set forth below:

On page two, subsection 3.1, by striking subdivision (d) and renumbering the remaining subdivisions, and

On page three, section 6, by striking all of subsection 6.1 and inserting in lieu thereof, the following:

"6.1 The department shall establish fixed rate fees for reproduction of documents, records, and files on the basis of the actual cost of such reproduction and shall document such costs: Provided, That where total costs are less than five dollars, no fee shall be charged."

(s) The legislative rules filed in the state register on the twelfth day of May, one thousand nine hundred eighty-seven, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of August, one thousand nine hundred eighty-seven, relating to the commissioner of the department of energy (blasters certification for surface coal mines and surface areas of coal mines) are authorized.

(t) The legislative rules filed in the state register on the twentieth day of January, one thousand nine hundred eighty-eight, modified by the commissioner of the department of energy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of November, one thousand nine hundred eighty-eight, relating to the commissioner of the department of energy (abandoned mine reclamation) are authorized.

(u) The legislative rules filed in the state register on the nineteenth day of September, one thousand nine hundred eighty-eight, and modified to meet the objections of the West Virginia Legislature and refiled in the
213 state register on the sixth day of April, one thousand
214 nine hundred eighty-nine, relating to the commissioner
215 of the department of energy (West Virginia surface
216 mining reclamation regulations (repealer)) are autho-
217 rized.

CHAPTER 112
(S. B. 236—By Senator Tucker, Mr. President)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reimbursement to the clerks of either legislative house of actual costs for copying or recording.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS.

§4-1-15. Fees of clerks for copying or recording.

1 For any copying or recording (other than that
2 mentioned in section twelve of this article and such as
3 he is required to do for the Legislature, or either house,
4 or a committee thereof, in the discharge of his official
5 duty) the clerk of either house may demand and receive
6 of and from the person, at whose request it is done, a
7 fee reasonably calculated to reimburse the clerk for the
8 cost of such copying or recording.
CHAPTER 113
(H. B. 2860—By Delegate Sattes)

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

AN ACT to amend and reenact section one, article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article five of said chapter; to amend and reenact section four, article nine of said chapter; to amend and reenact section seven, article ten of said chapter; to amend and reenact section three, article one, chapter five-a of said code; to amend and reenact section four, article twenty-nine-c, chapter sixteen of said code; to amend and reenact section ten, article three, chapter twenty-nine-a of said code; to amend and reenact section eleven, article three-a of said chapter twenty-nine-a; to amend and reenact section three, article five-c, chapter forty-nine of said code, all relating to revising membership of several statutory legislative committees and method by which membership is to be determined; membership of the commission on special investigations; proration of membership of the legislative commission on pensions and retirement; membership of the joint committee on government operations; membership of the council of finance and administration; composition of the legislative task force on uncompensated health care and medicaid expenditure; meeting dates, approval of joint committee on government and finance; reports to joint committee on government and finance and Legislature; compensation of members; membership of the legislative rule-making review committee; membership of the legislative oversight commission on education accountability; termination; composition of the legislative commission on juvenile law; terms of members.

Be it enacted by the Legislature of West Virginia:

That section one, article three; section one, article five; section four, article nine; and section seven, article ten, all of chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted;
that section three, article one, chapter five-a of said code be amended and reenacted; that section four, article twenty-nine-c, chapter sixteen of said code be amended and reenacted; that section ten, article three, chapter twenty-nine-a of said code be amended and reenacted; that section eleven, article three-a of said chapter twenty-nine-a be amended and reenacted; and that section three, article five-c, chapter forty-nine of said code be amended and reenacted, all to read as follows:

Chapter

4. The Legislature.

5A. Department of Finance and Administration.


29A. State Administrative Procedures.


CHAPTER 4. THE LEGISLATURE.

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-1. Continued as statutory body; composition; appointment and terms of members.

1. The joint committee on government and finance, heretofore existing under a joint rule of the Senate and House of Delegates, is hereby continued as a statutory body. This committee shall be composed of seven members of the Senate, six of whom shall be appointed by the president of the Senate, and seven members of the House of Delegates, six of whom shall be appointed by the speaker of the House of Delegates. The six members appointed by the president of the Senate shall include the majority leader of the Senate, the minority leader of the Senate, the chairman of the Senate committee on the judiciary and the chairman of the Senate committee on finance. The six members appointed by the speaker of the House of Delegates shall include the majority leader of the House of Delegates, the minority leader of the House of Delegates, the chairman of the house committee on the judiciary and the chairman of the house committee on finance. The president of the Senate and the speaker of the House of
20 Delegates shall be members of the committee and 21 cochairmen thereof. Not more than five members of the 22 committee from each house shall be members of the 23 same political party: Provided, That in the event the 24 membership of a political party is less than fifteen 25 percent in the House of Delegates or Senate, then the 26 membership of that political party from the legislative 27 house with less than fifteen percent membership may be 28 one from that house. The members shall serve until their 29 successors shall have been appointed as heretofore 30 provided.

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-1. Commission continued as “commission on special investigations”; composition; appointment and terms of members.

The purchasing practices and procedures commission, 2 heretofore created, shall continue in existence but on 3 and after the effective date of this section shall be 4 named and designated the “commission on special 5 investigations.” The commission shall continue to be 6 composed of five members of the Senate, to be appointed 7 by the president thereof, no more than three of whom 8 shall be from the same political party; and five members 9 of the House of Delegates, to be appointed by the 10 speaker thereof, no more than three of whom shall be 11 appointed from the same political party: Provided, That 12 in the event the membership of a political party is less 13 than fifteen percent in the House of Delegates or Senate, 14 then the membership of that political party from the 15 legislative house with less than fifteen percent member- 16 ship may be one from that house. The commission shall 17 be headed by two cochairmen, one to be selected by and 18 from the members appointed from the Senate, and one 19 to be selected by and from the members appointed from 20 the House of Delegates. All members of the commission 21 shall serve until their successors shall have been 22 appointed as heretofore provided.

ARTICLE 9. LEGISLATIVE COMMISSION ON PENSIONS AND RETIREMENT.

§4-9-4. Appointment of members; terms.
The commission shall consist of three members of the Senate to be appointed by the president of the Senate and three members of the House of Delegates to be appointed by the speaker of the House, and the governor shall appoint three members, one from labor, one from the business community and one from the general public. No more than two of the three members appointed by the president of the Senate and the speaker of the House, respectively, may be members of the same political party. The first appointed members of the commission shall serve for a term expiring on the thirtieth day of June in the year of the next succeeding regular session of the Legislature. At the commencement of such next succeeding regular session and at the commencement of regular sessions every two years thereafter, members of the commission shall be appointed for two-year terms beginning the first day of July in the year of each such regular session. Vacancies on the commission shall be filled for unexpired terms in the same manner as appointments to the commission.

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-7. Joint committee on government operations created; membership; compensation and expenses; meetings.

There is hereby created a statutory body to be known as the joint committee on government operations. Said committee shall be composed of five members of the Senate, to be appointed by the president thereof, no more than three of whom shall be appointed from the same political party; five members of the House of Delegates, to be appointed by the speaker thereof, no more than three of whom shall be appointed from the same political party: Provided, That in the event the membership of a political party is less than fifteen percent in the House of Delegates or Senate, that the membership of that political party from the legislative house with less than fifteen percent membership may be one from that house; and five citizens of this state who are not legislators, public officials or public employees, to be appointed by the governor to serve at his will and pleasure, not more than three of whom shall be
appointed from the same political party, and at least one
of whom shall reside in each congressional district of
this state. All citizen members shall sign a conflict of
interest statement. The committee shall be headed by
two cochairmen, one to be selected by the president of
the Senate from the members appointed from the
Senate, and one to be selected by the speaker of the
House of Delegates from the members appointed from
the House of Delegates. All members of the committee
shall serve until their successors shall have been
appointed as heretofore provided. Members of the
committee shall receive such compensation and reim-
bursement for expenses in connection with performance
of interim duties between regular sessions of the
Legislature as may be authorized by the citizens
legislative compensation commission established by
section thirty-three, article six of the constitution of
West Virginia. Each citizen member of the committee
shall receive thirty-five dollars per diem for each day
or substantial portion thereof that he is engaged in the
work of the committee, in addition to reimbursement for
his necessary expenses incurred in the performance of
his duties under this article, such reimbursement to be
subject to the same limitations as govern the expenses
of the legislative members of the committee.
Compensation and expenses shall be paid from an
appropriation to be made expressly for the committee,
but if no such appropriation be made or the total amount
appropriated has been expended, such expenses shall be
paid from the appropriation under "Account No. 103 for
Joint Expenses," but no expense of any kind whatever
payable under said Account No. 103 for joint expenses
shall be incurred unless first approved by the joint
committee on government and finance. The committee
shall meet upon call of the cochairmen or either of them
and may meet at any time, both during sessions of the
Legislature and in the interim.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

The council of finance and administration is hereby created and shall be composed of ten members, four of whom shall serve ex officio and six of whom shall be appointed as herein provided. The ex officio members shall be the commissioner of the department of finance and administration, the attorney general or his designee, the state treasurer or his designee and the state auditor or his designee; such designees being authorized voting ones. From the membership of the Legislature, the president of the Senate shall appoint three senators as members of the council, not more than two of whom shall be members of the same political party, and the speaker of the House shall appoint three delegates as members of the council, not more than two of whom shall be members of the same political party. Members of the council appointed by the president of the Senate and the speaker of the House shall serve at the will and pleasure of the officer making their appointment. The commissioner of finance and administration shall serve as chairman of the council. Meetings of the council shall be upon call of the chairman or a majority of the members thereof. It shall be the duty of the chairman to call no less than four meetings in each fiscal year, one in each quarter, or more often as necessary, and all meetings shall be open to the public. All meetings of the council shall be held at the capitol building in a suitable committee room which shall be made available by the Legislature for such purpose: Provided, That the second quarterly meeting in each fiscal year shall be held in November and shall be a joint meeting with the joint committee on government and finance of the Legislature called jointly by the president of the Senate, speaker of the House and commissioner of finance and administration.

The council shall serve the department of finance and administration in an advisory capacity for purposes of reviewing the performance of the administrative and fiscal procedures of the state, including the oversight of

*Clerk's Note: This section was also amended by H. B. 2037, which passed prior to this act.
all federal funds, and shall have the following duties:

(1) To advise with the commissioner in respect to matters of budgetary intent and efficiency, including budget bill and budget document detail and format;

(2) To advise with the commissioner concerning such studies of government and administration concerning fiscal policy as it may consider appropriate;

(3) To advise with the commissioner in the preparation of studies designed to provide long-term capital planning and finance for state institutions and agencies; and

(4) To advise with the commissioner in respect to the application for, and receipt and expenditure of, anticipated or unanticipated federal funds.

The appointed, non-ex officio members of the council shall be entitled to receive such compensation and reimbursement for expenses in connection with performance of their duties, during interim periods, if not otherwise receiving the same for such identical periods, as is authorized by the applicable sections of article two-a, chapter four of the code in respect to performance of duties either within the state or, if deemed necessary, out of state. Such compensation and expenses shall be incurred and paid only after approval by the joint committee on government and finance.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 29C. INDIGENT CARE.

§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

Not later than the first day of June, one thousand nine hundred eighty-five, the president of the Senate and speaker of the House of Delegates of the West Virginia Legislature shall appoint a legislative task force on uncompensated health care and medicaid expenditures which shall meet, study and make recommendations as herein provided.
The task force shall be composed of three members of the Senate appointed by the president from the membership of the Senate standing committee on health and human resources, three members of the House of Delegates appointed by the speaker from the membership of the House of Delegates standing committee on health and human resources, and a number of citizens appointed jointly by the president and speaker which, in their discretion, adequately provides for the appropriate representation of the interests of the providers of health care services, the providers of health care insurance, state departments involved in the administration of health care and health care related programs and the citizens of this state. Of the members of the Senate appointed by the president, not more than two shall be from the same political party. Of the members of the House of Delegates appointed by the speaker, not more than two shall be from the same political party.

Members originally appointed to the task force shall serve for terms beginning on the date of appointment and ending on the thirtieth day of June, one thousand nine hundred ninety, unless sooner replaced by the president or the speaker as applicable, or, in the discretion of the president and the speaker, unless the work of the task force is completed or the need for the task force no longer exists prior to that date. The task force shall cease to exist on the thirtieth day of June, one thousand nine hundred ninety.

The task force shall meet on such dates as may be approved by the joint committee on government and finance for the regular meetings of its subcommittees unless approval is first obtained from the joint committee on government and finance for additional meetings. The task force shall conduct studies on the amount of funds expended by hospitals and other health care providers of this state for services to persons who are unable to pay for those services and for which they receive no other form of reimbursement, the extent to which persons in this state forego needed medical services because of insufficient income and assets to pay
for those services, the extent to which the state is
maximizing available federal programs and moneys in
providing health care services to the citizens of this
state, the operation of the programs and funds created
by this article and the roles of the public, private and
private nonprofit sectors in providing health care
services to the citizens of this state. The task force shall
also study the state medicaid program in order to
determine if the state medicaid agency, as the payor of
last resort, is expending maximum effort to identify
alternate private insurance resources for medicaid
beneficiaries and shall study the feasibility and financial
impact upon the state of assuring increased access to
medicaid beneficiaries to primary health care in the
nonhospital setting by requiring enrollment in a
primary care clinic program, if available, and of the
establishment of different and lesser schedules of
payment for primary health services delivered by a
hospital emergency room as compared to the schedule
of payments for emergency room services of a true
medical emergency nature. The task force shall make
such recommendations as it deems appropriate to
address the needs identified in the studies.

The task force shall file an interim report with the
joint committee on government and finance and the
Legislature on the date of the last meeting of the joint
committee on government and finance prior to com-
mencement of the regular session of the Legislature in
each year before the final report of the task force is filed
with the joint committee on government and finance and
the Legislature on or before the thirtieth day of June,
one thousand nine hundred ninety.

The members of the task force shall be entitled to
compensation at the rate authorized for members of the
Legislature participating in legislative interim meetings
and to reimbursement for reasonable and necessary
expenses actually incurred in attending meetings of the
task force, except that any employee of the state
appointed to the task force is not entitled to such
compensation. Funds necessary for the work of the task
force shall be paid from joint appropriations to the
Senate and House of Delegates but no such funds shall be spent or obligations incurred in the conduct of such work without prior approval of the joint committee on government and finance.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

Article
3A. Education Rule Making.

ARTICLE 3. RULE MAKING.

§29A-3-10. Creation of a legislative rule-making review committee.

(a) There is hereby created a joint committee of the Legislature, known as the legislative rule-making review committee, to review all legislative rules of the several agencies and such other rules as the committee deems appropriate. The committee shall be composed of six members of the Senate, appointed by the president of the Senate, and six members of the House of Delegates, appointed by the speaker of the House of Delegates. In addition, the president of the Senate and the speaker of the House of Delegates shall be ex officio nonvoting members of the committee and shall designate the cochairs. Not more than four of the voting members of the committee from each house shall be members of the same political party: Provided, That in the event the membership of a political party is less than fifteen percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than fifteen percent membership may be one from that house. The members shall serve until their successors shall have been appointed as heretofore provided. Members of the committee shall receive such compensation and expenses as provided in article two-a, chapter four of this code. Such expenses and all other expenses, including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel, shall be paid from an appropriation to be made expressly for the legislative rule-making review committee, but if no such
appropriation be made, such expenses shall be paid
from the appropriation under “Account No. 103 for Joint
Expenses,” but no expense of any kind whatever payable
under said Account No. 103 for joint expenses shall be
incurred unless first approved by the joint committee on
government and finance. The committee shall meet at
any time, both during sessions of the Legislature and in
the interim.

(b) The committee may adopt such rules of procedure
as it considers necessary for the submission, presenta-
tion and consideration of rules.

ARTICLE 3A. EDUCATION RULE MAKING.

§29A-3A-11. Creation of a legislative oversight commis-
mission on education accountability; termination.

(a) There is hereby created a joint commission of the
Legislature, known as the legislative oversight commis-
sion on education accountability, to review all legislative
rules of the board and such other rules as the commis-
sion deems appropriate. The commission shall be
composed of three members of the Senate, appointed by
the president of the Senate, and three members of the
House of Delegates, appointed by the speaker of the
House of Delegates. No more than two of the three
members appointed by the president of the Senate and
the speaker of the House, respectively, may be members
of the same political party. In addition, the president of
the Senate and the speaker of the House of Delegates
shall be ex officio nonvoting members of the commission
and shall designate the cochairmen. At least one of the
Senate members and one of the House members shall
be members of the committee on education of the Senate
and House, respectively, and at least one of the Senate
members and at least one of the House members shall
be a member of the committee on finance of the Senate
and House, respectively. The members shall serve until
their successors shall have been appointed as heretofore
provided. Members of the commission shall receive such
compensation and expenses as provided in article two-
a, chapter four of this code. Such expenses and all other
expenses, including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel shall be paid from an appropriation to be made expressly for the legislative oversight commission on education accountability, but if no such appropriation be made, such expenses shall be paid from the appropriation under "Account No. 103 for Joint Expenses," but no expense of any kind whatever payable under said Account No. 103 for joint expenses shall be incurred unless first approved by the joint committee on government and finance. The commission shall meet at any time, both during sessions of the Legislature and in the interim.

(b) The commission may adopt such rules of procedure as it considers necessary for the submission, presentation and consideration of rules.

(c) The legislative oversight commission on education accountability shall be terminated on the first day of July, one thousand nine hundred ninety-two, unless review of its functions shall be undertaken pursuant to the provisions of sections nine, ten and eleven, article ten, chapter four of this code. If such commission is terminated pursuant to this subsection, any report required to be submitted to them shall instead be submitted to the joint committee on education of the Legislature.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5C. LEGISLATIVE COMMISSION ON JUVENILE LAW.

§49-5C-3. Appointment of members; terms.

1 The commission shall consist of:

(1) Three members of the Senate to be appointed by the president of the Senate and three members of the House of Delegates to be appointed by the speaker of the House. No more than two of the three members appointed by the president of the Senate and the speaker of the House, respectively, shall be members of the same political party.

(2) The commissioner of the department of human
services, the commissioner of corrections and the state
director of health who shall serve as ex officio members.

(3) Two persons trained and employed as school
guidance counselors, one to be appointed by the presi-
dent of the Senate and one to be appointed by the
speaker of the House.

The first appointed members of the commission shall
serve for a term expiring on the thirtieth day of June
in the year of the next succeeding regular session of the
Legislature. At the commencement of such next suc-
ceding regular session and at the commencement of
regular sessions every two years thereafter, members of
the commission shall be appointed for two-year terms
beginning the first day of July in the year of each such
regular session. Vacancies on the commission shall be
filled for unexpired terms in the same manner as
appointments to the commission.

CHAPTER 114

(Com. Sub. for H. B. 2005—By Delegates Love and Roop)

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

AN ACT to amend and reenact section one, article ten, chapter
thirty-eight of the code of West Virginia, one thousand
nine hundred thirty-one, as amended; and to further
amend said chapter thirty-eight by adding thereto a new
article, designated article ten-a, relating to the filing
and recordation of federal tax liens and other federal
liens generally; providing for an increase in the fees for
the recordation by the county clerk of any notice of
federal tax lien, refiled notice of federal tax lien,
certificate of discharge or subordination, or other
notices including a certificate of release, partial release
or nonattachment of a federal tax lien, and providing
a quarterly schedule for the payment of such fees by the
Internal Revenue Service; providing for the filing of
notices of liens, certificates, and other notices affecting
federal liens for which the filing thereof is not otherwise
provided; identifying the place of filing for federal liens
upon real and personal property; providing for the
certification of notices of liens, certificates, or other
notices affecting federal liens; prescribing the duties of
the clerk of the county commission; and establishing fees
for indexing and filing.

Be it enacted by the Legislature of West Virginia:

That section one, article ten, chapter thirty-eight of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; and that said chapter
thirty-eight be further amended by adding thereto a new
article, designated article ten-a, all to read as follows:

CHAPTER 38. LIENS.

ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN
BANKRUPTCY.

§38-10-1. Recordation of federal tax lien; release; fee.

1 Notices of federal tax liens and certificates discharg-
ing such liens may be filed in the office of the clerk of
the county commission of one or more of the counties of
this state. The clerk of the county commission of every
county of this state shall keep in his or her office in a
bound book a federal tax lien docket, in which he or she
shall, upon the filing in the office of any notice of a lien
upon the property of any person in favor of the United
States for the amount of any tax, including any interest,
penalty, additional amount, or additions to such tax,
共同 with any costs that may accrue in addition
thereunto, record such notice without delay. The clerk
shall index such notice in the name of the person against
whom the lien is claimed. No such tax shall be a valid
lien as against any mortgagee, purchaser or judgment
creditor, until such notice shall be filed in the office of
the clerk of the county commission of the county or
counties in which the property subject to such lien is
situated.

The clerk of such county commission shall, upon the
filing in his or her office of any release or partial release
of such lien issued by the Internal Revenue Service,
record the same and make proper marginal notation
thereof in the federal tax lien docket.
The fee for filing and indexing each notice of federal tax lien, refiled notice of federal tax lien, certificate of discharge or subordination, or other notice, including a certificate of release, partial release or nonattachment of a federal tax lien, shall be two dollars. If a release contains more than one reference to a lien released, the fee shall be two dollars for each lien released thereby. Such fees may, at the discretion of the Internal Revenue Service, be remitted quarterly on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December and shall include all fees due for the preceding three months of the quarter for which the remittance is made.

ARTICLE 10A. FEDERAL LIEN REGISTRATION.

§ 38-10A-2. Place of filing.
§ 38-10A-3. Execution of notices and certificates.
§ 38-10A-4. Duties of the clerk of the county commission.
§ 38-10A-5. Fees.


1 This article applies only to federal lien notices which under any Act of Congress or any regulation adopted pursuant thereto are required or permitted to be filed in the same manner as notices of federal tax liens.

§ 38-10A-2. Place of filing.

1 (a) Notices of liens, certificates, and other notices affecting federal liens, for which filing thereof is not otherwise provided for under the provisions of this code, must be filed in accordance with this article.

5 (b) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the clerk of the county commission of the county in which the real property subject to the liens is situated.

10 (c) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the clerk of the county commission of the county wherein the person against whose interest the lien applies resides at the time of filing of the notice of lien. For purposes of
this subsection, the residence of a corporation or a partnership shall be deemed to be the place at which the principal executive office is located.

§38-10A-3. Execution of notices and certificates.

Certification of notices of liens, certificates, or other notices affecting federal liens by the secretary of the treasury of the United States or his or her delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgement is necessary.

§38-10A-4. Duties of the clerk of the county commission.

(a) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (b) is presented to the clerk of the county commission, the clerk shall endorse thereon his or her identification and the date and time of receipt, file the same, and forthwith enter and record the fact of such filing in the index maintained for the public indexing of federal liens in such a manner that a reasonable inspection of the index will reveal the existence of the instrument.

(b) If a refiled notice of federal lien referred to in subsection (a) or a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the clerk of the county commission for filing, the clerk shall endorse thereon his or her identification and the date and time of receipt, file the same, enter and record the fact of such filing in the index maintained for the public indexing of federal liens, and enter and record the fact of such filing in the public index on the line where the original notice of lien is entered.

(c) Upon request of any person, the clerk of the county commission shall issue his or her certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed under this article or previous federal tax lien registration act, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The
§38-10A-5. Fees.

The fee for filing and indexing each notice of lien or certificate or notice affecting the lien is:

1. For a lien on real estate, $2.00;
2. For a lien on tangible and intangible personal property, $2.00;
3. For a certificate of discharge or subordination, $2.00; and
4. For all other notices, including a certificate of release or nonattachment, $2.00.

The clerk of the county commission shall bill the appropriate federal officials on a quarterly basis for fees for documents filed by them.

CHAPTER 115

(H. B. 2673—By Delegates Wooton and Rutledge)

[Passed April 5, 1989; in effect June 1, 1989. Approved by the Governor.]

AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-d, relating to the filing and recordation of federal superfund liens.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten-d, to read as follows:
ARTICLE 10D. SUPERFUND LIEN RECORDATION ACT.

§38-10D-1. Recordation of federal superfund liens; release; fee.

(a) Pursuant to the authority of section 107(d) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9607(1), notices of liens for costs and damages under said act (superfund liens) may be filed in an office designated by state law. Pursuant to said act, the office of the clerk of the county commission for the county in which the real property is located is hereby designated as the appropriate office for the filing of such notices of superfund liens.

(b) The clerk of the county commission of every county of this state shall, upon the filing in his/her office of any such notice of superfund lien upon the property of any person in favor of the United States, record such notice of lien without delay in the federal tax lien docket. He shall index such lien in the name of the person against whom the lien is claimed.

(c) Every such superfund lien shall be void as to any creditor, secured parties under a deed of trust, mortgagee, purchaser, holder of a security interest or judgment lien creditor, until and except from the time such lien is filed in the office of the clerk of the county commission of the county in which the real property subject to such lien is situated. In case the real property lies in more than one county, then such notice shall be filed in all counties in which the real property subject to such lien is situated.

(d) The clerk of such county commission shall, upon the filing in his/her office of any release of such lien issued by the regional counsel for the United States Environmental Protection Agency, record the same and make proper marginal notation thereof in the federal tax lien docket. No fee shall be charged by such clerk for recording of the notice of superfund lien, but he/she shall charge a fee of two dollars for recording such release or partial release.
AN ACT to amend and reenact section twelve, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five and seven, article six, chapter twenty-four of said code; and to further amend article six of said chapter by adding thereto a new section, designated section six-a, all relating to local emergency telephone systems; sharing of certain authority with public service commission by department of public safety; and allowing department of public safety to participate in developing a comprehensive plan, preparing a proposal and for causing a public meeting therein.

Be it enacted by the Legislature of West Virginia:

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

Chapter
15. Public Safety.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-12. Mission of the department; powers of superintendent, officers and members; patrol of turnpike.

1 (a) The West Virginia department of public safety shall have the mission of statewide enforcement of criminal and traffic laws with emphasis on providing basic enforcement and citizen protection from criminal depredation throughout the state and maintaining the safety of the state's public streets, roads and highways.

7 (b) The superintendent and each of the officers and
members of the department are hereby empowered:

(1) To make arrests anywhere within the state of any persons charged with the violation of any law of this state, or of the United States, and when a witness to the perpetration of any offense or crime, or to the violation of any law of this state, or of the United States, may arrest without warrant; to arrest and detain any persons suspected of the commission of any felony or misdemeanor whenever complaint is made and warrant is issued thereon for such arrest, and any person so arrested shall be forthwith brought before the proper tribunal for examination and trial in the county where the offense for which any such arrest has been made was committed;

(2) To serve criminal process issued by any court or magistrate anywhere within this state (they shall not serve civil process); and

(3) To cooperate with local authorities in detecting crime and in apprehending any person or persons engaged in or suspected of the commission of any crime, misdemeanor or offense against the law of this state, or of the United States, or of any ordinance of any municipality in this state; and to take affidavits in connection with any application to the department of highways, department of motor vehicles and department of public safety of West Virginia for any license, permit or certificate that may be lawfully issued by these departments of state government.

(c) Members of the department of public safety are hereby created forest patrolmen and game and fish wardens throughout the state to do and perform any duties and exercise any powers of such officers, and may apprehend and bring before any court or magistrate having jurisdiction of such matters, anyone violating any of the provisions of chapters twenty, sixty and sixty-one of this code, and the department of public safety shall at any time be subject to the call of the West Virginia alcohol beverage control commissioner to aid in apprehending any person violating any of the provisions of said chapter sixty of this code. They shall serve and execute warrants for the arrest of any person and warrants for the search of any premises issued by any properly constituted authority, and shall exercise all
of the powers conferred by law upon a sheriff. They
shall not serve any civil process or exercise any of the
powers of such officer in civil matters.

(d) Any member of the department of public safety
knowing or having reason to believe that anyone has
violated the law may make complaint in writing before
any court or officer having jurisdiction and procure a
warrant for such offender, execute the same and bring
such person before the proper tribunal having jurisdic-
tion. He shall make return on all such warrants to such
tribunals and his official title shall be "member of the
department of public safety." Members of the depart-
ment of public safety may execute any summons or
process issued by any tribunal having jurisdiction
requiring the attendance of any person as a witness
before such tribunal and make return thereon as
provided by law, and any return by a member of the
department of public safety showing the manner of
executing such warrant or process shall have the same
force and effect as if made by a sheriff.

(e) Each member of the department of public safety,
when called by the sheriff of any county, or when the
governor by proclamation so directs, shall have full
power and authority within such county, or within the
territory defined by the governor, to direct and com-
mand absolutely the assistance of any sheriff, deputy
sheriff, chief of police, policeman, game and fish
warden, and peace officer of the state, or of any county
or municipality therein, or of any able-bodied citizen of
the United States, to assist and aid in accomplishing the
purposes expressed in this article. When so called, any
officer or person shall, during the time his assistance is
required, be for all purposes, a member of the depart-
ment of public safety and subject to all the provisions
of this article.

(f) The superintendent may also assign members of
the department to perform police duties on any turnpike
or toll road, or any section thereof, operated by the West
Virginia turnpike commission: Provided, That such
turnpike commission shall reimburse the department of
public safety for salaries paid to such members, and
shall either pay directly or reimburse the department
for all other expenses of such group of members in
accordance with actual or estimated costs determined by the superintendent.

(g) The department of public safety may develop proposals for a comprehensive county or multi-county plan on the implementation of an enhanced emergency service telephone system and for causing a public meeting on such proposals, all as set forth in section six-a, article six, chapter twenty-four of this code.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-3. Adoption of emergency telephone system plan; department of public safety to adopt alternate plan.

(a) The public service commission shall develop, adopt and periodically review a comprehensive plan establishing the technical and operational standards to be followed in establishing and maintaining emergency telephone systems.

(b) In developing the comprehensive plan, the public service commission shall consult with telephone companies, and with the various public agencies and public safety units, including, but not limited to, emergency services organizations.

(c) The public service commission shall annually review with each operating telephone company their construction and switching replacements projections. During this review, the public service commission shall ensure that all new switching facilities will accommodate the emergency telephone system.

(d) The department of public safety shall participate in proceedings conducted under subsection (a) of this section. Additionally, the department of public safety
may actively participate in the annual review required by subsection (c) of this section.

§24-6-4. Creation of emergency telephone systems.

(a) Upon the adoption by the public service commission of a comprehensive plan, the public agency may establish, consistent with the comprehensive plan, an emergency telephone system within its respective jurisdiction. Nothing herein contained, however, shall be construed to prohibit or discourage in any way the establishment of multijurisdiction or regional systems, and any emergency telephone system established pursuant to this article may include the territory of more than one public agency, or may include only a portion of the territory of a public agency. To the extent feasible, emergency telephone systems shall be centralized.

(b) Every emergency telephone system shall provide access to emergency services organizations, police, fire fighting, and emergency medical and ambulance services and may provide access to other emergency services. Such system may also provide access to private ambulance services. The emergency telephone system shall provide the necessary mechanical equipment at the established public agency answering point to allow deaf persons access to the system. In those areas in which a public safety unit of the state provides emergency services, the system shall provide access to the public safety unit.

(c) The primary emergency telephone number to the extent possible shall be uniform throughout the state.

(d) A telephone company in the normal course of replacing or making major modifications to its switching equipment shall include the capability of providing for the emergency telephone system and shall bear all costs related thereto. All charges for other services and facilities provided by the telephone company, including the provision of distribution facilities and station equipment, shall be paid for by the public agency or public safety unit in accordance with the applicable tariff rates then in effect for such services and facilities.
Other costs pursuant to the emergency telephone system shall be allocated as determined by the applicable comprehensive plan of the public service commission.

(e) All coin-operated telephones within the state shall be of a design that will permit a caller to initiate, without first having to insert a coin (dial tone first or post-pay systems), local calls to the long distance and directory assistance operators, calls to the emergency telephone number answering point, if one has been established in his or her local calling area, and to other numbers for services as the telephone company may from time to time make available to the public.

§24-6-5. Enhanced emergency telephone system requirements.

(a) An enhanced emergency telephone system, at a minimum, shall provide that:

(1) All the territory in the county, including every municipal corporation in the county, which is served by telephone company central office equipment that will permit such a system to be established shall be included in the system;

(2) Every emergency service provider that provides emergency service within the territory of a county participate in the system;

(3) Each county answering point be operated constantly;

(4) Each emergency service provider participating in the system maintain a telephone number in addition to the one provided for in the system; and

(5) If the county answering point personnel reasonably determine that a call is not an emergency the personnel provide the caller with the number of the appropriate emergency service provider.

(b) To the extent possible, enhanced emergency telephone systems shall be centralized.

(c) In developing an enhanced emergency telephone system, the county commission or the department of
24 public safety shall seek the advice of both the telephone
25 companies providing local exchange service within the
26 county and the local emergency providers.

§24-6-6a. Alternate procedure for proposal by the de-
24 partment of public safety.

1 (a) In any county or counties which have areas thereof
2 not receiving service from an enhanced emergency
3 services telephone system, the department of public
4 safety may prepare a proposal on the implementation of
5 such a system and may cause a public meeting to be held
6 on the proposal to explain the system and receive
7 comments from the members of the county commission
8 and from other public officials and interested persons.
9 At least thirty, but not more than sixty days, before such
10 a meeting, the department of public safety shall place
11 an advertisement in a newspaper of general circulation
12 in the county notifying the members of the county
13 commission or county commission and the public of the
14 date, purpose and location of the meeting and the
15 location at which a copy of the proposal may be
16 examined.

17 (b) The proposal prepared by the department of
18 public safety shall conform to the requirements of
19 subsection (b), section six of this article and shall be
20 further modified, adopted, filed or amended by the
21 county commission only in conformity with said section
22 six.

§24-6-7. Resolution of conflicts.

1 In the event that a conflict arises between county
2 commissions, between telephone companies, between a
3 telephone company or companies and a county commis-
4 sion or commissions, or between the department of
5 public safety and any of the foregoing entities
6 concerning an emergency telephone system or systems
7 or an enhanced emergency telephone system or systems,
8 the public service commission, upon application by such
9 county commission, telephone company or department of
10 public safety, shall resolve such conflict. The resolution
11 of such conflict may include the modification or
12 suspension of any final plan adopted pursuant to section
AN ACT to amend and reenact section eighteen, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the creation of a lottery education fund and lottery senior citizens fund; providing for the appropriation of all of the net profits deposited into the state lottery fund on an annual basis to the lottery education fund, the lottery senior citizens fund, and to the commerce division; and specifying the purposes for which such net profits may be used.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits.

(a) There is hereby created a special fund in the state treasury which shall be designated and known as the "state lottery fund." The fund shall consist of all appropriations to the fund and all interest earned from
investment of the fund, and any gifts, grants or contributions received by the fund. All revenues received from the sale of lottery tickets, materials and games shall be deposited with the state treasurer and placed into the "state lottery fund." The revenue shall be disbursed in the manner herein provided for the purposes stated herein and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(b) No appropriation, loan or other transfer of state funds shall be made to the commission or lottery fund after the initial appropriation. The initial appropriation shall be used solely for the establishment and operation of the commission and lottery operations during the period until the lottery becomes a revenue-producing agency but no longer than eighteen months. After such period, but in no event longer than eighteen months from the effective date of this article, the commission shall commence repayment to the state general revenue fund of the amount of the initial appropriation from the general revenue fund to be repaid in equal installments over the ensuing twelve months from the funds provided in subsection (e) below.

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) A minimum annual average of forty percent of the gross amount received from each lottery shall be allocated as net profit. The director is authorized to expend the necessary percentage of the amount allocated as net profit, not to exceed fifteen percent thereof, for the purposes of entering into contractual arrangements for the acquisition, financing, lease and lease-purchase, and other financing transactions, of lottery goods and services, including tickets, equipment, machinery, electronic computer systems and terminals, and supplies and maintenance therefor, for the first thirty-six months of operation, and may apportion the costs, expenses and expenditures related thereto among the commission, vendor or vendors and licensed lottery sales agents.
(e) Not more than fifteen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses: Provided, That in the initial year of operation not more than twenty percent may be so allocated and disbursed. In the event that the percentage allotted for operations and administration generates a surplus, the surplus will be allowed to accumulate to an amount not to exceed two hundred fifty thousand dollars. On a monthly basis the director shall report to the joint committee on government and finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the state treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars which shall be allocated as net profit.

(f) Annually, the Legislature shall appropriate all of the amounts allocated as net profits above, in such proportions as it deems beneficial to the citizens of this state, to (1) the lottery education fund created in subsection (g) of this section, (2) the lottery senior citizens fund created in subsection (h) of this section, and (3) the commerce division created in article one, chapter five-b of this code, in accordance with subsection (i) of this section.

(g) There is hereby created a special fund in the state treasury which shall be designated and known as the "lottery education fund." The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which amounts shall be deposited into the lottery education fund by the state treasurer. The lottery education fund shall also consist of all interest earned from investment of the lottery education fund, and any other appropriations, gifts, grants, contributions or moneys received by the lottery education fund from any source. The revenues received or earned by the lottery education fund shall be disbursed in the manner provided below and shall not be treated by the auditor and treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the re-
venues received or earned by the lottery education fund to the state system of public and higher education for such educational programs as it considers beneficial to the citizens of this state.

(h) There is hereby created a special fund in the state treasury which shall be designated and known as the "lottery senior citizens fund." The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which amounts shall be deposited into the lottery senior citizens fund by the state treasurer. The lottery senior citizens fund shall also consist of all interest earned from investment of the lottery senior citizens fund, and any other appropriations, gifts, grants, contributions or moneys received by the lottery senior citizens fund from any source. The revenues received or earned by the lottery senior citizens fund shall be disbursed in the manner provided below and shall not be treated by the auditor or treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery senior citizens fund to such senior citizens medical care and other programs as it considers beneficial to the citizens of this state.

(i) The commerce division may use the amounts allocated to it pursuant to subsection (f) of this section for one or more of the following purposes: (1) The payment of any or all of the costs incurred in the development, construction, reconstruction, maintenance or repair of any project or recreational facility, as such terms are defined in section thirteen-a, article one, chapter five-b of this code, pursuant to the authority granted to it under article one, chapter five-b of this code, (2) the payment, funding or refunding of the principal of, interest on, or redemption premiums on any bonds, security interests or notes issued by the parks and recreation section of the commerce division under article one, chapter five-b of this code, or (3) the payment of any advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.
AN ACT to amend and reenact section nine-a, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the number of magistrate court deputy clerks.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.

§50-1-9a. Magistrate court deputy clerks; salary; duties.

Whenever required by work load and upon the recommendation of the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, the supreme court of appeals may by rule provide for the appointment of magistrate court deputy clerks, not to exceed fifty-two in number. Such magistrate court deputy clerks shall be appointed by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, with such appointee to serve at his will and pleasure under the immediate supervision of the magistrate court clerk. Such magistrate court deputy clerk shall have such duties, clerical or otherwise, as may be assigned by the magistrate court clerk and as may be prescribed by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court. Such magistrate court deputy clerks shall also have authority to exercise the power and perform the duties of the magistrate court clerk as may be delegated or assigned by such magistrate court clerk.
member of the immediate family of any magistrate, magistrate court clerk, magistrate assistant or circuit court judge within the same county, shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the county where appointed. For the purpose of this section, immediate family shall mean the relationships of mother, father, sister, brother, child or spouse.

Magistrate court deputy clerks shall be paid a monthly salary by the state. Such salary shall be paid on the same basis and in the same applicable amounts as for magistrate assistants in each county as provided in section nine of this article.

CHAPTER 119
(H. B. 22598—By Delegates White and Murensky)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article five, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the medicaid program; health care facilities financed by bonds; extension of rules regarding reimbursement of capital costs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-14. Medicaid program; health care facilities financed by bonds; rules regarding reimbursement of capital costs.

(a) The Legislature finds and declares that a number of health care facilities have been financed by public bonded indebtedness, and as a result of policies, rules, regulations and standards which may be in conflict, the
facilities and the health and welfare of those citizens served by such facilities are in jeopardy. The provisions of subsection (b) are enacted for the purpose of address- ing this as a short term solution.

(b) As to any health care facility licensed under article five-c, chapter sixteen of this code, constructed after the first day of April, one thousand nine hundred eighty-one, and affected on or after that date by the reimbursement methodology implemented by the depart- ment regarding standard appraised value, begin- ning on the first day of April, one thousand nine hundred eighty-eight, and for a two-year period only, ending on the thirty-first day of March, one thousand nine hundred ninety, all in compliance with federal rules and regulations, the department shall reimburse such health care facilities no less than any actual annual capital costs including, but not limited to, debt service, lease payments or costs of comparable financing arrangements incurred in connection with any capital expenditure approved pursuant to article two-d, chapter sixteen of this code, or any rule or regulation promul- gated thereunder or in conjunction with the financing of such capital expenditure pursuant to article two-c, chapter thirteen of this code, whichever is greater; and in no event, for the purpose of reimbursement of such capital costs, shall the value of any health care facility licensed pursuant to article five-c, chapter sixteen of this code, be deemed to be less than the greater of the aggregate principal amount of any public bond issue undertaken pursuant to the provisions of article two-c, chapter thirteen of this code or the maximum capital expenditure approved pursuant to article two-d, chapter sixteen of this code or any rule or regulation promul- gated thereunder, and any appraisal made by the department in connection therewith shall include costs related to the financing of the bond issue or the maximum capital expenditure approved pursuant to article two-d, chapter sixteen of this code, as applicable:

Provided, That said values may be reduced by (a) any functional obsolescence which is determined and identified annually pursuant to any rule or regulation promulgated hereunder and (b) the pro rata share of
such value which is attributable to capital expenditures
incurred with respect to facilities which provide services
which are not eligible for reimbursement under Title
XIX of the Social Security Act: Provided, however, That
the department shall not exceed the medicare upper
payment limit for medicaid in making any reimburse-
ment pursuant to this section.

As to any health care facility constructed after the
first day of April, one thousand nine hundred eighty-
one, and affected on or after that date by the reimbur-
sement methodology implemented by the department
regarding standard appraised value, with respect to
reimbursement to the state by such health care facility
arising from adjustment of projected rates, the depart-
ment shall provide for the adjustment of projected rates
based upon values which are consistent with the
provisions of this section and based upon the actual
occupancy experience of the health care facility during
the projected rate period, all in compliance with federal
rules and regulations.

(c) The medicaid payments that a long-term care
facility would otherwise receive shall not be reduced in
any manner as a result of the operation of this section.

CHAPTER 120
(H. B. 2758—By Delegates Anderson and Love)

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

AN ACT to amend and reenact section fourteen, article three,
chapter seventeen-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to special registration plates; authorizing the commis-
ioner of motor vehicles to determine the maximum
number of letters or numbers on special registration
plates; providing for a special registration plate for
recipients of the purple heart medal and exempting
such plates from registration fees; providing for special
registration plates bearing logos or emblems of non-
profit charitable and educational organizations to
members of such organizations and to the general
public, and providing that such special registration plates are to comply with the fees and law regarding Class A registration plates; authorizing legislative rules; authorizing the commissioner of motor vehicles to set certain fees; setting fees; providing for a special registration plate for members of volunteer fire companies, paid fire departments, state fire marshal and assistants, state fire administrator and voluntary rescue squad members, setting the fee therefor, and establishing a special revolving fund; and providing sanctions for a check which is returned for nonsufficient funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-14. Registration plates generally.

1 The department upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer or other motor vehicle.

2 Every registration plate shall be of reflectorized material and have displayed upon it the registration number assigned to the vehicle for which it is issued, also the name of this state, which may be abbreviated, and the year number for which it is issued or the date of expiration thereof.

3 Such registration plate and the required letters and numerals thereon, except the year number for which issued or the date of expiration, shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight, said registration numbering to begin with number two.

4 The department shall not issue, permit to be issued, or distribute any special numbers except as follows:

5 (a) The governor shall be issued registration plates, on one of which shall be imprinted the numeral one and on the other the word one.
(b) Upon appropriate application, there shall be issued to the secretary of state, state superintendent of free schools, auditor, treasurer, commissioner of agriculture, and the attorney general, the members of both houses of the Legislature, including the elected officials thereof, the justices of the supreme court of appeals of West Virginia, the representatives and senators of the state in the Congress of the United States, the judges of the United States district courts for the state of West Virginia and the judges of the United States court of appeals for the fourth circuit, if any of said judges shall be residents of West Virginia, a special registration plate for a motor vehicle owned by said official or spouse, but not to exceed two plates for each such official, which plate shall bear any combination of letters not to exceed an amount determined by the commissioner, and with a designation of the office and which plate shall supersede, during his term of office and while such motor vehicle is owned by said official or spouse, the regular numbered plate assigned to him.

(c) Upon receipt of an application on a form prescribed by the department and receipt of written evidence from the chief executive officer of the army national guard or air national guard, as appropriate, that the applicant is a member thereof, the department shall issue to any member of the national guard of this state a special registration plate designed by the commissioner for a motor vehicle owned by the member or the member's spouse, but not to exceed one plate for each such member.

(d) Upon appropriate application, any owner of a motor vehicle subject to Class A registration or the owner of a motorcycle subject to Class G registration under the provisions of this article may request that the department issue a registration plate bearing specially arranged letters or numbers with the maximum number of letters or numbers to be determined by the commissioner. The department shall attempt to comply with such request wherever possible and shall promulgate appropriate rules and regulations for the orderly distribution of such plates: Provided, That for purposes of this subdivision, such registration plates so requested
and issued shall include all plates bearing the numbers
two through two thousand and shall be subject to the
provisions of subdivision (i) of this section.

(e) Upon appropriate application, there shall be
issued to any disabled veteran, who is exempt from the
payment of registration fees under the provisions of this
chapter, a registration plate which bears the letters
"DV" in red, and also the regular identification
numerals in red.

(f) Upon appropriate application, there shall be issued
to any armed service person holding the distinguished
purple heart medal for persons wounded in combat a
registration plate bearing letters or numbers. The
registration plate designed by the commissioner of
motor vehicles shall denote that those individuals who
are granted this special registration plate are recipients
of the purple heart. All letterings as herein provided
shall be in purple where practical. Further, the
registration plates herein provided shall be exempt from
registration fees under the provisions of this chapter.

(g) Subject to rules promulgated by the commissioner,
nonprofit charitable and educational organizations shall
be authorized to design a logo or emblem for inclusion
on a special registration plate and to market this special
registration plate to organization members and the
general public. Approved nonprofit organizations may
accept applications for the special registration plate
from the owner of motor vehicles subject to a Class A
registration and payment of fees therefor under the
provisions of this article and may request that the
department issue a registration plate bearing a
combination of letters or numbers with the organiza-
tions' logo or emblem, with the maximum number of
letters or numbers to be determined by the commis-
sioner: Provided, That such rules, regulations and
standards that are promulgated by the commissioner for
purpose of this subdivision shall be promulgated in
accordance with the provisions of chapter twenty-nine-
a of this code. Nonprofit organizations seeking to market
such plates shall be authorized to collect a fee for
successfully processing a registration plate application
and shall deposit an appropriate fee, which shall be
determined by the commissioner, with the department
of motor vehicles to defray the administrative costs
associated with designing and manufacturing special
registration plates for the organization.

(h) Any owner of a motor vehicle who is a resident of
the state of West Virginia, and who is a member of a
volunteer fire company, a paid fire department, a
member of the state fire commission, the state fire
marshal, the state fire marshal's assistants, the state fire
administrator and voluntary rescue squad members
upon application, accompanied by an affidavit signed by
the fire chief or department head of the applicant,
stating that the applicant is justified in having a
registration with an insignia designed by the commis-
sioner of the department of motor vehicles to denote
those individuals who are granted special registration
plates under this article, complying with the motor
vehicle laws of the state relative to registration and
licensing of motor vehicles, and upon payment of the
registration, license and other fees required by law, and
the payment of the additional special fee herein
provided, shall be issued a license plate for a private
passenger car, upon which, in lieu of the registration
number prescribed by law, shall be inscribed the
insignia designed by the commissioner of the depart-
ment of motor vehicles to denote those individuals who
are granted this special registration insignia in addition
to their existing registration numbers.

The special fee that shall be charged each applicant
for the issuance of a license plate bearing the insignia
designed by the commissioner of the department of
motor vehicles to denote those individuals who are
granted this special registration insignia in addition to
their existing registration number, shall be five dollars,
which special fee shall be in addition to all other fees
required by law. This special fee is for the purpose of
compensating the department of motor vehicles for
additional costs and services required in the issuing of
such special registration and shall be collected by the
department and deposited in a special revolving fund to
be used for the administration of this section.
The commissioner is authorized to prescribe proper forms to be used in making application for the special license plates authorized by this section.

(i) In addition to the regular registration fees set forth in section three, article ten of this chapter, a fee of fifteen dollars shall be paid to the department in each case in which an application for a special registration plate is made as provided in subdivisions (a), (b), (c) and (d): Provided, That nothing in this section shall be construed to require a charge for a free prisoner of war license plate authorized by other provisions of this code.

Notwithstanding the provisions of this section, or of any other provision of this chapter, the commissioner may, in his discretion, issue a type of registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers and semitrailers, together with appropriate devices to be attached thereto to indicate the year for which such vehicles have been properly registered or the date of expiration of such registration. The design of such plates shall be determined by the commissioner.

Further, notwithstanding any provisions of this chapter to the contrary, any license plate issued or renewed pursuant to this chapter, which is paid for by a check that is returned for nonsufficient funds, shall be void without further notice to the applicant, and the applicant may not reinstate the registration until the returned check is paid by the applicant in cash, money order or certified check and all applicable fees assessed as a result thereof have been paid.

CHAPTER 121
(H. B. 2257—By Delegates Reid and Pitrolo)

[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]
amended, relating to motor vehicle administration; special antitheft laws; defining certain felony offenses with regard to buying, receiving, disposing of, selling, offering for sale, concealing, transporting, causing to be transported, or possessing a motor vehicle, or a motor or engine removed from a motor vehicle, from which the manufacturer's serial number, motor or engine number or other distinguishing number or identifying mark has been removed, defaced, covered, altered or destroyed, which offenses are subject to criminal penalties; and defining certain felony offenses with regard to removing, defacing, covering, altering or destroying a manufacturer's serial number, motor or engine number or other distinguishing number or identifying mark, which offenses are subject to criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. SPECIAL ANTITHEFT LAWS.

§17A-8-7. Motor vehicle or special mobile equipment without manufacturer's serial number, motor or engine number or other distinguishing number or identification mark; offenses.

§17A-8-8. Altering or changing a manufacturer's serial number, motor or engine number or other distinguishing number or identification mark; offenses.

§17A-8-7. Motor vehicle or special mobile equipment without manufacturer's serial number, motor or engine number or other distinguishing number or identification mark; offenses.

(a) A person who knowingly buys, receives, disposes of, sells, offers for sale, conceals, transports, causes to be transported, or possesses a motor vehicle, or a motor or engine removed from a motor vehicle, from which the manufacturer's serial number, motor or engine number or other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed for the purpose of concealing or misrepresenting
the identity of the motor vehicle or part thereof, is guilty of a felony.

(b) A person who knowingly buys, receives, disposes of, sells, offers for sale, conceals, transports, causes to be transported, or possesses special mobile equipment or special mobile equipment tires from which the manufacturer's serial number, motor or engine number or other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed, is guilty of a felony.

§17A-8-8. Altering or changing a manufacturer's serial number, motor or engine number or other distinguishing number or identification mark; offenses.

(a) A person who, with fraudulent intent, removes, defaces, covers, alters or destroys the manufacturer's serial number, motor or engine number or other distinguishing number or identification mark of a motor vehicle or who places or stamps an actual or facsimile manufacturer's serial number, motor or engine number or other distinguishing number or identification mark upon a motor vehicle, except one assigned thereto by the department, is guilty of a felony.

This section shall not prohibit the restoration by an owner of an original manufacturer's serial number, motor or engine number or other distinguishing number or identification mark when such restoration is made under permit issued by the department, nor prevent any manufacturer from placing numbers or marks upon motor vehicles or parts thereof in the ordinary course of business.

(b) A person who removes, defaces, covers, alters or destroys, or causes to be removed, defaced, covered, altered or destroyed, the manufacturer's serial number, motor or engine number or other distinguishing number or identification mark on special mobile equipment or special mobile equipment tires, the property of another, for any reason, is guilty of a felony.

(c) The term "manufacturer's serial number, motor or
engine number or other distinguishing number or identification mark", as used in this section and section seven of this article, means a unique number or mark placed on a vehicle or part thereof by the manufacturer so as to identify it particularly and distinguish the vehicle or part from all other such vehicles or parts.

CHAPTER 122
(H. B. 2345—By Delegate Pitrolo)

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

AN ACT to amend and reenact section three-a, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special registration of antique motor vehicles; providing that vehicles so registered may be operated on Saturdays and Sundays and holidays for recreational purposes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.
§17A-10-3a. Special registration of antique motor vehicles.

1 The annual registration fee for any antique motor vehicle as defined in this section shall be two dollars. "Antique motor vehicle" shall mean any motor vehicle which is over twenty-five years old, and is owned solely as a collector's item and for participation in club activities, exhibitions, tours, parades and similar uses, but in no event to be used for general transportation: Provided, That such vehicle may also be operated for recreational purposes on Saturdays and Sundays and holidays.
CHAPTER 123
(H. B. 2642—By Delegates Ashcraft and Prezioso)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to authority of members of official highway department weighing crews and public service commission, motor carrier employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. PENALTIES.

§17A-11-4. Authority of members of official highway department weighing crews and public service commission, motor carrier employees.

Employees of the department of highways designated by the commissioner of highways as weight enforcement officers and employees of the public service commission designated by the chairman as motor carrier utility inspectors, shall, during the course of their normal duties, have concurrent jurisdiction with police officers in the enforcement of article nine of this chapter.

CHAPTER 124
(S. B. 275—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article three, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to suspension or revocation of license; notice to be sent
by certified mail, return receipt requested; and oppor-
tunity for hearing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION
OF LICENSES.

§17B-3-6. Authority of department to suspend or revoke
license; hearing.

The department is hereby authorized to suspend the
license of an operator or chauffeur without preliminary
hearing upon a showing by its records or other sufficient
evidence that the licensee:

(1) Has committed an offense for which mandatory
revocation of license is required upon conviction;

(2) Has by reckless or unlawful operation of a motor
vehicle, caused or contributed to an accident resulting
in the death or personal injury of another or property
damage;

(3) Has been convicted with such frequency of serious
offenses against traffic regulations governing the
movement of vehicles as to indicate a disrespect for
traffic laws and a disregard for the safety of other
persons on the highways;

(4) Is an habitually reckless or negligent driver of a
motor vehicle;

(5) Is incompetent to drive a motor vehicle;

(6) Has permitted an unlawful or fraudulent use of
such license;

(7) Has committed an offense in another state which
if committed in this state would be a ground for
suspension or revocation;

(8) Has failed to pay or has defaulted on a plan for
the payment of all costs, fines, forfeitures or penalties
imposed by a magistrate court or municipal court
within ninety days, as required by section two-a, article
ten, chapter eight of this code;

(9) Has failed to appear or otherwise respond before
a magistrate court or municipal court when charged with a motor vehicle violation as defined in section three-a, article three, chapter seventeen-b of this code; or

(10) Is under the age of eighteen and has withdrawn either voluntarily or involuntarily from a secondary school, as provided in section eleven, article eight, chapter eighteen of this code.

The operator's or chauffeur's license of any person having his or her license suspended shall be reinstated if:

(A) The license was suspended under the provisions of subdivision (8) of this section and the payment of costs, fines, forfeitures or penalties imposed by the applicable court has been made; or

(B) The license was suspended under the provisions of subdivision (9) of this section, and the person having his or her license suspended has appeared in court and has prevailed against the motor vehicle violations charged, or such person has paid any and all costs, fines, forfeitures or penalties imposed by the applicable court.

Any reinstatement of a license under paragraph (A) or (B) of this subdivision shall be subject to a reinstatement fee designated in section nine of this article.

Upon suspending the license of any person as hereinbefore in this section authorized, the department shall immediately notify the licensee in writing, sent by certified mail, return receipt requested, to the address given by the licensee in applying for license, and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the department shall either rescind its order of suspension or, good cause appearing therefor, may
AN ACT to amend and reenact section four, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expanding the definition of law-enforcement officers for purposes of serious traffic offenses to include conservation officers of the department of natural resources; and authorizing such officers to request the testing of blood, breath or urine to be conducted by other authorized law-enforcement officers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

1 Any person who drives a motor vehicle in this state shall be deemed to have given his consent by the operation thereof, subject to the provisions of this article, to a preliminary breath analysis and a secondary chemical test of either his blood, breath or urine for the purposes of determining the alcoholic content of his blood. A preliminary breath analysis may be administered in accordance with the provisions of section five of this article whenever a law-enforcement officer has reasonable cause to believe a person to have committed an offense prohibited by section two of this article or by an ordinance of a municipality of this state which has the same elements as an offense described in said section two of this article. A secondary test of blood, breath or urine shall be incidental to a lawful arrest and shall be
administered at the direction of the arresting law-
enforcement officer having reasonable grounds to
believe the person to have committed an offense
prohibited by section two of this article or by an
ordinance of a municipality of this state which has the
same elements as an offense described in said section
two of this article. The law-enforcement agency by
which such law-enforcement officer is employed shall
designate which one of the aforesaid secondary tests
shall be administered: Provided, That if the test so
designated is a blood test and the person so arrested
refuses to submit to such blood test, then the law-
enforcement officer making such arrest shall designate
in lieu thereof, either a breath or urine test to be
administered, and notwithstanding the provisions of
section seven of this article, such refusal to submit to
a blood test only shall not result in the revocation of the
arrested person's license to operate a motor vehicle in
this state. Any person to whom a preliminary breath test
is administered who is then arrested shall be given a
written statement advising him that his refusal to
submit to the secondary chemical test finally designated
as provided in this section, will result in the revocation
of his license to operate a motor vehicle in this state for
a period of at least one year and up to life.

For the purpose of this article the term "law-
enforcement officer" or "police officer" shall mean and
be limited to (1) any member of the department of
public safety of this state, (2) any sheriff and any deputy
sheriff of any county, (3) any member of a police
department in any municipality as defined in section
two, article one, chapter eight of this code, and (4) any
conservation officer of the department of natural
resources. If any municipality or the department of
natural resources does not have available to its law-
enforcement officers the testing equipment or facilities
necessary to conduct any secondary test which a law-
enforcement officer may administer under this article,
any member of the department of public safety, the
sheriff of the county wherein the arrest is made or any
deputy of such sheriff or any municipal law-enforcement
officer of another municipality within the county
wherein the arrest is made may, upon the request of
such arresting law-enforcement officer and in his
presence, conduct such secondary test and the results of
such test may be used in evidence to the same extent
and in the same manner as if such test had been
conducted by such arresting law-enforcement officer.
Only the person actually administering or conducting
such test shall be competent to testify as to the results
and the veracity of such test.

CHAPTER 126
(Com. Sub. for H. B. 2170—By Delegates Flanigan and Basham)

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

AN ACT to amend and reenact section two, article five-b, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting postmortem blood alcohol tests as admissible evidence; disclosure of data compiled from blood alcohol test results; and disclosure of identities of decedents tested.

Be it enacted by the Legislature of West Virginia:

That section two, article five-b, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5B. POSTMORTEM TESTS FOR ALCOHOL IN PERSONS KILLED IN MOTOR VEHICLE ACCIDENTS.

§17C-5B-2. To whom and how county medical examiners report results of blood tests; such reports admissible as evidence; use of reports for statistical and highway safety purposes.

Each county medical examiner shall immediately report the results of each blood test conducted under the authority of section one of this article by him, or conducted at his request, to the chief medical examiner of the office of medical examinations and to the department of public safety. Results of such blood test or any report thereof may be admissible in evidence, if
The department of public safety shall compile the data from all such reports submitted to it on a monthly basis. The department shall forward such compilations to the governor’s highway safety administration and the department of motor vehicles. Such compilations shall be for statistical purposes and highway safety information and be disclosed or revealed in any manner necessary. The identity of any dead person whose blood was tested under the provisions of section one of this article may be disclosed or revealed when necessary for evidence in any action or proceeding of any kind in any court or before any tribunal, board or agency.

The department of public safety, the governor’s highway safety administration and the department of motor vehicles shall make use of such compilations in a manner to provide accurate and useful statistical information to government and the public relative to achieving a reduction in motor vehicle accidents arising in whole or in part from the imbibing of alcohol by motor vehicle drivers and adult pedestrians.

CHAPTER 127
(H. B. 2296—By Delegate Ryan)

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

AN ACT to amend and reenact section seven, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale of school buses; and allowing motorists to continue movement in certain situations involving stopped school buses on controlled access highways.

Be it enacted by the Legislature of West Virginia:

That section seven, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 12. SPECIAL STOPS REQUIRED.

§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; removal of warning lights, lettering, etc., upon sale of buses; highways with separate roadways.

(a) The driver of a vehicle on any street or highway upon meeting or overtaking from either direction any school bus which has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said school bus flashing warning signal lights, as referred to in section eight of this article, and said driver shall not proceed until such school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated. Any such driver acting in violation of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five nor more than two hundred dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "school bus" in letters not less than eight inches in height. When a contract school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating "school bus" shall be covered or concealed. Any school bus sold or transferred to another owner by a county board of education, agency or individual, shall have all flashing warning lights disconnected; all lettering removed or permanently obscured, except when sold or transferred for the transportation of school children.

(c) The driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a school bus which is on a different roadway and the school bus
34 is stopped in a loading zone which is a part of or
35 adjacent to such highway and where pedestrians are not
36 permitted to cross the roadway.

CHAPTER 128
(H. B. 2070—By Delegate Love)

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

AN ACT to amend and reenact section six, article thirteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to parking privileges for disabled persons; qualifications; applications; certificate of disability by a licensed physician; and penalties for violations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for disabled; qualification; application; violation.

(a) Any owner of a Class A motor vehicle subject to registration under the provisions of article three, chapter seventeen-a of this code, who is:

(1) A physically handicapped person with limited mobility;

(2) A relative of a person who is a physically handicapped person with limited mobility;

(3) A person who regularly resides with a person who is a physically handicapped person with limited mobility; or

(4) A person who regularly transports a person who is a physically handicapped person with limited mobility, may apply for a special registration plate or a
mobile windshield placard by submitting to the commissioner:

(i) An application therefor on a form prescribed and furnished by the commissioner, specifying whether the applicant desires a special registration plate or a mobile windshield placard; and

(ii) A certificate issued by a person licensed to practice medicine stating that the applicant or the applicant's spouse or a member of the applicant's immediate family residing with him is a physically handicapped person with limited mobility as defined in this section.

Upon receipt of the application, the physician's certificate and the registration fee, if he finds that the applicant qualifies for the special registration plate or mobile windshield placard provided for in this subsection, the commissioner shall issue to such applicant an appropriately designed and appropriately designated special registration plate or mobile windshield placard. The special plate shall be used in place of a regular license plate.

As used in this section, a physically handicapped person with limited mobility is any person who suffers from a permanent physical condition making it unduly difficult and burdensome for such person to walk.

Any person who falsely or fraudulently obtains or seeks to obtain the special plate or the mobile windshield placard provided for in this subsection (a), and any person who falsely certifies that a person is physically handicapped with limited mobility in order that an applicant may be issued the special plate, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any other penalty he may otherwise incur, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(b) Any physically disabled person, any person who is a relative of a physically disabled person, any person who regularly resides with a physically disabled person,
or any person who regularly transports a physically
disabled person, may apply for a vehicle decal for a
Class A vehicle by submitting to the commissioner:

(1) An application therefor on a form prescribed and
furnished by the commissioner;

(2) A certificate issued by a person licensed to
practice medicine stating that the applicant or the
applicant's relative is a physically disabled person, or
that the person regularly residing with the applicant or
regularly transported by the applicant is a physically
disabled person, as defined in this section, and stating
the expected duration of the disability; and

(3) A fee of one dollar.

Upon receipt of the application, the physician's
certificate and the registration fee, if he finds that the
applicant qualifies for the vehicle decal provided for in
this subsection, the commissioner shall issue to such
applicant an appropriately designed decal. The decal
shall be displayed on the motor vehicle in the manner
prescribed by the commissioner and shall be valid for
such period of time as the certifying physician has
determined that the disability will continue, which
period of time, reflecting the date of expiration, shall be
conspicuously shown on the face of the decal.

As used in this section "physically disabled person"
means any person who has sustained a temporary
disability rendering it unduly difficult and burdensome
for him to walk.

Any person who falsely or fraudulently obtains or
seeks to obtain the vehicle decal provided for in this
subsection, and any person who falsely certifies that a
person is physically disabled in order that an applicant
may be issued the vehicle decal, is guilty of a
misdemeanor, and, upon conviction thereof, in addition
to any other penalty he may otherwise incur, shall be
fined not less than fifty nor more than one hundred
dollars, or imprisoned in the county jail not more than
thirty days, or both fined and imprisoned.

(c) Free stopping, standing or parking places marked
“reserved for disabled persons” shall be designated in close proximity to all state, county and municipal buildings and other public facilities. Such places shall be reserved solely for physically disabled and handicapped persons during the hours that such buildings are open for business.

Any person whose vehicle properly displays a valid special registration plate, mobile windshield placard or decal may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: Provided, That this privilege does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this state is contrary to the provisions of this section, the provisions of this section shall take precedence and shall apply.

The privileges provided for in this subsection shall apply only during those times when the vehicle is being used for the transportation of a physically handicapped or disabled person. Any person who knowingly exercises, or attempts to exercise, such privileges at a time when the vehicle is not being used for the transportation of a physically handicapped or disabled person is guilty of a misdemeanor, and, upon conviction thereof, in addition to any other penalty he may otherwise incur, shall be fined not less than ten nor more than fifty dollars, or imprisoned in the county jail for not more than thirty days, or both fined and imprisoned.

(d) No person may stop, stand or park a motor vehicle in an area designated, zoned or marked for the handicapped or physically disabled, when such person is not physically disabled or handicapped and does not have displayed upon his vehicle a distinguishing insignia for the handicapped issued by the commissioner: Provided, That any person in the act of transporting a handicapped or physically disabled person, as
defined by this article, may stop, stand or park a motor vehicle not displaying a distinguishing insignia for the handicapped in an area designated, zoned or marked for the handicapped or physically disabled for the limited purposes of loading or unloading his handicapped or physically disabled passenger: Provided, however, That such vehicle shall be promptly moved after the completion of such limited purposes.

Any person who violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than twenty-five dollars.

(e) The commissioner shall adopt and promulgate rules and regulations in accordance with the provisions of chapter twenty-nine-a of this code to effectuate the provisions of this section.

CHAPTER 129

(H. B. 2156—By Delegate Ashcraft)

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

AN ACT to amend and reenact section twenty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to special restrictions on lamps used upon motor vehicles; strobotron lights permitted on county school board vehicles.

Be it enacted by the Legislature of West Virginia:

That section twenty-six, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.


(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 shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying other than a white or amber light visible from directly in front of the center thereof except as authorized by subsection (d) of this section.

(c) Except as authorized in section nineteen, flashing lights are prohibited on motor vehicles, except on an authorized emergency vehicle, school bus, snow removal equipment or on any vehicle as a means for indicating right or left turn, or on any vehicle as a means of indicating the same is disabled or otherwise stopped for an emergency.

(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, except as authorized by section twenty-seven of this article.

(2) Except as authorized by sections nineteen and twenty-seven of this article, red flashing warning lights are restricted to ambulances, fire-fighting vehicles, school buses, Class A vehicles, as defined by section one, article ten, chapter seventeen-a of this code, of those volunteer firemen who are authorized by their fire chiefs to have such lights and to Class A vehicles of members of volunteer ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have such lights: Provided, That red flashing warning lights attached to such Class A vehicles may be operated only when responding to or engaged in handling an emergency requiring the attention of such volunteer firemen or members of such
volunteer ambulance services or chartered rescue squads.

(3) All other emergency vehicles, including tow trucks and wreckers, authorized by this chapter and by section twenty-seven of this article shall be restricted to amber or yellow flashing warning lights.

(e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education may be equipped with a white flashing strobotron warning light. This strob light may be installed on the roof of a school bus 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.

It shall be 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.

CHAPTER 130

(S. B. 248—By Senators Pritt and Chernenko)

[Passed April 6, 1989; in effect ninety days from passage. Became law without Governor's signature.]

AN ACT to amend article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-eight, relating to altered suspension system of motor vehicles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EQUIPMENT.


(a) No person may operate upon a public highway any motor vehicle registered or required to be registered in this state if it has been modified by alteration of its altitude from the ground to the extent that its bumpers, measured to any point on the lower edge of the main horizontal bumper bar, exclusive of any bumper guards, are not within the range of fourteen inches to twenty-two inches above the ground. No vehicle may be modified to cause the vehicle body or chassis to come in contact with the ground, expose the fuel tank to damage from collision, or cause the wheels to come in contact with the body under normal operation. No part of the original suspension system may be disconnected to defeat the safe operation of the suspension system. However, nothing contained in this section prevents the installation of heavy duty equipment, including shock absorbers and overload springs. Nothing contained in this section prohibits the operation on a public highway of a motor vehicle with normal wear to the suspension system if such normal wear does not adversely affect the control of the vehicle.

(b) No person may operate upon a public highway any motor vehicle registered in this state if it has been modified by alteration of its altitude from the ground to the extent that its bumpers, measured to any point on the lower edge of the main horizontal bumper bar, exclusive of any bumper guards, do not fall within the limits specified herein for its gross vehicle weight rating category. The front bumper height of trucks whose gross vehicle weight rating is ten thousand pounds or less, may be no less than fourteen inches and no more than twenty-four inches and their rear bumper height may be no less than fourteen inches and no more than twenty-nine inches. The provisions of this subsection do not apply to trucks with a gross vehicle weight rating in excess of ten thousand pounds. For the purpose of this
section, the term "gross vehicle weight ratings" means
manufacturer's gross vehicle weight ratings established
for that vehicle.

(c) In the absence of bumpers, and in cases where
bumper heights have been lowered or modified, height
measurements under subsection (a) or (b) shall be made
to the bottom of the frame rail.

(d) This section does not apply to specially designed
or modified motor vehicles when operated off the public
highways in races and similar events. Such motor
vehicles may be lawfully towed on the highways of this
state.

CHAPTER 131
(S. B. 612—By Senators Heck and Wagner)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article seventeen,
chapter seventeen-c of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to the height and length of vehicles and loads.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-4. Height and length of vehicles and loads.

1 (a) A vehicle including any load thereon shall not
2 exceed a height of thirteen feet six inches, but the owner
3 or owners of such vehicles shall be responsible for
4 damage to any bridge or highway structure and to
5 municipalities for any damage to traffic control devices
6 or other highway structures where such bridges, devices
7 or structures have a vehicle clearance of less than
8 thirteen feet six inches.
(b) A motor vehicle including any load thereon shall not exceed a length of forty feet extreme overall dimension, inclusive of front and rear bumpers.

(c) Except as hereinafter provided, a combination of vehicles coupled together shall not consist of more than two units, and no such combination of vehicles including any load thereon shall have an overall length, inclusive of front and rear bumpers, in excess of fifty-five feet, except as provided in section eleven-b of this article, and except as otherwise provided in respect to the use of a pole trailer as authorized in section five of this article: Provided, That the limitation that a combination of vehicles coupled together shall not consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a drive-away service when no more than three saddle mounts are used: Provided, however, That equipment used in said combination meets the requirements of the safety regulations of the United States department of transportation and shall not exceed an overall length of more than sixty-five feet.

(d) The length limitations for truck tractor-semitrailer combinations and truck tractor-semitrailer-trailer combinations operating on the national system of interstate and defense highways and those classes of qualifying federal-aid primary system highways so designated by the United States secretary of transportation, and those highways providing reasonable access to and from terminals, facilities for food, fuel, repairs and rest, and points of loading and unloading for household goods carriers from such highways, and further, as to other highways so designated by the West Virginia commissioner of highways, shall be as follows: The maximum length of a semitrailer unit operating in a truck tractor-semitrailer combination shall not exceed forty-eight feet in length, except where semitrailers have an axle spacing of not more than thirty-seven feet between the rear axle of the truck tractor and the front axle of the semitrailer, such semitrailer shall be allowed to be not more than fifty-three feet in length and the maximum length of any semitrailer or trailer operating...
in a truck tractor-semitrailer-trailer combination shall not exceed twenty-eight and one-half feet in length and in no event shall any combinations exceed three units, including the truck tractor: Provided, That nothing herein contained shall impose an overall length limitation as to commercial motor vehicles operating in truck tractor-semitrailer or truck tractor-semitrailer-trailer combinations.

CHAPTER 132
(Com. Sub. for H. B. 2050—By Delegate Bradley)

[Passed April 8, 1989; in effect ninety days from passage. Became law without Governor's signature.]

AN ACT to amend and reenact sections one, two, four and five, article six, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal annexation; annexation by a majority of qualified voters and freeholders without an election; petition for annexation; and annexation by minor boundary adjustment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. ANNEXATION.

§8-6-1. Annexation of unincorporated territory.
§8-6-2. Petition for annexation.
§8-6-4. Annexation without an election.
§8-6-5. Annexation by minor boundary adjustment.

PART I. GENERAL.

§8-6-1. Annexation of unincorporated territory.

1 Unincorporated territory may be annexed to and become part of a municipality contiguous thereto only in accordance with the provisions of this article.
Any farmlands or operations as described in article nineteen, chapter nineteen of this code which may be annexed into a municipality shall be protected in the continuation of agricultural use after being annexed.

PART II. ANNEXATION BY ELECTION.

§8-6-2. Petition for annexation.

Five percent or more of the freeholders of a municipality desiring to have territory annexed thereto may file their petition in writing with the governing body thereof, setting forth the change proposed in the metes and bounds of the municipality, and asking that a vote be taken upon the proposed change. Such petition shall be verified and shall be accompanied by an accurate survey map showing the territory which would be annexed to the corporate limits by the proposed change.

The governing body, upon bond in penalty prescribed by the governing body with good and sufficient surety being given by petitioners, and conditioned to pay the costs of such election if a majority of the legal votes cast are against the proposed change in boundary, shall thereupon order a vote of the qualified voters of such municipality to be taken upon the proposed change on a date and at a time and place wherein to be named in the order, not less than twenty nor more than thirty days from the date thereof. The governing body shall, at the same time, order a vote of all of the qualified voters of the additional territory, and of all of the freeholders of such additional territory, whether they reside or have a place of business therein or not, to be taken upon the question on the same day, at some convenient place in or near such additional territory: Provided, That the additional territory to be included shall conform to the requirements of section one, article two of this chapter, and the determination that the additional territory does so conform shall be reviewable by the circuit court of the county in which the municipality or the major portion of the territory thereof, including the area proposed to be annexed, is located upon certiorari to the governing body, in accordance with the provisions of article three, chapter fifty-three of this code. The governing body shall cause the order to be published,
at the cost of the municipality, as a Class 11-0 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 municipality and the additional territory. The first publication must be at least fourteen days prior to the date upon which the vote is to be taken. The order so published shall contain an accurate description by metes and bounds of the additional territory proposed to be annexed to the corporate limits by the proposed change, and, if practicable, shall also contain a popular description of such additional territory.

The election shall be held, superintended and conducted, and the results thereof ascertained, certified, returned and canvassed in the same manner and by the same individuals as elections for municipal officers. The ballots, or ballot labels where voting machines are used, shall have written or printed on them the words:

☐ For Annexation
☐ Against Annexation

Any freeholder which is a firm or corporation may vote by its manager, president, or executive officer duly designated in writing by such firm or corporation. Even though an individual who is a qualified voter of the municipality or the territory is also a freeholder of the territory, such person shall be entitled to vote only once.

When an election is held in any municipality in accordance with the provisions of this section, another such election relating to the same proposed change or any part thereof shall not be held for a period of one year.

If a majority of all of the legal votes cast both in the municipality and in the territory are in favor of the proposed annexation, then the governing body shall proceed as specified in the immediately succeeding section of this article.

PART III. ANNEXATION WITHOUT ELECTION.

§8-6-4. Annexation without an election.
The governing body of a municipality may by ordinance provide for the annexation of additional territory without ordering a vote on the question if (1) a majority of the qualified voters of such additional territory file with the governing body their petition to be annexed, and (2) a majority of all freeholders of such additional territory, whether they reside or have a place of business therein or not, file with the governing body their petition to be annexed: *Provided,* That the additional territory shall conform to the requirements of section one, article two of this chapter, and the determination that the additional territory does so conform or that the requisite number of petitioners have filed the required petitions shall be reviewable by the circuit court of the county in which the municipality or the major portion of the territory thereof, including the area proposed to be annexed, is located upon certiorari to the governing body, in accordance with the provisions of article three, chapter fifty-three of this code. A qualified voter of the additional territory who is also a freeholder of the additional territory may join only in the voters' petition of such additional territory. It shall be the responsibility of the governing body to enumerate and verify the total number of eligible petitioners, in each category, from the additional territory. In determining the total number of eligible petitioners, in each category, a freeholder or any other entity that is a freeholder shall be limited to one vote or one signature on a petition as provided in this section. There shall be allowed only one signature on a petition per parcel of property and any freehold interest that is held by more than one individual or entity shall be allowed to sign a petition only upon the approval by the majority of the individuals or entities that have an interest in the parcel of property. A qualified voter of the additional territory who is also a freeholder of the additional territory shall be counted only as a freeholder and if all of the eligible petitioners are qualified voters, then only a voters' petition shall be required. If satisfied that the additional territory conforms to the requirements of section one, article two of this chapter and that the petition is sufficient in every respect, the governing body shall enter such fact upon
its journal and forward a certificate to that effect to the county commission of the county wherein the municipality or the major portion of the territory thereof, including the additional territory, is located. The county commission shall thereupon enter an order along the lines of the order described in the immediately preceding section of this article. After the date of such order, the corporate limits of the municipality shall be as set forth therein.

PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.

§8-6-5. Annexation by minor boundary adjustment.

In the event a municipality desires to increase its corporate limits by making a minor boundary adjustment, the governing body of such municipality may apply to the county commission of the county wherein the municipality or the major portion of the territory thereof, including the territory to be annexed, is located for permission to effect such annexation by minor boundary adjustment.

Such application shall disclose the number of persons residing in the territory to be annexed to the corporate limits by the proposed change, and shall have attached thereto an accurate map showing the metes and bounds of such additional territory.

If satisfied that the proposed annexation is only a minor boundary adjustment, the county commission shall order publication of a notice of the proposed annexation to the corporate limits and of the date and time set by the commission for a hearing on such proposal. Publication shall be as in the case of an order calling for an election, as set forth in section two of this article. A like notice shall be prominently posted at not less than five public places within the area proposed to be annexed.

If the freeholders of the area proposed to be annexed who are present or are represented at the hearing are not substantially opposed to the proposed boundary change, the commission may enter an order changing the corporate limits of the municipality as requested,
which order may be reviewed by the circuit court as an
order of a county commission ordering an election may
be reviewed under section sixteen, article five of this
chapter. After the date of such order, the corporate
limits of the municipality shall be as set forth therein,
unless judicial review is sought under the provisions of
said section sixteen. If the proposed change is substan-
tially opposed at the hearing by any such freeholder, the
commission shall dismiss the application. Dismissal of
any such application shall not preclude proceedings in
accordance with the provisions of sections two and three
or section four of this article. The municipality shall pay
the costs of all proceedings under this section.

CHAPTER 133
(Com. Sub. for S. B. 169—By Senator J. Manchin)

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

AN ACT to amend and reenact section twenty-two, article
eighteen, chapter eight of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to
further amend said article by adding thereto a new
section, designated section twenty-three; to amend
article nineteen of said chapter eight by adding thereto
a new section, designated section twelve-a; to amend
and reenact section ten, article twenty of said chapter; and
to amend and reenact section three, article thirteen,
chapter sixteen of said code, all relating to municipal
sewer, water and electric power facilities; authority to
require connection to sewers; authority to require
discontinuance of water service by provider other than
municipality where only sewer service is provided by
municipality and user is delinquent in payment for
service rates and charges; notice of delinquency; lien for
delinquent sewer, water and electric power service rates
and charges; failure of user to cure delinquency; suits
to collect delinquent charges; deferral of filing fees and
costs of magistrate court action for delinquent rates and
charges; and limitation on foreclosure of liens; powers
of sanitary board; contract; employees; compensation thereof; extension and improvements; replacement of damaged public works.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article eighteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-three; that article nineteen of said chapter eight be amended by adding thereto a new section, designated section twelve-a; that section ten, article twenty of said chapter be amended and reenacted; and that section three, article thirteen, chapter sixteen of said code be amended and reenacted, all to read as follows:

Chapter

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article
  18. Assessments to Improve Streets, Sidewalks and Sewers; Sewer Connections and Board of Health; Enforcement of Duty to Pay for Service.

ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS AND SEwers; SEWER CONNECTIONS AND BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

§8-18-22. Connection to sewers; board of health; penalty.
§8-18-23. Authority to require discontinuance of water service by provider utility for nonpayment of sewer service rates and charges; notice of delinquency; lien for delinquent service rates and charges; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

PART XII. CONNECTION TO SEWERS; BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

§8-18-22. Connection to sewers; board of health; penalty.

1 The owner or owners of any lot or parcel of land
2 abutting on any street, alley, public way or easement in
any municipality on which a public sewer is now located
or may hereafter be constructed and laid (whether
constructed and laid under the provisions of this article
or any other provisions of law) upon which lot or parcel
of land any business or residence building is now located
or may hereafter be erected, not connected with a public
sewer, may be required and compelled by the munici-
pality or by the board of health to connect any such
building with such sewer. Notice so to connect shall be
given by the municipality or by the board of health to
the owner and to the lessee or occupant of such building.
Each day's failure to comply with such notice and
connect with such sewer by such owner or owners, after
thirty days from the receipt of such notice, shall be a
misdemeanor and a separate and new offense under this
section, and each such offense shall be punishable by a
fine of not less than five nor more than twenty-five
dollars. Jurisdiction to hear, try, determine and sentence
for any violation of this section is hereby vested in the
police or municipal court thereof, or, where no police
court exists, in the mayor thereof.

§8-18-23. Authority to require discontinuance of water
service by provider utility for nonpayment
of sewer service rates and charges; notice of
delinquency; lien for delinquent service
rates and charges; failure to cure delin-
quency; civil actions; deferral of filing fees
and costs in magistrate court action;
limitations with respect to foreclosure.

(a) When any municipality owns, maintains, operates
or provides sewer facilities to its residents and custo-
mers and does not own, maintain, operate or provide
water facilities to them when the same is provided by
any other publicly or privately owned utility, municipal-
ity or public service district, the municipality providing
sewer facilities may require the provider of water
facilities to discontinue water service to any of its users
who are delinquent in the payment of sewer service
rates and charges to the municipality. The provider of
water facilities is empowered and authorized hereby to
discontinue water service upon demand of the munici-
pality for this purpose; however, prior to discontinuance
of any water service, the municipality shall contract
with the provider of water facilities which contract shall
provide that the municipality shall reimburse the
provider of water facilities for all costs and expenses
incurred in both the termination of water service to the
delinquent user of sewer facilities and the subsequent
resumption of water service to such user. The contract
shall provide for reasonable methods and assurances so
that the provider of water facilities will be protected
and held harmless from claims and damages when
water service is discontinued in error or in violation of
the rights of the user through the fault of the munic-
ipality providing sewer facilities and making the
demand for discontinuance of water service to the user
of such sewer facilities. Any contract made for this
purpose shall have the approval of the public service
commission prior to its execution and performance. Any
disconnection of water service must comply with all
rules, regulations and orders of the public service
commission.

(b) Whenever any rates and charges for services or
facilities furnished remain unpaid for a period of thirty
days after the same become due and payable, the
property and the owner thereof, as well as the user of
the services and facilities provided shall be delinquent
and the owner, user and property shall be held liable
at law until such time as all such rates and charges are
fully paid: Provided, That in the event the user is a
tenant, the property owner shall be given notice of any
said delinquency by certified mail, return receipt
requested, and the user shall be given such notice by
first-class mail: Provided, however, That failure of the
user to cure the delinquency within a thirty-day period
after receipt of such notice shall constitute grounds to
terminate the user's lease of the premises concerned.

(c) All rates and charges whenever delinquent, as
provided by ordinance of the municipality, shall be liens
of equal dignity, rank and priority with the lien on such
premises of state, county, school and municipal taxes for
the amount thereof upon the real property served, and
the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That a municipality shall have exhausted all remedies available in magistrate courts against such delinquent users before it may proceed in a civil action against the owner.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(e) No municipality may foreclose upon the premises served by it for delinquent rates and charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency has been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being instituted.

ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER SYSTEMS.

§8-19-12a. Lien for delinquent service rates and charges; notice of delinquency; failure to cure delinquency; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.
(a) Whenever any rates and charges for water services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid: Provided, That in the event the user is a tenant, the property owner shall be given notice of any said delinquency by certified mail, return receipt requested, and the user shall be given such notice by first-class mail: Provided, however, That failure of the user to cure the delinquency within a thirty-day period after receipt of such notice shall constitute grounds to terminate the user's lease of the premises concerned.

(b) All rates or charges for water service whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That a municipality shall have exhausted all remedies available against such delinquent users before it may proceed in a civil action against the owner.

(c) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(d) No municipality may foreclose upon the premises served by it for delinquent rates or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such
purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought.

**ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.**

§8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates or charges; change in rates or charges; notice of delinquency; failure to cure delinquency; delinquent rates or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a) The governing body of any municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all needful rules and regulations for the repair, maintenance and operation and management of the combined waterworks and sewerage system of such municipality and for the use thereof, and shall also have plenary power and authority to make, enact and enforce all needful rules and regulations and ordinances for the care and protection of any such system, which may be conducive to the preservation of the public health, comfort and convenience and to rendering the water supply of such municipality pure and the sewerage harmless insofar as it is reasonably possible so to do, and any such municipality shall have plenary power and authority to charge the users for the use and service of such combined waterworks and sewerage system and to establish rates or charges for such purpose. Separate
rates or charges may be fixed for the water and sewer services respectively or combined rates or charges for the combined water and sewer services. Such rates or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined waterworks and sewerage system, provide an adequate reserve fund and adequate depreciation fund and pay the principal of and interest upon all revenue bonds issued under this article. Rates or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance, and such rates or charges shall be changed from time to time as needful, consistent with the provisions of this article.

(b) Whenever any rates and charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid: Provided, That in the event the user is a tenant, the property owner shall be given notice of any said delinquency by certified mail, return receipt requested, and the user shall be given such notice by first-class mail: Provided, however, That failure of the user to cure the delinquency within a thirty-day period after receipt of such notice shall constitute grounds to terminate user's lease of the premises concerned.

(c) All rates or charges for water service and sewer service whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That a municipality shall have exhausted all remedies available in magistrate courts against such
(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(e) No municipality may foreclose upon the premises served by it for delinquent rates, fees or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§16-13-3. Powers of sanitary board; contracts; employees; compensation thereof; extensions and improvements; replacement of damaged public works.

The board shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this article: Provided, That any contract relating to the
financing of the acquisition or construction of any such
works, or any trust indenture as hereinafter provided
for, shall be approved by the governing body of such
municipality before the same shall be effective. The
board may employ engineers, architects, inspectors,
superintendents, managers, collectors, attorneys, and
such other employees as in its judgment may be
necessary in the execution of its powers and duties, and
may fix their compensation, all of whom shall do such
work as the board shall direct. All such compensation
and all expenses incurred in carrying out the provisions
of this article shall be paid solely from funds provided
under the authority of this article, and the board shall
not exercise or carry out any authority or power herein
given so as to bind said board of said municipality
beyond the extent to which money shall have been or
may be provided under the authority of this article. No
contract or agreement with any contractor or contrac-
tors for labor and/or material, exceeding in amount the
sum of five thousand dollars, shall be made without
advertising for bids, which bids shall be publicly opened
and award made to the best bidder, with power in the
board to reject any or all bids. After the construction,
installation, and completion of the works, or the
acquisition thereof, the board shall operate, manage and
control the same and may order and complete any
extensions, betterments and improvements of and to the
works that the board may deem expedient, if funds
therefor be available or are made available as provided
in this article, and shall establish rules and regulations
for the use and operation of the works, and of other
sewers and drains connected therewith so far as they
may affect the operation of such works, and do all things
necessary or expedient for the successful operation
thereof. The sanitary board may declare an emergency
situation in the event of collector line breaks or vital
treatment plant equipment failure and shall be exemp-
ted from competitive bidding requirements and enter
into direct purchase agreements or contracts for such
expenses. All public ways or public works damaged or
destroyed by the board in carrying out its authority
under this article shall be restored or repaired by the
board and placed in their original condition, as nearly as practicable, if requested so to do by proper authority, out of the funds provided by this article.

CHAPTER 134
(H. B. 2689—By Delegate Ryan)

[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article thirty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enhancing ability of municipal and county hospitals to borrow money for hospital purposes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. INTERGOVERNMENTAL RELATIONS-CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS OR HEALTH INSTITUTIONS FOR PUBLIC PURPOSES.

PART IV. HEALTH INSTITUTIONS.

§8-32-4. Legislative findings; authority of municipalities and county commissions to make appropriations; limitations and restrictions.

(a) The Legislature hereby finds that the support of public or nonprofit health institutions dedicated to making available to the general public health and mental health services is for the general welfare of the public and is a public purpose for which funds of a municipality or county commission may be lawfully expended. This section is enacted in view of this finding and shall be liberally construed in the light thereof. As used in this section, the term "health institution" means a hospital, health or mental health clinic, regional or community health or mental health center, mental retardation facility, extended care facility, nursing
(b) Notwithstanding any statutory or charter provision to the contrary, municipalities and county commissions are hereby empowered and authorized to appropriate funds, subject to the conditions and limitations set forth in this section, for the establishment, cost, operation, maintenance and projects of any health institution, whether such health institution be situate within or without the confines of any such municipality or county. Funds may not be appropriated by a municipality or county commission for the benefit and use of any health institution unless such health institution is either owned and operated by a unit of government, or is owned and operated by a nonstock, nonprofit corporation chartered under the laws of or licensed to do business in this state which provides in its charter that no member trustee or member of the board of directors (by whatever name the same may be called) shall receive any compensation, gain or profit from such corporation and which is operated in compliance with such charter provisions. Any such appropriation shall be made from the general funds of such municipality or county commission not otherwise appropriated or from federal revenue sharing funds received by such municipality or county commission.

(c) The recipient of any funds appropriated under the provisions of this section shall upon demand at any time make a full and complete accounting of all such funds to the governing body of the municipality or county commission which made such appropriation and shall in every event without demand make to such governing body an annual accounting thereof.

(d) Under no circumstances whatever shall any action taken by any municipality or county commission under the authority of this section give rise to or create any indebtedness on the part of the municipality, the county, the governing body of such municipality, the county commission, any member of such governing body or county commission or any municipal or county official or employee.
(e) No provision within this article prohibits the ability of a county or municipal hospital to borrow money and to perform such actions and do those things which are reasonably necessary to effectuate the purposes of this section, including, but not limited to, obtaining credit to further the mission of such hospital and acceptance of a loan for working capital requirements, as that term is generally defined: Provided, That the hospital complies with the provisions of subsection (d) of this section so that any indebtedness created is at no time an obligation of any municipality, the county commission, any member of such governing body or county commission or any municipal or county official or employee.

CHAPTER 135
(Com. Sub. for H. B. 2241—By Delegate S. Cook)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section fifteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to amend said chapter by adding thereto a new article, designated article one-a, all relating to the public land corporation of West Virginia; altering membership, establishing powers and duties, criteria for public land disposal; creating a special public land corporation fund and uses of fund moneys; license and permit issuance authority of corporation; requiring state agencies, with exception of department of highways, to prepare and submit inventories of all public land held or under control of such agencies; public bidding procedures and land appraisal requirements; and requiring public hearings by the corporation for the sale, exchange or transfer of public land.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, be repealed; that said chapter be amended by 
adding thereto a new article, designated article one-a, to read 
as follows:

ARTICLE IA. REAL ESTATE MANAGEMENT AND PRO-
CEDURES.

§20-1A-2. Corporation boards of directors, members, expenses, appointment, 
terms, qualifications; director as board chairman; meetings, 
quorum; executive secretary, secretary to board; professional 
and support staff; execution of legal documents, permits and 
licenses.

§20-1A-4. Public land corporation to conduct sales of public lands by 
competitive bidding, modified competitive bidding or direct 
sale.

§20-1A-5. Public land corporation to hold public hearing before sale, 
exchange or transfer of land.

§20-1A-6. Competitive bidding and notice requirements before the develop- 
ment of natural resources on certain lands.

§20-1A-7. Adopt a state park or forest program.


(a) The public land corporation, heretofore created 
and established as an activity of the department of 
natural resources, is hereby continued and established 
within and as a unit of the department of natural 
resources. The personal property and employees of the 
public land corporation are hereby transferred to the 
department of natural resources: Provided, That the 
employees so transferred shall continue to have merit 
system status or are hereby vested with such merit 
system status if not previously included therein.

(b) The corporation shall be a public benefit corpora-
tion and an instrumentality of the state and may sue or 
be sued, contract and be contracted with, plead and be 
impleaded, have and use a common seal.

(c) The corporation shall be vested with the title of the 
state of West Virginia in public lands, the title to which 
now is or may hereafter become vested in the state of 
West Virginia by reason of any law governing the title 
of lands of the state: Provided, That those lands for 
which title is specifically vested by law in other state 
agencies, institutions and departments shall continue to
be vested in such state agencies, institutions and departments.

§20-1A-2. Corporation boards of directors, members, expenses, appointment, terms, qualifications; director as board chairman; meetings, quorum; executive secretary, secretary to board; professional and support staff; execution of legal documents, permits and licenses.

(a) The public land corporation shall be governed by a board of directors comprised of five members of which three shall be ex officio and two shall be appointed by the governor. The members of the board shall receive no compensation for their service thereon. The board members who are not ex officio shall be reimbursed by the director for their actual and necessary expenses incurred pursuant to their duties under this article from funds authorized for such purposes.

(b) The director of the department of natural resources shall be an ex officio member and chairman of the board of directors. The commissioner of the department of culture and history and the commissioner of the department of commerce, or their designees who shall be employees of their respective departments, shall be ex officio members of the board of directors.

(c) The governor shall appoint two members of the board of directors, with the advice and consent of the Senate, which members shall serve a term of four years: Provided, That the initial appointments shall be to terms of two and four years, respectively, which terms shall commence on the first day of July, one thousand nine hundred eighty-nine. The members of the board of directors appointed by the governor shall be persons with a demonstrated interest and knowledge in the conservation and protection of the aesthetic, biological, geological, historical, archeological, cultural or recreational values of the public lands of the state.

(d) A majority of the board of directors shall constitute a quorum for the transaction of business. The board shall meet at such times and places as it may determine
and shall meet on call of the chairman. It shall be the duty of the chairman to call a meeting of the board on the written request of any three members thereof.

(e) The director shall appoint and supervise an executive secretary of the public land corporation, and may employ other necessary professional and support staff for the purposes of this article, who shall be employees of the department with merit system status. An affirmative vote of a majority of the members of the corporation is required for any action of the corporation with respect to the sale or exchange of public lands or for the issuance of a lease or contract for the development of minerals, oil or gas. All actions must be taken at a scheduled meeting of the corporation held in compliance with the provisions of article nine-a, chapter six of this code.

The powers and duties of the corporation are nondelegable, except that the executive secretary may negotiate and enter into preliminary agreements on behalf of the corporation, and shall, upon authorization of the corporation, be entitled to engage in valid actions of the corporation in respect of day-to-day administrative activities. An agreement entered into by the executive secretary on behalf of the corporation is not valid until such agreement is approved by an affirmative vote of a majority of the corporation.


1 The corporation is hereby authorized and empowered to:

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

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

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

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

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

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

There is hereby created in the state treasury a special public land corporation fund into which shall be paid all proceeds from public land sales and exchanges. The corporation may acquire public lands from use of the payments made to the fund, along with any interest accruing to said fund. The corporation shall report annually, just prior to the beginning of the regular session of the Legislature, to the finance committees of the Legislature on the financial condition of the special fund.

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

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

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

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

(B) Purchase, develop, restore and preserve for public
use, sites, structures, objects and documents of prehis-
toric, historical, archaeological, recreational, architectu-
ral and cultural significance to the state of West
Virginia; and

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

The corporation shall have the authority to designate
lands to which it has title for development and admin-
istration for the public use including recreation, wildlife
stock grazing, agricultural rehabilitation and home-
stead ing or other conservation activities. The corpora-
tion shall have authority to enter into leases for the
development and extraction of minerals, including sand
and gravel, except as otherwise circumscribed herein.
The corporation shall reserve title and ownership to the
mineral rights in all cases. It shall convey, assign, or
allot lands to the title or custody of proper departments
or other agencies of state government for administration
and control within the functions of such departments or
other agencies as provided by law. The corporation shall
make proper lands available for the purpose of coopera-
ting with the government of the United States in the
relief of unemployment and hardship or for any other
public purpose. The corporation shall report annually to
the Legislature on its public land holdings, its financial
condition and its operations and shall make such
recommendations to the Legislature as deemed proper
concerning the acquisition, development, disposition and
use of public lands. All state agencies, institutions and
departments shall make an inventory of the public lands
of the state as may be by law specifically allocated to
and used by each and provide to the corporation a list
of such public lands, including their current use,
intended use or best use to which such land may be put:
Provided, That the state department of highways need
not provide such inventory of public lands allocated to
and used by it. The inventory shall identify those parcels
of land which have no present or foreseeable useful
purpose to the state of West Virginia. The inventory
shall be submitted to the corporation by the first day
of August, one thousand nine hundred eighty-nine. The
corporation shall compile such inventory of all public
lands and report to the Legislature by no later than the
first day of January, one thousand nine hundred ninety,
on its public land holdings and the land holdings of the
other agencies or departments of this state which are
required to report their holdings to the corporation as
set forth hereinabove, its financial condition and its
operations.

During the continuance of the Blennerhassett histori-
cal park commission, the public land corporation and
its members shall consult with and keep the said
Blennerhassett historical park commission fully in-
formed as to any official action to be taken or proposed
to be taken pursuant to this act regarding or affecting
Blennerhassett Island and its prehistoric, historic,
archaeological, architectural, cultural and recreational
significance or development or any of the powers and
duties of the Blennerhassett historical park commission.

§20-1A-4. Public land corporation to conduct sales of
public lands by competitive bidding, modified competitive bidding or direct sale.

(a) Sales, exchanges or transfers of public lands under
this article shall be conducted under competitive
bidding procedures. However, where the secretary
determines it necessary and proper in order to assure
the following public policies including, but not limited
to, a preference to users, lands may be sold by modified
competitive bidding or without competitive bidding. In
recognizing public policies, the secretary shall give
consideration to the following potential purchasers:

(1) The local government entities which are in the
vicinity of the lands;

(2) Adjoining land owners.

(b) The policy for selecting the methods of sale is as
follows:
(1) Competitive sale is the general procedure for sales of public lands and shall be used in the following circumstances:

(A) Wherever in the judgment of the secretary the lands are accessible and usable regardless of adjoining land ownership; or

(B) Wherever the lands are within a developing or urbanizing area and land values are increasing due to the location of the land and interest on the competitive market.

(2) Modified competitive sales may be used to permit the adjoining landowner or local governmental entity to meet the high bid at the public sale. Lands otherwise offered under this procedure would normally be public lands not located near urban expansion areas, or not located near areas with rapidly increasing land values, and where existing use of adjacent lands would be jeopardized by sale under competitive bidding procedures.

(3) Direct sale may be used when the lands offered for sale are completely surrounded by lands in one ownership with no public access, or where the lands are needed by local governments.

(4) In no event shall lands be offered for sale by “modified competitive sales” or “direct sale” unless and until the corporation makes a written finding of justification for use of an alternative bidding procedure.

(5) Subject to the bidding procedures set forth herein, the corporation is authorized, at its discretion, to sell public lands subject to rights of way, restrictive covenants or easements retained by the corporation, limiting the use of such lands to purposes consistent with the use of adjoining or nearby lands owned by the corporation.

(c) When lands have been offered for sale by one method of sale and the lands remain unsold, then the lands may be reoffered by another method of sale.
In no case may lands be sold or exchanged for less than fair market value. Fair market value shall be determined by an appraisal made by an independent person or firm chosen by the public land corporation. The appraisal shall be performed using the principles contained in the "Uniform Appraisal Standards for Federal Land Acquisitions" published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972.

The corporation may reject all bids when such bids do not represent the corporation's considered value of the property exclusive of the fair market value.

The corporation shall promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, regarding procedures for conducting public land sales by competitive bidding, modified competitive bidding and direct sales.

Public land corporation to hold public hearing before sale, exchange or transfer of land.

(a) Prior to any final decision of any state agency to sell, exchange or transfer land, the public land corporation shall:

1. Prepare and reduce to writing the reasons and supporting data regarding such sale or exchange. The written reasons required under this section shall be available for public inspection at the office of the county clerk at the county courthouse of each county in which the affected land is located during the two successive weeks before the date of the public hearing required by this section;

2. Provide for a public hearing to be held at a reasonable time and place within each county in which the affected land is located to allow interested members of the public to attend the hearing without undue hardship. Members of the public may be present, submit statements and testimony and question the corporation's representative appointed pursuant to this section;

3. Not less than thirty days prior to such public hearing, provide notice to all members of the Legisla-
nature, to the head of the governing body of any political subdivision having zoning or other land use regulatory responsibility in the geographic area within which the public lands are located and to the head of any political subdivision having administrative or public services responsibility in the geographic area within which the lands are located;

(4) Cause to be published a notice of the required public hearing. The notice shall be 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 shall be each county in which the affected land is located. The public hearing shall be held no earlier than the fourteenth successive day and no later than the twenty-first successive day following the first publication of the notice. The notice shall contain the time and place of the public hearing along with a brief description of the affected land;

(5) Cause a copy of the required notice to be posted in a conspicuous place at the affected land for members of the public to observe. Such notice shall remain posted for two successive weeks prior to the date of the public hearing;

(6) Appoint a representative of the corporation who shall conduct the required public hearing. The corporation’s representative shall have full knowledge of all the facts and circumstances surrounding the proposed sale, exchange or transfer. The representative of the corporation shall make a report of the public hearing available for inspection by the public or, upon written request of any interested person, provide a written copy thereof and to all individuals previously receiving written notice of the hearing within thirty days following the public hearing; and

(7) If the evidence at the public hearing establishes by a preponderance that the appraisal provided for in subsection (c), section four of this article does not reflect the true, fair market value, the public land corporation shall cause another appraisal to be made. If the evidence at the public hearing establishes by a preponderance
that the sale or exchange of land does not meet the
criteria set forth in subdivision three, section three of
this article, the public land corporation shall not proceed
with the sale or exchange of said land without judicial
approval.

The representative of the corporation conducting the
public hearing shall make the results of the hearing
available to the corporation for its consideration prior
to the board making decisions regarding the affected
lands.

(b) No sale, exchange or transfer of land subject to the
provisions of this section may be made before the
thirtieth successive day following the public hearing
required by this section, but in no event shall the sale,
exchange or transfer of such lands be made prior to
fifteen days after the report of the public hearings are
made available to the public in general.

§20-1A-6. Competitive bidding and notice requirements
before the development of natural resources
on certain lands.

The corporation may enter into a lease or contract for
the development of minerals, gas or oil on or under lands
in which the corporation holds any right, title or
interest: Provided, That no lease or contract may be
entered into for the extraction and removal of minerals
by surface mining or auger mining of coal. With the
exception of deep mining operations which are already
in progress and permitted as of the effective date of this
article, extraction of coal by deep mining methods under
state forests or wildlife refuges may be permitted only
if such lease or contract provides that no entries, portals,
air shafts or other incursions upon and into said land
incident to said mining operations may be placed or
constructed upon said lands or within three thousand
feet of the boundary thereof. Any lease or contract
entered into shall reserve to the state all rights to
subjacent surface support which the state is seized or
possessed of at the time of such lease or contract.

Notwithstanding any other provisions of the code to the
contrary, nothing herein shall be construed to permit extraction of minerals, oil or gas by any method from, on or under, any state park or state recreation area, nor the extraction of minerals by strip or auger mining upon any state forest or wildlife refuge. The corporation may enter into a lease or contract for the development of minerals, oil or gas, where such lease or contract is not prohibited by any other provisions of this code, only after receiving sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The area for such publication shall be each county in which such lands are located. The minerals, oil or gas so advertised may be leased or contracted for development at not less than the fair market value, as determined by an appraisal made by an independent person or firm chosen by the corporation, to the highest responsible bidder, who shall give bond for the proper performance of the contract or lease as the corporation shall designate; but the corporation shall have the right to reject any and all bids and to readvertise for bids. If the foregoing provisions of this section have been complied with, and no bid equal to or in excess of the fair market value of such natural resources is received, the corporation may, at any time during a period of six months after the opening of the bids, lease or contract for the development of such natural resources in such manner as it is deemed appropriate, but the lease or contract price shall not be less than the fair market value of such natural resources advertised.

§20-1A-7. Adopt a state park or forest program.

The commissioner of the department of commerce shall establish an "adopt a state park or forest program" to encourage and coordinate the efforts of volunteers to help maintain and improve state parks, forests, or other public lands within the state.

The commissioner shall establish a matching grant program to assist such volunteer efforts by legislative rule pursuant to chapter twenty-nine-a of this code.
AN ACT to amend and reenact sections five and fifty-six, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to unlawful methods of hunting and fishing; and permit to hold a field trial, water race or wild hunt.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing.
§20-2-56. Permit to hold a field trial, shoot-to-retrieve field trial, water race or wild hunt; license exemption.

§20-2-5. Unlawful methods of hunting and fishing.

1 Except as authorized by the director, it is unlawful at any time for any person to:
2 (1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him;
3 (2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den or place of refuge, except as may be authorized by regulations promulgated by the director or by law;
4 (3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping, or killing any wild bird or wild animal, or to attempt to do so, while having in his possession or subject to his control, or for any person accompanying him to have in his possession or subject to his control, any firearm, whether cased or uncased, bow, arrow, or both, or other...
implement or device suitable for taking, killing or trapping a wild bird or animal: Provided, That it shall not be unlawful to hunt or take raccoon, opossum or skunk by the use of artificial lights. No person shall be guilty of a violation of this subdivision merely because he looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at such time he has in his possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless such artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of, or used from within or upon an automobile or other land conveyance.

Any person violating the provisions of this subdivision shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned in the county jail for not less than ten days nor more than one hundred days;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as may be authorized by regulations promulgated by the director;

(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind, any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his possession such nest or eggs unless authorized to do so under regulations or under a permit by the director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting
season for wild animals and nonmigratory wild birds
within any county of the state, unless he has in his
possession a permit in writing issued to him by the
director: Provided, That this section shall not prohibit
hunting or taking of unprotected species of wild animals
and wild birds and migratory wild birds, during the
open season, in the open fields, open water and open
marshes of the state;

(9) Except as provided in section six of this article,
carry an uncased or loaded gun after the hour of five
o'clock antemeridian on Sunday in any woods or on any
highway, railroad right-of-way, public road, field or
stream of this state, except at a regularly used rifle,
pistol, skeet, target or trapshooting ground or range;

(10) Have in his possession a loaded firearm or a
firearm from the magazine of which all shells and
cartridges have not been removed, in or on any vehicle
or conveyance, or its attachments, within the state,
except as may otherwise be provided by law or regu-
lation. Except as hereinafter provided, between five
o'clock postmeridian of one day and seven o'clock
antemeridian, eastern standard time of the day follow-
ing, any unloaded firearm, being lawfully carried in
accordance with the foregoing provisions, shall be so
carried only when in a case or taken apart and securely
wrapped. During the period from July first to Sep-
tember thirtieth, inclusive, of each year, the foregoing
requirements relative to carrying certain unloaded
firearms shall be permissible only from eight-thirty
o'clock postmeridian to five o'clock antemeridian,
eastern standard time;

(11) Hunt, catch, take, kill, trap, injure or pursue with
firearms or other implement by which wildlife may be
taken after the hour of five o'clock antemeridian on
Sunday any wild animals or wild birds: Provided, That
traps previously and legally set may be tended after the
hour of five o'clock antemeridian on Sunday, if the
person so doing shall not have firearms or long bow of
any description in his possession;
(12) Hunt with firearms or long bow while under the influence of intoxicating liquor;

(13) Hunt, catch, take, kill, injure or pursue a wild animal or bird with the use of a ferret;

(14) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(15) Have in his possession or about his premises, without the written permission of the director, any hunting or fishing paraphernalia which cannot be used lawfully in this state for hunting or fishing, and any conservation officer shall remove and destroy such hunting and fishing paraphernalia, whenever found in this state, and the person or persons claiming ownership shall have no recourse at law against such confiscation and destruction;

(16) Catch, take, kill, or attempt to catch, take or kill any fish at any time by any means other than by rod, line and hooks with natural or artificial lures unless otherwise authorized by law or regulation issued by the director: Provided, That snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;

(17) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill, any wild animal or wild bird except those species on which there is no closed season, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or regulations of the director, or the sale of which is prohibited;

(18) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and wild mammals concluded, respectively, August sixteen, one thousand nine hundred sixteen, and February seven, one thousand nine hundred thirty-six, except during the time and in
(19) Kill, take, catch or have in his possession, living or dead, any wild bird, other than a game bird; or expose for sale, or transport within or without the state any such bird, except as aforesaid. No part of the plumage, skin or body of any protected bird shall be sold or had in possession for sale, except mounted or stuffed plumage, skin, bodies or heads of such birds legally taken and stuffed or mounted, irrespective of whether such bird was captured within or without this state, except the English or European sparrow (Passer domesticus), starling (Sturnus vulgaris), crow (Corvus brachyrhynchos) and cowbird (Molothrus ater), which shall not be protected and the killing thereof at any time is lawful;

(20) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(21) Have a bow and gun, or have a gun and any arrow or arrows, in the fields or woods at the same time;

(22) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife;

(23) Take or attempt to take turkey, bear, elk or deer with any arrow unless the same is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(24) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow, or an arrow which would affect wildlife by any chemical action;

(25) Shoot an arrow across any public highway or
from aircraft, motor-driven watercraft, motor vehicle or other land conveyance;

(26) Permit any dog owned by him or under his control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between the first day of May and the fifteenth day of August next following: Provided, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his bona fide tenant or tenants or upon the grounds or lands of another person with his written permission or on public lands, at any time: Provided, however, That notwithstanding any of the above provisions, no person may train a dog in any county, or portion thereof, in which a legal bear hunting season has been established prior to the first day of July, one thousand nine hundred eighty-eight, except that residents may train dogs in such counties after the twenty-fourth day of August through the end of the legal small game hunting season: Provided further, That nonresidents shall not train dogs in this state at any time except during the legal small game hunting season: And provided further, That the person training said dogs does not have firearms or other implements in his possession during the closed season on such wild animals and wild birds, whereby wild animals or wild birds could be taken or killed;

(27) Conduct or participate in a field trial, shoot-to-retrieve field trial, water race or wild hunt hereafter referred to as trial: Provided, That any person, group of persons, club or organization may hold such trial at any time of the year upon obtaining such permit as is provided for in section fifty-six of this article. The person responsible for obtaining said permit shall prepare and keep an accurate record of the names and addresses of all persons participating in said trial, and make same readily available for inspection by any conservation officer upon request; and

(28) Except as provided in section four of this article, hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except
§20-2-56. Permit to hold a field trial, shoot-to-retrieve field trial, water race or wild hunt; license exemption.

The director may issue a permit to any person, group of persons, club or organization to hold or conduct a field trial, shoot-to-retrieve field trial, water race or wild hunt, hereinafter referred to as a trial, upon receipt of a written application setting forth: (1) The name of the person, group of persons, club or organization; (2) the type or kind of trial; (3) the place and county in which the trial is to be held; and (4) the period or date on which the trial is to be held. The fee for the permit shall be five dollars.

No person participating in a field trial, shoot-to-retrieve field trial, water race or wild hunt being held under a permit authorized by this section shall be required to possess a state hunting license.

AN ACT to amend and reenact section twenty-two-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to wildlife resources; hunting, tagging and reporting bear; increasing fines and penalties; suspending licenses for illegal killing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.
§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

(a) No person in any county of this state shall hunt, capture, or kill any bear, or have in his possession any bear, or any part thereof, including fresh pelt, except during the hunting season for bear designated by rules and regulations to be promulgated by the department of natural resources and at no other time nor in any other way than as herein and therein provided. A person on killing a bear shall within twenty-four hours after killing, deliver the bear or fresh skin to a conservation officer or checking station for tagging. The bear shall have affixed thereto an appropriate tag provided by the department before any part of the bear may be transported more than seventy-five miles from the point of kill. The checking tag shall remain on the skin until it is tanned or mounted. Any bear not properly tagged, or any part of such bear, shall be forfeited to the state for disposal to a charitable institution, or school, or as otherwise designated by the department of natural resources.

It shall be unlawful:

(1) To hunt bear without a bear damage stamp as prescribed in section forty-four-b of this article, in addition to a hunting license as prescribed in this article;

(2) To hunt a bear with (a) a shotgun using ammunition loaded with more than one solid ball, or (b) a rifle of less than twenty-five caliber using rimfire ammunition or (c) a crossbow;

(3) To kill or attempt to kill any bear through the use of poison, or explosives, or through the use of snares, steel traps or deadfalls other than as authorized herein;

(4) To shoot at or kill a cub bear weighing less than one hundred pounds or to kill any bear accompanied by such cub;

(5) To have in possession any part of a bear not tagged in accordance with the provisions of this section;
(6) To enter a state game refuge with firearms for the purpose of pursuing or killing a bear except under the direct supervision of department personnel;

(7) To hunt bear with dogs during seasons other than those designated for such purpose by the department of natural resources; after a bear is spotted and the chase has begun, to pursue the bear with other than the pack of dogs in use at the beginning of the hunt;

(8) To train bear hunting dogs on bear or to cause dogs to chase bear at times other than those designated by the department of natural resources for the hunting of bear;

(9) Notwithstanding the provisions of sections twenty-three and twenty-four of this article, for any person to organize for commercial purposes, or to professionally outfit a bear hunt or to give or receive any consideration whatsoever or any donation in money, goods or services in connection with a bear hunt;

(10) For any person, who is not a resident of this state, to hunt bear with dogs or to use dogs in any fashion for the purpose of hunting bear in this state, except in legally authorized hunts.

(b) The following shall apply to bear destroying property:

(1) Any property owner including a lessee, who has suffered damage to real or personal property including loss occasioned by the death of livestock or the injury thereto or the unborn issue thereof, caused by an act of a bear may complain to any conservation officer of the department of natural resources, for the protection against such bear. Upon receipt of the complaint, such officer shall immediately proceed to investigate the circumstances giving rise to such complaint, and if such officer is unable to personally investigate the complaint, he shall designate a wildlife biologist to investigate on his behalf and if the complaint is found to be justified, such officer or designated person, may, together with the owner and other residents, proceed to hunt and destroy or capture the bear which is determined to have
caused the property damage: *Provided*, That only the
conservation officer or the wildlife biologist shall
determine whether the bear shall be destroyed or
captured. Notwithstanding any provision of this article,
if it is determined that the complaint is justified, the
officer or designated person may summon or use dogs
from within or without this state to effectuate the
hunting and destruction or capture of such bear:
*Provided, however*, That in the event dogs from without
this state are used in such hunt, the owners thereof shall
be the only nonresidents permitted to participate in
hunting such bear.

(2) When a property owner has suffered damage as
the result of an act by a bear, such owner shall file a
report with the director of the department of natural
resources, stating whether or not such bear was hunted
and destroyed and if so, the sex, weight and estimated
age of subject bear, and also submit to the department
an appraisal of the property damage occasioned by
subject bear duly signed by three competent appraisers,
fixing the value of the property lost. Such report shall
be ruled upon and the alleged damages examined by a
commission to which it shall be referred by the
department. The commission shall be composed of the
complaining property owner, an officer of the depart-
ment and a person to be selected by the officer of the
department and the complaining property owner. The
department shall by rules and regulations to be
promulgated, establish the procedures to be followed in
presenting and deciding claims under this section and
all such claims shall be paid in the first instance from
the bear damage fund provided in section forty-four-b
of this article, and in the event such fund is insufficient
to pay all claims determined by the commission to be
just and proper the remainder due to owners of lost or
destroyed property shall be paid from the special
revenue account of the department of natural resources.

(3) In all cases where the act of the bear complained
of by the property owner is the killing of livestock, the
value to be established is the fair market value of the
livestock at the date of death, and in cases where
livestock killed is pregnant, the total value shall be the sum of the values of the mother and the unborn issue, with the value of the unborn issue to be determined on the basis of the fair market value of the issue, had it been born. In no event shall the fair market value of the livestock exceed twice the assessed value of the livestock for personal property taxes.

(c) Any person who kills a bear in violation of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not less than thirty nor more than one hundred days, or both fined and imprisoned; and the suspension of the person's hunting and fishing licenses for one year.

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CHAPTER 138
(H. B. 2725—By Delegates Love and Whitt)

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

AN ACT to amend and reenact section thirty, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to wildlife resources; making a false application for a license unlawful.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-30. Application and statement of eligibility for licenses; procuring license in violation of chapter.

It shall be the duty of every person who makes application for or procures any class of license for himself or another to inform correctly the issuing
authority that the applicant is eligible and fulfills the
prerequisites of this chapter in respect to age, citizen-
ship and residence which are necessary to entitle such
person to have and hold the class of license applied for.
In the case of an alien, the applicant shall produce the
permit issued by the director. The possession of any
class of license by any licensee shall presume that such
licensee or his agent has duly informed the issuing
authority that the licensee in question was eligible to
have, hold and procure the class of license so issued. It
shall be unlawful for any person to make false applica-
tion for or procure a license in violation of the provisions
of this chapter. It shall not be necessary for the state
to prove, in any proceeding for an offense hereunder,
that false statements were or were not made, if it be
established that the licensee possessed a class of license
he was not entitled to possess, or the license procured
by the offender for another was of a class the licensee
was not entitled to possess.

CHAPTER 139
(H. B. 2192—By Delegates Love and Givens)

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

AN ACT to amend article two, chapter twenty of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated
section thirty-a, relating to prohibiting the issuance of
a hunting license to persons unless the person submits
a certificate of training, another state's certificate of
training or a statement that the person has previously
held a hunting license; establishing a course in firearm
and bow and arrow safety; providing for a certificate of
training to be issued upon completion thereof; and
providing credit toward license reinstatement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.


(a) Notwithstanding any other provisions of this article, no hunting license may be issued to any person unless the person submits to the person authorized to issue hunting licenses either:

(1) A certificate of training as provided for in this section or proof of completion of any course which promotes as a major objective, safety in the handling of firearms and of bow and arrows and which course is approved by the Hunter Education Association;

(2) A certificate of training issued by another state or Canadian province; or

(3) An affidavit to be included on the license application form and signed by the person applying for a hunting license, stating that the person has held a hunting license issued by this or another state or Canadian province in a prior year. The provision of this section shall become effective the first day of January, one thousand nine hundred ninety.

(b) The director shall establish a course in the safe handling of firearms and of bows and arrows, such as the course approved by the Hunter Education Association. This course shall be given at least once per year in each county in this state and shall be taught by instructors certified by the director. In establishing and conducting this course, the director may cooperate with any reputable association or organization which promotes as a major objective, safety in the handling of firearms and of bows and arrows: Provided, That any person holding a class A-L or AB-L lifetime resident license obtained prior to his or her fifteenth birthday shall be required to obtain a certificate of training as provided for in this section. This course of instruction shall be offered without charge, except for materials or ammunition consumed. Upon satisfactory completion of the course, each person instructed in the course shall be
issued a certification of training for the purposes of complying with the requirements of subsection (a) of this section. The certificate shall be in the form prescribed by the director and shall be valid for hunting license application purposes.

(c)(1) Upon satisfactory completion of this course, any person whose hunting license has been revoked for a violation of the provisions of this chapter of the code may petition the director for a reduction of his revocation time. However, under no circumstances may the time be reduced to less than one year.

(2) Successful completion of this course shall be required to consider the reinstatement of a hunting license of any person whose license has been revoked due to a conviction for negligent shooting of a human being or of livestock under the provisions of section fifty-seven of this article or of section eleven, article seven, chapter sixty-one of this code, and who petitions the director for an early reinstatement of his hunting privileges. Such a petitioner shall also comply with the other requirements for consideration of reinstatement contained in section thirty-eight of this article.

Nothing herein contained shall mandate that any county school district in the state be responsible for implementing hunter safety education programs.

CHAPTER 140
(H. B. 2095—By Delegates Murphy and Love)

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

AN ACT to amend and reenact section thirty-four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to using interest accrued from game and fish license fees for the department of natural resources in the same manner as license fees are used.

Be it enacted by the Legislature of West Virginia:
That section thirty-four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-34. Disposition of license fees; reports of agents; special funds and uses.

1. All persons in this state who receive money for licenses and permits required by this chapter shall, on the first day of each month, pay over to the director all moneys so collected by them during the preceding month. Such payment shall be accompanied by a report showing, in the case of license money, the name of the county, the class of license sold, the names and addresses of the persons paying the same, the date of the receipt thereof, the signature of the person receiving and remitting such funds, and such other information as the director may deem necessary.

2. Except where other provisions of this chapter specifically require and direct payment of any such moneys into designated funds for specific uses and purposes, all moneys so received by the director hereunder shall be by him promptly paid into the state treasury and shall be credited to the department of natural resources and shall be further credited to and kept in a separate fund designated "license fund—wildlife resources" which shall be used and paid out, upon order of the director solely for law enforcement and for purposes directly relating to the conservation, protection, propagation and distribution of wildlife in this state pursuant to the provisions of this chapter.

3. No funds from the "license fund—wildlife resources" shall be expended for recreational facilities or activities that are used by or for the benefit of the general public, rather than purchasers of hunting and fishing licenses.

4. Of the annual license fund income, the director shall retain ten percent for capital improvements and land purchases benefiting state wildlife, forty percent shall be budgeted to the wildlife resources division, forty percent to law enforcement and ten percent apportioned
by the director within provisions of this section. Any unexpended moneys for capital improvements and land purchases shall be carried forward.

All interest generated from game and fish license fees after the thirty-first day of July, one thousand nine hundred ninety-one, shall be used by the director for the department of natural resources in the same manner as is provided for the use of license fees.

CHAPTER 141
(H. B. 2354—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

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

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-four, relating to free fishing days.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-44. Free fishing days.

1 The director may designate up to two days each year as free sport fishing days. On a designated free fishing day, an individual is entitled to fish for all legal fish in all counties of the state without having a Class B, Class F, Class I or Class O license and without the payment of any license fee, subject to the same privileges and restrictions applicable to a holder of any such license.
AN ACT to amend and reenact section forty-six-j, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting the use of muzzle-loaded pistols under provisions for muzzle-loading deer hunting licenses.

Be it enacted by the Legislature of West Virginia:

That section forty-six-j, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46j. Class V resident and Class VV nonresident muzzle-loading deer hunting licenses.

1 There shall be a special season of at least three days each year for the taking of deer with muzzle-loading firearms, either rifles or pistols, to be set at such time and to be of such duration as determined by the commission: Provided, That such special season shall not be set prior to the regular season for the taking of deer with firearms. For a minimum of two days during this season, deer of either sex may be taken with muzzle-loading firearms in all counties open for the taking of antlerless deer as provided in section forty-six-b of this article. Antlered deer only may be taken in all other counties open for the taking of deer with firearms.

13 Only single shot muzzle-loading firearms with iron sights having a bore diameter of no less than forty-four one-hundredths inch shall be legal firearms for the taking of deer during the special season provided herein.

17 In a calendar year, a hunter who has previously killed more than one deer may hunt for and take only antlered deer during the special season provided herein.
The special season provided herein shall be concurrent with all other seasons designated for the taking of game.

Any person wishing to hunt for and kill deer during the special muzzle-loading season must possess a valid Class V or Class VV license, except that this requirement shall not apply to a resident of West Virginia who is not required to obtain a license or permit to hunt as provided in this chapter. A Class V license shall be a resident muzzle-loading deer hunting license. A Class VV license shall be a nonresident muzzle-loading deer hunting license. The licenses shall be issued in a form prescribed by the director, shall be in addition to a Class A, Class AB or Class E license and shall be valid only when accompanied thereby. The fee for the Class V license shall be five dollars. The fee for the Class VV license shall be ten dollars.

CHAPTER 143

(Com. Sub. for H. B. 2357—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two-b, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to lifetime hunting, fishing and trapping licenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-7. Lifetime hunting, fishing and trapping licenses created.

Pursuant to section three of this article the following lifetime hunting, fishing and trapping licenses are hereby created and, for the lifetime of the licensee, shall serve in lieu of the equivalent annual license:
(a) A Class A-L lifetime resident statewide hunting and trapping license, the fee for which shall be two hundred dollars: Provided, That the fee shall be one hundred dollars for any resident who has not reached his or her second birthday; for proof of age, a certified birth certificate or other notarized record of birth shall be submitted with the license application;

(b) A Class AB-L lifetime resident combination statewide hunting, fishing and trapping license, the fee for which shall be three hundred dollars: Provided, That the fee shall be one hundred fifty dollars for any resident who has not reached his or her second birthday; for proof of age, a certified birth certificate or other notarized record of birth shall be submitted with the license application;

(c) A Class B-L lifetime resident statewide fishing license, the fee for which shall be two hundred dollars: Provided, That the fee shall be one hundred dollars for any resident who has not reached his or her second birthday; for proof of age, a certified birth certificate or other notarized record of birth shall be submitted with the license application; and

(d) A Class O-L lifetime resident trout fishing license, the fee for which shall be one hundred dollars: Provided, That the fee shall be fifty dollars for any resident who has not reached his or her second birthday; for proof of age, a certified birth certificate or other notarized record of birth shall be submitted with the license application.

CHAPTER 144

(Com. Sub. for S. B. 58—By Senators Parker, Chernenko, Brackenrich and Hawse)

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

AN ACT to amend and reenact sections five, six, seven, ten and eleven, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, relating to changing permitted times and procedures for open burning; use of a safety strip; misdemeanor offense created; increasing fines and penalties; regulating underground coal fires; and providing that landowners exercise all means to extinguish forest fires.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-5. Forest fire seasons; permits for fires; prohibited fires; closure of forests.

§20-3-6. Failure of person to extinguish fire started or used by him; throwing lighted material on forest land.

§20-3-7. Starting fire on lands of another; penalties.

§20-3-10. Spark arresters for sawmills, etc.; risk and hazard reduction to protect against fires; underground coal fires.

§20-3-11. Recovery of costs incurred in fighting fires; landowners responsibility to extinguish fires.

§20-3-5. Forest fire seasons; permits for fires; prohibited fires; closure of forests.

The periods of each year between March first and May thirty-first, inclusive, and October first and December thirty-first, inclusive, are hereby designated as forest fire seasons. No person shall during any such fire season, except between the hours of four o'clock p.m. and seven o'clock a.m. prevailing time, set on fire or cause to be set on fire any forest land, or any grass, grain, stubble, slash, debris, or other inflammable materials. Any fire set during this time shall be extinguished prior to seven o'clock a.m. prevailing time. Such prohibition of fires between seven o'clock a.m. and four o'clock p.m. prevailing time shall not be construed to include (1) small fires set for the purpose of food preparation, or providing light or warmth around which all grass, brush, stubble, or other debris has been removed for a distance of ten feet from the fire, and (2) burning which may be conducted at any time when the ground surrounding the burning site is covered by one
inch or more of snow. Any person who sets or causes to
be set any fire permitted by this section shall not leave
such fire unattended for any period of time.

The director or his designated appointees or em-
ployees may issue permits authorizing fires prohibited
by the preceding paragraph. Such permits may be
granted on such conditions and for such periods of time
as the director deems necessary to prevent danger from
fire to life or property, and noncompliance with any
term of the permit shall be a violation of this section.
Any permit which was obtained through willful misre-
presentation shall be invalid. All permit holders shall
take all necessary and adequate precautions to confine
and control any fire permitted by the authorization;
failure to take such action shall be a violation of this
section and shall be justification for the director or his
duly authorized representative to cancel the permit.

When the director considers it necessary to prevent
danger from fire to life or property, he may, with the
prior approval of the governor, prohibit the starting of
and require the extinguishment of any fire in any area
designated by the director, and such action may include
any fire for which a permit has been issued under the
preceeding paragraph. In addition, if so deemed neces-
sary, the director may, with the prior approval of the
governor, designate any forest area as a danger area and
prohibit entry thereon or use thereof except for the
purposes and on the conditions he designates. The
director by proclamation shall establish such areas and
designate which fires are prohibited therein; and if a
danger area is established, he shall announce the
purposes for which and conditions under which entry
thereon or use thereof may be made. Action hereunder
may be taken by the director at any time during the
year. Notice of any proclamation hereunder shall be
furnished to newspapers, radio stations and television
stations which serve the area designated. The proclama-
tion shall not be effective until twenty-four hours after
it is proclaimed. Any proclamation hereunder shall
remain in force until the director, with the approval of
the governor, by order terminates it. The order shall
§20-3-6. Failure of person to extinguish fire started or used by him; throwing lighted material on forest land.

Any person who, by himself, or by his employees, agents or guides, or as an employee, agent or guide of any other person, shall at any time build or use any fire in any field, in any public or private road, or in any area adjacent to or in any forest land in this state, shall, before leaving such fire for any period of time, totally extinguish the same.

A person shall not at any time throw or place any lighted match, cigar, cigarette, firecracker or lighted material on any forest land, private road, public highway or railroad right-of-way within this state.

Any person who violates any provision of this section shall be guilty of a misdemeanor.

§20-3-7. Starting fire on lands of another; penalties.

Any person who willfully sets or causes to be set on fire any forest land, grass, grain, stubble, brush, slash, debris, or any other inflammable substance upon the property of another without his consent, or in a place from which it is reasonable to expect that the fire may
spread to the property of another without his consent,
and as a result of either causes damage or destruction
to any natural resources in or on the other person's
property, shall be guilty of a felony, and, upon conviction
thereof, shall be fined not less than five hundred dollars
nor more than five thousand dollars, or be imprisoned
for not less than one year nor more than five years, or
both, in the discretion of the court.

§20-3-10. Spark arresters for sawmills, etc.; risk and
hazard reduction to protect against fires;
underground coal fires.

No person, firm or corporation shall use or operate on
land subject to fire by any cause, a sawmill, a power
shovel, or an engine or machine capable of throwing
sparks, unless the equipment is provided with an
approved spark arrester. Escape of fire from such
equipment shall be prima facie evidence that such
appliance was not maintained properly in compliance
with this section.

Any person, firm or corporation owning any land and
knowing of inflammable waste disposal on said land,
and any person, firm or corporation using any land for
the purpose of inflammable waste disposal, shall remove
annually all grass, brush, debris and other inflammable
material adjacent to such disposal areas to provide
adequate protection to prevent the escape of fire to
adjacent lands. Escape of fire from any such disposal
area shall be prima facie evidence that this section had
not been complied with.

Any person, firm or corporation owning or leasing any
mineral interests and knowing of underground coal
being on fire under that land shall between the first of
November and the thirty-first of December of each year
clear away all inflammable material within forty feet
of any mine break or other opening through which the
fire could escape to the surface. Any person, firm or
corporation owning any underground mineral interests
shall use all practical means to confine, extinguish or
suppress any such fire in such underground minerals.
Any person, firm or corporation violating any provision of this section shall be guilty of a misdemeanor.

§20-3-11. Recovery of costs incurred in fighting fires; landowners responsibility to extinguish fires.

The director shall, in the name of the state, recover from the person or persons, firms or corporations whose negligence or whose violation of any provision of this article caused any fire at any time on grass or forest land, the amount expended by the state for the personal services of persons especially employed under the provisions of section four of this article to control, confine, extinguish or suppress such fire, and the costs associated therewith, including payment for the personal services rendered by full-time state department of natural resources employees, operating costs of state equipment used and costs related thereto in controlling, confining, extinguishing or suppressing such fire. Such recovery shall not bar an action for damages by any other person.

Any such fire which was caused by a trespasser or by a person who was upon the property without the consent of the owner shall not be deemed caused by the negligence of the owner; but the owner shall use all practical means to confine, extinguish or suppress any such fire on his land even though it was caused by any such person. If he fails to do so, after becoming aware of such fire, the director shall, in the name of the state, recover from him amounts expended by the state for the personal services of persons especially employed under the provisions of section four of this article to control, confine, extinguish or suppress such fire and the costs associated therewith, including payment for the personal services rendered by full-time state department of natural resources employees, operating costs of state equipment used and costs related thereto in controlling, confining, extinguishing or suppressing such fire.

Any time that a landowner, his or her agent or employee is aware of a fire on the landowner's property, the landowner shall use all practical means to confine, extinguish or suppress the fire.
AN ACT to amend and reenact sections twenty-five and twenty-nine, article three, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including the State of Ohio in the Middle Atlantic Interstate Forest Fire Protection Compact.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-25. Governor's authority to execute.
§20-3-29. Other powers supplementary.

PART III. MIDDLE ATLANTIC INTERSTATE FOREST FIRE PROTECTION COMPACT.

§20-3-25. Governor's authority to execute.

The governor of West Virginia, on behalf of this state, is hereby authorized to execute a compact in substantially the following form, with any one or more of the states of Delaware, Maryland, New Jersey, Ohio, Pennsylvania and Virginia, and the Legislature hereby signifies in advance its approval and ratification of such compact:

MIDDLE ATLANTIC INTERSTATE FOREST FIRE PROTECTION COMPACT

ARTICLE I.

The purpose of this compact is to promote effective prevention and control of forest fires in the middle Atlantic region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire-fighting services by the member states, and by providing for mutual aid in fighting forest
ARTICLE II.

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Delaware, Maryland, New Jersey, Ohio, Pennsylvania, Virginia and West Virginia which are contiguous have ratified it and Congress has given consent thereto.

ARTICLE III.

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall organize to coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

ARTICLE IV.

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.
ARTICLE V.

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with such request: Provided, That nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other costs or from loaning such equipment or from donating such services to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state: Provided, That nothing herein shall be construed as relieving any
person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any state.

For the purposes of this compact the term “employee” shall include any volunteer or auxiliary legally included within the forest fire-fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

ARTICLE VI.

Nothing in this compact shall be construed to authorize or permit any member state to curtail or diminish its forest fire-fighting forces, equipment, services or facilities, and it shall be the duty and responsibility of each member state to maintain adequate forest fire-fighting forces and equipment to meet demands for forest fire protection within its borders in the same manner and to the same extent as if this compact were not operative.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between the United States forest service and a member state or states.

ARTICLE VII.

The compact administrators may request the United States forest service to act as the primary research and coordinating agency of the middle Atlantic interstate forest fire protection compact in cooperation with the appropriate agencies in each state, and the United States forest service may accept the initial responsibility in preparing and presenting to the compact administra-
tors its recommendations with respect to the regional
fire plan. Representatives of the United States forest
service may attend meetings of the compact
administrators.

ARTICLE VIII.

The provisions of articles four and five of this compact
which relate to mutual aid in combating, controlling or
preventing forest fires shall be operative as between any
state party to this compact and any other state which
is party to a regional forest fire protection compact in
another region: Provided, That the Legislature of such
other state shall have given its assent to such mutual aid
provisions of this compact.

ARTICLE IX.

This compact shall continue in force and remain
binding on each state ratifying it until the Legislature
or the governor of such state takes action to withdraw
therefrom. Such action shall not be effective until six
months after notice thereof has been sent by the chief
executive of the state desiring to withdraw to the chief
executive of all states then parties to the compact.

§20-3-29. Other powers supplementary.

Any powers herein granted to the state forester shall
be regarded as in aid of and supplemental to, and in no
case a limitation upon, any of the powers vested in said
director by other laws of the State of West Virginia or
by the laws of the State of Delaware, Maryland, New
Jersey, Ohio, Pennsylvania and Virginia, or by the
Congress or the terms of said compact.

CHAPTER 146

(H. B. 2677—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request)

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

AN ACT to amend and reenact section six, article five-a,
chapter twenty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
further amend said article by adding thereto a new
section, designated section six-a, relating to form of
application for permit under the water pollution control
act; information required; water quality management
fund established; permit application fees; annual permit
fees; dedication of proceeds; rules and regulations.

Be it enacted by the Legislature of West Virginia:

That section six, article five-a, chapter twenty of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; and that said article be
further amended by adding thereto a new section, designated
section six-a, to read as follows:

ARTICLE 5A. WATER POLLUTION CONTROL ACT.

§20-5A-6. Form of application for permit; information required.

§20-5A-6a. Water quality management fund established; permit application
fees; annual permit fees; dedication of proceeds; rules and
regulations.

§20-5A-6. Form of application for permit; information
required.

1 The chief shall prescribe a form of application for all
2 permits for any activity specified in section five of this
3 article and, notwithstanding any other provision of law
to the contrary, no other discharge permit or discharge
authorization from any other state department, agency,
commission, board or officer shall be required for such
activity except that which is required from the depart­
ment of mines by the provisions of chapter twenty-two
of this code. All applications must be submitted on a
form as prescribed above. An applicant shall furnish all
information reasonably required by any such form,
including without limiting the generality of the forego­
ing, a plan of maintenance and proposed method of
operation of the activity or activities. Until all such
required information is furnished, an application shall
not be considered a complete application. The chief and
board shall protect any information (other than effluent
data) contained in such permit application form, or
other records, reports or plans as confidential upon a showing by any person that such information, if made public, would divulge methods or processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in a national pollutant discharge elimination form, the chief or board shall forward such information to the regional administrator of the United States environmental protection agency for his concurrence in any determination of confidentiality.

§20-5A-6a. Water quality management fund established; permit application fees; annual permit fees; dedication of proceeds; rules and regulations.

(a) A special revenue fund designated the “Water Quality Management Fund” shall be established in the state treasury on the first day of July, one thousand nine hundred eighty-nine.

(b) The permit application fees and annual permit fees established and collected pursuant to this section shall be deposited into the water quality management fund. The director shall expend the proceeds of the water quality management fund for the review of initial permit applications, renewal permit applications and permit issuance activities.

(c) The director shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code, to establish a schedule of application fees for which the appropriate fee shall be submitted by the applicant to the department with the application filed pursuant to this article for any state water pollution control permit or national pollutant discharge elimination system permit. Such schedule of application fees shall be designed to establish reasonable categories of permit application fees based upon the complexity of the permit application review process required by the department pursuant to the provisions of this article and the rules promulgated thereunder: Provided, That no initial application fee shall exceed seven thousand five hundred dollars for any facility nor shall any permit renewal
application fee exceed two thousand five hundred dollars. The department shall not process any permit application pursuant to this article until said permit application fee has been received.

(d) The director shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code, to establish a schedule of annual permit fees which shall be assessed annually upon each person holding a state water pollution control permit or national pollutant discharge elimination system permit issued pursuant to this article. Each person holding such a permit shall pay the prescribed annual permit fee to the department pursuant to the rules and regulations promulgated hereunder. Such schedule of annual permit fees shall be designed to establish reasonable categories of annual permit fees based upon the relative potential of such categories or permits to degrade the waters of the state: Provided, That no annual permit fee may exceed two thousand five hundred dollars. Any such permit issued pursuant to this article shall be void when the annual permit fee is more than one hundred eighty days past due pursuant to the rules promulgated hereunder.

(e) The provisions of this section shall not be applicable to fees required for permits issued under article three, chapter twenty-two-a of this code.

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CHAPTER 147
(H. B. 2761—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

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

AN ACT to amend and reenact sections five and twenty-four, article five-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia water development authority by adding thereto provisions authorizing the refinancing of certain existing debt of local governmental agencies and increasing the limit on
borrowing by the water development authority from one hundred million dollars to two hundred million dollars.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. WEST VIRGINIA WATER DEVELOPMENT AUTHORITY.

§20-5C-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies shall be subject to terms of loan agreements.


§20-5C-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies shall be subject to terms of loan agreements.

To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the West Virginia water development authority may initiate, acquire, construct, maintain, repair and operate water development projects or cause the same to be operated pursuant to a lease, sublease or agreement with any person or governmental agency; may make loans and grants to governmental agencies for the acquisition or construction of water development projects by such governmental agencies, which loans may include amounts to refinance debt issued for existing water development projects of the governmental agency when such refinancing is in conjunction with a loan for a new water development project: Provided, That the amount of the refinancing may not exceed fifty percent of the loan to the governmental agency; and may issue water development revenue bonds of this state, payable solely from revenues, to pay the cost of, or finance, in whole or in part, by loans to governmental agencies, such projects. A water development project shall not be undertaken unless it has been determined by the authority to be consistent with any applicable comprehensive plan of water management approved by
the director of the department of natural resources or
in the process of preparation by such director and to be
consistent with the standards set by the state water
resources board, for the waters of the state affected
thereby. Any resolution of the authority providing for
acquiring or constructing such projects or for making
a loan or grant for such projects shall include a finding
by the authority that such determinations have been
made. A loan agreement shall be entered into between
the authority and each governmental agency to which
a loan is made for the acquisition or construction of a
water development project, which loan agreement shall
include without limitation the following provisions:

(1) The cost of such project, the amount of the loan,
the terms of repayment of such loan and the security
therefor, which may include, in addition to the pledge
of all revenues from such project after a reasonable
allowance for operation and maintenance expenses, a
deed of trust or other appropriate security instrument
creating a lien on such project;

(2) The specific purposes for which the proceeds of the
loan shall be expended including the refinancing of
existing water development project debt as provided
above, the procedures as to the disbursement of loan
proceeds and the duties and obligations imposed upon
the governmental agency in regard to the construction
or acquisition of the project;

(3) The agreement of the governmental agency to
impose, collect, and, if required to repay the obligations
of such governmental agency under the loan agreement,
increase, service charges from persons using said
project, which service charges shall be pledged for the
repayment of such loan together with all interest, fees
and charges thereon and all other financial obligations
of such governmental agency under the loan agreement;
and

(4) The agreement of the governmental agency to
comply with all applicable laws, rules and regulations
issued by the authority or other state, federal and local
bodies in regard to the construction, operation, mainte-
nance and use of the project.


1 The aggregate principal amount of bonds and notes
2 issued by the authority shall not exceed two hundred
3 million dollars outstanding at any one time: Provided,
4 That in computing the total amount of bonds and notes
5 which may at any one time be outstanding, the principal
6 amount of any outstanding bonds or notes refunded or
7 to be refunded either by application of the proceeds of
8 the sale of any refunding bonds or notes of the authority
9 or by exchange for any such refunding bonds or notes,
10 shall be excluded.

CHAPTER 148

(Com. Sub. for S. B. 262—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed April 8, 1989; in effect ninety days from passage. Approved by the Governor.]
injunctive relief; financial responsibility provisions; 
solid waste management definitions; order, inspections 
and enforcement; and civil and criminal penalties.

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

That sections two, three, four, five, six, seven, fourteen and 
sixteen, article five-e, chapter twenty of the code of West 
Virginia, one thousand nine hundred thirty-one, as amended, 
be amended and reenacted; that said article five-e be further 
amended by adding thereto two new sections, designated 
sections eight-a and twenty-four; and that sections two and six, 
article five-f of said chapter twenty be amended and reen­
acted, all to read as follows:

**CHAPTER 20. NATURAL RESOURCES.**

**ARTICLE 5E. HAZARDOUS WASTE MANAGEMENT ACT.**

§20-5E-2. Declaration of policy.
§20-5E-4. Designation of department of natural resources as the state 
hazardous waste management lead agency.
§20-5E-5. Powers and duties of director; integration with other acts; 
establishment of study of hazardous waste management.
§20-5E-6. Promulgation of regulations by director.
§20-5E-7. Authority and jurisdiction of other state agencies.
§20-5E-8a. Corrective action.
§20-5E-14. Enforcement orders; hearings.
§20-5E-16. Civil penalties and injunctive relief.

§20-5E-2. Declaration of policy.

1 (a) The Legislature finds that:

2 (1) Continuing technological progress and increases in 
3 the amount of manufacture and the abatement of air 
4 and water pollution have resulted in ever increasing 
5 quantities of hazardous wastes;

6 (2) The public health and safety and the environment 
7 are threatened where hazardous wastes are not man- 
8 aged in an environmentally sound manner;

9 (3) The knowledge and technology necessary for
alleviating adverse health, environmental and aesthetic impacts resulting from current hazardous waste management and disposal practices are generally available; (4) The manufacture, refinement, processing, treatment and use of coal, raw chemicals, ores, petroleum, gas and other natural and synthetic products are activities that make a significant contribution to the economy of this state; and (5) The problem of managing hazardous wastes has become a matter of statewide concern.

(b) Therefore, it is hereby declared that the purposes of this article are:

(1) To protect the public health and safety, and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes; (2) To establish a program of regulation over the storage, transportation, treatment and disposal of hazardous wastes; (3) To assure the safe and adequate management of hazardous wastes within this state; and (4) To assume regulatory primacy through Subtitle C of the Resource Conservation and Recovery Act.


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

(1) “Chief” means the chief of the division of waste management of the department of natural resources; (2) “Director” means the director of the department of natural resources; (3) “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters; (4) “Division” means the division of waste management of the department of natural resources;
"Generation" means the act or process of producing hazardous waste materials;


"Hazardous waste" means a waste or combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics, may (A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed;

"Hazardous waste fuel" means fuel produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a), section six of this article, or produced from any hazardous waste identified or listed pursuant to section six;

"Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes;

"Land disposal" means any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave;

"Manifest" means the form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage;

"Person" means any individual, trust, firm, joint stock company, public, private or government corporation, partnership, association, state or federal agency, the United States government, this state or any other
state, municipality, county commission or any other political subdivision of a state or any interstate body;


(14) "Storage" means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste;

(15) "Subtitle C" means Subtitle C of the Resource Conservation and Recovery Act;

(16) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;

(17) "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, as amended, or source, special nuclear or by-product material as defined by the federal Atomic Energy Act of 1954, as amended.

§20-5E-4. Designation of department of natural resources as the state hazardous waste management lead agency.

The department of natural resources is hereby
designated as the hazardous waste management lead agency for this state for purposes of Subtitle C of the Resource Conservation and Recovery Act, and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of said legislation. In carrying out the purposes of this article, the director is hereby authorized to cooperate with the federal environmental protection agency and other agencies of the federal government, this state and other states, and other interested persons in all matters relating to hazardous waste management.

§20-5E-5. Powers and duties of director; integration with other acts; establishment of study of hazardous waste management.

(a) In addition to all other powers and duties prescribed in this article or otherwise by law, and unless otherwise specifically set forth in this article, the director shall perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of the Resource Conservation and Recovery Act as of the effective date of this article.

(b) The director shall integrate all provisions of this article for purposes of administration and enforcement and shall avoid duplication to the maximum extent practicable, with the appropriate provisions of the water pollution control act, article five-a of this chapter; the surface mining and reclamation act, article six of this chapter; the coal refuse disposal control act, article six-c of this chapter; the air pollution control act, article twenty, chapter sixteen of this code; the oil and gas laws of article four, chapter twenty-two of this code; the public health laws, chapter sixteen of this code; the dam control act, article five-d of this chapter; the pesticide use and application act of 1975, article sixteen-b, chapter nineteen of this code; and the pesticide act of 1961, article sixteen-a, chapter nineteen of this code.

(c) The director may enter into any agreements, including reimbursement for services rendered, contracts or cooperative arrangements, under such terms and conditions as he deems appropriate, with other state
27 agencies, educational institutions or other organizations
28 and individuals as necessary to implement the provi-
29 sions of this article.
30
31 (d) The director shall cooperate with and may receive
32 and expend money from the federal government and
33 other sources.
34
35 (e) Within twelve months after the effective date of
36 this article, the director, or upon designation by the
37 director, the chief, shall conduct and publish a study of
38 hazardous waste management in this state which shall
39 include, but not be limited to:
40
41 (1) A description of the sources of hazardous waste
42 generation within the state, including the types and
43 quantities of such wastes;
44
45 (2) A description of current hazardous waste manage-
46 ment practices and costs, including treatment, storage
47 and disposal within the state; and
48
49 (3) An inventory of existing and abandoned hazardous
50 waste treatment, storage and disposal sites.
51
52 (f) The director, or upon designation by the director,
53 the chief, in preparing the study provided for in
54 subsection (e) of this section may (1) require any owner
55 or operator of a storage, treatment or disposal facility,
56 or site, or any transporter or generator of hazardous
57 wastes to furnish or permit access to any and all
58 information that may reasonably be required to fulfill
59 the duty imposed upon him in subsection (e) of this
60 section, and (2) may issue subpoenas or subpoena duces
61 tecum to compel the production of information regard-
62 ing the location of any existing or abandoned hazardous
63 waste treatment, disposal or storage site as well as
64 production of information regarding quantity, quality
65 and hazardous waste management practices from any
66 generator or transporter of hazardous waste or any
67 owner or operator of an existing or abandoned hazard-
68 ous waste treatment, storage or disposal site.
69
70 (g) The director, or upon designation by the director,
71 the chief, shall (1) encourage, participate in and conduct
72 an ongoing investigation and analysis of methods,
incentives, technologies of source reduction, reuse, recycling or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste, and (2) investigate the feasibility of operating an information clearinghouse for hazardous wastes.

(h) The director, or upon designation by the director, the chief, shall provide for the continuing education and training of appropriate department personnel in matters of hazardous waste management.

§20-5E-6. Promulgation of regulations by director.

(a) The director has overall responsibility for the promulgation of rules and regulations under this article. Within six months of the effective date of this article the director shall promulgate the following rules and regulations, in consultation with the department of health, the air pollution control commission, the office of emergency services, the public service commission, the state fire marshal, the department of public safety, the department of highways, the department of agriculture, the water resources board and the department of mines office of oil and gas. In promulgating and revising such rules and regulations the director shall comply with the provisions of chapter twenty-nine-a of this code, shall avoid duplication to the maximum extent practicable with the appropriate provisions of the acts and laws set out in subsection (b), section five of this article and shall be consistent with but no more expansive in coverage nor more stringent in effect than the rules and regulations promulgated by the federal environmental protection agency pursuant to the Resource Conservation and Recovery Act:

(1) Rules and regulations establishing a plan for the safe and effective management of hazardous wastes within the state;

(2) Rules and regulations establishing criteria for identifying the characteristics of hazardous waste, identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of this article: Provided, That:
(A) Each waste listed below shall, except as provided in paragraph (B) of this subdivision, be subject only to regulation under other applicable provisions of federal or state law in lieu of this article until proclamation by the governor finding that at least six months have elapsed since the date of submission of the applicable study required to be conducted under section 8002 of the federal Solid Waste Disposal Act, as amended, and that regulations have been promulgated with respect to such wastes in accordance with section 3001 (b)(3)(C) of the Resource Conservation and Recovery Act, and finding in the case of the wastes identified in subparagraph (iv) of this paragraph that the regulation of such wastes have been authorized by an act of Congress in accordance with section 3001 (b)(2) of the Resource Conservation and Recovery Act:

(i) Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(ii) Solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore;

(iii) Cement kiln dust waste; and

(iv) Drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy.

(B) Owners and operators of disposal sites for wastes listed in paragraph (A) of this subdivision may be required by the director of the department of natural resources through regulation prescribed under authority of this section:

(i) As to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting or other measures, together with recordation of such information on the public record, to assure that the locations where such wastes are disposed of are known and can be located in the future; and
(ii) To provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record.

(3) Rules and regulations establishing such standards applicable to generators of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall establish requirements respecting (A) record keeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment and the disposition of such wastes, (B) labeling practices for any containers used for the storage, transport or disposal of such hazardous waste such as will identify accurately such waste, (C) use of appropriate containers for such hazardous waste, (D) furnishing of information on the general chemical composition of such hazardous wastes to persons transporting, treating, storing or disposing of such wastes, (E) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage or disposal in, and arrives at treatment, storage or disposal facilities (other than facilities on the premises where the waste is generated) with respect to which permits have been issued which are required (1) by this article or any rule and regulation required by this article to be promulgated; (2) by Subtitle C of the Resource Conservation and Recovery Act; (3) by the laws of any other state which has an authorized hazardous waste program pursuant to section 3006 of the Resource Conservation and Recovery Act; or (4) by Title I of the federal Marine Protection, Research and Sanctuaries Act, and (F) the submission of reports to the director at such times as the director deems necessary setting out the quantities of hazardous wastes identified or listed under this article that the generator has generated during a particular time period, and the disposition of all such hazardous waste;

(4) Rules and regulations establishing such perfor-
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108 maintenance standards applicable to owners and operators of
109 facilities for the treatment, storage or disposal of
110 hazardous waste identified or listed under this article
111 as may be necessary to protect public health and safety
112 and the environment, which standards shall, where
113 appropriate, distinguish in such standards between
114 requirements appropriate for new facilities and for
115 facilities in existence on the date of promulgation of
116 such rules and regulations and shall include, but need
117 not be limited to, requirements respecting:
118 (A) Maintaining records of all hazardous wastes iden-
119 tified or listed under this article which are treated,
120 stored or disposed of, as the case may be, and the
121 manner in which such wastes were treated, stored or
122 disposed of; (B) satisfactory reporting, monitoring and
123 inspection and compliance with the manifest system
124 referred to in subdivision (3) of subsection (a) of this
125 section; (C) treatment, storage or disposal of all such
126 waste received by the facility pursuant to such operating
127 methods, techniques and practices as may be satisfac-
128 tory to the director; (D) the location, design and
129 construction of such hazardous waste treatment, dispos-
130 al or storage facilities; (E) contingency plans for
131 effective action to minimize unanticipated damage from
132 any treatment, storage or disposal of any such hazardous
133 waste; (F) the maintenance of operation of such facili-
134 ties and requiring such additional qualifications as to
135 ownership, continuity of operation, training for person-
136 nel and financial responsibility as may be necessary or
137 desirable; however, no private entity may be precluded
138 by reason of criteria established under this subsection
139 from the ownership or operation of facilities providing
140 hazardous waste treatment, storage or disposal services
141 where such entity can provide assurances of financial
142 responsibility and continuity of operation consistent
143 with the degree and duration of risks associated with the
144 treatment, storage or disposal of specified hazardous
145 waste; and (G) compliance with the requirements of
146 section eight of this article respecting permits for
147 treatment, storage or disposal;

148 (5) Rules and regulations specifying the terms and
149 conditions under which the chief shall issue, modify,
suspend, revoke or deny such permits as may be
required by this article;

(6) Rules and regulations for the establishment and
maintenance of records; the making of reports; the
taking of samples and the performing of tests and
analyses; the installing, calibrating, operating and
maintaining of monitoring equipment or methods; and
the providing of any other information as may be
necessary to achieve the purposes of this article;

(7) Rules and regulations establishing standards and
procedures for the certification of personnel at hazard-
ous waste treatment, storage or disposal facilities or
sites;

(8) Rules and regulations for public participation in
the implementation of this article;

(9) Rules and regulations establishing procedures and
requirements for the use of a manifest during the
transport of hazardous wastes;

(10) Rules and regulations establishing procedures
and requirements for the submission and approval of a
plan, applicable to owners or operators of hazardous
waste storage, treatment and disposal facilities, as
necessary or desirable for closure of the facility, post-
closure monitoring and maintenance, sudden and
accidental occurrences and nonsudden and accidental
occurrences;

(11) Rules and regulations establishing a schedule of
fees to recover the costs of processing permit applica-
tions and permit renewals;

(12) Rules and regulations, including exemptions and
variances, as appropriate, (A) establishing standards
and prohibitions relating to the management of hazard-
ous waste by land disposal methods; (B) establishing
standards and prohibitions relating to the land disposal
of liquid hazardous wastes or free liquids contained in
hazardous wastes and any other liquids which are not
hazardous wastes; (C) establishing standards applicable
to producers, distributors, or marketers of hazardous
waste fuels; (D) establishing such standards relating to
the management of used oil as may be necessary to protect human health and the environment; (E) establishing such standards relating to the management of recycled oil as may be necessary to protect human health and the environment; and (F) as are otherwise necessary to allow the state to assume primacy for the administration of the federal hazardous waste management program under the Resource Conservation and Recovery Act and in particular, the Hazardous and Solid Waste Amendments of 1984:

Provided, That such rules and regulations authorized by this subdivision shall be consistent with but no more expansive in coverage nor more stringent in effect than rules and regulations promulgated by the federal environmental protection agency under Subtitle C; and

(13) Such other rules and regulations as are necessary to effectuate the purposes of this article.

(b) The rules and regulations required by this article to be promulgated shall be reviewed and, where necessary, revised not less frequently than every three years. Additionally, the rules and regulations required to be promulgated by this article shall be revised, as necessary, within six months of the effective date of any amendment of the Resource Conservation and Recovery Act and within six months of the effective date of any adoption or revision of rules and regulations required to be promulgated by the Resource Conservation and Recovery Act.

(c) Notwithstanding any other provision in this article the director shall not promulgate rules and regulations which are more properly within the jurisdiction and expertise of any of the agencies empowered with rule-making authority pursuant to section seven of this article.

§20-5E-7. Authority and jurisdiction of other state agencies.

(a) The commissioner of highways, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated
tencies with, and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director of the department of natural resources or any other rule-making authority, shall promulgate rules and regulations establishing standards applicable to generators and to permitting, licensing and operation of facilities that treat, store or dispose of hazardous wastes with infectious characteristics. Such rules and regulations shall specify the terms, conditions and procedures under which the state director of health or his authorized representative shall issue, modify, suspend, revoke or deny such permits required pursuant to those regulations. Such permits as the board of health regulations may require shall be issued by the state director of health or his authorized representative. All rules and regulations promulgated under this subsection shall be promulgated in accordance with the provisions of chapter twenty-nine-a of this code. Nothing in this subsection shall be construed to diminish or alter the authority of the air pollution control commission or its director under this article or article twenty, chapter sixteen of this code: Provided, That such permitting or licensing required by this subsection shall be in addition to those permits required by section eight of this article. Such rules and regulations shall be consistent with this article and shall be promulgated within six months of the effective date of this article.

Any person aggrieved or adversely affected by an order of the state director of health pursuant to this article, or the denial or issuance of a permit, or the failure or refusal of said director to act within a reasonable time on an application for a permit or the terms or conditions of a permit granted under the provisions of this article, may appeal to a special hearing examiner appointed to hear contested cases in accordance with the provisions of chapter twenty-nine-a of this code. All procedures for appeal and conduct of hearings shall comply with rules and regulations promulgated by the state board of health. Unless the board of health directs otherwise, the appeal hearing shall be held in the city of Charleston, Kanawha County.
In lieu of those enforcement and inspection powers conferred upon the state director of health elsewhere by law with respect to hazardous waste with infectious characteristics, the state director of health shall have the same enforcement and inspection powers as those granted to the chief, his authorized representative or agent or any authorized employee or agent of the department of natural resources, as the case may be, under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article.

(e) The director shall rely, to the maximum extent practicable, on the department of health for expertise on the adverse effects of toxic hazardous waste on human health.

(f) The air pollution control commission, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of article twenty, chapter sixteen and chapter twenty-nine-a of this code, shall promulgate such rules and regulations establishing air pollution performance standards and permit requirements and procedures as may be necessary to comply with the requirements of this article. Such permits shall be in addition to those permits required by section eight of this article. All rules and regulations promulgated pursuant to this subsection shall be consistent with this article.

The commission shall adopt regulations for the monitoring and control of air emissions at hazardous waste treatment storage and disposal facilities, including, but not limited to, open tanks, surface impoundments and landfills, as may be necessary to protect human health and the environment.

The commission shall promulgate rules and regulations establishing standards applicable to the owners and operators of facilities which burn, for purposes of energy recovery, any fuel produced from any hazardous
waste identified or listed pursuant to subdivision (2), subsection (a), section six of this article or which is produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a), section six of this article and any other material, as may be necessary to protect human health and the environment: Provided, That such rules and regulations shall be consistent with Subtitle C.

With respect to this article, and any rules or regulations promulgated pursuant thereto, the director of the air pollution control commission has the same enforcement and inspection powers as those of the chief under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article: Provided, That no action for penalties may be initiated by the director of the air pollution control commission without the approval of that commission. Any person aggrieved or adversely affected by an order of the director of the air pollution control commission made and entered in accordance with the provisions of this article, or by the failure or refusal of said director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted under the provisions of this article, may appeal to the air pollution control commission in accordance with the procedure set forth in section six, article twenty, chapter sixteen of this code, and orders made and entered by said commission shall be subject to judicial review in accordance with the procedures set forth in section seven, article twenty, chapter sixteen of this code, except that as to cases involving an order granting or denying an application for a permit, revoking or suspending a permit or approving or modifying the terms and conditions of a permit or the failure to act within a reasonable time on an application for a permit, the petition for judicial review shall be filed in the circuit court of Kanawha County.

(g) The director of the department of natural resources has exclusive responsibility for carrying out any requirement of this article with respect to coal mining wastes or overburden for which a permit is issued under
the surface coal mining and reclamation act of 1980, article six of this chapter.

(h) To the extent that this article relates to activities with respect to oil and gas wells, liquid injection wells and waste disposal wells now regulated by articles four, four-b and seven, chapter twenty-two of this code, the administrator of the office of oil and gas and the shallow gas-well review board has the jurisdiction with respect to the regulation of such activities and shall promulgate such rules and regulations as may be necessary to comply with the requirements of this article: Provided, That nothing in this subsection may be construed to diminish or alter the authority and responsibility of the chief or the water resources board under articles five and five-a, chapter twenty of this code.

In lieu of those enforcement and inspection powers conferred upon the administrator of the office of oil and gas and the shallow gas-well review board elsewhere by law, with respect to hazardous wastes, the administrator of the office of oil and gas and the shallow gas-well review board have the same enforcement and inspection powers as those granted to the chief, his authorized representative or agent or any authorized employee or agent of the department of natural resources, as the case may be, under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article.

(i) The water resources board, in consultation with the director, and avoiding inconsistency with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall, as necessary, promulgate rules and regulations governing discharges into the waters of this state of hazardous waste resulting from the treatment, storage or disposal of hazardous waste as may be required by this article. Such rules and regulations shall be consistent with this article.

(j) All rules and regulations promulgated pursuant to this section shall be consistent with rules and regula-
tions promulgated by the federal environmental protection agency pursuant to the Resource Conservation and Recovery Act.

(k) The director shall submit his written comments to the legislative rule-making review committee regarding all rules and regulations promulgated pursuant to this article.

§20-5E-8a. Corrective action.

(a) All permits issued after the date the state is delegated authority by the federal environmental protection agency to administer the portion of the federal hazardous waste program covered under the Hazardous and Solid Waste Amendments of 1984 shall contain conditions requiring corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this article regardless of the time at which waste was placed in such unit. Permits issued under this article shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

(b) The director shall amend the standards under subdivision (4), subsection (a), section six of this article, regarding corrective action required at facilities for the treatment, storage, or disposal of hazardous waste listed or identified in rules and regulations promulgated pursuant to subdivision (2), subsection (a), section six of this article, to require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the director that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such regulations shall take effect immediately upon promulgation, and shall apply to:

(1) All facilities operating under permits issued under subdivision (4), subsection (a), section six of this article; and
(2) All landfills, surface impoundments and waste pile units (including any new units, replacement of existing units or lateral expansions of existing units) which receive hazardous waste after the twenty-sixth day of July, one thousand nine hundred eighty-two. Pending promulgation of such regulations the director shall issue corrective action orders for facilities referred to in subdivisions (1) and (2) above on a case-by-case basis consistent with the purposes of this subsection.

§20-5E-14. Enforcement orders; hearings.

(a) If the chief, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, any permit, order or rules or regulations issued or promulgated hereunder, he may:

(1) Issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders;

(2) Seek an injunction in accordance with subsection (c) of section sixteen of this article;

(3) Institute a civil action in accordance with subsection (c) of section sixteen of this article; or

(4) Request the attorney general, or the prosecuting attorney of the county in which the alleged violation occurred, to bring a criminal action in accordance with section fifteen of this article.

(b) Any person issued a cease and desist order may file a notice of request for reconsideration with the chief not more than seven days from the issuance of such order and shall have a hearing before the chief contesting the terms and conditions of such order within ten days of the filing of such notice of a request for reconsideration. The filing of a notice of request for
reconsideration shall not stay or suspend the execution or enforcement of such cease and desist order.

§20-5E-16. Civil penalties and injunctive relief.

(a) (1) Any person who violates any provision of this article, any permit or any rule, regulation or order issued pursuant to this article shall be subject to a civil administrative penalty, to be levied by the director, of not more than seventy-five hundred dollars for each day of such violation, not to exceed a maximum of twenty-two thousand five hundred dollars. In assessing any such penalty, the director shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors as may be established by the director by rules and regulations promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, regulation, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator shall have twenty calendar days from receipt of the notice within which to deliver to the director a written request for an informal hearing. If no hearing is requested, the notice shall become a final order after the expiration of the twenty-day period. If a hearing is requested, the director shall inform the alleged violator of the time and place of the hearing. The director may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the director concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the director shall issue and furnish to the violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of the
director's decision, the alleged violator may request a formal hearing before the water resources board in accordance with the provisions of section nineteen of this article. The authority to levy an administrative penalty shall be in addition to all other enforcement provisions of this article and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: Provided, That no combination of assessments against a violator under this section shall exceed twenty-five thousand dollars per day of each such violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this section shall not be the subject of a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. All administrative penalties shall be levied in accordance with rules and regulations issued pursuant to subsection (a) of section six of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the hazardous waste emergency response fund established pursuant to section three, article five-g of this chapter.

(2) No assessment levied pursuant to subdivision (1), subsection (a) above shall become due and payable until the procedures for review of such assessment as set out in said subsection have been completed.

(b) Any person who violates any provision of this article, any permit or any rule, regulation or order issued pursuant to this article shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each day of such violation, which penalty shall be recovered in a civil action either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

(c) The chief may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule, regulation or order issued pursuant to this article. In seeking an injunction, it is not necessary for the chief to post bond
nor to allege or prove at any stage of the proceeding that
irreparable damage will occur if the injunction is not
issued or that the remedy at law is inadequate. An
application for injunctive relief or a civil penalty action
under this section may be filed and relief granted
notwithstanding the fact that all administrative reme-
dies provided for in this article have not been exhausted
or invoked against the person or persons against whom
such relief is sought.

(d) Upon request of the chief, the attorney general, or
the prosecuting attorney of the county in which the
violation occurs, shall assist the chief in any civil action
under this section.

(e) In any action brought pursuant to the provisions
of this section, the state, or any agency of the state which
prevails, may be awarded costs and reasonable attor-
ney's fees.


(1) Financial responsibility required by subdivision
(4), subsection (a), section six of this article may be
established in accordance with regulations promulgated
by the director by any one, or any combination, of the
following: Insurance, guarantee, surety bond, letter of
credit or qualification as a self-insurer. In promulgating
requirements under this section, the director is autho-
rized to specify policy or other contractual terms,
conditions or defenses which are necessary or are
unacceptable in establishing such evidence of financial
responsibility in order to effectuate the purposes of this
act.

(2) In any case where the owner or operator is in
bankruptcy reorganization, or arrangement pursuant to
the federal bankruptcy code or where (with reasonable
diligence) jurisdiction in any state court or any federal
court cannot be obtained over an owner or operator
likely to be solvent at the time of judgment, any claim
arising from conduct for which evidence of financial
responsibility must be provided under this section may
be asserted directly against the guarantor providing
such evidence of financial responsibility. In the case of
any action pursuant to this subsection, such guarantor
shall be entitled to invoke all rights and defenses which
would have been available to the owner or operator if
any action had been brought against the owner or
operator by the claimant and which would have been
available to the guarantor if an action had been brought
against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited
to the aggregate amount which the guarantor has
provided as evidence of financial responsibility to the
owner or operator under this act. Nothing in this
subsection shall be construed to limit any other state or
federal statutory contractual or common law liability of
a guarantor to its owner or operator including, but not
limited to, the liability of such guarantor for bad faith
either in negotiating or in failing to negotiate the
settlement of any claim. Nothing in this subsection shall
be construed to diminish the liability of any person
under section 107 or 111 of the Comprehensive Environ-
mental Response Compensation and Liability Act of
1980 or other applicable law.

(4) For the purposes of this section, the term “guaran-
tor” means any person other than the owner or operator
who provides evidence of financial responsibility for an
owner or operator under this section.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-2. Definitions.
§20-5F-6. Orders, inspections and enforcement; civil and criminal penalties.

§20-5F-2. Definitions.

1 Unless the context clearly requires a different
2 meaning, as used in this article the terms:

3 (a) “Approved solid waste facility” means a solid
4 waste facility or practice which has a valid permit
5 under this article;

6 (b) “Chief” shall mean the chief of the division of
7 waste management of the department of natural
8 resources;

9 (c) “Commercial solid waste facility” means any solid
waste facility which accepts solid waste generated by
sources other than the owner or operator of the facility
and shall not include an approved solid waste facility
owned and operated by a person for the sole purpose of
disposing of solid wastes created by that person or such
person and other persons on a cost-sharing or nonprofit
basis;

(d) “Department” shall mean the department of
natural resources;

(e) “Director” shall mean the director of the depart-
ment of natural resources;

(f) “Open dump” means any solid waste disposal
which does not have a permit under this article, or is
in violation of state law, or where solid waste is disposed
in a manner that does not protect the environment;

(g) “Person,” “persons” or “applicant” shall mean any
industrial user, public or private corporation, institu-
tion, association, firm or company organized or existing
under the laws of this or any other state or country; state
of West Virginia; governmental agency, including
federal facilities; political subdivision; county commis-
sion; municipal corporation; industry; sanitary district;
public service district; drainage district; soil conserva-
tion district; watershed improvement district; partner-
ship; trust; estate; person or individual; group of persons
or individuals acting individually or as a group; or any
legal entity whatever;

(h) “Sludge” means any solid, semisolid, residue or
precipitate, separated from or created by a municipal,
commercial or industrial waste treatment plant, water
supply treatment plant or air pollution control facility
or any other such waste having similar origin;

(i) “Solid waste” means any garbage, paper, litter,
refuse, cans, bottles, sludge from a waste treatment
plant, water supply treatment plant or air pollution
control facility, other discarded material, including
carcasses of any dead animal or any other offensive or
unsightly matter, solid, liquid, semisolid or contained
liquid or gaseous material resulting from industrial,
commercial, mining or from community activities but
does not include solid or dissolved material in sewage,
or solid or dissolved materials in irrigation return flows
or industrial discharges which are point sources and
have permits under article five-a, chapter twenty of the
code, or source, special nuclear or by-product material
as defined by the Atomic Energy Act of 1954, as
amended, or a hazardous waste either identified or
listed under article five-e, chapter twenty of the code or
refuse, slurry, overburden or other wastes or material
resulting from coal-fired electric power generation, the
exploration, development, production, storage and
recovery of coal, oil and gas, and other mineral
resources placed or disposed of at a facility which is
regulated under chapter twenty-two, twenty-two-a, or
twenty-two-b of the code, so long as such placement or
disposal is in conformance with a permit issued
pursuant to such chapters; "solid waste" shall not
include materials which are recycled by being used or
reused in an industrial process to make a product, as
effective substitute for commercial products, or are
returned to the original process as a substitute for raw
material feed stock;

(j) "Solid waste disposal" means the practice of
disposing solid waste including placing, depositing,
dumping or throwing or causing to be placed, deposited,
dumped or thrown any solid waste;

(k) "Solid waste disposal shed" means the geographi-
cal area which the resource recovery—solid waste
disposal authority designates and files in the state
register pursuant to section eight, article twenty-six,
chapter sixteen of this code; and

(l) "Solid waste facility" means any system, facility,
land, contiguous land, improvements on the land,
structures or other appurtenances or methods used for
processing, recycling or disposing of solid waste,
including landfills, transfer stations, resource recovery
facilities and other such facilities not herein specified.

§20-5F-6. Orders, inspections and enforcement; civil and
criminal penalties.
(a) If the director or chief, upon inspection, investigation or through other means observes, discovers or learns of a violation of this article, its rules, article five-a of this chapter or its rules, or any permit or order issued under this article, he may:

(1) Issue an order stating with reasonable specificity the nature of the alleged violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders;

(2) Seek an injunction in accordance with subsection (e) of this section;

(3) Institute a civil action in accordance with subsection (e) of this section; or

(4) Request the attorney general, or the prosecuting attorney of the county wherein the alleged violation occurred, to bring a criminal action in accordance with subsection (b) of this section.

(b) Any person who willfully or negligently violates the provisions of this article, any permit or any rule, regulation or order issued pursuant to this article shall be subject to the same criminal penalties as set forth in section nineteen, article five-a, chapter twenty of the code.

(c) (1) Any person who violates any provision of this article, any permit or any rule, regulation or order issued pursuant to this article shall be subject to civil administrative penalty, to be levied by the director, of not more than five thousand dollars for each day of such violation, not to exceed a maximum of twenty thousand dollars. In assessing any such penalty, the director shall take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements as well as any other appropriate factors as may be established by the director by rules and regulations promulgated pursuant to this article and article three, chapter twenty-nine-a of the code. No
assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, regulation, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator shall have twenty calendar days from receipt of the notice within which to deliver to the director a written request for an informal hearing. If no hearing is requested, the notice shall become a final order after the expiration of the twenty-day period. If a hearing is requested, the director shall inform the alleged violator of the time and place of the hearing. The director may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the director concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the director shall issue and furnish to the alleged violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of the director's decision, the alleged violator may request a formal hearing before the water resources board in accordance with the provisions of section seven of this article. The authority to levy a civil administrative penalty shall be in addition to all other enforcement provisions of this article and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied: Provided, That no combination of assessments against a violator under this section shall exceed twenty-five thousand dollars per day of each such violation: Provided, however, That any violation for which the violator has paid a civil administrative penalty assessed under this section shall not be the subject of a separate civil penalty action under this article to the extent of the amount of the civil administrative penalty paid. All administrative penalties shall be levied in accordance
with rules and regulations issued pursuant to subsection (a) of section four of this article. The net proceeds of assessments collected pursuant to this subsection shall be deposited in the solid waste reclamation and environmental response fund established in subdivision (3), subsection (h), section five-a of this article.

(2) No assessment levied pursuant to subdivision (1), subsection (c) above shall become due and payable until the procedures for review of such assessment as set out in said subsection have been completed.

(d) Any person who violates any provision of this article, any permit or any rule, regulation or order issued pursuant to this article shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each day of such violation, which penalty shall be recovered in a civil action either in the circuit court wherein the violation occurs or in the circuit court of Kanawha County.

(e) The director or chief may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule, regulation or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director or chief to post bond nor to allege or prove at any state of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

(f) Upon request of the director or chief, the attorney general or the prosecuting attorney of the county in which the violation occurs shall assist the director in any civil action under this section.

(g) In any civil action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.
CHAPTER 149

(H. B. 2676—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request)

Clerk's Note: It has been determined that H. B. 2676, originally styled as Chapter 149, was enrolled and signed by the Governor in an incorrect form, certain amendments adopted by the Senate having been omitted from the original House Bill.

Therefore, the Governor not having received and signed a true and correct copy of the bill as passed by both houses, H. B. 2676 did not become law.

CHAPTER 150

(H. B. 2696—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request)

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

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-i, relating to the creation of the West Virginia water pollution control revolving fund; definitions; designation of department of natural resources as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency; disbursement of fund moneys; administration of the fund; annual audit; collection of money due to the fund; state construction grants program established; special fund created; promulgation of legislative rules; environmental review of funded projects; conflicting provisions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5I. WATER POLLUTION CONTROL REVOLVING FUND ACT.

§20-5I-1. Definitions.
§20-51-2. Designation of department of natural resources as state instrumentality for purposes of capitalization agreements with the United States environmental protection agency.

§20-51-3. West Virginia water pollution control revolving fund created; disbursement of fund moneys; administration of the fund.

§20-51-4. Annual audit.

§20-51-5. Collection of money due to the fund.

§20-51-6. State construction grants program established; special fund created.


§20-51-1. Definitions.

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

(a) "Authority" means the West Virginia water development authority created in section four, article five-c, chapter twenty of this code.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local government that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

(1) Developmental, planning and feasibility studies, surveys, plans and specifications;

(2) Architectural, engineering, financial, legal or other special services;

(3) Acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements;

(4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;

(5) The reasonable costs of financing incurred by the local government in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date
the project is to be placed in service, necessary expenses
incurred in connection with placing the project in
service, and the funding of accounts and reserves which
the authority may require; and

(6) Other items that the department of natural
resources determines to be reasonable and necessary.

(c) "Fund" means the state water pollution control
revolving fund created by this article.

(d) "Instrumentality" means the agency of state
government empowered with the primary responsibility
associated with water pollution control activities
regulating publicly-owned wastewater treatment
facilities.

(e) "Local government" means any county, city, town,
municipal corporation, authority, district, public service
district commission or political subdivision in West
Virginia.

(f) "Project" means any wastewater treatment facility
located or to be located in this state by a local govern-
ment and includes:

(1) Sewage and wastewater collection, treatment and
disposal facilities;

(2) Drainage facilities and projects;

(3) Administrative, maintenance, storage and labora-
tory facilities related to the facilities delineated in
subdivisions (1) and (2) of this subsection;

(4) Interests in land related to the facilities delineated
in subdivisions (1), (2) and (3) of this subsection; and

(5) Other projects allowable under federal law.

§20-5I-2. Designation of department of natural resources
as state instrumentality for purposes of
capitalization agreements with the United
States environmental protection agency.

The department of natural resources shall act as the
instrumentality that is empowered to enter into capital-
ization agreements with the United States environmen-
§20-51-3. **West Virginia water pollution control revolving fund created; disbursement of fund moneys; administration of the fund.**

(a) Under the direction of the department of natural resources, the West Virginia water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the “West Virginia Water Pollution Control Revolving Fund.” The fund shall be comprised of moneys appropriated to said fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local governments, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local governments to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the department of natural resources in administering the provisions of this article.

(b) The director of the department of natural resources, in consultation with the authority, shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code, to:

(1) Govern the disbursement of moneys from the fund; and

(2) Establish a state water pollution control revolving fund program to direct the distribution of loans from the fund to particular local governments and establish the interest rates and repayment terms of such loans.

(c) In order to carry out the administration and management of the fund, the authority is authorized to
employ officers, employees, agents, advisers and consultants, including attorneys, financial advisers, engineers, other technical advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or his designee. Any depository or officer of such depository to which moneys of the fund are paid shall act as trustee of such moneys and shall hold and apply them solely for the purposes for which said moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code.

§20-5I-4. Annual audit.

The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants, and the cost thereof may be defrayed as a part of the cost of construction of a project or as an administrative expense under the provisions of subsection (a), section three of this article.

§20-5I-5. Collection of money due to the fund.

In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a local government, and notwithstanding any provisions of this code to the contrary, the authority shall have, and may, at its option, exercise the following rights and remedies in the
event of any default by a local government under such a loan agreement:

(a) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local government pursuant to this article, and may proceed directly to enforce and collect such service charges, together with all necessary costs of such enforcement and collection.

(b) The authority may exercise, in its own name or in the name of and as the agent for a particular local government, all of the rights, powers and remedies of the local government with respect to the project or which may be conferred upon the local government by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local government pursuant to this article.

(c) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local government of all of the terms and conditions of the loan agreement between the state and that local government including:

(1) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(2) The enforcement and collection of service charges;

and

(3) The enforcement by the local government of all rights and remedies conferred by statute, rule, regulation or judicial decision.

The rights and remedies enumerated in this section shall be in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

§20-51-6. State construction grants program established; special fund created.

(a) The director of the department of natural resour-
(b) A special fund designated "The West Virginia Construction Grants Fund" shall be established in the state treasury on the first day of July, one thousand nine hundred eighty-nine. The special fund shall be comprised of moneys appropriated to said fund by the Legislature, assessments on existing wastewater treatment facilities, and all other sums designated for deposit to the special fund from any source, public or private: Provided, That such assessments shall be made and collected in accordance with fee schedules to be established by legislative rules promulgated by the director of the department of natural resources, in accordance with chapter twenty-nine-a of this code, and which rules shall provide that no such assessments may be collected before the first day of July, one thousand nine hundred ninety. Moneys in the special fund shall be used solely for the state construction grants program established under subsection (a) of this section: Provided, however, That moneys in the special fund may be utilized to defray the costs incurred by the department of natural resources in administering the provisions of this section.


(a) The department of natural resources shall conduct an environmental review on each project funded under this article. The director of the department of natural resources shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to implement the environmental review of funded projects: Provided, That said rules shall be consistent with the rules and regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the department of natural resour-
ces is authorized to direct a local government, or its
agent, to implement all measures that, in the judgment
of the director, are necessary in order to mitigate or
prevent adverse impacts to the public health, safety or
welfare or to the environment that may result from a
project funded under this article. The director is further
authorized to require all projects to comply with all
other appropriate federal laws and regulations that are
required of such projects under the federal clean water
act, as amended.


The provisions of this article shall be liberally
construed to the end that its beneficial purposes may be
effectuated. Insofar as the provisions of this article are
inconsistent with the provisions of any other general,
special or local law, the provisions of this article shall
be controlling.

CHAPTER 151
(Com. Sub. for H. B. 2201—By Delegate Love)

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

AN ACT to amend and reenact section one-a, article seven,
chapter twenty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to conservation officers employed by the department of
natural resources; providing salary increases for
conservation officers based on length of service.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENAL-
TIES; MOTORBOATING; WEST VIRGINIA LITTER
CONTROL PROGRAM.
§20-7-1a. Conservation officers excluded from coverage of wage and hour laws; supplemental pay in lieu of overtime; regulation; salary increase based on length of service.

(a) The Legislature finds and declares that the supreme court of appeals of West Virginia has held that conservation officers are covered by the provisions of the state wage and hour law, article five-c, chapter twenty-one of this code. The Legislature further finds and declares that because of the unique duties of conservation officers, it is not appropriate to apply said wage and hour provisions to them. Accordingly, conservation officers are hereby excluded from the provisions of said wage and hour law and department of civil service guidelines, rules or regulations relating thereto. They shall be subject to duty whenever and wherever required by the functions, services and needs of the department.

The minimum workweek for conservation officers shall be five eight hour days and the maximum number of days and hours per day shall be unrestricted. Conservation officers shall not be entitled to compensatory time for days or hours worked in excess of the minimum in a work day or week except a compensatory day shall be granted for any holiday worked. In lieu of any benefits to which they would have been entitled by the coverage from which they are hereby excluded, conservation officers, except those classified by the West Virginia civil service system as conservation officer IV and natural resources administrator, shall receive in addition to their salaries an annual premium payment of two thousand one hundred dollars which sum shall be prorated and included in the payment of their salary checks.

(b) Effective the first day of January, one thousand nine hundred ninety, each conservation officer shall receive and be entitled to an increase in salary based on length of service, including that heretofore and hereafter served as a conservation officer as follows: For five years of service with the department, such conservation officer shall receive a salary increase of three
hundred dollars per year payable during his next three years of service and a like increase at three-year intervals thereafter, with such increases to be cumulative: Provided, That for purposes of calculating such salary increase, a maximum of twenty-five years of service shall be applicable. Such salary increase shall be based upon years of service as of the first day of July of each year and shall not be recalculated until the first day of July of the following year.

Conservation officers in service at the time the amendment to this section becomes effective shall be given credit for prior service and shall be paid such salaries as the same length of service will entitle them to receive under the provisions hereof.

(c) This section shall not apply to special or emergency conservation officers appointed under the authority of section one of this article.

CHAPTER 152

(H. B. 2569—By Delegate Schoonover)

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

AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a, relating to making the payment of personal property taxes a prerequisite to application for certificate of number or renewal for motorboats; duties of assessors; and requiring the tax commissioner to compile schedule of motorboat values.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING; WEST VIRGINIA LITTER CONTROL PROGRAM.
§20-7-12a. Payment of personal property taxes prerequisite to application for certificate or renewal of number; duties of assessors; schedule of motorboat values.

Certificates of number and renewals therefor shall not be issued or furnished by the department of motor vehicles, or any other officer charged with such duty, unless the applicant therefor, furnishes the receipt hereinafter provided to show full payment of the personal property taxes for the calendar year which immediately precedes the calendar year in which application is made on all motorboats which were listed with the department of motor vehicles in the applicant's name on the tax day for the former calendar year. If the applicant contends that any motorboat so listed was not subject to personal property taxation for that year, he shall furnish such information and evidence as the commissioner of motor vehicles may require to substantiate his contention.

The assessor shall require any person having a duty to make a return of property for taxation to him to furnish information identifying each motorboat subject to the numbering provisions of this article. When the property taxes on any such motorboat have been paid, the officer to whom the payment was made shall deliver to the person paying such taxes a written or printed receipt therefor, and shall retain for his records a duplicate of such receipt. The assessor and sheriff, respectively, shall see that the assessment records and the receipts contain information adequately identifying the motorboat as registered under the provisions of this article. The officer receiving payment shall sign each receipt in his own handwriting.

The assessors shall commence their duties hereunder during the tax year one thousand nine hundred eighty-nine and the department of motor vehicles shall commence its duties hereunder as of the first day of January, one thousand nine hundred ninety.

The state tax commissioner shall annually compile a schedule of motorboat values, based on the lowest values...
CHAPTER 153
(H. B. 2129—By Delegates Hatfield and White)

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

AN ACT to amend and reenact section five-a, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to substituted consent for nursing home and personal care home health services by making applicable to prospective patients.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES.

§16-5C-5a. Substituted consent for nursing home and personal care home health care services.

(a) For purposes of this section, "physical or mental incapacity" or like words shall mean the inability, because of physical or mental impairment, of a nursing home or personal care home patient or prospective patient to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented, and to communicate that choice in an unambiguous manner.

(b) Where there has been no adjudication of incompetence of a patient or prospective patient, or appointment of a guardian for such patient or prospective patient, and where there is no applicable durable power of attorney for such patient or prospective patient, but
where such patient or prospective patient is unable to
grant informed consent for nursing home or personal
care home health care services or to acknowledge
notification by a nursing home or personal care home
of his or her rights, responsibilities, and any applicable
rules and regulations of the nursing home or personal
care home due to physical or mental incapacity, as
documented in such patient's or prospective patient's
health care records by two physicians licensed to
practice medicine in this state under the provisions of
article three or article fourteen, both of chapter thirty
of this code, or one such physician and one licensed
psychologist, the following persons shall be deemed the
patient's or prospective patient's, representative autho-
rized to consent to nursing home or personal care home
health care services for such patient or prospective
patient to acknowledge notification by a nursing home
or personal care home of such patient's or prospective
patient's rights, responsibilities and any applicable rules
and regulations of the nursing home or personal care
home, in the order of class priority set forth below:

(1) The patient's or prospective patient's spouse;

(2) An adult child of the patient or prospective
patient;

(3) A parent of the patient or prospective patient;

(4) An adult sibling of the patient or prospective
patient;

(5) The nearest living relative of the patient or
prospective patient;

(6) Such other persons or classes of persons including,
but not limited to, such public agencies, public
guardians, other public officials, public and private
corporations, protective service agencies and other
representatives as the board of health may from time
to time designate in its rules and regulations promul-
gated pursuant to chapter twenty-nine-a of this code:

Provided, That there is no reason to believe that such
health care services are contrary to the patient's or
prospective patient's religious beliefs and there is no
(c) A nursing home or personal care home, as applicable, shall document its good faith efforts to contact permitted representatives in the order of class priority and its efforts to contact all members of a class before the next class is contacted but shall suffer no liability or deficiency for any failure to apprise the proper persons of the requirements of this section, so long as it has acted reasonably and in good faith. A nursing home or personal care home, as applicable, may rely on the apparent authority of one member of a class to speak for that class.

(d) The determination of incapacity hereunder shall expire after six months or upon the patient's earlier discharge from the nursing home or personal care home. At the end of every such six-month period, if the patient remains admitted to the nursing home or personal care home the patient shall be reexamined by two physicians licensed to practice medicine in this state as set forth in subsection (b), or by one such physician and one licensed psychologist, who shall render a determination whether or not the patient remains physically or mentally incapacitated, and such determination shall be documented in the patient's health care records. The authority of the representatives provided in subsection (b) above shall terminate unless upon such reevaluation the examining physicians, or the physician and the psychologist, as the case may be, shall certify that the patient remains physically or mentally incapacitated.

(e) In addition to the reevaluations required by subsection (d) above, a nursing home or personal care home, as applicable, upon request of any interested person, or upon its own initiative if it shall have reason to believe that the patient has regained his or her capacity, shall permit or obtain a reevaluation at any time by one or more physicians licensed to practice medicine in this state as set forth in subsection (b), of a prior determination of capacity or incapacity: Provided, That no patient shall be required to be reevaluated within three months of a prior evaluation except
for good cause shown. A physician's determination of capacity upon such reevaluation shall terminate any authority of a patient's representative under this section.

(f) The board of health shall adopt rules and regulations pursuant to the provisions of chapter twenty-nine-a of this code setting forth a procedure by which any interested person may obtain an administrative review of any determination of capacity or incapacity made pursuant to this section. Nothing contained in this section shall preclude an interested person from seeking a determination of competency or incompetency under the provisions of article eleven, chapter twenty-seven of this code in an appropriate case or from seeking any form of judicial review.

(g) At least one of the physicians, or the psychologist, who certifies the incapacity under subsections (b) and (d) shall not be associated, in any way, with the personal care home or the nursing home. The two persons performing the certification shall not be associated in the same medical practice.

CHAPTER 154

(Com. Sub. for S. B. 387—By Senators Tucker, Mr. President, and Harman, By Request of the Executive)

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

AN ACT to amend and reenact sections one, two, three, four and five, article six, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article six by adding thereto a new section, designated section six, all relating to allowing a man to bring a paternity action; jurisdiction; default judgment; statute of limitations; scope of representation of the child advocate; and establishment of paternity upon acknowledgment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Action for establishment of paternity.
§48A-6-2. Statute of limitations; prior statute of limitations not a bar to action under this article; effect of prior adjudication between husband and wife.
§48A-6-3. Medical testing procedures to aid in the determination of paternity.
§48A-6-4. Establishment of paternity and duty of support.
§48A-6-5. Representation of parties.
§48A-6-6. Establishing paternity by acknowledgment of natural father.

§48A-6-1. Action for establishment of paternity.

(a) A civil action to establish the paternity of a child and to obtain an order of support for the child may be instituted, by verified complaint, in the circuit court of the county where the plaintiff, the defendant or the child resides. Such action may be brought by any of the following persons:

1. An unmarried woman with physical or legal custody of a child to whom she gave birth;

2. A married woman with physical or legal custody of a child to whom she gave birth, if the complaint alleges that:

(A) Such married woman lived separate and apart from her husband for a period of one year or more immediately preceding the birth of the child;

(B) Such married woman did not cohabit with her husband at any time during such separation and that such separation has continued without interruption; and

(C) The defendant, rather than her husband, is the father of the child.

3. Any person, including the state of West Virginia or the department of human services, who is not the mother of the child, but who has physical or legal custody of such child;
(4) The guardian or committee of such child;

(5) The next friend of such child when the child is a minor;

(6) By such child in his own right at any time after the child’s eighteenth birthday but prior to the child’s twenty-first birthday; or

(7) A man purporting to be the father of a child born out-of-wedlock, when there has been no prior judicial determination of paternity.

(b) A person who has sexual intercourse in this state submits to the jurisdiction of the courts of this state for an action brought under this article with respect to a child who was conceived by that act of intercourse. Service of process may be perfected according to the rules of civil procedure.

(c) If the person against whom the action is brought has failed to plead or otherwise defend the action after proper service has been obtained, judgment by default may be issued by the court as provided by the rules of civil procedure.

§48A-6-2. Statute of limitations; prior statute of limitations not a bar to action under this article; effect of prior adjudication between husband and wife.

(a) Except for an action brought by a child in his or her own right under the provisions of subdivision (6), subsection (a), section one of this article, an action for the establishment of the paternity of a child shall be brought prior to such child’s eighteenth birthday.

(b) An action to establish paternity under the provisions of this article may be brought by or on behalf of a child notwithstanding the fact that, prior to the effective date of this section, an action to establish paternity may have been barred by a prior statute of limitations set forth in this code or otherwise provided for by law.

(c) An action to establish paternity under the provisions of this article may be brought for any child who
15 was not yet eighteen years of age on the sixteenth day
16 of August, one thousand nine hundred eighty-four,
17 regardless of the current age.

18 (d) An action to establish paternity under the provi-
19 sions of this article may be brought for any child who
20 was not yet eighteen years of age on the sixteenth day
21 of August, one thousand nine hundred eighty-four, and
22 for whom a paternity action was brought but dismissed
23 because a statute of limitations of less than eighteen
24 years was then in effect.

25 (e) Any other provision of law to the contrary notwith-
26 standing, when a husband and wife or former husband
27 and wife, in an action for divorce or an action to obtain
28 a support order, have litigated the issue of the paternity
29 of a child conceived during their marriage to the end
30 that the husband has been adjudged not to be the father
31 of such child, such prior adjudication of the issue of
32 paternity between the husband and the wife shall not
33 preclude the mother of such child from bringing an
34 action against another person to establish paternity
35 under the provisions of this article.

§48A-6-3. Medical testing procedures to aid in the
determination of paternity.

1 (a) The court may, on its own motion, or shall upon
2 the motion of any party, order the mother, her child and
3 the man to submit to blood tests or tissue tests to aid
4 the court in proving or disproving paternity. If such
5 tests are ordered, the court shall direct that the
6 inherited characteristics, including, but not limited to,
7 blood types, be determined by appropriate testing
8 procedures at a hospital, independent medical institu-
9 tion or independent medical laboratory, duly licensed
10 under the laws of this state, or any other state, and shall
11 appoint an expert qualified as an examiner of genetic
12 markers to analyze and interpret the results and to
13 report to the court. The court shall consider the results
14 as follows:

15 (1) Blood or tissue test results which exclude the man
16 as the father of the child are admissible and shall be
17 clear and convincing evidence of nonpaternity and the
court shall, upon considering such evidence, dismiss the action.

(2) Blood or tissue test results which show a statistical probability of paternity of more than seventy-five percent are admissible and shall be weighed along with other evidence of the defendant's paternity.

(3) If the results of the blood or tissue tests or the expert's analysis of inherited characteristics is disputed, the court, upon reasonable request of a party, shall order that additional tests be made by the same laboratory or another laboratory at the expense of the party requesting additional testing.

(b) Documentation of the chain of custody of the blood or tissue specimens is competent evidence to establish such chain of custody. A verified expert's report shall be admitted at trial unless a challenge to the testing procedures or a challenge to the results of test analysis has been made before trial. The costs and expenses of making such tests shall be paid by the parties in proportions and at times determined by the court.

§48A-6-4. Establishment of paternity and duty of support.

If the defendant, by verified responsive pleading shall admit that the man is the father of the child and owes a duty of support, or if after a trial on the merits, the court or jury shall find, by clear and convincing evidence that the man is the father of the child, the court shall order support in accordance with the provisions of this chapter.

§48A-6-5. Representation of parties.

(a) The children's advocate of the county where the action under this section is brought shall litigate the action in the best interests of the child although the action is commenced in the name of a plaintiff listed in section one of this article.

(b) The defendant shall be advised of his right to counsel. In the event he files an affidavit that he is a
poor person within the meaning of section one, article two, chapter fifty-nine of this code, counsel shall be appointed to represent him. The service and expenses of counsel shall be paid in accordance with the provisions of article twenty-one, chapter twenty-nine of this code: Provided, That the court shall make a finding of eligibility for appointed counsel in accordance with the requirements of said article and, if the person qualifies, any blood or tissue tests ordered to be taken shall be paid as part of the costs of the proceeding.

(c) The children's advocate shall litigate the action only to the extent of establishing paternity and establishing and enforcing a child support order. The children's advocate shall participate in matters of custody and visitation only to the extent provided by article three of this chapter.

§48A-6-6. Establishing paternity by acknowledgment of natural father.

(a) The natural father of a child may file an application to establish paternity in circuit court when he acknowledges that the child is his or when he has married the mother of the child after the child's birth and upon consent of the mother, or if she is deceased or incompetent, or has surrendered custody, upon the consent of the person or agency having custody of the child or of a court having jurisdiction over the child's custody. The application may be filed in the county where the natural father resides, the child resides, or the child was born. The circuit court, if satisfied that the applicant is the natural father and that establishment of the relationship is for the best interest of the child, shall enter the finding of fact and an order upon its docket, and thereafter the child is the child of the applicant, as though born to him in lawful wedlock.

(b) A written acknowledgment by both the man and woman that the man is the father of the named child legally establishes the man as the father of the child for all purposes and child support can be established under the provisions of this chapter.
CHAPTER 155

(Com. Sub. for S. B. 46—By Senator Tucker, Mr. President, By Request)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article five-a of said chapter, all relating to permitting trustees of permanent endowment funds for cemetery associations to receive negotiable, reasonable compensation for their services; permitting nonresident trust companies and banks to serve as trustees for permanent endowment care funds; providing that secretary of state accepts service of process on behalf of such nonresident trustees; and bond.

Be it enacted by the Legislature of West Virginia:

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

Article

5. Cemeteries.

5A. Perpetual Care of and Trust Funds for Cemeteries.

ARTICLE 5. CEMETERIES.

§35-5-5. Permanent endowment funds for cemetery associations—Trustee therefor; appointment; bond; compensation; vacancy.

1 The board of directors of any such cemetery association shall appoint a trustee, who shall be a responsible businessman or some solvent federally insured banking institution, to act as such trustee for a period of two years, or until his, or its, successor is appointed. Such trustee shall be known as the trustee of the permanent endowment fund of such cemetery association, and shall immediately upon his, or its, appointment and acceptance of the trust, give bond to the said cemetery association, with some solvent and reliable bonding
company authorized to do business in this state, in a sum
equal to the amount which may come into the hands of
such trustee, which bond shall be increased or dimin-
ished from time to time so as always to equal at least
the amount of the trust funds in the hands of such
trustee; and the premium upon such bond shall be paid
out of the income of the trust funds in the trustee's hands
and as part of the cost of the administration of the trust
fund. No trustee appointed under this section shall enter
upon the discharge of his, or its, duties until such bond
is given and approved by the board of directors of such
cemetery association: Provided, That if the trustee so
appointed by any such cemetery association be a
federally insured banking institution authorized and
qualified to exercise trust powers under and subject to
the provisions of article four, chapter thirty-one-a of the
code of West Virginia, one thousand nine hundred
thirty-one, as amended, it shall not be required to give
the bond hereinbefore provided, excepting and unless
required by the provisions of section eighteen, article
four, chapter thirty-one-a of said code. The board of
directors of such cemetery association shall allow such
trustee, for service as such, a negotiable, reasonable fee
to be paid from such trust funds. In the event of a
vacancy in such trusteeship, or failure of the board of
directors of any such cemetery association to appoint
such trustee, after being requested so to do by any
stockholder of any such cemetery association, or its
successor, or any citizen interested, application may be
made to the circuit court of the county wherein such
cemetery association is located, and it shall be the duty
of the circuit court of such county to appoint a trustee,
who, when so appointed and qualified, shall have all the
powers and perform all the duties of such trustee as
provided in this section.

ARTICLE 5A. PERPETUAL CARE OF AND TRUST FUNDS FOR
CEMETERIES.

§35-5A-5. Trustee of the permanent endowment care
funds.

1 The trustee of the permanent endowment care fund
2 shall be a federally insured trust company or a federally
insured banking institution with fiduciary powers authorized and qualified to exercise trust powers under and subject to the provisions of article four, chapter thirty-one-a of this code, or of the corresponding law of another state. A nonresident federally insured trust company or nonresident federally insured banking institution so authorized and qualified may become a trustee of a permanent endowment care fund notwithstanding the provision of section seven, article eight-a, chapter thirty-one-a of this code. When a nonresident trust company or nonresident banking institution becomes a trustee of a permanent endowment care fund for a perpetual care cemetery in this state, said nonresident trust company or nonresident banking institution thereby constitutes the secretary of state as its true and lawful attorney-in-fact upon whom service of notice and process in any action or proceeding against it as trustee, and acceptance of such trust by said nonresident trust company or nonresident banking institution shall be a manifestation of agreement that any notice or process, which is served in the manner hereinafter provided in this section, shall be of the same legal force and validity as though such nonresident trust company or nonresident banking institution was personally served with notice and process within this state. Service of such notice and process and the manner of acceptance of the same by the secretary of state shall be in accordance with the provisions of section fifteen, article one, chapter thirty-one of this code.

Any nonresident trust company or nonresident banking institution appointed as trustee of a permanent endowment care fund shall immediately upon acceptance of the trust give bond in accordance with the provisions of section five, article five, chapter thirty-five of this code.

The trustee shall invest such permanent endowment care funds for the purpose of providing an income to be used for the maintenance, improvement and preservation of the grounds, lots, buildings, equipment, records, statuary, and other real and personal property of the
cemetery, and shall acquire, invest, reinvest, exchange, retain, sell and manage all property now or hereafter coming into such trustee’s care or control.

The trustee shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence, exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

Within the limitations of the foregoing standard, any such trustee is authorized to acquire and retain without any order of any court, every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, which men of prudence, discretion and intelligence acquire or retain for their own account.

The trustee shall prepare an annual report of all of the assets and investments of the permanent endowment care fund. One copy shall be maintained at the office of the cemetery and shall be available for inspection at reasonable times by owners of interment rights in the cemetery.

The trustee shall pay over to the cemetery all income derived from the permanent endowment care fund semiannually to be expended only for the maintenance, improvement and preservation of the grounds, lots, buildings, equipment, records, statuary and other real and personal property of the cemetery.

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CHAPTER 156
(H. B. 2740—By Delegates Flanigan and Kephart)

[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

AN ACT to authorize and direct the commissioner of the
department of commerce to accept as an addition to the state park system and particularly as an addition to Pipestem State Resort Park, Pipestem, West Virginia, approximately twenty acres, more or less, known as Brush Creek Falls in Mercer County.

Be it enacted by the Legislature of West Virginia:

ADDITION TO PIPESTEM STATE RESORT PARK.

§1. Acceptance of Brush Creek Falls property.

1 The Legislature hereby directs the commissioner of the Department of Commerce to accept the transfer by deed from Princeton area business development corporation, of twenty acres, more or less, situate in Plymouth District, Mercer County, West Virginia, known as the "Brush Creek Falls Property," bounded and described as follows:

"BEGINNING at a spruce pine on the bank of Brush Creek; thence S. 38 degrees E. crossing the creek 12 poles (198.0 feet) to a large spruce pine on a hillside; thence N. 32 degrees E. 60 Poles, (990. feet) to a Spruce Pine on a cliff; thence S. 44 degrees W., crossing the creek at 10 poles (165.0 feet) 59 poles (973.50 feet) to a white pine on top of a hill; thence S. 32 degrees W. 90 poles (1485.0 feet) to a white pine and chestnut sapling; thence N. 44 degrees E. 28 poles (462 feet) to a spruce, pine, buckeye and cucumber sapling on bank of the creek; thence with the meanderings of the creek to the BEGINNING containing 30 acres, more or less. There is excepted and reserve from the operation of this deed a five acre tract which was conveyed by Lark Farley and wife to L.A. Farley by deed dated June 1, 1922, of record in said Clerk's Office in Deed Book 147 at page 154, which said exception is bounded and described as follows:

"BEGINNING in the J.W. Johnston line near a chestnut; thence running in a southeasterly direction about 18 poles to a chestnut on a cliff; thence in a southern direction about 20 poles to a chestnut on a cliff, with the meanderings of the cliff; thence in a southwesterly direction about 31 1/2 poles to a Bunch
AN ACT to repeal article twenty-four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter seventeen of said code by adding thereto a new article, designated article sixteen-b; and to amend and reenact section seven, article three, chapter twenty-four of said code, all relating to public port authority; creation; board of directors—members, officers, qualifications, terms, oath, compensation, quorum and delegation of power; executive director; appointment; powers and duties; compensation; purposes of authority; commerce; tourism; divisions; powers and duties of authority; special West Virginia public port authority operations fund; foreign trading zones; export trading company; division of tourist trains and transportation; disclaimer of any liability of the state of West Virginia; prohibition on funds inuring to the benefit of or being distributable to directors, officers or private persons; prohibition against certain financial interests; criminal penalties; permit to abandon services; certificate; hearing upon intervention by consumer advocate; alternative service; and repeal tourist train and transportation board.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter seventeen of said code be amended by adding thereto a new article, designated article sixteen-b; and that section seven, article three, chapter twenty-four of said code be amended and reenacted, all to read as follows:
CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16B. PUBLIC PORT AUTHORITY.

§17-16B-1. Creation of authority.

The West Virginia public port authority is hereby created and shall be under the supervision of the secretary of the department of transportation pursuant to the provisions of chapter five-f of this code.

§17-16B-2. Board of directors—Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.

(a) The governing and administrative powers of the authority shall be vested in a board of directors consisting of nine members, six of whom shall be appointed by the governor with the advice and consent of the Senate.
All directors of the authority shall be residents of the state of West Virginia. The directors shall annually elect from the representatives of the private sector, as provided in subsection (b), one of their members as chairman. The directors shall annually elect one of their members as vice chairman, one as secretary and one as treasurer. The board may elect such other officers from its membership or from its staff as it deems proper and prescribe their powers and duties. Appointments to fill a vacancy of one of the appointed members shall be made in the same manner as the original appointment.

(b) Six members of the board shall be from the private sector, with one member of the board from each congressional district of the state as of the effective date of this article, and shall represent the public interest generally. At least one member may be appointed that has recognized ability and practical experience in transportation. At least one member may be appointed that has recognized ability and practical experience in banking and finance. At least one member may be appointed that has recognized ability and practical experience in international trade. At least one member may be appointed that has recognized ability and practical experience in business management or economics.

(c) The governor shall appoint two members of the board whose terms shall expire on the first day of July, one thousand nine hundred ninety; two members of the board whose term shall expire on the first day of July, one thousand nine hundred ninety-one; two members of the board whose term shall expire on the first day of July, one thousand nine hundred ninety-two. Their respective successors shall be appointed for terms of three years from the first day of July of the year of appointment. Each member shall serve until his successor is appointed and qualified.

One ex officio member of the board shall be the secretary of transportation or his designee.

One ex officio member of the board shall be the director of the department of commerce or his designee.
One ex officio member of the board shall be the director of the governor’s office of community and industrial development or his designee.

(d) Each director, before entering upon his duties, shall take and subscribe to the oath or affirmation required by the West Virginia constitution. A record of each such oath or affirmation shall be filed in the office of the secretary of state.

(e) Members of the board shall not be entitled to compensation for their services but shall be reimbursed for all necessary expenses actually incurred in connection with the performance of their duties as members.

(f) Five members of the board shall constitute a quorum and the affirmative vote of the majority of members present at a meeting of the board shall be necessary and sufficient for any action taken by the board, except that the affirmative vote of at least six members is required for the approval of any resolution authorizing the issuance of any bonds pursuant to this article.

(g) No vacancy in the membership of the board impairs the right of a quorum to exercise all rights and perform all duties of the board. Any action taken by the board may be authorized by resolution at any regular or special meeting and shall take effect upon the date the chairman certifies the action of the authority by affixing his signature to the resolution unless some other date is otherwise provided in the resolution.

(h) The board may delegate to one or more of its members or to its officials, agents or employees such powers and duties as it may deem proper.

§17-16B-3. Executive director; appointment; powers and duties; compensation.

(a) The board of directors shall appoint an executive director of the authority.

(b) The executive director shall be paid a salary to be determined by the board of directors. The executive director shall be responsible for managing and admin-
istering the daily functions of the authority and for performing any and all other functions necessary or helpful for the effective functioning of the authority, together with all other functions and powers as may be delegated to him by the board. The executive director may, with the authorization of the board of directors, employ support staff as deemed necessary to carry out the duties and responsibilities of the authority.

(c) The chairman of the board shall serve as temporary director of the authority until appointment of the executive director pursuant to this section.

§17-16B-4. Purposes of authority; commerce; tourism.

(a) Commercial activity.—The Legislature finds that the state of West Virginia must look to new opportunities to expand and diversify its economy and the general welfare and well-being of its people. The Legislature further finds that if West Virginia is to keep and attract industry, it must provide for a modern and efficient transportation infrastructure that will allow and facilitate business to compete on a regional, national and international basis. The Legislature finds that West Virginia has the potential to establish an efficient and low cost system of intermodal transportation by linking together its abundant navigable waters and rivers, its rail systems, its interstate and modern highway system, and its airports into an intermodal transportation network connected and served by various intermodal ports, terminals and facilities located at strategic regional sites throughout the state.

The Legislature further finds that it would be the purpose of these intermodal ports and terminals, under the direction of the West Virginia public port authority, or local port authority districts, to negotiate, coordinate and supervise the shipment of products and natural resources from the producers in West Virginia to both domestic and international markets, including passage through other states and through the seaports of other states to the seaports of foreign countries.

The Legislature further finds that it is the corollary purpose of the public port authority to assist state
businesses to engage in export trade activities, both domestic and international, in furtherance of its powers and duties, including the formation of export trading companies and foreign trade zones.

(b) Tourism.—The Legislature finds that the same intermodal transportation network, as set forth in this section for commercial purposes, may also serve to enhance tourism in West Virginia by providing access and linkage to the various tourist and historic attractions around the state through the utilization of railroads, waterways, highways, airways and other forms of transportation.

The Legislature further finds that it would be the purpose of the public port authority to negotiate and coordinate the movement of tourists and travelers through the state by assisting the tourist and travel industry, state agencies and other political subdivisions.

§17-16B-5. Divisions.

There shall be within the public port authority a division of commerce, a division of tourist trains and transportation, and such other divisions as are deemed necessary by the board of directors.

§17-16B-6. Powers and duties of authority.

(a) The authority is granted the following powers and duties:

(1) The authority shall initiate meetings with political subdivisions of the state to assess specific transportation needs and shall determine the needs of the state as a whole in terms of transportation, as well as consider feasibility studies for the purpose of determining the best site locations for transportation centers, terminals, ports and harbors, and foreign trade zones.

The authority shall give first consideration to selected high priority opportunities as set forth in the document entitled “Development of an Inland Port Authority,” as submitted to the governor's office of community and industrial development on the second day of March, one thousand nine hundred eighty-nine.
(2) On or before the fifteenth day of January, one thousand nine hundred ninety, the authority shall prepare and file a comprehensive report with the governor and the Legislature setting forth the overall strategic plan both short term and long term for accomplishing the purposes set forth in this article.

(3) The public port authority shall coordinate with the West Virginia turnpike commission or other parkways authority, established pursuant to article sixteen-a, chapter seventeen of this code, in the exercise of its powers and duties hereunder and development of appropriate intermodal transportation within the state.

(b) The authority has the following additional powers and duties:

(1) The powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) Acquire, purchase, install, lease, construct, own, hold, operate, maintain, equip, use and control ports, terminals, buildings, roadways, rights-of-way, rails and such structures, equipment, facilities or improvements necessary to carry out the provisions of this article, and in connection therewith shall have the further right to lease, install, construct, acquire, own, maintain, control and use any and every kind or character of motive powers and conveyances or appliances necessary or proper to carry goods, wares and merchandise over, along, upon or through the railway, highway, waterway or airway or other conveyance of such transportation system, excluding pipelines;

(3) To apply for and accept loans, grants or gifts of money, property or service from any federal agency or the state of West Virginia or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this article, or imposed thereon by any such federal agency, the state of West Virginia, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as may be required;
(4) To act as agent for the United States of America, or any agency, department, corporation or instrumentality thereof, in any manner coming within the purposes or powers of the board;

(5) To initiate preservation of railroad, waterway, highway and airway facilities, to promote economic development and tourism of a specific nature in this state;

(6) To meet and cooperate with similar authorities or bodies of any of the several states contiguous with this state, whose purpose in their respective states is to establish an interstate or intermodal transportation network;

(7) To enter into agreements, contracts or other transactions with any federal, state, county, municipal agency or private entity;

(8) To report annually to the Legislature by the first day of January of each year on the status of projects, operations, financial condition and other necessary information relating to the statewide tourist intermodal transportation system and public port authority activities;

(9) To enter into agreements or contracts with the West Virginia railroad maintenance authority for the preservation, operation, and use of railroad lines;

(10) To assist and encourage the West Virginia railroad maintenance authority to purchase railroad tracks being abandoned by any common carrier, and to financially assist the railroad maintenance authority in making such purchase;

(11) To collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments and other evidence of indebtedness, and in connection with providing technical, consultive and project assistance services;

(12) To do any and all things necessary to carry out and accomplish the purposes of this article.

(c) Incidental to the development of a comprehensive
strategic plan for intermodal transportation, the executive director and staff of the authority shall analyze the shipment of products through the ports of the state for the purpose of expediting such shipments, and shall be authorized to collect and analyze such information, which is maintained in the ordinary course of business by the person, firm or corporation providing such information, pertaining to the transportation of products which has been moved by rail, water, highway or air to and from points within and without this state.

(1) Any such information and data supplied to the executive director of the authority shall be for exclusive use of the executive director and the staff of the authority. Such information is deemed confidential and is not subject to disclosure under the freedom of information act. Neither the executive director nor any staff member of the authority shall publicly disclose this information and data to any member of the board of the authority, nor to any person, firm, corporation or agent. It shall be unlawful for any officer or employee of this state to divulge or make known in any manner any information obtained pursuant to this subsection or disclose information concerning the personal or business affairs of any individual or the business of any single firm or corporation, or disclose any particulars set forth or disclosed in any report or other information provided to the authority.

(2) Any officer or employee (or former officer or employee) of this state who violates this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with costs of prosecution.

(3) In carrying out the functions theretofore described, the authority shall be deemed to be performing an essential governmental function as an instrumental-ity of the state of West Virginia.

§17-16B-7. Special West Virginia public port authority operations fund.

There is hereby established a special West Virginia
public port authority operations fund which shall
operate as a special revolving fund. All proceeds and
revenues of the authority shall be credited to the fund
by the state treasurer on a monthly basis. At the end
of each fiscal year, any unexpended funds in this
account shall be reappropriated and available for
expenditure for the subsequent fiscal year:\n
That no funds shall be appropriated from the general
revenue fund of the state of West Virginia for the
operation of the authority.

§17-16B-8. Designation of local port authority districts,
powers and duties; plan for development.

(a) Upon application by a local governmental entity,
groups of local governmental entities, or joint venture
of local government entity or entities and private
industry, the board may grant authority for the creation
of a local inland port authority district. In so authorizing
such entities, political subdivisions of this state are
authorized to join with other political subdivisions of
this and sister states to form a local port authority. In
deciding on a local port district designation, consider-
ation shall be given to the following:

(1) Areas which have entered into a joint venture with
private industry;

(2) Areas for which the political subdivi-
sion(s) seeking designation has made or will make the
greatest effort, both financially and otherwise, to
encourage the establishment of facilities to enhance the
efficiency and cost of the movement of goods and
services to and from markets in West Virginia, or will
make the greatest effort to encourage the construction
and completion of infrastructure projects, including all
types of transportation systems.

(b) A local port authority district provided for in this
article has the authority to establish a local board of
directors, and has powers only as provided for by the
state board of directors. In no event shall the powers of
a local port authority district supersede the powers of
the state authority.
Any board of directors of a port authority district shall prepare or cause to be prepared a plan for the future development, construction and improvement of its services and facilities.

§17-16B-9. Construction and operation of facilities by private enterprise; leasing of facilities by port authority.

(a) The authority or local port authority districts shall foster and encourage the participation of private enterprise in the development of the port facilities to the fullest extent it deems practicable in the interest of limiting the necessity of construction and operation of such facilities by the port authority. In this respect, the authority or local port authority districts may upon its own motion or upon the written request of any other party, advertise and solicit for the construction, operations and/or maintenance of any facility included in the development plan in accordance to plans, specifications and regulations therefor prepared by the board of directors.

(b) It is further provided that in the event the board of directors of the port authority or the local port authority districts deem it advisable and practicable, said board may cause certain facilities included in the development plan to be installed by private enterprise and leased back to the authority or local port authority districts on an installment contract or option to purchase: Provided, That any such lease bank arrangement must be financially feasible and any bonds or loans utilized to enter into such lease bank arrangement shall be repayable in full from the expected rentals to be generated by such facility.

§17-16B-10. Foreign trade zones; free trade zones; ports of entry and customs zones.

The authority is empowered and directed to develop, maintain and operate foreign trade zones, free trade zones, ports of entry and customs zones under such terms and conditions as are or may be prescribed by federal law, and to keep foreign trade zone status for, and to assist in the applications for foreign trade zone

(a) The authority may assist business in the formation of joint venture to function as an export trading company. The authority may conduct feasibility studies to ascertain the feasibility of such a joint venture.

(b) The authority shall study whether the formation of such an entity would aid and assist West Virginia businesses in the export of goods. In the event that such company is financially feasible, the authority is authorized to create a quasi-public corporation, under the authority's control, to perform such function. The authority may advance seed money to such corporation to get it established: Provided, That the obligations of such quasi-public corporation shall not be considered obligations of the authority.

(c) The authority is authorized to promulgate rules and regulations to establish the duties, powers and obligations of any export trading company to be established under this section.

§17-16B-12. Division of tourist trains and transportation; duties.

(a) The division of tourist trains and transportation shall develop a plan to assess the feasibility, financial and otherwise, of establishing a statewide intermodal network of tourist transportation, so as to coordinate, link and supervise the various means of transportation including highway, rail, waterway and air and such plan shall also include, if feasible, the development of a comprehensive strategy and state plan for tourist transportation.

(b) The division shall cooperate and assist the efforts of public and private groups, agencies and political subdivisions in establishing components of the tourist transportation plan.

(c) The division shall specifically work to establish a
pilot project for the purpose of creating a tourist train network in the area from Bluefield, West Virginia, to Bramwell, West Virginia, to Matoaka, West Virginia, and to Pocahontas, Virginia.


The state of West Virginia is not liable on notes or other evidences of indebtedness of the public port authority and such notes or other evidences of indebtedness are not a debt of the state of West Virginia, and such notes or other evidences of indebtedness shall contain on the face thereof a statement to such effect.

§17-16B-14. Prohibition on funds inuring to the benefit of or being distributable to directors, employees, officers or private persons; prohibition against certain financial interests; criminal penalties.

(a) No part of the funds of the public port authority may inure to the benefit of or be distributable to its directors, employees, officers or other private persons except that the public port authority may pay reasonable compensation to its officers and employees for services rendered and to make loans and exercise its other powers as previously specified in furtherance of its corporate purposes: Provided, That no such loans may be made, and no property may be purchased or leased from, or sold, leased to or otherwise disposed of, to any director or officer of the public port authority.

(b) No officer, member or employee of the authority may be financially interested, directly or indirectly, in any contract of any person with the authority, or in the sale of any property, real or personal, to or from the authority during such person's employment with the authority or for a period of twelve months after termination of such person's employment with the authority. This section does not apply to contracts or purchases of property, real or personal, between the authority and any governmental agency. Any officer, member or employee of the authority who has such financial interest in a contract or sale of property
24 prohibited hereby is guilty of a misdemeanor, and, upon
25 conviction thereof, shall be fined not more than one
26 thousand dollars, or imprisoned in the county jail not
27 more than one year, or both fined and imprisoned.

CHAPTER 24. PUBLIC SERVICE
COMMISSION.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES
SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-7. Permit to abandon service; certificate; hearing
upon intervention by consumer advocate; alternative service.

1 (a) No railroad or other public utility shall abandon
2 all or any portion of its service to the public or the
3 operation of any of its lines which would affect the
4 service it is rendering the public unless and until there
5 shall first have been filed with the public service
6 commission of this state an application for a permit to
7 abandon service and obtained from the commission an
8 order stating that the present and future public
9 convenience and necessity permits such abandonment.

10 (b) The consumer advocate's office shall be notified of
11 all notices to abandon rail service. Within five (5) days
12 of the receipt of such notice the consumer advocate shall
13 notify the West Virginia public port authority of such
14 proposed abandonment. The public port authority shall
15 advise the consumer advocate as to whether such
16 abandonment is in the public interest or if such rail line
17 or service is an integral part of the intermodal trans-
18 portation system within West Virginia. If the public
19 port authority deems such abandonment to be not in the
20 public interest, then the consumer advocate shall
21 intervene to block such abandonment before all approp-
22 riate state and federal agencies or courts.

23 (c) The public service commissioner, to the extent
24 permitted by federal law, shall promulgate rules and
25 regulations to govern the abandonment of rail lines and
26 rail service, including, but not limited to, the providing
27 of a hearing for the presentation of evidence in cases
28 where the consumer advocate seeks intervention pursu-
29 ant to subsection (b).
(d) In the event the commission determines that an application to abandon gas service or any part thereof is in the public interest and required by the present and future public convenience and necessity, it shall include in its order, as a condition of releasing any such utility from its public service obligation to provide gas service, a provision requiring the utility, prior to discontinuing service, to pay the cost reasonably necessary to convert each customer to an alternate fuel source.

CHAPTER 158
(S. B. 297—By Senator Chafin)

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

AN ACT to amend and reenact section fourteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to professional discipline of physicians and podiatrists; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; and probable cause determinations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to board pertaining to professional malpractice and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists;
investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.

(a) The board may independently initiate disciplinary proceedings as well as initiate disciplinary proceedings based on information received from medical peer review committees, physicians, podiatrists, hospital administrators, professional societies and others.

The board may initiate investigations as to professional incompetence or other reasons for which a licensed physician or podiatrist may be adjudged unqualified if the board receives notice that, within the most recent five-year period, five or more judgments or settlements in excess of fifty thousand dollars each arising from medical professional liability have been rendered or made against such physician or podiatrist.

(b) Upon request of the board, any medical peer review committee in this state shall report any information that may relate to the practice or performance of any physician or podiatrist known to that medical peer review committee. Copies of such requests for information from a medical peer review committee may be provided to the subject physician or podiatrist if, in the discretion of the board, the provision of such copies will not jeopardize the board's investigation. In the event that copies are so provided, the subject physician or podiatrist is allowed fifteen days to comment on the requested information and such comments must be considered by the board.

After the completion of the hospital's formal disciplinary procedure and after any resulting legal action, the chief executive officer of such hospital shall report in writing to the board within sixty days the name of any member of the medical staff or any other physician or podiatrist practicing in the hospital whose hospital privileges have been revoked, restricted, reduced or terminated for any cause, including resignation, to-
gather with all pertinent information relating to such action. The chief executive officer shall also report any other formal disciplinary action taken against any physician or podiatrist by the hospital upon the recommendation of its medical staff relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

Any professional society in this state comprised primarily of physicians or podiatrists which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice, moral turpitude or drug or alcohol abuse, shall report in writing to the board within sixty days of a final decision the name of such member, together with all pertinent information relating to such action.

Every person, partnership, corporation, association, insurance company, professional society or other organization providing professional liability insurance to a physician or podiatrist in this state shall submit to the board the following information within thirty days from any judgment, dismissal or settlement of a civil action or of any claim involving the insured: The date of any judgment, dismissal or settlement; whether any appeal has been taken on the judgment, and, if so, by which party; the amount of any settlement or judgment against the insured; and such other information as the board may require.

Within thirty days after a person known to be a physician or podiatrist licensed or otherwise lawfully practicing medicine and surgery or podiatry in this state or applying to be so licensed is convicted of a felony under the laws of this state, or of any crime under the laws of this state involving alcohol or drugs in any way, including any controlled substance under state or federal law, the clerk of the court of record in which the conviction was entered shall forward to the board a certified true and correct abstract of record of the
convicting court. The abstract shall include the name
and address of such physician or podiatrist or applicant,
the nature of the offense committed and the final
judgment and sentence of the court.

Upon a determination of the board that there is
probable cause to believe that any person, partnership,
corporation, association, insurance company, professional society or other organization has failed or refused
to make a report required by this subsection, the board
shall provide written notice to the alleged violator
stating the nature of the alleged violation and the time
and place at which the alleged violator shall appear to
show good cause why a civil penalty should not be
imposed. The hearing shall be conducted in accordance
with the provisions of article five, chapter twenty-nine-a of this code. After reviewing the record of such
hearing, if the board determines that a violation of this
subsection has occurred, the board shall assess a civil
penalty of not less than one thousand dollars nor more
than ten thousand dollars against such violator. Anyone
so assessed shall be notified of the assessment in writing
and the notice shall specify the reasons for the assess-
ment. If the violator fails to pay the amount of the
assessment to the board within thirty days, the attorney
general may institute a civil action in the circuit court
of Kanawha County to recover the amount of the
assessment. In any such civil action, the court's review
of the board's action shall be conducted in accordance
with the provisions of section four, article five, chapter
twenty-nine-a of this code.

Any person may report to the board relevant facts
about the conduct of any physician or podiatrist in this
state which in the opinion of such person amounts to
professional malpractice or professional incompetence.

The board shall provide forms for filing reports
pursuant to this section. Reports submitted in other
forms shall be accepted by the board.

The filing of a report with the board pursuant to any
provision of this article, any investigation by the board
or any disposition of a case by the board does not
preclude any action by a hospital, other health care
facility or professional society comprised primarily of
physicians or podiatrists to suspend, restrict or revoke
the privileges or membership of such physician or
podiatrist.

(c) The board may deny an application for license or
other authorization to practice medicine and surgery or
podiatry in this state and may discipline a physician or
podiatrist licensed or otherwise lawfully practicing in
this state who, after a hearing, has been adjudged by
the board as unqualified due to any of the following
reasons:

(1) Attempting to obtain, obtaining, renewing or
attempting to renew a license to practice medicine and
surgery or podiatry by bribery, fraudulent misrepres-
entation or through known error of the board.

(2) Being found guilty of a crime in any jurisdiction,
which offense is a felony, involves moral turpitude or
directly relates to the practice of medicine. Any plea of
nolo contendere is a conviction for the purposes of this
subdivision.

(3) False or deceptive advertising.

(4) Aiding, assisting, procuring or advising any
unauthorized person to practice medicine and surgery
or podiatry contrary to law.

(5) Making or filing a report that the person knows
to be false; intentionally or negligently failing to file a
report or record required by state or federal law;
willfully impeding or obstructing the filing of a report
or record required by state or federal law; or inducing
another person to do any of the foregoing. Such reports
and records as are herein covered mean only those that
are signed in the capacity as a licensed physician or
podiatrist.

(6) Requesting, receiving or paying directly or
indirectly a payment, rebate, refund, commission, credit
or other form of profit or valuable consideration for the
referral of patients to any person or entity in connection
with providing medical or other health care services or
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155. clinical laboratory services, supplies of any kind, drugs, medication or any other medical goods, services or devices used in connection with medical or other health care services.

159. (7) Unprofessional conduct by any physician or podiatrist in referring a patient to any clinical laboratory or pharmacy in which the physician or podiatrist has a proprietary interest unless such physician or podiatrist discloses in writing such interest to the patient. Such written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed or any pharmacy for purposes of purchasing any prescribed drug or any other medical goods or devices used in connection with medical or other health care services.

177. As used herein, "proprietary interest" does not include an ownership interest in a building in which space is leased to a clinical laboratory or pharmacy at the prevailing rate under a lease arrangement that is not conditional upon the income or gross receipts of the clinical laboratory or pharmacy.


183. (9) Making a deceptive, untrue or fraudulent representation in the practice of medicine and surgery or podiatry.

186. (10) Soliciting patients, either personally or by an agent, through the use of fraud, intimidation or undue influence.

190. (11) Failing to keep written records justifying the course of treatment of a patient, such records to include, but not be limited to, patient histories, examination and test results and treatment rendered, if any.

192. (12) Exercising influence on a patient in such a way as to exploit the patient for financial gain of the physician or podiatrist or of a third party. Any such
influence includes, but is not limited to, the promotion
or sale of services, goods, appliances or drugs.

(13) Prescribing, dispensing, administering, mixing
or otherwise preparing a prescription drug, including
any controlled substance under state or federal law,
other than in good faith and in a therapeutic manner
in accordance with accepted medical standards and in
the course of the physician's or podiatrist's professional
practice.

(14) Performing any procedure or prescribing any
therapy that, by the accepted standards of medical
practice in the community, would constitute experimen-
tation on human subjects without first obtaining full,
informing and written consent.

(15) Practicing or offering to practice beyond the
scope permitted by law or accepting and performing
professional responsibilities that the person knows or
has reason to know he is not competent to perform.

(16) Delegating professional responsibilities to a
person when the physician or podiatrist delegating such
responsibilities knows or has reason to know that such
person is not qualified by training, experience or
licensure to perform them.

(17) Violating any provision of this article or a rule
or order of the board, or failing to comply with a
subpoena or subpoena duces tecum issued by the board.

(18) Conspiring with any other person to commit an
act or committing an act that would tend to coerce,
imimidate or preclude another physician or podiatrist
from lawfully advertising his services.

(19) Gross negligence in the use and control of
prescription forms.

(20) Professional incompetence.

(21) The inability to practice medicine and surgery or
podiatry with reasonable skill and safety due to physical
or mental disability, including deterioration through the
aging process or loss of motor skill or abuse of drugs
or alcohol. A physician or podiatrist adversely affected
under this subdivision shall be afforded an opportunity
at reasonable intervals to demonstrate that he can
resume the competent practice of medicine and surgery
or podiatry with reasonable skill and safety to patients.
In any proceeding under this subdivision, neither the
record of proceedings nor any orders entered by the
board shall be used against the physician or podiatrist
in any other proceeding.

(d) The board shall deny any application for a license
or other authorization to practice medicine and surgery
or podiatry in this state to any applicant who, and shall
revoke the license of any physician or podiatrist licensed
or otherwise lawfully practicing within this state who,
is found guilty by any court of competent jurisdiction
of any felony involving prescribing, selling, administer-
ing, dispensing, mixing or otherwise preparing any
prescription drug, including any controlled substance
under state or federal law, for other than generally
accepted therapeutic purposes. Presentation to the
board of a certified copy of the guilty verdict or plea
rendered in the court is sufficient proof thereof for the
purposes of this article. A plea of nolo contendere has
the same effect as a verdict or plea of guilt.

(e) The board may refer any cases coming to its
attention to an appropriate committee of an appropriate
professional organization for investigation and report.
Any such report shall contain recommendations for any
necessary disciplinary measures and shall be filed with
the board within ninety days of any such referral. The
recommendations shall be considered by the board and
the case may be further investigated by the board. The
board after full investigation shall take whatever action
it deems appropriate, as provided herein.

(f) The investigating body, as provided for in subsec-
tion (e) of this section, may request and the board under
any circumstances may require a physician or podiatrist
or person applying for licensure or other authorization
to practice medicine and surgery or podiatry in this
state to submit to a physical or mental examination by
a physician or physicians approved by the board. A
physician or podiatrist submitting to any such exami-
nation has the right, at his expense, to designate another
physician to be present at the examination and make an
independent report to the investigating body or the
board. The expense of the examination shall be paid by
the board. Any individual who applies for or accepts the
privilege of practicing medicine and surgery or podiatry
in this state is deemed to have given his consent to
submit to all such examinations when requested to do
so in writing by the board and to have waived all
objections to the admissibility of the testimony or
examination report of any examining physician on the
ground that the testimony or report is privileged
communication. If a person fails or refuses to submit to
any such examination under circumstances which the
board finds are not beyond his control, such failure or
refusal is prima facie evidence of his inability to
practice medicine and surgery or podiatry competently
and in compliance with the standards of acceptable and
prevailing medical practice.

(g) In addition to any other investigators it employs,
the board may appoint one or more licensed physicians
to act for it in investigating the conduct or competence
of a physician.

(h) In every disciplinary or licensure denial action,
the board shall furnish the physician or podiatrist or
applicant with written notice setting out with particu-
larity the reasons for its action. Disciplinary and
licensure denial hearings shall be conducted in accor-
dance with the provisions of article five, chapter twenty-
nine-a of this code. However, hearings shall be heard
upon sworn testimony and the rules of evidence for trial
courts of record in this state shall apply to all such
hearings. A transcript of all hearings under this section
shall be made, and the respondent may obtain a copy
of the transcript at his expense. The physician or
podiatrist has the right to defend against any such
charge by the introduction of evidence, the right to be
represented by counsel, the right to present and cross-
examine witnesses and the right to have subpoenas and
subpoenas duces tecum issued on his behalf for the
attendance of witnesses and the production of docu-
ments. The board shall make all its final actions public. The order shall contain the terms of all actions taken by the board.

(i) Whenever it finds any person unqualified because of any of the grounds set forth in subsection (c) of this section, the board may enter an order imposing one or more of the following:

1. Deny his application for a license or other authorization to practice medicine and surgery or podiatry;
2. Administer a public reprimand;
3. Suspend, limit or restrict his license or other authorization to practice medicine and surgery or podiatry for not more than five years, including limiting the practice of such person to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;
4. Revoke his license or other authorization to practice medicine and surgery or podiatry or to prescribe or dispense controlled substances;
5. Require him to submit to care, counseling or treatment designated by the board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry;
6. Require him to participate in a program of education prescribed by the board;
7. Require him to practice under the direction of a physician or podiatrist designated by the board for a specified period of time; and
8. Assess a civil fine of not less than one thousand dollars nor more than ten thousand dollars.

(j) Notwithstanding the provisions of section eight, article one, chapter thirty of this code, if the board determines the evidence in its possession indicates that a physician's or podiatrist's continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may take any of the actions...
350 provided for in subsection (i) of this section on a
temporary basis and without a hearing, if institution of
proceedings for a hearing before the board are initiated
simultaneously with the temporary action and begin
within fifteen days of such action. The board shall
render its decision within five days of the conclusion of
a hearing under this subsection.

357 (k) Any person against whom disciplinary action is
taken pursuant to the provisions of this article has the
right to judicial review as provided in articles five and
six, chapter twenty-nine-a of this code. Except with
regard to an order of temporary suspension of a license
for six months or less, a person shall not practice
medicine and surgery or podiatry or deliver health care
services in violation of any disciplinary order revoking
or limiting his license while any such review is pending.
Within sixty days, the board shall report its final action
regarding restriction, limitation, suspension or revoca-
tion of the license of a physician or podiatrist, limitation
on practice privileges or other disciplinary action
against any physician or podiatrist to all appropriate
state agencies, appropriate licensed health facilities and
hospitals, insurance companies or associations writing
medical malpractice insurance in this state, the Amer-
ican Medical Association, the American Podiatry
Association, professional societies of physicians or
podiatrists in the state and any entity responsible for the
fiscal administration of medicare and medicaid.

378 (l) Any person against whom disciplinary action has
been taken under the provisions of this article shall at
reasonable intervals be afforded an opportunity to
demonstrate that he can resume the practice of medicine
and surgery or podiatry on a general or limited basis.
At the conclusion of a suspension, limitation or restric-
tion period, the physician or podiatrist has the right to
resume practice pursuant to the orders of the board:
Provided, That for a revocation pursuant to subsection
(d) of this section a reapplication shall not be accepted
for a period of at least five years.

389 (m) Any entity, organization or person, including the
board, any member of the board, its agents or employees
and any entity or organization or its members referred
to in this article, any insurer, its agents or employees,
a medical peer review committee and a hospital
governing board, its members or any committee ap-
pointed by it acting without malice and without gross
negligence in making any report or other information
available to the board or a medical peer review
committee pursuant to law and any person acting
without malice and without gross negligence who assists
in the organization, investigation or preparation of any
such report or information or assists the board or a
hospital governing body or any such committee in
carrying out any of its duties or functions provided by
law, is immune from civil or criminal liability, except
that the unlawful disclosure of confidential information
possessed by the board is a misdemeanor as provided for
in this article.

(n) A physician or podiatrist may request in writing
to the board a limitation on or the surrendering of his
license to practice medicine and surgery or podiatry or
other appropriate sanction as provided herein. The
board may grant such request and, if it considers it
appropriate, may waive the commencement or continua-
tion of other proceedings under this section. A physician
or podiatrist whose license is limited or surrendered or
against whom other action is taken under this subsection
has a right at reasonable intervals to petition for
removal of any restriction or limitation on or for
reinstatement of his license to practice medicine and
surgery or podiatry.

(o) In every case considered by the board under this
article regarding discipline or licensure, whether
initiated by the board or upon complaint or information
from any person or organization, the board shall make
a preliminary determination as to whether probable
cause exists to substantiate charges of disqualification
due to any reason set forth in subsection (c) of this
section. If such probable cause is found to exist, all
proceedings on such charges shall be open to the public
who shall be entitled to all reports, records, and
nondeliberative materials introduced at such hearing,
including the record of the final action taken: Provided, that any medical records, which were introduced at such hearing and which pertain to a person who has not expressly waived his right to the confidentiality of such records, shall not be open to the public nor is the public entitled to such records.

CHAPTER 159
(H. B. 2232—By Delegates Hatfield and Humphreys)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and five, article four-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to eligibility requirements for general anesthesia permits by eliminating person who employs or works in conjunction with a physician or osteopath who is qualified under this article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. ADMINISTRATION OF GENERAL ANESTHESIA AND PARENTERAL CONSCIOUS SEDATION BY DENTISTS.

§30-4A-4. Eligibility requirements for general anesthesia permit.
§30-4A-5. Eligibility requirements for permit to administer parenteral conscious sedation only.

§30-4A-4. Eligibility requirements for general anesthesia permit.

1 To receive a permit for the use of general anesthesia and parenteral conscious sedation, a dentist shall:

3 (a) Be a dentist licensed by the West Virginia board of dental examiners, hereinafter sometimes referred to as the "board," or as "board of dental examiners" and registered to practice dentistry in the state of West Virginia;
(b) Apply to the West Virginia board of dental examiners on an application form prescribed by the board;

(c) Include with the application an application fee in the amount of three hundred dollars;

(d) Have a properly equipped facility for the administration of general anesthesia, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto as outlined in the office anesthesia evaluation manual as adopted and amended by the board of dental examiners;

(e) In the case of any dentist who treats children who applies for any permit under this section, such dentist must document his or her competency to administer general anesthesia and parenteral conscious sedation to children by demonstrating to the satisfaction of the board his or her familiarity with the "Guidelines for the elective use of conscious sedation, deep sedation and general anesthesia in pediatric patients" of American Academy of Pediatrics and the American Academy of Pediatric Dentistry; and

(f) Produce evidence showing at least one of the following:

(1) He or she has completed a minimum of one year of advanced training in an approved anesthesia residency;

(2) He or she is a diplomate of the American board of oral and maxillofacial surgery;

(3) He or she is eligible for an examination by the American board of oral and maxillofacial surgery (ABOMS);

(4) He or she is a fellow of the American association of oral and maxillofacial surgery (AAOMS);

(5) He or she has successfully completed an American dental association accredited oral and maxillofacial
surgery program as evidenced by a letter from the program director stating that said applicant is qualified to perform such anesthesia techniques;

(6) He or she is a fellow of the American dental society of anesthesiology.

§30-4A-5. Eligibility requirements for permit to administer parenteral conscious sedation only.

To receive a permit for use of parenteral conscious sedation only, the dentist shall:

(a) Be a dentist licensed by the West Virginia board of dental examiners and registered to practice dentistry in the state of West Virginia;

(b) Apply to the West Virginia board of dental examiners on an application form prescribed by the board for the use of parenteral conscious sedation only;

(c) Include with the application a fee in the amount of three hundred dollars;

(d) Maintain a properly equipped facility for the administration of parenteral conscious sedation, staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto as outlined in the office anesthesia evaluation manual of the board of dental examiners;

(e) In the case of any dentist who treats children who applies for any permit under this section, such dentist must document his or her competency to administer parenteral conscious sedation to children by demonstrating to the satisfaction of the board his or her familiarity with the “Guidelines for the elective use of conscious sedation, deep sedation and general anesthesia in pediatric patients” of the American Academy of Pediatrics and the American Academy of Pediatric Dentistry; and

(f) Produce evidence showing at least one of the following:

(1) He or she meets at least one of the criteria
described in subdivisions (1) through (6) of subsection (f) of section four of this article;

(2) He or she has satisfactorily completed at least one year of post-doctoral dental training in a dental residency or specialty program approved by the American dental association or the American medical association which must include didactic studies and practical experience in the administration of general anesthesia and parenteral conscious sedation. A letter from the chief of the approved residency program verifying that said dentist has satisfactorily completed said training and is competent to administer parenteral conscious sedation may be deemed acceptable evidence thereof; or

(3) He or she has satisfactorily completed a continuing education course or program regarding the administration of parenteral conscious sedation which meets or exceeds the American dental association council on dental education’s current “Guidelines For Teaching The Comprehensive Control of Pain and Anxiety in Dentistry.”

CHAPTER 160

(S. B. 177—By Senators Wiedebusch and Warner)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-a, relating to pharmacists; and requiring annual completion of accredited program of continuing professional education.

Be it enacted by the Legislature of West Virginia:

That article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section three-a, to read as follows:
ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-3a. Legislative finding; continuing professional education required.

The Legislature finds and declares that because of the continuous introduction of new therapeutic and diagnostic agents and the changing concepts in the delivery of health care services in the practice of pharmacy, it is essential that a pharmacist undertake a continuing education program in order to maintain his or her professional competency and improve his or her professional skills. To assure the continued competency of the pharmacist and to maintain uniform qualifications and licensure in the profession of pharmacy for the protection of the health and welfare of its citizens, the West Virginia Legislature deems it in the public interest to adopt a continuing professional education program for pharmacists.

Beginning the first day of July, one thousand nine hundred ninety, no annual renewal license may be issued to a pharmacist until such pharmacist has submitted proof to the board of pharmacy that he or she has satisfactorily completed an accredited program of continuing professional education during the previous year to help assure his or her continued competence to engage in the practice of pharmacy. The board shall from time to time determine the amount of continuing education to be required.

The board shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code required to carry out the stated objectives and purpose of this section.
chapter thirty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to requirement that prescribing practitioner specify in
his or her own handwriting "Brand Necessary" or
"Brand Medically Necessary" or other designated
language if generic drugs are not to be used to fill a
prescription.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND
DRUGSTORES.

§30-5-12b. Definitions; selection of generic drug
products.

(a) As used in this section:

(1) "Brand name" means the proprietary or trade
name selected by the manufacturer and placed upon a
drug or drug product, its container, label or wrapping
at the time of packaging.

(2) "Generic name" means the official title of a drug
or drug combination for which a new drug application,
or an abbreviated new drug application, has been
approved by the United States food and drug adminis-
tration and is in effect.

(3) "Substitute" means to dispense without the pres-
criber's express authorization a therapeutically equiv-
ten generic drug product in the place of the drug
ordered or prescribed.

(4) "Equivalent" means drugs or drug products which
are the same amounts of identical active ingredients and
same dosage form, and which will provide essentially
the same therapeutic efficacy and toxicity when admin-
istered to an individual.

(5) "Practitioner" means a physician, an authorized
Type A physician assistant at the direction of his or her
supervising physician in accordance with the provisions
of section sixteen, article three of this chapter, osteo-
path, dentist, veterinarian, podiatrist, optometrist or any other person duly licensed to practice and to prescribe drugs under the laws of this state.

(b) A pharmacist who receives a prescription for a brand name drug or drug product shall substitute a less expensive equivalent generic name drug or drug product unless in the exercise of his or her professional judgment the pharmacist believes that the less expensive drug is not suitable for the particular patient: Provided, That no substitution may be made by the pharmacist where the prescribing practitioner indicates that, in his or her professional judgment, a specific brand name drug is medically necessary for a particular patient. Every drug prescription order shall contain an instruction on whether or not an equivalent generic name drug or drug product may be substituted.

A written prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner has indicated in his or her own handwriting the words "Brand Necessary" or "Brand Medically Necessary." The following sentence shall be printed on the prescription form: "This prescription may be filled with a generically equivalent drug product unless the words "Brand Necessary" or the words "Brand Medically Necessary" are written, in the practitioner's own handwriting, on this prescription form."

A verbal prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner or his or her agent shall indicate to the pharmacist that the prescription is "Brand Necessary" or "Brand Medically Necessary." The pharmacist shall note the instructions on the file copy of the prescription or chart order form.

(c) No person may by trade rule, work rule, contract, or in any other way prohibit, restrict, limit or attempt to prohibit, restrict or limit the making of a generic name substitution under subsection (b) of this section. No employer or his or her agent may use coercion or
other means to interfere with the professional judgment
of the pharmacist in deciding which generic name drugs
or drug products shall be stocked or substituted: 

*Provided*, That this section shall not be construed to
permit the pharmacist to generally refuse to substitute
less expensive therapeutically equivalent generic drugs
for brand name drugs, and that any pharmacist so
refusing shall be subject to the penalties prescribed in
section twenty-two, article five, chapter thirty of this
code.

(d) A pharmacist may substitute a drug under
subsection (b) of this section only where there will be
a savings to the buyer. Where substitution is proper
under subsection (b), or where the practitioner pre-
scribes the drug by generic name, the pharmacist shall,
consistent with his or her professional judgment,
dispense the lowest retail cost, effective brand which is
in stock.

(e) All savings in the retail price of the prescription
shall be passed on to the purchaser; these savings shall
be equal to the difference between the retail price of the
brand name product and the customary and usual price
of the generic product substituted therefor: *Provided*,
That in no event shall such savings be less than the
difference in acquisition cost of the brand name product
prescribed and the acquisition cost of the substituted
product.

(f) Each pharmacy shall maintain a record of any
substitution of an equivalent generic name drug product
for a prescribed brand name drug product on the file
copy of a written or verbal prescription or chart order.
Such record shall include the manufacturer and generic
name of the drug product selected.

All drugs shall be labeled in accordance with the
instructions of the practitioner.

Unless the practitioner directs otherwise, the pres-
scription label on all drugs dispensed by the pharmacist
shall indicate the generic name using abbreviations if
necessary and the name of the manufacturer. The same
(g) A pharmacist may not dispense a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices by:

1. Labeling products with the name of the original manufacturer and control number;
2. Maintaining quality control standards equal to or greater than those of the United States food and drug administration;
3. Marking products with identification code or monogram; and
4. Labeling products with an expiration date.

(h) The West Virginia board of pharmacy shall establish by rule a formulary of generic type and brand name drug products which are determined by the board to demonstrate significant biological or therapeutic inequivalence and which, if substituted, would pose a threat to the health and safety of patients receiving prescription medication. The formulary shall be promulgated by the board within ninety days of the date of passage of this section, and may be amended in accordance with the provisions of chapter twenty-nine-a of this code.

(i) No pharmacist shall substitute a generic named therapeutically equivalent drug product for a prescribed brand name drug product if the brand name drug product or the generic drug type is listed on the formulary established by the West Virginia board of pharmacy pursuant to this article, or is found to be in violation of the requirements of the United States food and drug administration.

(j) Any pharmacist who substitutes any drug shall, either personally or through his or her agent, assistant or employee, notify the person presenting the prescription of such substitution. The person presenting the
prescription shall have the right to refuse the substitution. Upon request the pharmacist shall relate the retail price difference between the brand name and the drug substituted for it.

(k) Every pharmacy shall post in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign which shall read: "West Virginia law requires pharmacists to substitute a less expensive generic named therapeutically equivalent drug for a brand name drug, if available, unless you or your physician direct otherwise." The sign shall be printed with lettering of at least one and one-half inches in height with appropriate margins and spacing as prescribed by the West Virginia board of pharmacy.

(l) The West Virginia board of pharmacy shall promulgate rules and regulations setting standards for substituted drug products, obtaining compliance with the provisions of this section and enforcing the provisions of this section. Any person shall have the right to file a complaint with the West Virginia board of pharmacy regarding any violation of the provisions of this article. Such complaints shall be investigated by the board of pharmacy.

Fifteen days after the board has notified, by registered mail, a person, firm, corporation or copartnership that such person, firm, corporation or copartnership is suspected of being in violation of a provision of this section, the board shall hold a hearing on the matter. If, as a result of the hearing, the board determines that a person, firm, corporation or copartnership is violating any of the provisions of this section, it may, in addition to any penalties prescribed by section twenty-two of this article, suspend or revoke the permit of any person, firm, corporation or copartnership to operate a pharmacy or drugstore.

(m) No pharmacist complying with the provisions of this section shall be liable in any way for the dispensing of a generic named therapeutically equivalent drug, substituted under the provisions of this section, unless
the generic named therapeutically equivalent drug was
incorrectly substituted.

In no event where the pharmacist substitutes a drug
under the provisions of this section shall the prescribing
physician be liable in any action for loss, damage, injury
or death of any person occasioned by or arising from the
use of the substitute drug unless the original drug was
incorrectly prescribed.

Failure of a practitioner to specify that a specific
brand name is necessary for a particular patient shall
not constitute evidence of negligence unless the practi-
tioner had reasonable cause to believe that the health of
the patient required the use of a certain product and no
other.

CHAPTER 162

(Com. Sub. for S. B. 254—By Senators Tucker, Mr. President, and Jackson)

[Passed March 24, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact article nine, chapter thirty of
the code of West Virginia, one thousand nine hundred
thirty-one, as amended, all relating to the practice and
regulation of public accounting; setting forth findings
and declarations; providing definitions; continuing and
reorganizing the state board of accountancy; providing
for the appointment, terms, qualifications, removal and
compensation of members thereof; providing for the
funding of said board; enabling and directing said board
to promulgate rules; providing for the certification of
qualified persons in the practice of public accounting
and the continuing regulation of those previously
certified or registered as public accountants under prior
law; providing for the annual licensure of certified
persons and registrants and enabling the board to
promulgate the requirements therefor; prohibiting and
providing for the criminal punishment of those engaged
in the uncertified, unlicensed or unregistered practice
of public accounting and other unlawful acts; providing
for the enjoinment of such acts and evidence thereof for purposes of such injunctive relief; exempting certain activity from regulation; providing for the ownership of working papers; providing for the practice of accountancy by accounting corporations; providing for board revocation and suspension of certificates, registrations and licenses; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. ACCOUNTANTS.

§30-9-1. Findings and statement of purpose.

§30-9-2. Definitions.

§30-9-3. Board of accountancy; appointment, terms, qualifications, removal and compensation of members; funds; rules and regulations.

§30-9-4. Certification; applicability of article to previous holders of certificates.

§30-9-5. Grant and renewal of license; rights of licensee.

§30-9-6. Practice of public accounting restricted to licensees; prohibited acts.

§30-9-7. Prohibitions and penalties.

§30-9-8. Injunction against unlawful act; evidence.

§30-9-9. Inapplicability of article.

§30-9-10. Ownership of working papers.

§30-9-11. Accounting corporations.

§30-9-12. Revocation or suspension of certificate, license or registration.


§30-9-1. Findings and statement of purpose.

The Legislature hereby finds and declares that the public interest requires the certification and licensure of those persons engaged in the practice of public accounting as herein defined in order to aid the citizens of this state in determining the qualifications of such persons; that this function is best served by a state board of accountancy subject to legislative control; and that this article is enacted to further the aforesaid public interest.

§30-9-2. Definitions.

As used in this article, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:
“Assurance” means any act or action, whether written or oral, expressing an opinion or conclusion about the reliability of a financial statement or about its conformity with any financial accounting principles or standards.

“Board” means the state board of accountancy, known as the “West Virginia board of accountancy,” continued by the provisions of this article and established under prior law.

“Certificate” means a certificate as a certified public accountant issued by the board pursuant to this article or corresponding provisions of prior law or a corresponding certificate as a certified public accountant issued after examination under the laws of any other state.

“Financial statement” means a writing or other presentation, including accompanying notes, which presents, in whole or in part, historical or prospective financial position, results of operations or changes in financial position of any person, corporation, partnership or other entity.

“License” means a license to practice public accounting issued annually under the provisions of this article and “licensee” means a person holding such license.

“Practice of public accountancy” or “public accounting” means: (i) The giving of an assurance, in a report or otherwise, whether expressly or implicitly; or (ii) in the case of a person holding himself out as a certificate holder, the performance of or offering to perform any service involving the use of accounting or auditing skills, including, but not limited to, management advisory or consulting services, the preparation of tax returns, the rendering of tax services, the keeping of books of account and related accounting records and the preparation of financial statements without the expression of an assurance: Provided, That an employee giving assurances to or performing such services for an employer shall not be deemed to be practicing public accountancy.
"Registered" or "registrant" refers to or means a person registered, but not certified, by the board under prior law as a public accountant before the first day of January, one thousand nine hundred sixty-seven, and "registration" means such registration.

"Report" or "reports" when used with reference to financial statements, means an opinion or disclaimer of opinion or other form of language or representation which states or implies any form of assurance or denial of assurance.

"State" means any state of the United States, the District of Columbia, Puerto Rico, the U. S. Virgin Islands or Guam.

As used in this article, the singular and plural and the masculine and feminine are interchangeable unless the context clearly indicates otherwise.

§30-9-3. Board of accountancy; appointment, terms, qualifications, removal and compensation of members; funds; rules and regulations.

The state board of accountancy, known as the "West Virginia board of accountancy," is hereby continued. The board consists of five members appointed by the governor with the advice and consent of the Senate for terms of three years. Any vacancy on the board occurring during a three-year term shall be filled by appointment of the governor for the remainder of the unexpired term. No member may serve more than two consecutive full terms, and any member having served two full terms may not be appointed or reappointed for one year after completion of his second full term.

The members composing the board on and after the effective date of this article shall be appointed by the governor to serve as follows: Two for a term of three years; two for a term of two years; and one for a term of one year. Thereafter, as the terms of office of the members respectively expire, the governor shall appoint, to fill the vacancies so occasioned, members whose terms shall be for three years from the day on which that of their immediate predecessors expired.
Every member of the board shall hold a certificate: Provided, That the governor shall appoint as a member no more than one noncertificated, licensed registrant under prior law. At the time of any appointment at least three members of the board shall hold a certificate and a current license.

Notwithstanding the foregoing, for the first five years after the effective date of this article the board shall further consist of two additional members, and for the second five years after the effective date of this article the board shall further consist of one additional member, each of whom shall be a noncertificated, licensed registrant. One of such two additional members shall be appointed for an initial term of one year, and the second of such two additional members shall be appointed for an initial term of two years. Thereafter, and subject to the expiration of such five year periods, as the terms of office of such additional members respectively expire, the governor shall appoint, to fill the vacancies so occasioned, members of like qualification whose terms shall be for three years from the day on which that of their immediate predecessors expired.

The governor shall remove from the board any member who fails to attend, without just cause, three regularly scheduled board meetings. Any member of the board shall immediately and automatically forfeit his membership if he (i) has his certificate, registration or license suspended or revoked by the board; or (ii) is convicted of a felony under the laws of any state or the United States.

The board shall pay each member fifty dollars for each day or portion thereof spent in the discharge of his official duties and shall reimburse each member for his actual and necessary expenses incurred in the discharge of his official duties.

All fees and other moneys received by the board pursuant to the provisions of this article shall be kept by the board in a separate fund and expended solely for the purposes of this article. The board shall retain its funds from year to year, and no part of this special fund
shall revert to the general funds of this state. The compensation provided by this article and all expenses incurred under this article shall be paid from this special fund. No compensation or expense incurred under this article is a charge against the general funds of this state.

The board shall make and enforce all necessary rules, not inconsistent with this article, for the examination, certification and licensure of public accountants as set forth herein, and for the general practice of public accounting, including the collection of fees for examination, certification and licensure. The board may promulgate and amend rules of professional conduct appropriate to establish and maintain a high standard of integrity in the profession of public accountancy, which rules are applicable to all licensees. No rule promulgated by the board is effective unless promulgated pursuant to article three, chapter twenty-nine-a of this code: Provided, That all rules promulgated by the board under prior law shall remain in full force and effect unless modified or repealed in accordance with this section.

§30-9-4. Certification; applicability of article to previous holders of certificates.

1 The board shall grant a certificate to any applicant who, at the time of making application:
2
3 (1) Is over the age of eighteen years;
4 (2) Is of good moral character;
5 (3) Is, at the time of taking the examination provided for in subdivision (5), a resident of this state or employed in this state on a full-time basis: Provided, That the board may provide by rule for exceptions to this requirement;
6 (4) Has satisfied the following educational requirements:
7
8 (a) If application is made prior to the first day of July, two thousand, the obtainment of a baccalaureate or equivalent degree conferred by a college or university
acceptable to the board with a concentration in accounting or its equivalent, as determined by the board by rule;

(b) If application is made on or after the first day of July, two thousand, the satisfactory completion of one hundred fifty semester hours or their equivalent at such accredited institutions, including the obtainment of the aforesaid degree.

(5) Has completed satisfactorily an examination to be given by the board at least twice each year in accounting theory, accounting practice, auditing, commercial law or such other appropriate subjects as determined by the board by rule. The board shall prescribe by rule for the retention of credit for the satisfactory completion of a portion of such examination in future examinations.

The board may, in its discretion, in lieu of the examination provided for in this section, issue a certificate to any person who possesses the other qualifications stated in this section, and who is the holder of a certificate issued under the laws of any state which extends similar privileges to certified public accountants of this state provided the requirements for such certificates in the state which has granted the certificate to such person, are, in the opinion of the board, equivalent to those herein required; or who is the holder of a certificate, or the equivalent thereof, granted under the authority of a foreign nation, if the requirements for such certificates in the foreign nation, are, in the opinion of the board, equivalent to those herein required.

Persons who, on the effective date of this article, hold certificates theretofore issued by the board are not required to obtain additional certificates under this article, but are otherwise subject to all provisions of this article; and such certificates theretofore issued shall, for all purposes, be considered certificates issued under this article and subject to the provisions hereof.

§30-9-5. Grant and renewal of license; rights of licensee.

The board shall prescribe by rule for the issuance of
licenses on an annual basis. The board shall issue a license only to a person who holds a valid certificate or is registered under prior law. The board may establish by rule work experience, continuing education, and other qualifications for the licensure of certificate holders: Provided, That no such qualifications may be imposed on registrants under prior law.

Only a person who holds a valid license granted to him by the board may practice public accounting. Failure to obtain a license does not impair the right of a person to obtain a license in future years, but only removes that person from those licensed to practice during the year.

§30-9-6. Practice of public accounting restricted to licensees; prohibited acts.

(a) A person who does not hold a valid license issued by the board may not claim to hold one; nor may he or she practice or offer to practice public accountancy or public accounting; nor may he or she make any other claim of licensure or approval related to the preparation of financial statements or expression of assurances thereon which is false or misleading.

(b) Except as set forth in this subsection, a person who does not hold a valid certificate issued by the board may not claim to hold one or describe himself as or assume any of the following titles or designations: Certified public accountant, CPA, public accountant, PA, certified accountant, CA, chartered accountant, licensed accountant, LA, registered accountant, RA, independent auditor, auditor, or similar designation: Provided, That registrants under prior law may use the titles public accountant or PA.

Partnerships practicing accountancy in this state may use the aforesaid designations, or practice as such, only if all the members thereof who practice in this state are so licensed.

(c) A person who does not hold a valid license issued by the board may not claim to have used "generally accepted accounting principles," "generally accepted
accounting standards,” “public accountancy standards,” “public accountancy principles,” “generally accepted auditing principles,” or “generally accepted auditing standards,” in connection with his preparation of any financial statement; nor may he or she use any of these terms in describing any complete or partial variation from such standards or principles or to imply complete or partial conformity with such standards or principles.

(d) A person who does not hold a valid license issued by the board may not use the words “audit,” “audit report,” “independent audit,” “attest,” “attestation,” “examine,” “examination,” “opinion,” or “review” in a report on a financial statement.

(e) A person who does not hold a valid license issued by the board may neither state nor imply that he or she is tested, competent, qualified, or proficient in financial standards established by: (i) The American institute of certified public accountants or any agency thereof; (ii) the governmental accounting standards board or any agency thereof; (iii) the securities and exchange commission or any agency thereof; (iv) the financial accounting standards board; or (v) any successor entity to an entity named in this subsection.

(f) No person who holds a valid license issued by the board may engage in the practice of public accounting under a professional or firm name or designation that contains a name or term other than past or present partners, officers or shareholders of the firm or of a predecessor firm; nor may any such person engage in the practice of public accounting under a professional or firm name which is deceptive or misleading.

§30-9-7. Prohibitions and penalties.

Any person who engages in any of the unauthorized acts listed in section six of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§30-9-8. Injunction against unlawful act; evidence.
The board or any other interested person may apply to any court of competent jurisdiction for an order enjoining any of the acts listed in section six of this article. Upon a showing that any person has engaged, or is about to engage, in any such acts, an injunction, restraining order or such other order as may be appropriate shall be granted by such court without bond. The display or uttering by a person of any printed, engraved or written instrument, bearing the name of such person in conjunction with any of the claims, titles, words or phrases listed in section six of this article shall, for purposes of this section, be prima facie evidence that such person has engaged in such acts.

§30-9-9. Inapplicability of article.

(a) Nothing contained in this article may be construed to prevent any person from describing himself as an "accountant" or a "bookkeeper" or from stating that he practices accountancy or bookkeeping; nor, subject to the licensure requirements herein imposed on persons holding themselves out as certificate holders, may this article be construed to prevent any person from performing services involving the use of accounting skills, rendering tax services, management advisory or consulting services, or in the keeping of books of account and related accounting records, or from preparing financial statements without the expression of an assurance.

(b) Nothing contained in this article may be construed to prevent any person from stating that he has prepared, compiled, assembled or drafted a financial statement, provided he does not use any additional language which comprises an assurance.

(c) The prohibitions of section six and the other provisions of this article may not be construed to preclude the use of the following or substantially similar language: "I (We) have compiled the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. A compilation is limited to presenting in the form of financial statements information that is the representation of management
I (We) have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them. Management has elected to omit substantially all (or certain) required disclosures (and the statement of changes in financial position). If omitted disclosures were included in the financial statements, they might influence the user's conclusions about the (entity's) financial position, results of operations and changes in financial position. Accordingly, these financial statements are not designed for those who are not informed about these matters."

(d) Nothing contained in this article may be construed to prohibit an employee from furnishing services to his employer.

§30-9-10. Ownership of working papers.

(a) All statements, records, schedules, working papers and memoranda prepared by a licensee, or a partner, shareholder, officer, director or employee of a licensee, incident to or in the course of rendering services to a client pursuant to the practice of public accountancy of a licensee, shall be and remain the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary: Provided, That this subsection shall not apply to reports submitted to a client and statements, records, schedules, working papers and memoranda provided by a client to a licensee, or a partner, shareholder, officer, director or employee to a licensee. No such statement, record, schedule, working paper or memorandum may be sold, transferred or bequeathed, without the consent of the client or his personal representative, successor or assignee, to anyone other than one or more surviving partners or shareholders or new partners or shareholders of the licensee or any combined or merged firm or successor in interest to the licensee.

(b) In addition to any statements, records, schedules, working papers, memoranda or reports required to be furnished or returned to the client in accordance with subsection (a), a licensee shall furnish to his client or
former client, upon request made within a reasonable
time after original issuance of the document in question:

(1) A copy of a tax return of the client.

(2) A copy of any report or other document issued by
the licensee to or for such client and not formally
withdrawn or disavowed by the licensee prior to the
request.

(3) A copy of the licensee's working papers to the
extent that such working papers include records that
would ordinarily constitute part of the client's records
and are not otherwise available to the client.

(4) Any accounting or other records belonging to, or
obtained from or on behalf of, the client which the
licensee removed from the client's premises or received
for the client's account. The licensee may make and
retain copies of such documents of the client whenever
those documents form the basis for work done by him.

§30-9-11. Accounting corporations.

One or more individuals, each of whom is licensed
within this state, may organize and become a share-
holder or shareholders of an accounting corporation.
Individuals who may be practicing public accountancy
as an organization created otherwise than pursuant to
the provisions of this section may incorporate under and
pursuant to this section. This section is not intended to
amend the statutory or common law as it relates to
associations or partnerships, except to allow partner-
ships of licensees to organize as an accounting
corporation.

An accounting corporation may render public ac-
counting services only through officers, employees and
agents who are themselves duly licensed within this
state. The term "employee" or "agent," as used in this
section, does not include secretaries, clerks, typists or
other individuals who are not usually and ordinarily
considered by custom and practice to be rendering
accounting services for which a license is required.

This section does not modify the law as it relates to
the relationship between a person furnishing accounting
services and his client, nor does it modify the law as it
relates to liability arising out of such a professional
service relationship. Except for permitting an account-
ing corporation, this section is not intended to modify
any legal requirement or court rule relating to ethical
standards of conduct required of persons providing
public accounting services.

An accounting corporation may issue its capital stock
only to persons who are duly certified or registered
under prior law.

When not inconsistent with this section, the organiza-
tion and procedures of accounting corporations shall
conform to the requirements of article one, chapter
thirty-one of this code.

The board may require that those persons subject to
this article must obtain prior board authorization before
beginning to act as an accounting corporation and may
require by regulation a fee for each application for
authorization to form an accounting corporation. The
board may adopt rules: (1) To set reasonable standards
for granting or refusing authorization to act as an
accounting corporation, (2) to require appropriate
information therefor from an accounting corporation
applicant, and (3) to notify the secretary of state that
certain persons have been given authorization by the
board to act as an accounting corporation.

Upon notification by the board of its approval the
secretary of state, upon compliance by the incorporators
with this section and the applicable provisions of
chapter thirty-one of this code, may issue to the
incorporators a certificate of incorporation for the
accounting corporation which then may engage in
practice through duly licensed or otherwise legally
authorized stockholders, employees and agents.

A shareholder of an accounting corporation may sell
or transfer his shares of stock in such corporation only
to (i) another individual who is duly licensed to practice
public accountancy in this state or (ii) back to the
corporation.
The corporate name of an accounting corporation shall contain the last name or names of one or more of its shareholders: Provided, That if the rules of the board so permit, the corporate name may contain or include the name or names of former shareholders or of persons who were associated with a predecessor partnership or other organization. The corporate name shall also contain the words "accounting corporation," or the abbreviation "A.C." The use of the word "company," "corporation" or "incorporated," or any other words or abbreviations in the name of an accounting corporation organized under this article which indicate that such corporation is a corporation, other than the words "accounting corporation" or the abbreviation "A.C.,” is specifically prohibited.

§30-9-12. Revocation or suspension of certificate, license or registration.

After notice and hearing, as provided in article one of this chapter, the board may revoke or suspend any certificate or registration and may refuse to issue, or refuse to renew, any license, for any one or combination of the following causes:

(a) Fraud or deceit in obtaining a certificate, registration or license;

(b) Dishonesty, fraud or gross negligence in the practice of public accounting;

(c) Violation of a rule of professional conduct promulgated by the board under the authority granted by this article;

(d) Conviction of any felony, or any crime, an element of which is deceit or fraud, under the laws of any state or of the United States;

(e) Cancellation, revocation, suspension or refusal to renew authority to practice public accountancy by any other state, for any cause other than failure to pay an annual license fee in such other state;

(f) Habitual drunkenness, addiction to the use of habit-forming drugs, mental incompetence or gross immorality; or
AN ACT to amend and reenact sections two, four, five, six, seven, eight and twelve, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the board of examiners of land surveyors and qualifications for the practice of land surveying; expanding the definition of the practice of land surveying to include surface mining surveying; increasing the experience requirement prior to licensure; allowing certain equivalent curricula; removing certain eligibilities for persons to obtain a license without examination; changing the license fee from seventy dollars to not to exceed two hundred dollars; providing lower fees for partial reexaminations; renewal fees; removing the exemption of certain persons from application of this article and including other persons; and providing for probation and fines as penalties to be imposed by the board as disciplinary actions.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five, six, seven, eight and twelve, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13A. LAND SURVEYORS.

§30-13A-4. Powers and duties of board; funds.
§30-13A-5. Qualifications of applicants for licenses; surveyor in training applications; fees; examinations.

§30-13A-6. Issuance of license; notice of expiration; renewal; renewal fee; display.

§30-13A-7. Exemption from regulation and licensing.

§30-13A-8. Suspension or revocation of license.


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

2 (a) "Applicant" means any person making application for an original or renewal license under the provisions of this article;

3 (b) "Licensee" means any person holding a license issued under the provisions of this article;

4 (c) "Board" means the West Virginia state board of examiners of land surveyors created under the provisions of this article;

5 (d) "Practice of land surveying" means the rendering or offering to render for a fee, salary or other compensation, monetary or otherwise, for the public generally, any of the following services:

6 (1) The location, relocation, establishment, reestablishment or retracement of any property line or boundary of any parcel of land or of any road or utility right-of-way, easement or alignment;

7 (2) The performance of any survey for the division, subdivision or resubdivision of any tract of land;

8 (3) The determination of the position of any monument or reference point which marks a property line boundary or corner, or setting, resetting or replacing any such monument or reference point, by the use of the principles of land surveying;

9 (4) The determination of the configuration or contour of the earth's surface or the position of fixed objects thereon or related thereto, by means of measuring lines and angles, and applying the principles of mathematics;

10 (5) The performance of cadastral surveying, under-
ground surveying, surface mine surveying or hydrographic surveying;

(6) The preparation of subdivision maps; and

(7) The preparation of maps or drawings showing any of the above.

(e) "Professional surveyor" means any person who engages in the practice of land surveying.

(f) "Equivalent curriculum" includes, but is not limited to, degrees in related curricula such as engineering, forestry, geology, mathematics, physics, computer science or other related fields.

§30-13A-4. Powers and duties of board; funds.

(a) The board shall have the power and duty to:

(1) Examine applicants and determine their eligibility for a license to engage in the practice of land surveying;

(2) Prepare, conduct and grade an apt and proper written, oral or written and oral examination of applicants for a license and determine the satisfactory passing score thereon;

(3) Promulgate reasonable rules implementing the provisions of this article and the powers and duties conferred upon the board hereby, all of which reasonable rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(4) Issue, renew, deny, suspend or revoke licenses to engage in the practice of land surveying in accordance with the provisions of this article;

(5) Investigate alleged violations of the provisions of this article, reasonable rules promulgated hereunder and orders and final decisions of the board and take appropriate disciplinary action against any licensee for the violation thereof or institute appropriate legal action for the enforcement of the provisions of this article, reasonable rules promulgated hereunder and orders and final decisions of the board or take such disciplinary action and institute such legal action;
(6) Keep accurate and complete records of its proceedings, certify the same as may be appropriate, and prepare, from time to time, a list showing the names and addresses of all licensees;

(7) Take such other action as may be reasonably necessary or appropriate to effectuate the provisions of this article; and

(8) Establish standards to evaluate surveying or equivalent curricula as it relates to the practice of land surveying under the provisions of this article and to determine the amount of experience required under section five of this article which may be substituted for a particular curriculum.

(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him with the treasurer of the state and credited to an account to be known as the “board of examiners of land surveyors fund.” All of the reasonable compensation of the members of the board, the reimbursement of all reasonable and necessary expenses actually incurred by such members and all other costs and expenses incurred by the board in the administration of this article shall be paid from such fund, and no part of the state’s general revenue fund shall be expended for this purpose.

§30-13A-5. Qualifications of applicants for licenses; surveyor in training applications; fees; examinations.

(a) To be eligible for a license to engage in the practice of land surveying, the applicant must:

(1) Be at least eighteen years of age;

(2) Be of good moral character;

(3) Have been a resident of the United States for one year immediately preceding the date of application;

(4) Not have been convicted of a crime involving moral turpitude;

(5) Have four years or more experience in the practice of land surveying under the supervision of a person
authorized to practice land surveying in this state, or a
person authorized in another state or country to engage
in the practice of land surveying; and each year of
satisfactory study in a surveying or equivalent curric-
ulum shall be substituted for one year of experience, but
only two years of such experience requirement may be
fulfilled by such study. On and after the first day of
July, one thousand nine hundred ninety-one, six years
or more of such experience under the supervision of a
licensee or a person authorized in another state or
country to engage in the practice of land surveying shall
be required by those applicants who are graduates of a
surveying or equivalent curriculum of two scholastic
years or more. However, only three years of such
experience may be fulfilled by such study, and eight
eyears of such experience under the supervision of a
person authorized to practice land surveying in this
state, or a person authorized in another state or country
to engage in the practice of land surveying, shall be
required for those applicants who are not graduates of
a surveying or equivalent curriculum; and

(6) Have passed the examination prescribed by the
board, which examination shall cover the basic subject
matter of land surveying and land surveying skills and

(b) Any applicant for any such license shall submit an
application therefor on forms provided by the board.
Such application shall be verified and shall contain a
statement of the applicant's education and experience,
the names of five persons for reference (at least three
of whom shall be licensees or persons authorized in
another state or country to engage in the practice of land
surveying, who have knowledge of his work) and such
other information as the board may from time to time
by reasonable rule prescribe.

(c) An applicant shall pay to the board with his
application an examination fee for the purpose of
covering the cost of the examination not to exceed two
hundred dollars as determined by the board by rule.

(d) Examinations shall be held at least once each year
at such time and place as the board shall determine. The
scope of the examination and methods of procedure shall
be determined by the board. An applicant who fails to
pass all or any part of an examination may reapply at
any time and shall furnish additional information as
requested by the board. The cost of reexamination will
be based on the cost of the examination as determined
by the board by rule.

§30-13A-6. Issuance of license; notice of expiration;
renewal; renewal fee; display.

Whenever the board finds that an applicant meets all
of the requirements of this article for a license to engage
in the practice of land surveying, it shall forthwith issue
to such person such license; and otherwise the board
shall deny the same. All licenses, whether original or
renewal, shall expire on the thirtieth day of June
following the date of issuance or renewal. The secretary-
treasurer of the board shall mail to every licensee, at
least thirty days prior to the expiration of such license,
notice of the expiration date and the amount of the
renewal fee. A license may be renewed without exam-
ination upon application for a renewal on a form
prescribed by the board and payment to the board of
an annual renewal fee of forty dollars. If a license is not
renewed when due, the fee shall increase one dollar per
month for each month or fraction thereof that such
renewal fee is not paid, up to a maximum of thirty-six
months. No license shall be renewed after expiration of
said period of thirty-six months, and the fact that a
license cannot be renewed because of the expiration of
said period of thirty-six months shall not prevent such
person from making application for a new license. The
board may deny any application for renewal for any
reason which would justify the denial of an original
application for a license. The board shall prescribe the
form of licenses and each such license shall be conspic-
uously displayed by the licensee at his or her principal
place of practice. A duplicate license may be issued upon
payment of a fee of ten dollars.

§30-13A-7. Exemption from regulation and licensing.
The following persons are exempt from regulation and licensing under the provisions of this article and any reasonable rules promulgated hereunder, and may engage in the practice of land surveying without a license issued under the provisions of this article and any such reasonable rules:

(a) Any professional engineer authorized to practice the profession of engineering as provided in article thirteen of this chapter;

(b) Any employee of a proprietorship, partnership, association, corporation or other business entity which is engaged in the practice of land surveying in this state or any employee of a proprietorship, partnership, association, corporation or other business entity exempted from rules and licensing under subdivision (a) of this section: Provided, That the work of any such employee is done under the supervision of and certified by a licensed employee of the proprietorship, partnership, association, corporation or other business entity;

(c) Any employee of a person, firm, association or corporation, when such employee is engaged in the practice of land surveying exclusively for the person, firm, association or corporation by which employed, or, if a corporation, its parents, affiliates or subsidiaries, and such person, firm, association or corporation does not hold himself or itself out to the public as being engaged in the business of land surveying;

(d) Any employee or officer of the United States, this state or any political subdivision thereof, when such employee is engaged in the practice of land surveying exclusively for such governmental unit.

§30-13A-8. Suspension or revocation of license.

(a) The board may at any time upon its own motion and shall upon the verified written complaint of any person conduct an investigation to determine whether there are any grounds for disciplinary action against the holder of a license or the suspension or revocation of a license issued under the provisions of this article.

(b) The board shall suspend or revoke the license of
(c) Any suspension of a license shall continue for the period specified in the order of suspension. Revocation of a license shall not preclude application for a new license, which application shall be processed in the same manner and the application approved or denied and the license issued or refused on the same grounds as any other application for a license is processed, considered and determined, except that any previous suspension and the revocation may be considered in deciding whether to approve or deny such application and issue or refuse to issue such license.


No plat, report of survey or any survey related document shall be filed by any clerk of a county commission or accepted by any public official of this state unless the seal required by section eleven of this article has been affixed thereto, except that any document prepared by a person exempted from the regulation and licensing requirements of this article, as provided in section seven of this article, shall not be required to have the seal required by section eleven of this article affixed thereto. Nothing in this section shall prevent a document prepared prior to the twenty-fifth day of May, one thousand nine hundred sixty-nine, from being recorded without such seal. If a seal of such exempt person is not affixed to said document, a
AN ACT to amend and reenact section seven, article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the fee for renewal of a chiropractic license and to requirements for continuing chiropractic education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. CHIROPRACTORS.

§30-16-7. License; annual renewal fee; effect of failure to renew; reinstatement.

All holders of certificates of license to practice chiropractic in this state shall renew them annually on or before the first day of July of each year: (1) By paying the board an annual renewal fee not exceeding one hundred dollars as determined by the board, and (2) by presenting to the board evidence of attendance of at least twelve classroom hours of continuing education each year. The West Virginia board of chiropractic
examiners shall approve the fulfillment of the continuing education requirement. The board shall notify each certificate holder by mail, at least thirty days prior to the first day of July of each year, of the necessity of renewing his or her certificate. The first annual renewal fee shall be due on the first day of July, one thousand nine hundred sixty-five.

The failure to renew a certificate of license to practice chiropractic shall operate as an automatic suspension of the rights and privileges granted by its issuance.

A certificate of license suspended by a failure to make an annual renewal may be reinstated by the board upon presentation of evidence of attendance of at least twelve classroom hours of continuing education for each year such license has been suspended; payment of all fees that would have been paid had the certificate holder maintained his certificate in good standing and the payment to the board of a reinstatement fee of not to exceed fifty dollars as determined by the board; but no certificate shall be reinstated after a lapse of three years. After a lapse of three years, license may be issued only after the former certificate holder subsequent to said lapse has passed the examination provided for in this article.

CHAPTER 165
(H. B. 2032—By Delegates Love and Leggett)

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

AN ACT to amend and reenact section three, article thirty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to West Virginia board of social work examiners; removing restriction on terms of board members; establishing roster of names and addresses of certain social workers; creating an administrative-clerical support staff position; and continuing the board.

*Be it enacted by the Legislature of West Virginia:*
That section three, article thirty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 30. SOCIAL WORKERS.

§30-30-3. Board of social work examiners.

1. (a) For the purpose of carrying out the provisions of this article, there is hereby created a West Virginia board of social work examiners, consisting of seven members who shall be appointed by the governor, subject to the following requirements:

   1) No person may be excluded from serving on the board by reason of race, sex or national origin;

   2) Two members shall be certified social workers, two members shall be graduate social workers and two members shall be social workers. All such members must be licensed under the provisions of this article in accordance with their respective titles. In addition, there shall be one member of the board chosen from the general public: Provided, That those members who are appointed by the governor to serve as the first board after the effective date of this article shall be persons eligible for the licensing required under this article: Provided, however, That the member from the general public shall never be required to be eligible for licensing;

   3) The members of the first board to serve after the effective date of this article shall be appointed within ninety days thereof;

   4) The term of office for each member of the board shall be three years: Provided, That one of the members of the first board to serve after the effective date of this article shall serve a term of two years, three of them shall serve a term of three years and the remaining three shall serve a term of four years; and

   5) The governor shall, whenever there is a vacancy on the board due to circumstances other than the expiration of the term of a member, appoint another member with the same qualifications as the member
who has vacated to serve the duration of the unexpired term.

For the purpose of accepting nominations for the replacement of a member, the governor shall cause a notice of the vacancy to be published at least thirty days prior to an announcement of the replacement member, as a Class I-0 legal advertisement, in accordance with the provisions of section two, article three, chapter fifty-nine of this code. The publication area shall be statewide.

If the governor fails to make appointment in ninety days after expiration of any term, the board shall make the necessary appointment. Each member shall hold office until the expiration of the term for which such member is appointed and until a successor shall have been duly appointed and qualified.

(b) Any members of the board may be removed from office for cause, in accordance with procedures set forth in this code for the removal of public officials from office.

(c) Members of the board shall receive appropriate compensation, not to exceed the amount specified for attendance of similar board meetings as provided elsewhere in this code, for attending meetings of the board. In addition to such compensation, each member of the board shall be reimbursed out of moneys appropriated for such purposes, reasonable expenses and all sums which he or she necessarily shall expend in the discharge of his or her duties as a member of the board, not to exceed the prevailing rate paid to employees of the state: Provided, That such compensation and such expenses shall not exceed the amount received by the board from licensing fees and penalties imposed under subdivision (4), subsection (e) of this section.

(d) The board shall hold an annual election for the purpose of electing a chairman, vice chairman and secretary. The requirements for meetings and management of the board shall be established in regulations promulgated by the board as required by this article.
(e) In addition to the duties set forth in other provisions of this article, the board shall:

(1) Recommend to the Legislature any proposed modifications to this article;

(2) Report to county prosecutors any suspected violations of this article: Provided, That no report shall be made until the board has given the suspected violator ninety days written notice of the suspected violation and the violator has, within such ninety day period, been afforded an opportunity to respond to the board with respect to the allegation;

(3) Publish an annual report and a roster listing the names and addresses of all persons who have been licensed in accordance with the provisions of this article as a certified social worker, graduate social worker or social worker;

(4) Establish a fee schedule for the initial examination, license fee and the annual license renewal;

(5) Establish standards and requirements for continuing education. In establishing these requirements the board shall consult with professional groups and organizations representing all levels of practice provided for in this article and the board shall consider recognized staff development programs, continuing education programs offered by colleges and universities having social work programs approved or accredited by the council on social work education, and continuing education programs offered by recognized state and national social work bodies: Provided, That such standards and requirements for continuing education shall not be construed to alter or affect in any way the standards and requirements for licensing as set forth elsewhere in this article;

(6) Conduct its proceedings in accordance with provisions of article nine-a, chapter six of this code; and

(7) Employ, direct and define the duties of an administrative clerical support staff person.

After having conducted a performance and fiscal
audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the board of social work examiners be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the social work board of examiners shall continue to exist until the first day of July, one thousand nine hundred ninety-five.

CHAPTER 166
(Com. Sub. for H. B. 2131—By Delegates Phillips and Hatfield)

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

AN ACT to amend and reenact section two, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to altering qualifications for the person appointed commissioner of banking.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DEPARTMENT OF BANKING.

§31A-2-2. Commissioner’s appointment, term, qualifications, salary, oath and bond.

The commissioner of banking shall be appointed by the governor, by and with the advice and consent of the Senate. He shall serve at the will and pleasure of the governor for the term for which the governor was elected and until his successor is appointed and qualified, unless earlier removed from office for cause as provided by law.

Any person appointed as commissioner shall have a college degree from an accredited institution, be of good
moral character, have knowledge of the theory and practice of banking and be at least twenty-five years of age.

Before entering upon the discharge of his duties as commissioner, he shall take and subscribe to the oath of office prescribed in section five, article four of the constitution of West Virginia and shall enter into a bond in the penal sum of one hundred thousand dollars, with a corporate surety authorized to engage in business in this state, conditioned upon the faithful discharge and performance of the duties of his office. The premium of such bond shall be payable from the state treasury out of funds allocated to the department of banking. The executed oath and bond shall be filed in the office of the secretary of state.

CHAPTER 167
(H.B. 2157—By Delegates Given and Faircloth)
[Passed March 16, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to real estate licenses; requiring continuing education courses prior to license renewal.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESМEN.

§47-12-7a. Continuing education; license renewal.

In addition to other provisions of this article, beginning the first day of July, one thousand nine hundred
ninety, and every year thereafter, every real estate broker and salesperson shall complete seven actual hours of continuing education, with each hour equaling fifty minutes of instructions. The commission shall establish the continuing education program by rules and shall approve all courses, seminars and lectures: Provided, That continuing legal education courses approved by the West Virginia State Bar shall be approved by the commission. If approved in advance by the real estate commission, correspondence courses and audio or video tapes may be used to satisfy the continuing education requirement.

Upon application for renewal of a real estate license in each year following one thousand nine hundred ninety, such real estate broker or salesperson must furnish satisfactory evidence, as established by the commission, that he or she has completed the required number of continuing education hours: Provided, That a real estate broker or salesperson holding a license on the first day of July, one thousand nine hundred sixty-nine, and continuously thereafter, shall be exempt from continuing education requirements. When a real estate broker or salesperson in an inactive status reverts to an active status, he will obtain seven hours continuing education each year without being required to complete additional hours of education resulting from his inactive status.

CHAPTER 168
(S. B. 103—By Senators Harman, Holliday and Felton)

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

AN ACT to amend and reenact section seven, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the housing of adult male criminal offenders and adult female criminal offenders at Pruntytown Correctional Center.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-7. Pruntytown Correctional Center established as a minimum security facility; limitations on type of residents therein.

1 The commissioner of corrections is hereby authorized to house adult male criminal offenders and adult female criminal offenders as the commissioner deems necessary for the operation of a just, humane and efficient system of corrections at the facility located at Pruntytown, West Virginia, heretofore known as the West Virginia Industrial School for Boys. Henceforth, this facility shall be known as the Pruntytown Correctional Center and shall be operated according to rules and regulations promulgated by the commissioner pursuant to the provisions of section four, article thirteen, chapter sixty-two.

CHAPTER 169

(Com. Sub. for S. B. 231—By Senator Tucker, Mr. President)

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

AN ACT to amend and reenact article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a general revision of the law applicable to providing public legal services to indigents subjected to criminal or quasi-criminal proceedings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PUBLIC DEFENDER SERVICES.
§29-21-1. Legislative findings; purpose.
§29-21-3. Establishment of public defender services.
§29-21-4. Purpose and duties of public defender services.
§29-21-5. Executive director.
§29-21-7. Criminal law research center established; functions.
§29-21-10. Public defender corporation—Intent to apply for funding.
§29-21-11. Public defender corporations—Funding applications; legal representation plans; review.
§29-21-12. Public defender corporation funding applications.
§29-21-13. Approval of public defender corporation funding applications; funding; compensation of corporations and panel attorneys; record keeping by public defender corporations.
§29-21-14. Limitation on use of funds; exceptions.
§29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.
§29-21-17. Private practice of law by public defenders.
§29-21-18. Records and reports.
§29-21-19. Audits.
§29-21-20. Appointed counsel immune from liability.

§29-21-1. Legislative findings; purpose.

1 The Legislature finds and declares that in certain proceedings the state is required to provide high quality legal assistance to indigent persons who would be otherwise unable to afford adequate legal counsel; that providing legal representation to those who face an economic barrier to adequate legal counsel will serve the ends of justice in accordance with rights and privileges guaranteed to all citizens by the constitution of the United States of America and the constitution of the state of West Virginia; that the availability of quality legal assistance reaffirms the faith of our citizens in our government of laws; that the present system which utilizes appointed counsel is not operating satisfactorily in some areas of this state and the Legislature is presently unable to determine what system or systems will provide the most efficient means for providing legal representation; that there is a need to explore alternative methods of delivering legal assistance, including the use of salaried public defenders complemented by
20 private panel attorneys; that innovative programs and
21 pilot projects as well as a continuation of the present
22 appointed counsel system are necessary in separate
23 areas of the state to provide information and experience
24 upon which to base future legislative action.


1 As used in this article, the following words and
2 phrases are hereby defined:
3 (1) "Eligible client": Any person who meets the
4 requirements established by this article to receive
5 publicly funded legal representation in an eligible
6 proceeding as defined herein;
7 (2) "Eligible proceeding": Criminal charges which
8 may result in incarceration, juvenile proceedings,
9 proceedings to revoke parole or probation if the
10 revocation may result in incarceration, contempt of
11 court, child abuse and neglect proceedings which may
12 result in a termination of parental rights, mental
13 hygiene commitment proceedings, paternity proceed-
14 ings, extradition proceedings, proceedings brought in
15 aid of an eligible proceeding, and appeals from or post
16 conviction challenges to the final judgment in an eligible
17 proceeding. Legal representation provided pursuant to
18 the provisions of this article shall be limited to the court
19 system of the state of West Virginia;
20 (3) "Legal representation": The provision of any legal
21 services or legal assistance consistent with the purposes
22 and provisions of this article;
23 (4) "Private practice of law": The provision of legal
24 representation by a public defender or assistant public
25 defender to a client who is not entitled to receive legal
26 representation under the provisions of this article, but
27 does not include, among other activities, teaching;
28 (5) "Public defender": The staff attorney employed on
29 a full-time basis by a public defender corporation who,
30 in addition to providing direct representation to eligible
31 clients, has administrative responsibility for the opera-
32 tion of the public defender corporation: Provided, That
33 the public defender may be a part-time employee if the
board of directors of the public defender corporation finds efficient operation of the corporation does not require a full-time attorney, and the executive director approves such part-time employment;

(6) "Assistant public defender": A staff attorney providing direct representation to eligible clients whose salary and status as a full-time or part-time employee are fixed by the board of directors of the public defender corporation;

(7) "Public defender corporation": A corporation created under section eight of this article for the sole purpose of providing legal representation to eligible clients; and

(8) "Public defender office": An office operated by a public defender corporation to provide legal representation under the provisions of this article.

§29-21-3. Establishment of public defender services.

There is hereby created an executive agency known as public defender services. The agency shall administer, coordinate and evaluate programs by which the state provides legal representation to indigent persons, monitor the progress of various delivery systems, and recommend improvements. The agency shall maintain its office at the state capital.

§29-21-4. Purpose and duties of public defender services.

The agency shall have as its principal purpose the development and improvement of programs by which the state provides legal representation to indigent persons.

§29-21-5. Executive director.

(a) The governor shall appoint, by and with the advice and consent of the Senate, on or before the first day of July, one thousand nine hundred eighty-nine, the executive director of public defender services, who shall serve at the will and pleasure of the governor. The executive director shall be a qualified administrator as determined by the governor, and shall be a member of the bar of the supreme court of appeals. In addition to
the executive director there shall be such other em-
ployees as the executive director determines to be
necessary. The executive director shall have the author-
ity to promulgate rules, and shall have such other
authority and perform such duties as may be required
or necessary to effectuate this article. The executive
director shall provide supervision and direction to the
other agency employees in the performance of their
duties.

(b) The executive director's annual salary shall be as
determined by the governor.


(a) Consistent with the provisions of this article, the
agency is authorized to make loans and grants to and
contracts with public defender corporations and with
individuals, partnerships, firms, corporations and
nonprofit organizations, for the purpose of providing
legal representation under this article, and may make
such other loans, grants and contracts as are necessary
to carry out the purposes and provisions of this article.

(b) The agency is authorized to accept, and employ or
dispose of in furtherance of the purposes of this article,
any money or property, real, personal or mixed, tangible
or intangible, received by gift, devise, bequest or
otherwise.

(c) The agency shall establish and the executive
director or his designate shall operate a criminal law
research center as provided for in section seven of this
article. This center shall undertake directly, or by grant
or contract, to serve as a clearinghouse for information;
to provide training and technical assistance relating to
the delivery of legal representation; and to engage in
research, except that broad general legal or policy
research unrelated to direct representation of eligible
clients may not be undertaken.

(d) The agency shall establish and the executive
director or his designate shall operate an accounting and
auditing division to require and monitor the compliance
with this article by public defender corporations and
other persons or entities receiving funding or compensation from the agency. This division shall review all plans and proposals for loans, grants and contracts, and shall make a recommendation of approval or disapproval to the executive director. The division shall prepare, or cause to be prepared, reports concerning the evaluation, inspection, or monitoring of public defender corporations and other grantees, contractors, persons or entities receiving financial assistance under this article, and shall further carry out the agency's responsibilities for records and reports as set forth in section eighteen of this article.

Upon the request of the executive director, the accounting and auditing division shall require each public defender corporation to annually report on nonbillable time of its professional employees, including time utilized in administration of the respective offices, so as to compare such time to similar time expended in nonpublic law offices for like activities.

(e) The accounting and auditing division shall provide to the executive director assistance in the fiscal administration of all of the agency's divisions. Such assistance shall include, but not be limited to, budget preparation and statistical analysis.

(f) The agency shall establish and the executive director or a person designated by the executive director shall operate an appellate advocacy division for the purpose of prosecuting litigation on behalf of eligible clients in the supreme court of appeals. The executive director or a person designated by the executive director shall be the director of the appellate advocacy division. The appellate advocacy division shall represent eligible clients upon appointment by the circuit courts, or by the supreme court of appeals. The division may, however, refuse such appointments due to a conflict of interest or if the executive director has determined the existing caseload cannot be increased without jeopardizing the appellate division's ability to provide effective representation. In order to effectively and efficiently utilize the resources of the appellate division the executive director
may restrict the provision of appellate representation to
certain types of cases.

The executive director is empowered to select and
employ staff attorneys to perform the duties prescribed
by this subsection. Within the appropriations to the
agency, the appellate division shall have its own budget
as determined to be appropriate by the executive
director and shall maintain vouchers and records for
representation of eligible clients, for record purposes
only.

§29-21-7. Criminal law research center established;
functions.

(a) Within the agency, there shall be a division known
as the criminal law research center which may:

(1) Undertake research, studies and analyses and act
as a central repository, clearinghouse and disseminator
of research materials;

(2) Prepare and distribute a criminal law manual and
other materials and establish and implement standard
and specialized training programs for attorneys practicing
criminal law;

(3) Provide and coordinate continuing legal education
programs and services for attorneys practicing criminal
law; and

(4) Prepare, supplement and disseminate indices and
digests of decisions of the West Virginia supreme court
of appeals and other courts, statutes and other legal
authorities relating to criminal law.

(b) The services of the criminal law research center
shall be offered at reasonable rates or by subscription,
and such service shall be provided to prosecuting
attorneys and their professional staffs, panel attorneys,
and private attorneys engaged in the practice of
criminal law on the same basis as such services are
provided to public defender corporations, public defend-
ers and assistant public defenders.


(a) In each judicial circuit of the state, there is hereby
created a "public defender corporation" of the circuit:

Provided, That one such public defender corporation shall serve both the twenty-third and thirty-first judicial circuits. The purpose of such public defender corporations is to provide legal representation in the respective circuits in accordance with the provisions of this article.

(b) The public defender corporations are hereby activated in the first, second, third, seventh, eighth, ninth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, twenty-third and thirty-first combined, twenty-fifth, twenty-eighth and thirtieth judicial circuits. Public defender corporations in other circuits may be activated by the executive director if the judge of a single judge circuit, the chief judge of a multi-judge circuit or a majority of the active members of the bar in the circuit determine there is a need to activate the corporation and certify that fact in writing to the executive director.

(c) Public defender corporations may apply in writing to the executive director for permission to merge to form multi-circuit or regional public defender corporations. Applications for mergers shall be subject to the review procedures set forth in section eleven of this article.


(a) In each circuit of the state, the circuit court shall establish and maintain regional and local panels of private attorneys-at-law who shall be available to serve as counsel for eligible clients.

(b) An attorney-at-law may become a panel attorney and be enrolled on the regional or local panel, or both, to serve as counsel for eligible clients, by informing the court. A prospective panel attorney shall inform the court in writing, on forms provided by the executive director, of a desire to accept appointments generally, or of the specific types of cases in which he or she will accept appointments. The attorney shall also indicate whether or not he or she will accept appointments in adjoining circuits and, if so, in which circuits. An agreement to accept cases generally or certain types of cases particularly shall not prevent a panel attorney from declining an appointment in a specific case.
(c) In all cases where an attorney-at-law is required to be appointed for an eligible client, the appointment shall be made by the circuit judge. In circuits where a public defender office is in operation, the judge shall appoint the public defender office unless such appointment is not appropriate due to a conflict of interest or unless the public defender corporation board of directors has notified the court that the existing caseload cannot be increased without jeopardizing the ability of defenders to provide effective representation. If the public defender office is not available for appointment, the court shall appoint one or more panel attorneys from the local panel. If there is no local panel attorney available, the judge shall appoint one or more panel attorneys from the regional panel. If there is no regional panel attorney available, the judge may appoint a public defender office from an adjoining circuit if such public defender office agrees to the appointment. In circuits where no public defender office is in operation, the judge shall first refer to the local panel and then to the regional panel in making appointments, and if an appointment cannot be made from the panel attorneys, the judge may appoint the public defender office of an adjoining circuit if such public defender office agrees to the appointment. In any circuit, when there is no public defender, or assistant public defender, local panel attorney or regional panel attorney available, the judge may appoint one or more qualified private attorneys to provide representation, and such private attorney or attorneys shall be treated as panel attorneys for that specific case. In any given case, the appointing judge may alter the order in which attorneys are appointed if the case requires particular knowledge or experience on the part of the attorney to be appointed.

§29-21-10. Public defender corporation — Intent to apply for funding.

(a) Any public defender corporation established by section eight of this article applying to public defender services for financial assistance to establish a program to provide legal representation consistent with this article and any public defender corporation proposing
a major substantive modification to an existing program
shall notify the executive director and the circuit judges
in the area in which the program will deliver legal
representation of the intent to apply for such assistance
or modification. Such notice shall be given at least thirty
days prior to the filing of an application or a proposal
for modification.

(b) Notifications shall include a summary description
of the proposed program. The summary description
shall contain the following information:

(1) The identity of the applicant;

(2) The geographical area to be served by the pro-
posed program;

(3) A brief description of the proposed program,
general size or scale, estimated cost, or other character-
istics which will enable the circuit court to determine
how the system for representation of indigents within
the circuit may be affected by the proposed program;
and

(4) The estimated date the public defender corpora-
tion expects to formally file an application or modifica-
tion proposal.

§29-21-11. Public defender corporations — Funding
applications; legal representation plans; review.

(a) Any public defender corporation established by
section eight of this article or any other entity wishing
to take advantage of state financial assistance through
the agency must submit a funding application to the
executive director.

(b) The funding application, which is to be submitted
in a form prescribed by the executive director, shall
contain a general description of the plans and policies
the applicant intends to utilize in providing legal
representation, and such other information prescribed
by the executive director.

(c) All applications for financial assistance from
public defender services under the provisions of this
article must be submitted to the circuit judges of the
circuit for review prior to their submission to public
defender services.

(d) Completed applications shall include:

(1) All comments and recommendations made by the
circuit judges, along with a statement that such
comments have been considered prior to submission of
the application; or

(2) If no comments have been received from circuit
judges, a statement that the procedures outlined in this
section have been followed and that no comments or
recommendations have been received.

(e) Reviews required under this section shall be
completed by circuit judges within fifteen days after
receipt. If the public defender corporation or other
applicant has not received a response within the fifteen-
day period, the public defender corporation may
consider the judge to have waived his opportunity to
review and comment on the proposed program or
program modification and may submit the application
to public defender services.

§29-21-12. Public defender corporation funding
applications.

(a) If an application does not carry evidence that
appropriate circuit judges have been given an opportuni-
ty to review the application, the application shall be
returned with instructions to fulfill the requirements of
section eleven of this article.

(b) The executive director shall within seven working
days after taking any major action on an application
notify the circuit judges who have reviewed the appli-
cation of the action taken. Major actions will include
program approvals, rejections, returns for amendment,
deferrals or withdrawals.

(c) If a judge has recommended against approval, or
has recommended approval only with specific and major
substantive changes, and the executive director ap-
proves the application substantially as submitted, the
§29-21-13. Approval of public defender corporation funding applications; funding; compensation of corporations and panel attorneys; record keeping by public defender corporations.

(a) The accounting and auditing division shall review all funding applications and prepare recommendations for an operating plan and budget. The executive director shall review the funding applications and the accounting and auditing recommendations and shall, in consultation with the applicants, prepare a plan for providing legal services to the area which is the subject of the funding application.

(b) Upon final approval of a funding application by the executive director, the approved budget shall be set forth in an approval notice. The total cost to the agency shall not exceed the amount set forth in the approval notice and the agency shall not be obligated to reimburse the recipient for costs incurred in excess of such amount unless and until a program modification has been approved in accordance with the provisions of this article, revising the total costs of the program.

(c) Funding of public defender corporations or other programs or entities providing legal representation under the provisions of this article shall be by annual grants disbursed in such periodic allotments as the executive director shall deem appropriate.

(d) All recipients of funding under this article shall maintain such records as required by the executive director.

(e) All panel attorneys shall maintain detailed and accurate records of the time expended and expenses incurred on behalf of eligible clients, and upon completion of each case, exclusive of appeal, shall submit to the appointing court a voucher for services. Claims for fees and expense reimbursements shall be submitted to the appointing court on forms approved by the executive director.
director and shall meet the requirements of subsection (i) of this section. The appointing court shall review the voucher to determine if the time and expense claims are reasonable, necessary and valid and shall forward such voucher to the agency, with an order approving payment of the claimed amount or of such lesser sum the court considers appropriate: Provided, That notwithstanding any other provision of this section, public defender services may pay by direct bill, prior to the completion of the case, litigation expenses incurred by attorneys appointed under this article.

(f) In each case in which a panel attorney provides legal representation under this article, and in each appeal after conviction in circuit court, the panel attorney shall be compensated at the following rates for actual and necessary time expended:

(1) For work performed out of court, compensation shall be at the rate of twenty dollars per hour. Out-of-court work shall include, but not be limited to, travel, interviews of clients or witnesses, preparation of pleadings, and prehearing or pretrial research.

(2) For work performed in court, compensation shall be at the rate of twenty-five dollars per hour. In-court work shall include, but not be limited to, all time spent awaiting hearing or trial if the presence of the attorney is required at the time.

(3) The maximum amount of compensation for out-of-court and in-court work under this subsection is one thousand dollars: Provided, That if the eligible client is charged with a felony for which a penalty of life imprisonment may be imposed, the court may approve additional compensation for further work at one half the rates provided in this subsection.

(g) Actual and necessary expenses incurred in providing legal representation, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services, and expert witnesses shall be reimbursed to a maximum of five hundred dollars unless the court, for good cause shown, gives advance approval to incur expenses for a larger sum. Expense
vouchers shall specifically set forth the nature, amount
and purpose of expenses incurred and shall provide such
receipts, invoices or other documentation required by
the executive director.

(h) For purposes of compensation under this section,
an appeal to the supreme court of appeals from a final
order of the circuit court shall be considered a separate
case.

(i) Vouchers submitted under this section shall
specifically set forth the nature of the service rendered,
the stage of proceeding or type of hearing involved, the
date and place the service was rendered and the amount
of time expended in each instance. All time claimed on
the vouchers shall be itemized to the nearest tenth of an
hour. If the charge against the eligible client for which
services were rendered is one of several charges
involving multiple warrants or indictments, the voucher
shall indicate such fact and sufficiently identify the
several charges so as to enable the court to avoid a
duplication of compensation for services rendered. The
voucher shall indicate whether the services were
rendered by a local panel attorney, a regional panel
attorney, or such other private attorney as may have
been appointed. The executive director shall refuse to
requisition payment for any voucher which is not in
conformity with the record keeping, compensation or
other provisions of this article and in such circumstance
shall return the voucher to the court for further review.

§29-21-14. Limitation on use of funds; exceptions.

(a) Funds made available by the agency to public
defender corporations or other entities under this
article, either by loan, grant or contract, and funds used
for payments to panel attorneys shall be used only to
provide legal representation for eligible clients involved
in proceedings defined by this article as eligible
proceedings.

(b) Funds received from any source other than the
agency shall not be used by a public defender corpo-
tion for purposes prohibited by this article.

(a) The governing body of each public defender corporation shall be a board of directors consisting of persons who are residents of the area to be served by the public defender corporation.

(1) In multi-county circuits, and in the case of multi-circuit or regional corporations, the county commission of each county within the area served shall appoint a director, who shall not be an attorney-at-law. The president of each county bar association within the area served shall appoint a director, who shall be an attorney-at-law: Provided, That in a county where there is not an organized and active bar association, the circuit court shall convene a meeting of the members of the bar of the court resident within the county and such members of the bar shall elect one of their number as a director. The governor shall appoint one director, who shall serve as chairman, who may, but need not, be an attorney-at-law, unless such appointment would result in there being an even number of directors, in which event the governor shall appoint two directors, one of whom may be an attorney-at-law.

(2) In single-county circuits, the manner of selecting directors shall be the same as that described in subdivision (1) of this subsection, except that the county commission shall appoint two directors rather than one, and the bar shall appoint two directors rather than one.

(b) The board of directors shall have at least four meetings a year. Timely and effective prior public notice of all meetings shall be given, and all meetings shall be public except for those concerned with matters properly discussed in executive session.

(c) The board of directors shall establish and enforce broad policies governing the operation of the public defender corporation but shall not interfere with any attorney's professional responsibilities to clients. The duties of the board of directors shall include, but not be limited to, the following:
(1) Appointment of the public defender and any assistant public defenders as may be necessary to enable the public defender corporation to provide legal representation to eligible clients; and

(2) Approval of the public defender corporation’s budget and the fixing of professional salaries; and

(3) Renewal of the employment contract of the public defender on an annual basis except where such renewal is denied for cause: Provided, That the board of directors shall have the power at any time to remove the public defender for misfeasance, malfeasance or nonfeasance.

(d) To the extent that the provisions of chapter thirty-one of this code regarding nonprofit corporations are not inconsistent with this article, the provisions of such chapter shall be applicable to the board of directors of the public defender corporation.

(e) While serving on the board of directors, no member may receive compensation from the public defender corporation, but a member may receive payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of membership.

§29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.

(a) The agency shall establish, and periodically review and update financial guidelines for determining eligibility for legal representation made available under the provisions of this article. The agency shall adopt a financial affidavit form for use by persons seeking legal representation made available under the provisions of this article.

(b) All persons seeking legal representation made available under the provisions of this article shall complete the agency’s financial affidavit form, which shall be considered as an application for the provision of publicly funded legal representation.
Any juvenile shall have the right to be effectively represented by counsel at all stages of proceedings brought under the provisions of article five, chapter forty-nine of this code. If the child advises the court of his or her inability to pay for counsel, the court shall require the child’s parent or custodian to execute a financial affidavit. If the financial affidavit demonstrates that neither of the child’s parents, or, if applicable, the child’s custodian, has sufficient assets to pay for counsel, the court shall appoint counsel for the child. If the financial affidavit demonstrates that either of the child’s parents, or, if applicable, the child’s custodian, does have sufficient assets to pay for counsel, the court shall order the parent, or, if applicable, the custodian, to provide, by paying for, legal representation for the child in the proceedings: Provided, That the court may disregard the assets of the child’s parents or custodian and appoint counsel for the child, as provided above, if the court concludes, as a matter of law, that the child and the parent or custodian have a conflict of interest that would adversely affect the child’s right to effective representation of counsel, or concludes, as a matter of law, that requiring the child’s parent or custodian to provide legal representation for the child would otherwise jeopardize the best interests of the child.

(c) In circuits in which no public defender office is in operation, circuit judges shall make all determinations of eligibility. In circuits in which a public defender office is in operation, all determinations of indigency shall be made by a public defender office employee designated by the executive director. Such determinations shall be made after a careful review of the financial affidavit submitted by the person seeking representation. The review of the affidavit shall be conducted in accord with the financial eligibility guidelines established by the agency pursuant to subsection (a) of this section. In addition to the financial eligibility guidelines, the person determining eligibility shall consider other relevant factors, including, but not limited to, those set forth in subdivisions (1) through (8) of subsection (d) of this section. If there is substan-
tial reason to doubt the accuracy of information in the financial affidavit, the person determining eligibility may make such inquiries as are necessary to determine whether the affiant has truthfully and completely disclosed the required financial information. After reviewing all pertinent matters the person determining eligibility may find the affiant to be eligible to have the total cost of legal representation provided by the state, or may find that the total cost of providing representation shall be apportioned between the state and the eligible person. A person whose annual income exceeds the maximum annual income level allowed for eligibility may receive all or part of the necessary legal representation, or a person whose income falls below the maximum annual income level for eligibility may be denied all or part of the necessary legal representation if the person determining eligibility finds the person's particular circumstances require that eligibility be allowed or disallowed, as the case may be, on the basis of one or more of the eight factors set forth in subsection (d) of this section. If legal representation is made available to a person whose income exceeds the maximum annual income level for eligibility, or if legal representation is denied to a person whose income falls below the maximum annual income level for eligibility, the person determining eligibility shall make a written statement of the reasons for the action and shall specifically relate those reasons to one or more of the factors set forth in subsection (d) of this section.

(d) The following factors shall be considered in determining eligibility for legal representation made available under the provisions of this article:

1. Current income prospects, taking into account seasonal variations in income;

2. Liquid assets, assets which may provide collateral to obtain funds to employ private counsel and other assets which may be liquidated to provide funds to employ private counsel;

3. Fixed debts and obligations, including federal, state and local taxes and medical expenses;
(4) Child care, transportation and other expenses necessary for employment;

(5) Age or physical infirmity of resident family members;

(6) Whether the person seeking publicly funded legal representation has made reasonable and diligent efforts to obtain private legal representation, and the results of those efforts;

(7) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought; and

(8) The consequences for the individual if legal assistance is denied.

(e) Legal representation requested by the affiant may not be denied in whole or part unless the affiant can obtain legal representation without undue financial hardship. Persons determined to be eligible by public defender personnel may have the initial determination reviewed by a local circuit judge who may amend, modify or rewrite the initial determination. At any stage of the proceedings a circuit court may determine a prior finding of eligibility was incorrect or has become incorrect as the result of the affiant's changed financial circumstances, and may revoke any prior order providing legal representation. In such event any attorney previously appointed shall be entitled to compensation under the provisions of law applicable to such appointment for services already rendered.

(f) In the circumstances and manner set forth below, circuit judges may order repayment to the state, through the office of the clerk of the circuit court having jurisdiction over the proceedings, of the costs of representation provided under this article:

(1) In every case in which services are provided to an indigent person and an adverse judgment has been rendered against such person, the court may require that person, and in juvenile cases, may require the juvenile's parents or custodian, to pay as costs the compensation of appointed counsel, the expenses of the
defense and such other fees and costs as authorized by statute.

(2) The court shall not order a person to pay costs unless the person is able to pay without undue hardship. In determining the amount and method of repayment of costs, the court shall take account of the financial resources of the person, the person's ability to pay and the nature of the burden that payment of costs will impose. The fact that the court initially determines, at the time of a case's conclusion, that it is not proper to order the repayment of costs does not preclude the court from subsequently ordering repayment should the person's financial circumstances change.

(3) When a person is ordered to repay costs, the court may order payment to be made forthwith or within a specified period of time or in specified installments. If a person is sentenced to a term of imprisonment, an order for repayment of costs is not enforceable during the period of imprisonment unless the court expressly finds, at the time of sentencing, that the person has sufficient assets to pay the amounts ordered to be paid or finds there is a reasonable likelihood the person will acquire the necessary assets in the foreseeable future.

(4) A person who has been ordered to repay costs, and who is not in contumacious default in the payment thereof, may at any time petition the sentencing court for modification of the repayment order. If it appears to the satisfaction of the court that continued payment of the amount ordered will impose undue hardship on the person or the person's dependents, the court may modify the method or amount of payment.

(5) When a person ordered to pay costs is also placed on probation or imposition or execution of sentence is suspended, the court may make the repayment of costs a condition of probation or suspension of sentence.

(g) Circuit clerks shall keep a record of repaid counsel fees and defense expenses collected pursuant to this section and shall, quarterly, pay the moneys to the state auditor who shall deposit the funds in the general revenue fund of the state.
The making of an affidavit subject to inquiry under this section shall not in any event give rise to criminal remedies against the affiant nor occasion any civil action against the affiant except for the recovery of costs as in any other case where costs may be recovered. A person who has made an affidavit knowing the contents thereof to be false may be prosecuted for false swearing as provided by law.

§29-21-17. Private practice of law by public defenders.

(a) No full-time public defender or full-time assistant public defender may engage in any private practice of law except as provided in this section.

(b) A board of directors may permit a newly employed full-time public defender or full-time assistant public defender to engage in the private practice of law for compensation for the sole purpose of expeditiously closing and withdrawing from existing private cases from a prior private practice. In no event shall any person employed for more than ninety days as a full-time public defender or full-time assistant public defender be engaged in any other private practice of law for compensation.

(c) A board of directors may permit a full-time public defender or full-time assistant public defender to engage in private practice for compensation if the defender is acting pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction and if the defender remits to the public defender corporation all compensation received.

(d) A board of directors may permit a full-time public defender or full-time assistant public defender to engage in uncompensated private practice of law if the public defender or assistant public defender is acting:

(1) Pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(2) On behalf of a close friend or family member; or

(3) On behalf of a religious, community or charitable group.
§29-21-18. Records and reports.

(a) The agency is authorized to require such reports as it deems necessary from any public defender corporation or other entity or person receiving funding under this article regarding activities carried out pursuant to this article.

(b) The agency is authorized to prescribe the keeping of records with respect to the activities of public defender corporations and other grantees, contractors, persons or entities receiving financial assistance under this article and shall have access to such records at all reasonable times for the purpose of ensuring compliance with the terms and conditions upon which financial assistance was provided.

(c) Copies of all reports pertinent to the evaluation, inspection, or monitoring of any public defender corporation, other grantee, contractor, person or entity receiving financial assistance under this article shall be maintained by the agency for a period of at least five years subsequent to such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the agency may establish.

§29-21-19. Audits.

(a) The accounts of each public defender corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by the state tax commissioner.

(b) The audits shall be conducted at the place or places where the accounts of the public defender corporation are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the public defender corporation and necessary to facilitate the audits shall
be made available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(c) The report of the annual audit shall be filed with the agency and shall be available for public inspection during business hours at the principal office of the public defender corporation. The report of each such audit shall be maintained for a period of at least five years at the office of the agency.

§29-21-20. Appointed counsel immune from liability.

Any attorney who provides legal representation under the provisions of this article under appointment by a circuit court or by the supreme court of appeals, and whose only compensation therefor is paid under the provisions of this article, shall be immune from liability arising from that representation in the same manner and to the same extent that prosecuting attorneys are immune from liability.

CHAPTER 170
(Com. Sub. for S. B. 233—By Senators Rundle and Lucht)

[Passed April 5, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to penalties for accepting money or other things of value for performing or failing to perform duties; contracting for the providing of extraordinary police or security services by the department; procedures; assignment of personnel, equipment or facilities by the superintendent; reimbursement therefor; payment of officer or member; contract to contain provisions relating to public disaster or emergency and reassignment of personnel; requiring provision for indemnity; and authorizing the superintendent to promulgate rules and regulations.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-18. Officers or members performing duties for private persons; general penalty; providing extraordinary police or security services by contract.

(a) Any officer or member of the department of public safety who hires himself or herself to any person, firm or corporation to guard private property, or who demands or receives from any person, firm or corporation any money or other thing of value as a consideration for the performance of, or the failure to perform, his or her duties under the regulations of the superintendent and the provisions of this article, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for not less than one nor more than five years, and any such officer or member of the department of public safety who violates any other provisions of this article, for which no other penalty is expressly provided, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county jail for not more than four months, or both fined and imprisoned.

(b) Notwithstanding any other provision of this article, the superintendent may contract with public, quasi-public, military or private entities to provide extraordinary police or security services by the department when it is determined by the superintendent to be in the public interest. The superintendent shall assign such personnel, equipment or facilities as is deemed necessary and the department shall be reimbursed for the wages, overtime wages, benefits and costs of providing the contract services as negotiated between the parties. The compensation paid to public safety personnel by virtue of contracts provided for in this section shall be paid from a special account and shall be excluded from any formulation used to calculate an
employee's benefits. All requests for obtaining extraordinary police or security services shall be made to the superintendent in writing and shall explain the funding source and the authority for making such a request. No officer or member of the department shall be required to accept any assignment made pursuant to this subsection. Every officer or member assigned to duty hereunder shall be paid according to the hours and overtime hours actually worked notwithstanding that officer's or member's status as exempt personnel under the Federal Labor Standards Act or applicable state statutes. Every contract entered into under this subsection shall contain the provision that in the event of public disaster or emergency where the reassignment to official duty of all officers and members is required, neither the department nor any of its officers or members shall be liable for any damages incurred as the result of the reassignment. Further, any entity contracting with the department of public safety under this section shall also agree as part of that contract to hold harmless and indemnify the state, department of public safety and its personnel from any liability arising out of employment under the contract. The superintendent is authorized to promulgate legislative rules and regulations in accordance with chapter twenty-nine-a of this code relating to the implementation of any contracts made under this subsection: Provided, That said regulations shall expressly prohibit private employment of officers or members in circumstances involving labor disputes.

CHAPTER 171

(Com. Sub. for H. B. 2382—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

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

AN ACT to repeal article thirty-one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter fifteen of said code by adding thereto a new article, designated
article five-a, relating to the West Virginia Emergency Response And Community Right-to-Know Act; setting forth purpose; creating the West Virginia Emergency Response Commission; setting forth responsibilities; providing definitions; referencing certain federal legislation; setting forth composition, organization, qualifications, terms, removal, compensation and meeting requirements for the State Emergency Response Commission; setting forth powers and duties of the commissions; providing for procedural rules; providing for certain fees; setting forth powers and duties of the office of emergency services; providing for the establishment of emergency planning districts and committees; relating to facility fees and a special account to receive such fees; providing for a local grant program; setting forth a mechanism to collect and disseminate information to the public on certain hazardous chemicals and toxic chemicals and to assure that state and local authorities and the public are adequately prepared to respond to releases of hazardous chemicals and toxic chemicals into the environment; providing commission standards and requirements more stringent than federal law; providing for penalties; authorizing the commission to utilize the attorney general in initiating legal actions and penalties; and authorizing the commission to comply with the obligations of the state under federal law.

Be it enacted by the Legislature of West Virginia:

That article thirty-one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter fifteen of said code be amended by adding thereto a new article, designated article five-a, to read as follows:

ARTICLE 5A. WEST VIRGINIA EMERGENCY RESPONSE AND COMMUNITY RIGHT-TO-KNOW ACT.


The Legislature recognizes that Title III of the 1986: The Emergency Planning and Community Right-to-Know Act of 1986, P.L. 99-499, enacted by the United States congress and signed into law on the seventeenth day of October, one thousand nine hundred eighty-six, has two primary objectives, i.e., to require states and local communities to develop comprehensive emergency response plans, and to establish a program for the collection and dissemination to the public of information on certain hazardous chemicals and toxic chemicals in their communities.

The purpose of this article is to enable and authorize this state to fulfill its obligations under the federal statute.


The state emergency response commission shall have within its jurisdiction and supervision the preparation and implementation of comprehensive emergency response plans for each designated emergency planning district within the state so as to comply with the requirements of 42 U.S.C. §11001, et seq. The commission, through the office of emergency services, shall also be responsible for providing the citizens of this state with information in accordance with the requirements of 42 U.S.C. §11001, et seq., and this article. All state agencies shall cooperate with and assist the commission in all commission duties and responsibilities.


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

(a) “Best management practices” means any practices made applicable to a facility pursuant to section 304(e)
of the Clean Water Act and the federal regulations promulgated thereunder.

(b) "Clean Water Act" means the Federal Water Pollution Control Act, P.L. 92-500, enacted on the eighteenth day of October, one thousand nine hundred seventy-two, and all subsequent amendments to that act.

c) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

d) "Commission" means the state emergency response commission.

e) "Committee" means a local emergency planning committee.

(f) "Emergency planning district" means a geographic area designated by the commission as requiring its own comprehensive emergency response plan. The commission may designate existing political subdivisions or multijurisdictional planning organizations as such districts.

g) "Facility" means a facility subject to the provisions of 42 U.S.C. §11001, et seq., and this article, pursuant to the provisions of 42 U.S.C. §11002.

(h) "Local emergency planning committee" means that group of persons, for each emergency planning district, who are appointed by the state emergency response commission in accordance with the provisions of section seven of this article.

(i) "Resource Conservation and Recovery Act" means P.L. 94-580, enacted on the twenty-first day of October, one thousand nine hundred seventy-six, and all subsequent amendments to that act.

(j) "Spill prevention control and countermeasure plan" means any plan developed pursuant to section 112.3 of title 40 of the code of federal regulations.


(a) There is hereby created the state emergency response commission.

(b) The state emergency response commission shall consist of eleven members, including the director of the department of natural resources, the director of the health department, the director of the air pollution control commission, the director of the office of emergency services, the superintendent of the department of public safety, the commissioner of the department of highways; one designee of the public service commission and one designee of the state fire marshal, all of whom shall be members ex officio. A representative from the chemical industry, a representative of a municipal or volunteer fire department and a representative of the public who shall be knowledgeable in the area of emergency response shall be appointed by the governor as public members of the state emergency response commission. The director of the office of emergency services shall serve as the chairman of the commission and shall cast a vote only in the event of a tie vote. Members shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties under this article. The initial public members appointed by the governor shall serve for a term ending on the first day of July, one thousand nine hundred ninety-one. A successor to a public member of the commission shall be appointed in the same manner as the original public members and shall have a term of office expiring two years from the date of the expiration of the term for which his predecessor was appointed. In cases of any vacancy among the public members, such vacancy shall be filled by appointment by the governor. Any member appointed to fill a vacancy on the commission occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Members appointed by the governor may be removed by the governor in case of
incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The commission shall elect from its membership a vice chairman and appoint a secretary. The secretary need not be a member of the commission. The vice chairman shall preside over the meetings and hearings of the commission in the absence of the chairman. The commission may appoint and employ such personnel as may be required, whose duties shall be defined by the commission and whose compensation, to be fixed by the commission, shall be paid out of the state treasury, upon the requisition of the commission, from moneys appropriated for such purposes.

(d) The commission may establish procedural rules in accordance with chapter twenty-nine-a of the code for the regulation of its affairs and the conduct of all proceedings before it. All proceedings of the commission shall be entered in a permanently bound record book, properly indexed, and the same shall be carefully preserved and attested by the secretary of the commission. The commission shall meet at such times and places as may be agreed upon by the commissioners, or upon the call of the chairman of the commission or any two members of the commission, all of which meetings shall be general meetings for the consideration of any and all matters which may properly come before the commission. A majority of the commission shall constitute a quorum for the transaction of business.


The commission shall have and may exercise the following powers and authority and shall perform the following duties:

(a) Designate emergency planning districts;

(b) Appoint local emergency planning committees for each emergency planning district and supervise and coordinate the activities of such committees;

(c) Revise any designations and appointments made under subsections (a) and (b) of this section as it deems appropriate: Provided, That any interested person may
petition the state emergency response commission to
modify the membership of a local emergency planning
commission;

(d) Designate, if necessary, additional facilities which
shall be subject to the requirements of this article,
provided such designation is made after public notice
and opportunity for comment as provided under article
three, chapter twenty-nine-a of the code;

(e) Review the emergency response plans submitted
by the local emergency planning committees and make
recommendations to the local committees on revisions of
the plan that may be necessary to ensure coordination
of such plan with the plans of other emergency planning
districts and other existing state and local emergency
response plans;

(f) Enter into cooperative agreements with other state
agencies designating specific responsibilities to be
performed by such state agencies to implement the
provisions of this article;

(g) Promulgate procedural rules in accordance with
the provisions of article three, chapter twenty-nine-a of
this code, establishing rules of practice before the
commission;

(h) Promulgate procedural rules in accordance with
the provisions of article three, chapter twenty-nine-a of
this code, establishing procedures for receiving and
processing requests from the public for information in
accordance with the provisions of 42 U.S.C. §11001, et
seq., and this article, and prescribing forms and
instructions for requesting such information;

(i) Promulgate procedural rules in accordance with
the provisions of article three, chapter twenty-nine-a of
this code, prescribing forms and instructions for the
submission and receipt of confidential information;

(j) Promulgate rules establishing the following fees
which shall be deposited in a special account for the
administration of this act and which shall be reasonably
calculated to recover the necessary expenses incurred by
(1) An emergency planning notification fee not to exceed one hundred dollars to be paid by a facility when it makes the emergency planning notification required under SARA, Title III, sections 301 through 303;

(2) An inventory form fee not to exceed one hundred dollars to be paid annually by a facility when it submits the emergency and hazardous chemical inventory forms or material safety data sheet required under SARA, Title III, sections 311 and 312; and

(3) A surcharge fee not to exceed twenty percent of the fee otherwise payable to be paid by facilities which fail to pay the fees in paragraphs (1) and (2) in a timely manner;

(k) Establish an emergency planning grant program to be administered by the commission. The grant programs will be funded by fees collected to administer this act pursuant to subdivision (j) of this section. The commission shall promulgate rules which establish the method of awarding such grants to local emergency planning committees to assist them in performing their responsibilities under this article; and

(l) Promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to implement the provisions of this article.

(m) The chairman of the commission may order a facility owner or operator to comply with the requirements of applicable federal law, this article and any rules or regulations promulgated thereunder. When the chairman has reasonable cause to believe that there exists a failure to comply with the provisions of applicable federal law, this article or any rule or regulation promulgated thereunder or any order entered by the chairman, he may request the attorney general to commence an action for civil penalties, injunctive relief or other appropriate relief to enforce such provisions, rules and regulations or order. Such

The office of emergency services, as created by article five, chapter fifteen of the code of West Virginia, shall perform the administrative duties of the state emergency response commission. The administrative duties to be performed by the office of emergency services shall include, but shall not be limited to, the following:

(a) Receive, catalogue and organize information required to be submitted to the commission;
(b) Utilize existing state response organizations, plans and facilities to the extent possible;
(c) Upon concurrence of the commission, enter into training exercise agreements with federal response agencies;
(d) Coordinate with other state agencies on training for first responders and emergency service personnel;
(e) Respond to requests to the commission from the public for information pursuant to this act;
(f) Perform such preliminary analysis and collect such information as may be required to enable the commission to fully review local emergency response plans; and
(g) The director may employ such clerical and technical personnel and acquire data management and other equipment and office space as may be necessary to carry out the provisions of this act.


(a) The state emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency response plans.
plans. After designating emergency planning districts, the state emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include representatives from each of the following groups or organizations: (1) Elected state and local officials; (2) law enforcement, civil defense, fire fighting, first aid, health, local environmental, hospital and transportation personnel; (3) broadcast and print media; (4) community groups; and (5) owners and operators of facilities subject to the requirements of this article. In addition to the above members, each county commission president from every county within the district, or a member of the county commission designated by the president, shall be appointed as a member of the committee and such appointment may fulfill the requirement to appoint elected local officials.

(b) Each local committee shall appoint a chairperson and establish procedural rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee and distribution of the emergency plan.

(c) The local committees shall submit their proposed procedural rules to the state emergency response commission for review and comment no later than the first day of January, one thousand nine hundred ninety. If any local committees fail to submit proposed procedural rules, the state emergency response commission shall itself promulgate rules applicable to such local committees.

(d) The local emergency planning committee shall have and may exercise the following powers and authority and shall perform the following duties:

(1) Establish procedures for receiving and processing requests from the public for information regarding any emergency response plan, material safety data sheet, emergency, first aid and medical treatment procedures, list described in 42 U.S.C. §11021(a)(2), inventory form,
toxic chemical release form, or followup emergency notice, including tier II information under 42 U.S.C. §11022;

(2) Designate an official to serve as coordinator for information for processing requests for information from the public;

(3) Develop and implement a comprehensive emergency response plan in accordance with 42 U.S.C. §11003, and review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require: Provided, That such comprehensive emergency response plans may not require a covered facility to revise, modify or otherwise alter any emergency release response or release prevention plan that has been prepared pursuant to any other state or federal statute or regulation including, but not limited to, contingency plans developed under the Resource Conservation and Recovery Act, Spill Prevention and Countermeasure Plans, or Best Management Practices Plans developed under the Clean Water Act;

(4) Prior to implementation, submit a copy of the prepared emergency response plan to the state emergency response commission for review and recommendation;

(5) Publish annually a notice in local newspapers that the emergency response plan is available for review, as are those material safety data sheets, emergency, first aid and medical treatment procedures, inventory forms and followup emergency notices which have been submitted to the committee. The notice shall also state that members of the public who wish to review any such plan, sheet, form or followup notice may do so at a designated location;

(6) Establish deadlines for responding to information requests from the public; and

(7) Receive, catalogue and organize information required to be submitted to the committee under the provisions of 42 U.S.C. §11001, et seq.

1 The provisions of this article are severable and if any provision, section or part thereof shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sections or parts of the article or their application to him or to other persons and circumstances. It is hereby declared to be the legislative intent that this article would have been adopted if such invalid or unconstitutional provisions, section or part had not been included therein.

CHAPTER 172

(Com. Sub. for H. B. 2621—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

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

AN ACT to amend article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections one-d and one-e, all relating to future electric generating capacity requirements of electric utilities in West Virginia and rate recovery for construction of electric transmission facilities.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections one-d and one-e, all to read as follows:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1d. Future electric generating capacity requirements.

§24-2-1e. Rate recovery for construction of electric transmission facilities.

§24-2-1d. Future electric generating capacity requirements.

1 (a) In order to maximize the use of electricity
generated within the state by using coal or natural gas
produced within the state, the public service commission
shall by order, no later than the thirty-first day of
December, one thousand nine hundred eighty-nine,
establish the schedule and amount of future electric
generating capacity additions required by each West
Virginia electric utility, for the next ten years, taking
into account: (i) Projected load growth; (ii) existing
generating capacity; (iii) existing contractual commit-
ments to sell or purchase capacity; (iv) planned retire-
ment and life extensions of existing capacity; (v) planned
construction of capacity; (vi) availability of capacity
from generating units of affiliated companies; and (vii)
such other reasonable factors as the commission may
deem relevant and appropriate to consider.

(b) If the commission determines after considering all
such named and other relevant and appropriate factors
that a utility will be required to purchase electric
generating capacity beyond those agreements approved
by the Federal Energy Regulatory Commission or the
West Virginia public service commission in order to
serve its West Virginia customers, the amount of such
required additional purchased capacity so identified by
the commission will for purposes of this section be
referred to as the utility’s “projected deficient capacity”:
Provided, That this subsection shall not include power
generating facilities whose total production of electricity
is sold outside the state of West Virginia.

(c) In the interests of: Keeping utility rates of
residential customers as low as possible; keeping utility
rates for commercial and industrial customers compet-
itive with those of other states; attracting new industry
for which electric power costs are a major factor in
location determinations; and of not placing any greater
cost burden on government than is absolutely necessary
for its electric power needs, each utility shall acquire,
if reasonable, its projected deficient capacity from
electric generation situate in West Virginia which burns
coal or gas produced in West Virginia and which will
provide the most reliable supply of capacity and energy
at the least cost to those customers of the utility who will
be served by such electric generation: Provided, That all
power purchase contracts executed prior to the effective date of this section which satisfy the following requirements, regardless of location, shall be considered, for the purposes of this subsection, as electric generation situate in West Virginia: (1) Said contracts were negotiated in accordance with procedures and priced according to methodologies of other contracts which the commission has ordered approved; (2) said contracts either guarantee or are substantially amended to guarantee for the life of the contract the use of an amount of West Virginia fuel which equals or exceeds the amount which would be required, on a percentage of output basis, to produce the amount of electric power to be consumed in West Virginia; and (3) said contracts meet the requirements for a qualifying facility established by the Federal Energy Regulatory Commission pursuant to the Public Utility Regulatory Policies Act of 1978.

§24-2-1e. Rate recovery for construction of electric transmission facilities.

In order to encourage the construction of transmission facilities necessary to transmit electric power from generating facilities located in this state to areas where such power can be economically marketed, the commission may allow an electric utility accelerated rate recovery for transmission facilities constructed or upgraded for the purpose of increasing the capacity to transmit electric power to areas outside the utility's service territory where such power can be economically marketed. In allowing accelerated rate recovery, the commission shall include the impact of the investment in transmission facilities on any investment equalization agreement in which the utilities participate.
thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to telemetry systems on railroads; providing definitions; requiring telemetry systems on certain railroad trains in lieu of cabooses; prohibiting retaliation for reporting violations; and requiring the telemetry system to be capable of emergency braking, beginning the first day of July, one thousand nine hundred ninety-one.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-1a. Definitions; telemetry systems required.

(a) As used in this article:

(1) "Head end device" means a device located on the lead locomotive of a railroad train designed to receive information from the rear end device. It may also be used to transmit information to the rear end device;

(2) "Mainline" means a railroad track extending through railroad yards and between stations which must not be occupied without authority or protection;

(3) "Rear end device" means a device located on the rear car of a railroad train designed to transmit information to the head end device and equipped with a rear marker light, red in color, and at least one hundred, but not more than one thousand, candela. It may also be used to receive information from the head end device;

(4) "Telemetry system" means a radio transmitter and receiver system between a front end device and a rear end device which indicates through a display at the head end device the following:
(i) Brake pipe pressure at the rear of the train, displayed in increments of one pound per square inch;

(ii) Rear car movement;

(iii) Whether the rear marker light is operating;

(iv) Remaining battery life powering the system;

(v) Any interruption in radio transmission as established by a distance measuring device at the rear end device; and

(vi) The location of the rear of the train as established by a distance measuring device at the rear end device.

(b) It is unlawful to operate a railroad train over one thousand five hundred feet in length on any mainline track within any railroad yard, without an occupied caboose as the rear car of such train unless it is equipped with an operable telemetry system.

(c) No train may depart any crew change point or its point of origin unless the train is equipped with telemetry system as required by this article. Any inoperable system shall be repaired or replaced before leaving the point of origin or at crew change point.

(d) The rear marker light required by this article shall be flashing during the period from one hour before sunset until one hour after sunrise.

(e) Beginning the first day of July, one thousand nine hundred ninety-one, all telemetry devices shall be equipped so that an emergency application of the brakes of the train can be initiated at the rear car of the train either by the engineer in the lead or controlling locomotive or by a crew member riding on the rear car.

It is unlawful to institute any disciplinary action or other adverse administrative or employment action against any person who reports a violation or acts to enforce the provisions of this article. Such person’s remedies under this chapter shall be in addition to any other remedies that might be available to such person.
AN ACT to amend and reenact sections nine and thirteen, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public service districts; requiring certain information in applications for service; requiring security deposits from new applicants; requiring certain notices of delinquency and termination of service; specifying certain conditions and procedures for termination of service; and adjusting the interest rate and interest cost of the proceeds on public service district revenue bonds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-9. Rules and regulations; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.


§16-13A-9. Rules and regulations; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

1 The board may make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions
of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. Where water, sewer and gas services are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate thereof. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he shall state the name and address of the owner or owners of the premises to be served by the district. All new applicants for service shall deposit a minimum of fifty dollars with the district to secure the payment of service rates and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another minimum deposit of fifty dollars has been remitted to the district. Whenever any rates, rentals or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services
and facilities provided shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid. Provided, That the property owner shall be given notice of any said delinquency by certified mail, return receipt requested. The board may, under reasonable rules and regulations promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both: Provided, however, That upon written request of the owner or owners of the premises, the board shall shut off and discontinue water and gas services where any rates, rentals, or charges for services or facilities remain unpaid by the user of the premises for a period of sixty days after the same became due and payable.

In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or sewer facilities, and the district owns and operates the other kind of facilities, either water or sewer, as the case may be, then the district and such publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval. Any public service district providing water and sewer service to its customers shall have the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the...
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93 district providing sewer service to the delinquent
94 account, shall terminate its water service to the
95 customer having the delinquent sewer account:
96 Provided, however, That any termination of water
97 service must comply with all rules, regulations and
98 orders of the public service commission.

99 Any district furnishing sewer facilities within the
district may require, or may by petition to the circuit
court of the county in which the property is located,
compel or may require the department of health to
compel all owners, tenants or occupants of any houses,
dwellings and buildings located near any such sewer
facilities, where sewage will flow by gravity or be
transported by such other methods approved by the
department of health including, but not limited to,
vacuum and pressure systems, approved under the
provisions of section nine, article one, chapter sixteen of
this code, from such houses, dwellings or buildings into
such sewer facilities, to connect with and use such sewer
facilities, and to cease the use of all other means for the
collection, treatment and disposal of sewage and waste
matters from such houses, dwellings and buildings
where there is such gravity flow or transportation by
such other methods approved by the department of
health including, but not limited to, vacuum and
pressure systems, approved under the provisions of
section nine, article one, chapter sixteen of this code, and
such houses, dwellings and buildings can be adequately
served by the sewer facilities of the district, and it is
hereby found, determined and declared that the man-
datory use of such sewer facilities provided for in this
paragraph is necessary and essential for the health and
welfare of the inhabitants and residents of such districts
and of the state: Provided, That if the public service
district determines that the property owner must
connect with the sewer facilities even when sewage from
such dwellings may not flow to the main line by gravity
and the property owner must incur costs for any
changes in the existing dwellings' exterior plumbing in
order to connect to the main sewer line, the public
service district board shall authorize the district to pay
all reasonable costs for such changes in the exterior
plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump, or any other method approved by the department of health; maintenance and operation costs for such extra installation should be reflected in the users charge for approval of the public service commission. The circuit court shall adjudicate the merits of such petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer facility, and the engineer for the district has certified that such sewer facilities are available to and are adequate to serve such owner, tenant or occupant, and sewage will flow by gravity or be transported by such other methods approved by the department of health from such house, dwelling or building into such sewer facilities, the district may charge, and such owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner.

All delinquent fees, rates and charges of the district for either water facilities, sewer facilities or gas facilities are liens on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts.
Anything in this section to the contrary notwithstanding, any establishment, as defined in section two, article five-a, chapter twenty, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the department of natural resources, as prescribed by section seven, article five-a, chapter twenty of this code, is exempt from the provisions of this section.


For constructing or acquiring any public service properties for the authorized purposes of the district, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the district, the board of any such district is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds of such district, payable solely from the revenues derived from the operation of the public service properties under control of the district. Such bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding eighteen percent per annum payable at such times, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the board. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond is nonnegotiable, all such bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be
such officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in such manner and at such time or times as is found by the board to be most advantageous, and all such bonds may be sold at such price that the interest cost of the proceeds therefrom does not exceed nineteen percent per annum, based on the average maturity of such bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of such bonds may contain such covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized.

CHAPTER 175

(Com. Sub. for S. B. 389—By Senators Tucker, Mr. President, and Harman, By Request of the Executive)

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

AN ACT to repeal section five-b, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article three, chapter seven of said code; to amend and reenact sections one, two, three, four, five, five-a, six, seven, eight, nine, ten, nineteen, twenty-two, twenty-four and twenty-five, article twenty, chapter thirty-one of said code; and to further amend said article twenty by adding thereto two new sections, designated sections one-a and twenty-six, all relating to the West Virginia Regional Jail and Correctional Facility Authority generally; providing that no county commission is required to provide and maintain jails or holding facilities unless it is determined to be necessary; setting forth certain legislative findings and purposes; changing the reference to “prison” throughout article twenty, chapter thirty-one of the code to “correctional facility”; renaming a special fund; providing that the chairman and secretary of the board of the Regional Jail
and Correctional Facility Authority are to be elected by the members of the board every two years; changing the number and composition of the board; specifying quarterly meetings of the board unless a special meeting or meetings are called by the chairman; requiring the board to review and approve the budget of the authority annually; specifying that the executive director of the authority is its chief executive officer; providing for the nomination and appointment of the executive director by the governor with the advice and consent of the Senate, to serve at the will and pleasure of the governor; specifying certain duties of the executive director; providing that the authority may enter into certain types of contracts; specifying that the authority shall provide the Jail and Correctional Facility Standards Commission with secretarial and other necessary services; creating the regional jail and correctional facility development fund; and creating a legislative oversight committee.

Be it enacted by the Legislature of West Virginia:

That section five-b, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section two, article three, chapter seven of said code be amended and reenacted; that sections one, two, three, four, five, five-a, six, seven, eight, nine, ten, nineteen, twenty-two, twenty-four and twenty-five, article twenty, chapter thirty-one of said code be amended and reenacted; and that said article twenty be further amended by adding thereto two new sections, designated sections one-a and twenty-six, all to read as follows:

Chapter
7. County Commissions and Officers.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 3. COUNTY PROPERTY.

§7-3-2. Courthouse, jail and offices.

1 The county commission of every county, at the expense
2 of the county, shall provide at the county seat thereof
a suitable courthouse and jail, together with suitable offices for the judge of the circuit court and judges of courts of limited jurisdiction, clerks of circuit courts, courts of limited jurisdiction and of the county commission, assessor, sheriff, prosecuting attorney, county superintendent of schools, and surveyor, and all other offices as are or may be required by law: Provided, That the courthouse, including any annex or other facility housing the courts and offices herein set out (excepting all facilities that are on a twenty-four-hour basis), shall be open to the public Monday through Friday during the hours prescribed by the county commission by an order duly recorded in the order book of the commission. The county commission in such order may, in its discretion, provide that the courthouse, including any annex or other facility housing the courts and offices herein set out, be open on Saturday and prescribe the hours during which it shall be open. In no case may the county commission provide that the courthouse, including any annex or other facility housing the courts and offices herein set out, be open for business on Sundays or national or state holidays: Provided, however, That the county commission of every county having a population in excess of two hundred thousand may provide at the county seat or elsewhere in the county, as the county commission shall determine, a suitable jail or jails: Provided further, That the county commission of any county, regardless of population, may, as provided in article twenty-three, chapter eight of the code of West Virginia, contract with the county commissions of one or more other counties within this state for the erection, construction, equipment, leasing and renting of a regional correctional center for either adult or youth offenders, at a location mutually agreeable to the contracting parties and not necessarily at the county seat, which will serve each county entering into the contract. The county commission shall keep the courthouse, jail and other offices in constant and adequate repair, and supplied with the necessary heat, light, furniture, record books, and janitor service, and, except as to the office for the judge of the circuit court, with the necessary stationery and postage, and other things
as shall be necessary; but all of the public records, books
and papers belonging or appertaining to the county
surveyor's office shall be delivered to the clerk of the
county commission and retained by him in his official
possession and under his control and shall constitute a
part of the public records, books and papers of his office.
All courthouses, jails and offices hereafter erected shall
be built of stone and brick, or stone or brick, or other
equally fireproof materials, and the offices shall be
fireproof or be furnished with fireproof vaults or safes.
The jails shall be well secured, and sufficient for the
convenient accommodation of those who may be confined
therein. The county commission may also provide other
necessary offices and buildings, and may, by purchase
or otherwise, acquire as much land as may be requisite
or desirable for county purposes, and may suitably
enclose, improve and embellish the lands so acquired.

Subject to the conditions hereinabove set forth with
respect to the site of the courthouse, jail, and other
offices, the commission may, from time to time, as may
seem to it proper, provide, at the expense of the county,
a new or other building or buildings to be used for the
courthouse and jail, or for either, together with suitable
offices, as aforesaid, and for that purpose may acquire,
by purchase or otherwise, and hold any lands, or lands
and buildings, which may be necessary, and may
enclose, improve and embellish the same. When any new
or other building or buildings shall be ready for
occupancy, the county commission shall make an order
declarating that, on a day to be therein named, the new
or other building or buildings shall become the court-
house, or jail, or both the courthouse and jail of the
county, and shall cause copies of the order to be posted
at the front door of the new as well as of the old
courthouse, at least twenty days before the day named
in the order; and on and after the day named the new
or other building or buildings shall become, respec-
tively, the courthouse, or jail, or both the courthouse and
jail of the county in all respects and for all purposes.
After the change shall have been made the county
commission may sell or otherwise dispose of, as may
seem to it proper, the building or buildings previously
used as a courthouse and jail, or either, and the land on
which they are, or either is, situated, and of the interest
of the county therein.

Notwithstanding any other provision of this code to
the contrary, any county commission providing and
maintaining a jail on the effective date of this article
shall not be required to provide and maintain a jail after
a regional jail becomes available pursuant to the
provisions of article twenty, chapter thirty-one of this
code, unless the county commission determines that such
a facility is necessary: Provided, That such county
commission may provide and maintain a holding facility
which complies with the standards set forth for such
holding facilities in legislative rules promulgated by the
jail and correctional facility standards commission or its
predecessor, the jail and prison standards commission.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-1. Short title.
§31-20-1a. Legislative findings and purposes.
§31-20-2. Definitions.
§31-20-3. West Virginia regional jail and correctional facility authority; composition; appointment; terms; compensation and expenses.
§31-20-4. Governing body; organization and meetings; quorum; administrative expenses.
§31-20-5. Powers and duties of the authority; bidding procedures.
§31-20-5a. Bidding procedures.
§31-20-6. Regional jail commissions; composition; appointment; terms; compensation and expenses.
§31-20-7. General powers of the commission.
§31-20-8. Jail and correctional facility standards commission; appointment; compensation; vacancies; quorum.
§31-20-9. Purpose, powers and duties.
§31-20-10. Regional jail and correctional facility development fund.
§31-20-22. Money of the authority.
§31-20-24. Agreement with federal agencies not to alter or limit powers of authority.
§31-20-25. Further duties of the authority.
§31-20-26. Legislative oversight committee.

§31-20-1. Short title.

1 This article shall be known and may be cited as "The
§31-20-1a. Legislative findings and purposes.

(a) The Legislature finds as follows:

(1) That existing jails and correctional facilities in this state serve neither the best interests of the inmate population of such jails and facilities nor the citizens of West Virginia;

(2) That due to time constraints established and imposed by judicial decisions, it is imperative that the Legislature give immediate and diligent attention to the improvement of existing facilities and the construction and maintenance of new facilities, as well as to the development and implementation of new, innovative and effective programs dealing with incarcerated persons;

(3) That the physical condition of most existing jails and correctional facilities contribute to a frustration of efforts to provide rehabilitation, education, vocational training, and social and psychological adjustment and improvement for incarcerated persons, to the end that such existing facilities are utilized largely for the limited purposes of confinement;

(4) That there is a need to examine, understand and implement various new and innovative trends which are being advanced in the area of correctional institution design, and to explore the developing alternatives to incarceration which are being experimented with in other jurisdictions; and

(5) That the revenues of this state, insofar as they are currently used to maintain a traditional penal system, are not efficiently utilized to provide facilities or produce programs which could direct an inmate's time and effort to prepare him for life outside of confinement; nor do such revenues provide corrections officials with the resources necessary to address the issues and problems with which they are confronted.

(b) The purposes of this article are as follows:

(1) To provide a cost-efficient system within this state
36 for the construction, maintenance and operation of jails
37 and correctional facilities;
38
39 (2) To develop and implement plans for the renovation
40 and improvement of existing facilities and the design
41 and construction of new facilities to better serve the
42 inmate population and the citizens of this state;
43
44 (3) To provide an environment in which new and
45 innovative corrections programs may be considered and
46 undertaken, and in which opportunities may be offered
47 to inmates to overcome personal deficiencies which are
48 educational, vocational, social or psychological in nature;
49
50 (4) To investigate the feasibility of individualizing
51 and classifying inmates according to their psychological
52 and physical conditions at the time they are incarcera-
53 ted, and the feasibility of designing for each such
54 inmate a plan for self-improvement and rehabilitation.

§31-20-2. Definitions.
1 Unless the context indicates clearly otherwise, as used
2 in this article:
3
4 (a) "Authority" or "West Virginia Regional Jail
5 Authority" means the West Virginia regional jail and
6 correctional facility authority created by this article.
7
8 (b) "Board" means the governing body of the
9 authority.
10
11 (c) "Bonds" means bonds of the authority issued under
12 this article.
13
14 (d) "Cost of construction or renovation of a local jail
15 facility or regional jail facility" means the cost of all
16 lands, water areas, property rights and easements,
17 financing charges, interest prior to and during construc-
18 tion and for a period not exceeding six months following
19 the completion of construction, equipment, engineering
20 and legal services, plans, specifications and surveys,
21 estimates of costs and other expenses necessary or
22 incidental to determining the feasibility or practicabil-
23 ity of any such project, together with such other
24 expenses as may be necessary or incidental to the
25 financing and the construction or renovation of such
26 facilities and the placing of same in operation.
(e) "County" means any county of this state.

(f) "Federal agency" means the United States of America and any department, corporation, agency or instrumentality created, designated or established by the United States of America.

(g) "Fund" means the regional jail and correctional facility development fund provided in section ten of this article.

(h) "Government" means state and federal government, and any political subdivision, agency or instrumentality thereof, corporate or otherwise.

(i) "Inmate" means any person properly committed to a local or regional jail facility or a correctional facility.

(j) "Local jail facility" means any county facility for the confinement, custody, supervision or control of persons convicted of misdemeanors, awaiting trial or awaiting transportation to a state correctional facility.

(k) "Municipality" means any city, town or village in this state.

(l) "Notes" means any notes as defined in section one hundred four, article three, chapter forty-six of this code issued under this article by the authority.

(m) "Correctional facility" means any correctional facility, penitentiary, detention center or other correctional institution operated by the department of corrections.

(n) "Regional jail facility" or "regional jail" means any facility operated by the authority and used jointly by two or more counties for the confinement, custody, supervision or control of persons convicted of misdemeanors or awaiting trial or awaiting transportation to a state correctional facility.

(o) "Regional jail commission" means the commission established in section eight of this article.

(p) "Revenues" means all fees, charges, moneys, profits, payments of principal of, or interest on, loans
and other investments, grants, contributions and all other income received by the authority.

(q) "Security interest" means an interest in the loan portfolio of the authority which interest is secured by an underlying loan or loans and is evidenced by a note issued by the authority.

(r) "Work farm" shall have the same meaning as that term is used in section twelve, article eight, chapter seven of this code authorizing work farms for individual counties.

§31-20-3. West Virginia regional jail and correctional facility authority; composition; appointment; terms; compensation and expenses.

There is hereby created the West Virginia regional jail and correctional facility authority which shall be a body corporate and a government instrumentality. The authority shall have 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 the West Virginia regional jail and prison authority. The West Virginia regional jail and prison authority is hereby abolished. The terms of members currently serving on the board of the West Virginia regional jail and prison authority shall expire on the thirtieth day of June, one thousand nine hundred eighty-nine. Wherever in this chapter and elsewhere in law reference is made to the West Virginia regional jail and prison authority, such reference shall henceforth be construed and understood to mean the West Virginia regional jail and correctional facility authority.

The authority shall be governed by a board of seven members, consisting of the commissioner of the department of corrections; the commissioner of the department of finance and administration or his designated representative; three county officials appointed by the governor, no more than two of which may be of the same political party; and two citizens appointed by the governor to represent the areas of law and medicine. Members of the Legislature are not eligible to serve on the board.
The governor shall nominate and, by and with the advice and consent of the Senate, appoint five members of the authority for staggered terms of four years beginning the first day of July, one thousand nine hundred eighty-nine. Of the members of the board first appointed, one shall be appointed for a term ending the thirtieth day of June, one thousand nine hundred ninety-one, two shall be appointed for terms ending the thirtieth day of June, one thousand nine hundred ninety-two, and two shall be appointed for terms ending the thirtieth day of June, one thousand nine hundred ninety-three. As these original appointments expire, each subsequent appointment shall be for a full four-year term.

Any appointed member whose term has expired shall serve until his successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. Members of the authority are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

All members of the board of the authority shall execute an official bond in a penalty of ten thousand dollars, conditioned as required by law. Premiums on such bond shall be paid from funds accruing to the authority. Such bond shall be approved as to form by the attorney general and as to sufficiency by the governor and, when fully executed and approved, shall be filed in the office of the secretary of state.

§31-20-4. Governing body; organization and meetings; quorum; administrative expenses.

The governing body of the authority shall consist of the members of the board as provided for in section three of this article and shall exercise all the powers given to the authority in this article. On the second Monday of July of each odd-numbered year, the board shall meet to elect a chairman and a secretary from among its own members. The commissioner of finance
and administration or his designated representative shall serve as treasurer of the board. The board shall otherwise meet quarterly, unless a special meeting is called by its chairman.

A majority of the members of the board constitute a quorum, and a quorum must be present for the board to conduct business. Unless the bylaws require a larger number, action may be taken by majority vote of the members present.

The board shall prescribe, amend and repeal bylaws and rules governing the manner in which the business of the authority is conducted and shall review and approve the budget prepared by the executive director annually.

The governor shall, with the advice and consent of the Senate, appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the governor. The executive director is empowered to employ any other personnel he determines necessary and may appoint counsel and legal staff for the authority and retain such temporary engineering, financial and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director is further empowered to engage in negotiations and carry out plans to implement the provisions of this article and to exercise those powers listed in section five of this article on behalf of the authority. The executive director shall prepare annually a budget to be submitted to the board for its review and approval.

All costs incidental to the administration of the authority including office expense, personal services expense and current expense, shall be paid from the regional jail and correctional facility development fund in accordance with guidelines issued by the board of the authority.

§31-20-5. Powers and duties of the authority; bidding procedures.

The regional jail and correctional facility authority
shall complete a comprehensive study of all correctional facilities and jail facilities in the state of West Virginia no later than the first day of July, one thousand nine hundred eighty-six. This study shall include an assessment of the physical conditions of confinement within the institutions and the relative need for the institutions when considering other available institutions of confinement located within the state.

After completing this study, the authority shall submit a plan to the governor on the establishment of regional jails in this state and the acquisition, construction or renovation of facilities for correctional facilities. The authority shall specify groups of counties within the state to be formed into regions for the establishment of such regional jails. Within each region a local jail commission shall be established and have the powers and duties as set forth in section six of this article.

The authority shall consider, but not be limited to, the following when creating the plan establishing regions:

(1) The relative physical condition of the correctional facilities and jail facilities located within the state;

(2) The transportation costs associated with the establishment of centralized jail services including, but not limited to, the costs of transporting persons incarcerated in regional jails to court appearances, to interviews with their attorneys, and to have visitation with their families and friends, all in any county seat of a county served by the regional facility: Provided, That consideration of such costs in the creation of the plan shall not be construed to require the transportation of inmates to interviews with their attorneys or to have visitation with their families and friends when visitation facilities and schedules are established in regional jails;

(3) The availability of medical services and educational and recreational opportunities;

(4) Information received from public hearings;

(5) The relative efficiency in the cost of jail services caused by establishment of regional jail facilities;

(6) Available facilities which may be used as regional
jails or correctional facilities including, but not limited
to, existing county and state owned properties: Provided, That if the authority determines that an existing facility meets the standards or could reasonably be made to meet the standards for a regional jail or other correctional facility, the authority may proceed to acquire such existing facility and compensate the owner thereof in an amount not less than any local share expended by the owner as matching moneys for the receipt of federal funds: Provided, however, That if the authority determines that an existing facility does not meet the standards or could not reasonably be made to meet the standards for a regional jail or other correctional facility, the authority shall provide the owner with a written statement setting forth the reasons supporting such determination;

(7) The cost of acquiring, constructing, renovating, operating and maintaining local jail facilities for use as local holding facilities in each county and regional jail facilities for each county and the financing provided by this article;

(8) The leasing of any available portion of any regional jail space and the leasing of available facilities of any regional jail to the West Virginia department of corrections for the keeping and detaining of prisoners sentenced to serve terms of incarceration under the custody of the West Virginia department of corrections for nonviolent crimes and to contract with the department of corrections for the providing of food, clothing, shelter and any and all incidental costs in the care, control and maintenance of such prisoners: Provided, That such leasing does not restrict space or facilities needed for the detention of county prisoners;

(9) The advisability and cost effectiveness of acquiring, constructing, renovating, operating and maintaining work farms serving one or more counties or regions; and

(10) The proximity of possible sites for the regional jail facilities to residential areas, schools, churches and other public buildings and facilities.
Public hearings pursuant to this section shall be held by the authority in convenient locations throughout the state. No less than ten public hearings shall be held for public comment on the establishment of regional jails. The authority shall cause to be published at least two weeks in advance of a hearing a Class II-0 legal advertisement, as provided in section two, article three, chapter fifty-nine of this code, setting forth the reason for the hearing and the time, place and date thereof. The publication area shall be each county which may be included in a region for the purposes of a regional jail with the county in which the public hearing is held.

In addition to the hearing requirements above, before beginning construction of a new facility for use as a regional jail or correctional facility or before beginning renovation or acquisition of an existing facility for use as a regional jail facility, which existing facility is not already a jail, correctional facility or secure facility for the detention of juveniles or persons otherwise involuntarily committed or confined, the authority shall hold a hearing for comment by all members of the public on all aspects relating to the advisability of the use of the site for that regional jail facility. The authority shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code for the requirements for notice and other procedures of said public hearings, which requirements shall be as similar as practicable to those hearings conducted regarding the construction of bridges by the West Virginia department of highways.

The authority, as a public corporation and governmental instrumentality exercising public powers of the state, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power:

(a) To acquire, own, hold and dispose of property, real and personal, tangible and intangible.

(b) To lease property, whether as lessee or lessor.

(c) To mortgage or otherwise grant security interests in its property.
(d) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation at public or private hearings, on any matter relevant to this article and necessary for information on the construction or renovation of any correctional facility or the establishment of any correctional facility industries project.

(e) To issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant to any hearing before such authority or one or more members appointed by it to conduct any hearing.

(f) To apply to the circuit court having venue of such offense to have punished for contempt any witness who refuses to obey a subpoena, refuses to be sworn or affirmed, or refuses to testify, or who commits any contempt after being summoned to appear.

(g) To sue and be sued, implead and be impleaded, and complain and defend in any court.

(h) To adopt, use and alter at will a corporate seal.

(i) To make bylaws for the management and regulation of its affairs pursuant to article three, chapter twenty-nine-a of this code.

(j) To appoint officers, agents and employees.

(k) To make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership or corporation to effect any or all of the purposes of this article.

(l) Without in any way limiting any other subdivision of this section, to accept grants from and enter into contracts and other transactions with any federal agency.

(m) To borrow money and to issue its negotiable bonds, security interests or notes and to provide for and
secure the payment thereof, and to provide for the rights of the holders thereof, and to purchase, hold and dispose of any of its bonds, security interests or notes: Provided, That no bond or other obligation may be issued or incurred unless and until the Legislature by concurrent resolution has approved the purpose and amount of each project for which proceeds from the issuance of such bond or other obligation will be used.

(n) To sell, at public or private sale, any bond or other negotiable instrument, security interest or obligation of the authority in such manner and upon such terms as the authority considers would best serve the purposes of this article.

(o) To issue its bonds, security interests and notes payable solely from the revenues or other funds available to the authority therefor; and the authority may issue its bonds, security interests or notes in such principal amounts as it considers necessary to provide funds for any purposes under this article, including:

(1) The payment, funding or refunding of the principal of, interest on or redemption premiums on, any bonds, security interests or notes issued by it whether the bonds, security interests, notes or interest to be funded or refunded have or have not become due.

(2) The establishment or increase of reserves to secure or to pay bonds, security interests, notes or the interest thereon and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. Any bonds, security interests or notes may be additionally secured by a pledge of any revenues, funds, assets or moneys of the authority from any source whatsoever.

(p) To issue renewal notes or security interests, to issue bonds to pay notes or security interests and, whenever it considers refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no such renewal notes shall be issued to mature more than ten years from date of issuance of the notes renewed and no such refunding bonds may be issued to
mature more than twenty-five years from the date of issuance.

(q) To apply the proceeds from the sale of renewal notes, security interests or refunding bonds to the purchase, redemption or payment of the notes, security interests or bonds to be refunded.

(r) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, firm or corporation, and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants.

(s) To the extent permitted under its contracts with the holders of bonds, security interests or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interest, note or contract or agreement of any kind to which the authority is a party.

(t) To sell security interests in the loan portfolio of the authority. Such security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of security interests may be issued in the same manner and for the same purposes as bond and note revenues.

(u) To promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers, duties and responsibilities invested in the authority by the provisions of this article and otherwise by law.

(v) To assume the responsibility for operation and management of regional jail facilities under the jurisdiction of the state regional jail and correctional facility authority. The authority shall provide for the transportation of inmates between the regional jails and local holding facilities for court appearances.
(w) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate or oversee the operation of regional jails and correctional facilities.

Notwithstanding any other provision of this section, the regional jail and correctional facility authority shall no later than the first day of November, one thousand nine hundred eighty-nine, submit a plan to the joint committee on government and finance of the Legislature detailing the means by which the authority will comply with the mandates of the supreme court of appeals as to the structural and internal conditions and programs of the correctional facilities in this state. In preparing such plan, the authority is to allow for and consider any input from the public.

§31-20-5a. Bidding procedures.

1 When the cost under any contract or agreement entered into by the authority other than compensation for personal services involves an expenditure of more than two thousand dollars, the authority shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county or counties wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and general character of the materials to be furnished, the place where plans and specifications thereof may be examined and the time and place of receiving bids, but a contract for lease of a correctional facility or regional or county jail project constructed and owned by the authority is not subject to the foregoing requirements and the authority may enter into such contract for lease pursuant to negotiation upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or efficient acquisition or construction of such projects. The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, shall
be required of all contractors in an amount equal to at
least fifty percent of the contract price, conditioned upon
faithful performance of the contract.

§31-20-6. Regional jail commissions; composition; appointment; terms; compensation and expenses.

Upon the formation of specific regions by the regional jail and correctional facility authority for the establishment of regional jails as provided in section five of this article, there shall be created in each region a regional jail commission composed of the following members: The sheriff from each county in the region or his designated representative; a member of the county commission from each county in the region chosen by the commission or a designated representative; one mayor from each county in the region to be appointed by the regional jail and correctional facility authority from a list of names submitted by the West Virginia municipal league, or his designated representative; and three persons from the region who are representative of the areas of law, medicine and education to be appointed by the regional jail and correctional facility authority and who shall serve for a term of three years: Provided, That any local regional jail authority or commission established prior to the effective date of this article shall be recognized as meeting the requirements of this section, at the option of the local regional jail authority or commission.

Any appointed member whose term has expired shall serve until his successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. Members of the commission are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties. The county commission from each county in the region shall provide the commission with secretarial and other necessary services.
§31-20-7. General powers of the commission.

1 Each regional jail commission shall prepare and submit such plans, suggestions and recommendations to the regional jail and correctional facility authority which will define the needs for its region as to the construction, renovation and general operation of a regional jail facility. The report may include, but is not limited to, recommendations for conforming its jail facility to the jail standards promulgated by the jail and correctional facility standards commission, upgrading the recreational and educational opportunities for inmates confined in the region's facility, development of programs in cooperation with community medical and mental health centers in the region to provide adequate medical and drug and alcohol addiction services within the facility and information concerning the costs incurred in the operation of the facility.

§31-20-8. Jail and correctional facility standards commission; appointment; compensation; vacancies; quorum.

1 A jail and correctional facility standards commission of eleven members is hereby created. The governor shall appoint two county sheriffs, to be chosen from a list of three names provided by the president of the West Virginia sheriff's association, and three county commissioners, to be chosen from a list of five names provided by the president of the West Virginia county commissioner's association. The chief justice of the state supreme court of appeals shall appoint a representative from the juvenile facilities review panel. Each of the members so appointed shall serve for a term of three years and be eligible for reappointment. The commissioner of the department of corrections, the director of the department of health, the state fire marshal, the commissioner of the department of human services and the director of the division of vocational education of the state department of education or their designees shall be members ex officio in an advisory capacity.

19 Members of the commission shall serve without compensation, but may be reimbursed for reasonable
and necessary expenses incurred in the performance of their duties. The regional jail and correctional facility authority shall provide the commission with secretarial and other necessary services.

A vacancy among the appointed members of the commission shall be filled, within thirty days, in the same manner as the original appointment. A quorum consists of four of the six voting members. Members of the commission shall select a chairman.

§31-20-9. Purpose, powers and duties.

The purpose of the commission is to assure that proper minimum standards and procedures are developed for jail, work farm and correctional facility operation, maintenance and management of inmates for correctional facilities, regional jails and local jail facilities used as temporary holding facilities. In order to accomplish this purpose, the commission shall:

(1) Prescribe standards for the maintenance and operation of correctional facilities, county and regional jails. Such standards shall include, but not be limited to, requirements assuring adequate space, lighting and ventilation; fire protection equipment and procedures; provision of specific personal hygiene articles; bedding, furnishings and clothing; food services; appropriate staffing and training; sanitation, safety and hygiene; isolation and suicide prevention; appropriate medical, dental and other health services; indoor and outdoor exercise; appropriate vocational and educational opportunities; classification; inmate rules and discipline; inmate money and property; religious services; inmate work programs; library services; visitation, mail and telephone privileges; and other standards necessary to assure proper operation.

(2) Promulgate such rules pursuant to the provisions of chapter twenty-nine-a of this code as are necessary to implement the provisions of this article, including, without limitation, minimum jail, work farm and correctional facility standards which shall be promulgated on or before the first day of July, one thousand nine hundred eighty-six.
(3) Develop a process for reviewing and updating the jail, work farm and correctional facility standards pursuant to the provisions of chapter twenty-nine-a of this code as may be necessary to assure that they conform to current law.

(4) Report periodically to the authority to advise and recommend actions to be taken by the authority to implement proper minimum jail, work farm and correctional facility standards.

Notwithstanding any other provision of this code to the contrary, any county commission providing and maintaining a jail on the effective date of this article shall not be required to provide and maintain a jail after a regional jail becomes available pursuant to the provisions of article twenty, chapter thirty-one of this code, unless the county commission determines that such a facility is necessary: Provided, That such county commission may provide and maintain a holding facility which complies with the standards set forth for such holding facilities in legislative rules promulgated by the jail and correctional facility standards commission or its predecessor, the jail and prison standards commission.

§31-20-10. Regional jail and correctional facility development fund.

(a) The regional jail and correctional facility development fund is hereby created and shall be a special account in the state treasury. The fund shall operate as a revolving fund whereby all appropriations and payments thereto may be applied and reapplied by the authority for the purposes of this article. Separate accounts may be established within the special account for the purpose of identification of various revenue resources and payment of specific obligations.

(b) Revenues deposited into the fund may be used to make payments of interest and may be pledged as security for bonds, security interests or notes issued by the authority pursuant to this article.

(c) Whenever the authority determines that the balance in the fund is in excess of the immediate
requirements of this article, it may request that such excess be invested until needed. In such case such excess shall be invested in a manner consistent with the investment of the temporary state funds. Interest earned on any money invested pursuant to this section shall be credited to the fund.

(d) If the authority determines that funds held in the fund are in excess of the amount needed to carry out the purposes of this article, it shall take such action as is necessary to release such excess and transfer it to the general fund of the state treasury.

(e) The fund shall consist of the following:

(1) Amounts raised by the authority by the sale of bonds or other borrowing authorized by this article;

(2) Moneys collected and deposited in the state treasury which are specifically designated by acts of the Legislature for inclusion into the fund;

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

(4) All sums paid by the counties pursuant to subsection (h) of this section; and

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

(f) The amounts deposited in the fund shall be accounted for and expended in the following manner:

(1) Amounts raised by the sale of bonds or other borrowing authorized by this article shall be deposited in a separate account within the fund and expended for the purpose of construction and renovation of correctional facilities and regional jails for which need has been determined by the authority;

(2) Amounts deposited from all other sources shall be pledged first to the debt service on any bonded indebtedness or other obligation incurred by borrowing of the authority;

(3) After any requirements of debt service have been
satisfied, the authority shall requisition from the fund such amounts as are necessary to provide for payment of the administrative expenses of this article;

(4) The authority shall requisition from the fund after any requirements of debt service have been satisfied such amounts as are necessary for the maintenance and operation of the correctional facilities or regional jails or both that are constructed pursuant to the plan required by this article and shall expend such amounts for such purpose. The fund shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs or fines required by law to be deposited in the fund and amounts from the jail improvement funds of the various counties. After the expenses of administration have been deducted the amounts expended in the respective regions from such sources shall be in proportion to the percentage the amount contributed to the fund by the counties in each region bears to the total amount received by the fund from such sources;

(5) Notwithstanding any other provisions of this article, sums paid into the fund by each county pursuant to subsection (h) of this section for each inmate shall be placed in a separate account and shall be requisitioned from the fund to pay for the costs specified in that subsection incurred at the regional jail facility at which each such inmate was incarcerated; and

(6) Any amounts deposited in the fund from other sources permitted by this article shall be expended in the respective regions based on particular needs to be determined by the authority.

(g) After a regional jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the regional jail facility in the regional jail facility except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the standards and procedures developed pursuant to section
nine of this article and who the sheriff or the circuit
court elects to incarcerate therein.

(h) When inmates are placed in a regional jail facility
pursuant to subsection (g) of this section the county
shall pay into the regional jail and correctional facility
development fund a cost per day for each inmate so
incarcerated to be determined by the regional jail and
correctional facility authority according to criteria and
by procedures established by regulations pursuant to
article three, chapter twenty-nine-a of this code to cover
the costs of operating such regional jail facility to
maintain each such inmate which costs shall not include
the cost of construction, acquisition or renovation of said
regional jail facility.


The exercise of the powers granted to the authority
by this article will be in all respects for the benefit of
the people of the state for the improvement of their
safety, convenience and welfare. Since the operation and
maintenance of correctional facilities and correctional
facility industries projects will constitute the perfor-
mance of essential governmental functions, the authority
is not required to pay any taxes or assessments upon any
such facilities or projects or upon any property acquired
or used by the authority or upon the income therefrom.
Such bonds, security interests and notes and all interest
and income thereon are exempt from all taxation by this
state, or any county, municipality, political subdivision
or agency thereof, except inheritance taxes.

§31-20-22. Money of the authority.

All money accruing to the authority from whatever
source derived, except legislative appropriations, and
except that authorized to be deposited directly into the
regional jail and correctional facility development fund
shall be collected and received by the treasurer of the
authority, who shall pay it into the state treasury in the
manner required by section two, article two, chapter
twelve of this code, to be credited to the fund.
§31-20-24. Agreement with federal agencies not to alter or limit powers of authority

The state hereby pledges to and agrees with each federal agency that, if such agency constructs or loans or contributes any funds for the acquisition, construction, extension, improvement or enlargement of any correctional facility or correctional facility industries project, the state will not alter or limit the rights and powers of the authority in any manner which would be inconsistent with the due performance of any agreement between the authority and such federal agency and that the authority shall continue to have and exercise all powers granted for carrying out the purposes of this article for so long as necessary.

§31-20-25. Further duties of the authority.

The Legislature hereby finds that the regional jail and correctional facility authority has not complied with the provisions of this article in certain areas and by this section imposes further duties upon the authority in order to save the taxpayers of this state unnecessary expense in the development of the regional jail system.

No moneys shall be expended for regional jail construction from the regional jail and development fund and no final site selection for a regional jail shall be made by the regional jail and correctional facility authority until (1) the regional jail commissions are formed and activated under the provisions of section six, article twenty, chapter thirty-one of this code, and (2) the regional jail commission for the region in which a jail is to be constructed submits the report provided for under the provisions of section seven, article twenty, chapter thirty-one of this code: Provided, That this section shall not apply to the regional jail commission previously established for the region consisting of Berkeley, Morgan and Jefferson counties.

Notwithstanding any other provision of this article, the regional jail and correctional facility authority shall present a written report to the joint committee on government and finance of the Legislature no later than
the meeting of such committee in the month of December, one thousand nine hundred eighty-seven, which will show that the authority has done the following:

(a) Completed a comprehensive plan as required in section five of this article;

(b) Specified which counties are to be formed into regions as required in section five of this article;

(c) Appointed a regional jail commission in each region as required by section six of this article;

(d) Developed through the jail and correctional facility standards commission, jail and correctional facility standards as required by section nine of this article;

(e) That the authority in obtaining or attempting to obtain land or buildings for regional jail facilities has considered all available options which will minimize costs while maximizing the effectiveness of this article, including, but not limited to, the option of obtaining land through offers of such by county or local governments; and

(f) That the authority has developed plans which will utilize regional jail facilities for the housing of convicted felons who have committed nonviolent crimes. Such plans are to provide that the convicted felons shall be housed separately from those persons serving time for misdemeanor offenses. The development of the plans shall be a cooperative effort between the authority and the department of corrections inasmuch as it is the intent of the Legislature that the penal system of this state shall be a consolidated system of both the regional jail system and the state correctional institutions.

§31-20-26. Legislative oversight committee.

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 legislative
oversight committee charged with immediate and ongoing oversight of the authority and the commissions, and functions and duties thereof created by this article. This committee shall report regularly at each legislative session on the implementation of the purposes set forth in section one-a of this article. It shall regularly investigate all matters relating to integrity, probity, and foresight in funding, operating, and planning the correctional system on state, regional, and county levels. Specifically, the committee shall study and make recommendations to the Legislature as to the revision of the system of classifying inmates, with a view variously to decreasing the prison population confined in "maximum security" facilities and to designating and meeting the needs of inmates classified as elderly, disabled, or otherwise handicapped.

The committee shall further study and inform the state judiciary of the impact of sentencing on the composition of the prison population in proportion to the use of facilities. It shall recommend alternatives to long-term sentencing, and shall recommend measures to improve the quality of correctional staff and facilitate its nonconfrontational contacts with inmates. The committee shall investigate means to structure inmates' time to ensure genuine and willing recommodations to societal norms; shall probe and coordinate all available means for funding state, regional, and county correctional facilities; and shall contract with penal experts to study these issues in appropriate depth and perspective. Annually, to predict a prudent use of available funds, the committee shall study the profile of the inmate population with regard to its age and social background and needs.

The committee shall recommend to the Legislature the funding required to execute such functions. It shall meet regularly with the governing body of the authority established in this article to determine what may be required for full and timely compliance with all court-ordered changes in the correctional system and shall recommend funding for such changes.
AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-f, relating to the contractual relationship between farm, construction, industrial or outdoor power equipment retail dealers and their suppliers generally; providing a short title by which the article may be known and cited; providing certain definitions of terms used with respect thereto; requiring certain notices to be given by one party to such contracts to the other party thereto with respect to the termination of any contractual arrangement between them and the time requirements with respect to such notice; providing for certain exceptions with respect to such terminations; the manner, form and content of such notifications; requiring the supplier to repurchase dealer inventory at the time of such termination and the terms of such repurchase; providing exceptions with respect to such repurchase requirements; providing for certain rules with respect to the applicability of the uniform commercial code; providing certain rules with respect to outstanding warranty claims at the time of termination; certain civil remedies against the suppliers available to such dealers and the amounts of recovery with respect to actions brought in such cases; providing for the applicability of certain other legal remedies; and providing for a period of limitations with respect to any actions brought pursuant to said article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11F. FARM EQUIPMENT DEALER CONTRACT ACT.
§47-llF-1. Short title.

§47-llF-2. Definitions.

§47-llF-3. Notice of termination of agreement or contract.

§47-llF-4. Supplier requirement to repurchase dealer inventory; terms of repurchase.

§47-llF-5. Exceptions to repurchase requirement.

§47-llF-6. Applicability of uniform commercial practices.

§47-llF-7. Warranty claims.

§47-llF-8. Civil remedies applicable.

§47-llF-1. Short title.

This article shall be known and may be cited as the "West Virginia Farm Equipment Dealer Contract Act."

§47-llF-2. Definitions.

(a) As used in this article, unless the context in which used clearly requires otherwise:

(1) "Agreement" or "contract" means a written or oral agreement or contract between a dealer and a supplier, by the terms of which the dealer is granted the right to sell the supplier's equipment and the dealer is required to order and maintain inventory from such supplier in excess of ten thousand dollars at current net price.

(2) "Current net price" means the price listed in the supplier's price list in effect at the time an agreement is terminated, less any applicable discount allowed.

(3) "Dealer" means any person, firm, partnership, association, corporation or other business entity engaged in the business of selling, at retail, farm, construction, industrial or outdoor power equipment or any combination of the foregoing and who maintains a total inventory of new equipment and repair parts having an aggregate value of not less than twenty-five thousand dollars at current net price and who provides repair service for such equipment.

(4) "Inventory" means the tractors, implements, attachments, equipment, and repair parts that the dealer purchased from the supplier, including, but not limited to, any data processing hardware and software, special service tools, and business signs the supplier has required the dealer to purchase and maintain.
(5) "Net cost" means the price paid by the dealer to the supplier for the inventory, less all applicable discounts allowed, plus the amount the dealer paid for freight costs from the supplier's location to the dealer's location and the reasonable cost of assembly incurred or performed by the dealer.

(6) "Supplier" means a wholesaler, manufacturer or distributor who enters into an agreement with a dealer and who supplies inventory to such dealer.

(7) "Termination" means the termination, cancellation, nonrenewal or discontinuation of an agreement.

(b) The terms "farm," "construction," "industrial" or "outdoor power," when used to refer to tractors, implements, attachments or repair parts shall have the meaning commonly used and understood among dealers and suppliers subject to this article.

§47-11F-3. Notice of termination of agreement or contract.

(a) The provisions of any agreement to the contrary notwithstanding, a supplier who terminates a contract or agreement with a dealer shall notify such dealer of the termination not less than six months prior to the effective date thereof: Provided, That the supplier may terminate the agreement at anytime after the occurrence of any of the following described events:

(1) The filing of a petition for bankruptcy or for receivership filed either by or against the dealer;

(2) The dealer defaults under a chattel mortgage or other security agreement between the dealer and the supplier;

(3) The dealer has made an intentional misrepresentation with the intent to defraud the supplier;

(4) The close out or sale or discontinuance of all or at least fifty percent of the dealer's business related to the handling of goods or products of the supplier;

(5) If the dealer is a partnership or corporation, the
commencement of dissolution or liquidation, whether voluntary or involuntary of such dealer;

(6) A change in location of the dealer's principal place of business as provided in the agreement without the prior written approval of the supplier;

(7) The withdrawal of an individual proprietor, partner, major shareholder, or the involuntary termination of the manager of the dealership or a substantial reduction in the interest of a partner or major shareholder without the prior written approval of the supplier. If the dealership is operated from more than one location, the involuntary termination of a manager at one or more branch locations without the prior written approval of the supplier shall not be grounds for termination of the dealership by the supplier;

(8) The revocation or discontinuance by a guarantor or of any guarantee of the dealer's present or future obligations to the supplier.

(b) The provisions of any agreement to the contrary notwithstanding, a dealer who terminates an agreement or contract with a supplier shall notify such supplier of the termination not less than six months prior to the effective date thereof.

(c) Any agreement or contract may also be terminated by the written mutual consent of the parties; and the effective date of such termination may be such as is mutually agreed upon by the parties.

(d) Notification under this section shall be in writing and shall be given by certified mail, return receipt requested, or by personal delivery to the recipient and the receipt thereof acknowledged in writing by such recipient. Any such notice of termination shall contain (i) a statement of intention to terminate the agreement; (ii) a statement of the reasons for such termination; and (iii) the date on which the termination is to take effect.

§47-11F-4. Supplier requirement to repurchase dealer inventory; terms of repurchase.
1 (a) The provisions of any agreement to the contrary
2 notwithstanding, whenever an agreement or contract
3 between a dealer and a supplier is terminated by either
4 party, the supplier shall repurchase the dealer's
5 inventory as provided in this article unless the dealer
6 chooses to keep the inventory and so advises the supplier
7 in writing.
8 (b) The supplier's obligation to repurchase the
9 dealer's inventory shall apply to any successor in
10 interest or assignee of that supplier. A successor in
11 interest includes any purchaser of assets or stock, any
12 surviving corporation resulting from a merger or
13 liquidation, any receiver, or any trustee of the original
14 supplier.
15 (c) If the dealer dies or becomes incompetent, the
16 supplier shall, at the option of the heir, repurchase the
17 inventory to the same extent as if the agreement had
18 been terminated. The heir has one year from the date
19 of the death of the dealer or from the date such dealer
20 is determined to be incompetent to exercise the options
21 of the dealer under this article.
22 (d) The supplier shall repurchase from the dealer
23 within ninety days from the date of termination of the
24 agreement or contract all inventory previously pur-
25 chased from the supplier that remains unsold on the
26 date of termination of the agreement or contract,
27 including, but not limited to, all data processing
28 hardware and software, special services tools, and
29 business signs that the supplier required the dealer to
30 purchase.
31 (e) The supplier shall pay the dealer:
32 (1) One hundred percent of the net cost of all new,
33 unused, undamaged and complete inventory, except
34 repair parts, special service tools, business signs and
35 data processing equipment, less a reasonable allowance
36 for deterioration attributable to weather conditions at
37 the dealer's location; and
38 (2) Ninety percent of the current net price of all new,
unused, and undamaged repair parts that are currently
listed in the supplier's price book as of the effective date
of such termination; and

(3) Seventy-five percent of the net cost of all undamaged special service tools and business signs in the
possession of the dealer which are currently available; and

(4) Net cost less twenty percent per year depreciation
of all data processing hardware and software that the
supplier required the dealer to purchase or the supplier
shall assume all data processing hardware and software
lease responsibilities of the dealer if the supplier
required the dealer to lease the data processing
hardware and software from a specific supplier of such
hardware and/or software.

(f) The inventory shall be returned F.O.B. (which
means “free on board”) to the dealership and the dealer
shall bear the expenses and risk of putting them into
the possession of the carrier. The supplier may perform
the handling, packing, and loading of repair parts
returned and withhold, as a charge for these services,
five percent of the current net price of the returned
repair parts. The dealer and the supplier may each
furnish a representative to inspect all inventory and
certify as to its acceptability before being returned.

(g) The supplier shall pay the full repurchase amount
as required by subsection (d) of this section not later
than ninety days after receipt of the inventory by the
supplier.

§47-11F-5. Exceptions to repurchase requirement.

Any other provisions of this article to the contrary
notwithstanding, a supplier shall not be required to
repurchase from the dealer (i) a repair part of or with
a limited storage life or which is otherwise subject to
deterioration; that is to say by way of example and not
in limitation thereof, such items as gaskets or batteries;
(ii) multiple packaged repair parts when the package
has been broken; (iii) a repair part that because of its
condition is not resalable as a new part without repackaging or reconditioning; (iv) any portion of the inventory that the dealer chooses to retain; or (v) any inventory that was acquired by the dealer from a source other than the supplier, except for data processing hardware and software, special service tools, and business signs that the supplier required the dealer to purchase; and (vi) any tractor, implement, attachment or equipment that the dealer purchased from the supplier more than thirty-six months before the date of the termination notice.

§47-11F-6. Applicability of uniform commercial practices.

(a) The provisions of this article do not affect a security interest of the supplier in the inventory of the dealer.

(b) A repurchase of inventory pursuant to this article shall not be subject to the bulk transfer provisions of article six, chapter forty-six of this code.

§47-11F-7. Warranty claims.

If after the termination of a contract or agreement, the dealer submits a warranty claim to the supplier for work performed prior to the effective date of the termination of such contract or agreement, the supplier shall accept or reject such claim within a minimum of forty-five days from the day the supplier received the warranty claim. A warranty claim not rejected before the expiration of such forty-five-day period shall be deemed to be accepted by the supplier. In the event a warranty claim is accepted by the supplier as prescribed in this section, such claim shall be paid by such supplier not later than sixty days from the date the supplier received the claim.

§47-11F-8. Civil remedies applicable.

(a) The provisions of any agreement to the contrary notwithstanding, if a supplier fails or refuses without just cause to repurchase any inventory or portion thereof when required to do so under the provisions of this
article within the time periods prescribed thereby, such
supplier shall be civilly liable for (i) one hundred
percent of the current net price of the inventory or
portion thereof not repurchased; (ii) the amount the
dealer paid for freight costs from the supplier's location
to the dealer's location; (iii) the reasonable cost of
assembly performed by the dealer; (iv) reasonable
attorney's fees and court costs incurred by the dealer in
requiring the supplier to comply with this article of the
code; and (v) interest on the current net price of the
inventory or portion thereof not repurchased, computed
at the prime rate of interest commencing the ninety-first
day after termination of the contract agreement, and
recomputed quarterly thereafter.

(b) Any person who suffers monetary loss due to a
violation of this article or because he or she refuses to
accede to a proposal for an arrangement that, if
consummated, is in violation of this article, may bring
civil action to enjoin further violation and to recover
damages sustained by him or her together with the costs
of the suit, including reasonable attorney's fees and
court costs.

(c) In the event of failure to provide the required
notice of termination or otherwise comply with provi-
sions of this article, the supplier shall be civilly liable
for the dealer's loss of business for the time period the
supplier is in violation of the notice of termination
provisions of the article, plus reasonable attorney's fees
and court costs.

(d) The provisions of this section are in addition to all
legal or equitable remedies available at law, as well as
any remedies available pursuant to any agreement
between the supplier and dealer.

(e) A civil action commenced under the provisions of
this article may be brought until the expiration of five
years after the violation complained of is or reasonably
should have been discovered, whichever occurs first.
CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE
AND ATTORNEY GENERAL; BOARD OF PUBLIC
WORKS; MISCELLANEOUS AGENCIES,
COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 25. RESIDENT TRUSTEE ACCOUNTS.

§5-25-1. Resident trustee accounts required, reports.

All state institutions including, but not limited to,
those institutions under the control of the department of
veterans affairs, the department of health, or the
department of human services which provide custodial
care for any person for any purpose whatsoever shall
establish resident trustee accounts for all persons
resident at the institution who request such accounts or
who are unable to manage their own funds. The
administrator in charge of the institution shall take
possession of all money or other valuables on the person
of or sent to each resident for whom a trustee account
has been established: Provided, That this article shall
not apply to state institutions under the control of the
department of corrections or where there is a legal
representative appointed for such person.

The administrator shall credit such money and
valuables to the resident entitled thereto and shall keep
an accurate record of all moneys and valuables received
or disbursed. This account is subject to examination by
the head of the department which controls the institu-
tion. The administrator shall deposit such fiduciary
funds received into federally insured account approved
by the director of the department except for those funds
required to be kept locally. The local funds shall be
deposited in one or more responsible banks. The
accounts shall be designated "resident trustee account."

The administrator shall ensure that proper disburse-
ments are made from the "resident trustee account"
when required for the maintenance of the resident or
when agreed to by the resident.

The administrator shall deliver to the resident, or to
the resident's responsible representative payee when
applicable, at the time the resident leaves the institution
all valuables or moneys then credited to the resident or,
in the case of the death of a resident before leaving the
institution, the administrator shall deliver such property
to the resident's representative.

The administrator of the institution shall submit a
monthly report to the head of the department control-
ing the institution. This report shall provide a recon-
ciliation of each resident trustee account or other
fiduciary account maintained by the institution.

The director of any department who receives these
monthly reports shall submit each month to the legis-
legate auditor a record of the reconciliations for each
institution.

CHAPTER 178
(H. B. 2757—By Delegates Whitt and Helmick)

[Passed April 8, 1989; in effect ninety days from passage.
Became law without Governor's signature.]

AN ACT to amend and reenact section three, article five,
chapter five of the code of West Virginia, one thousand
nine hundred thirty-one, as amended; and to amend and
reenact section twenty-nine, article two, chapter fifteen
of said code, all relating to retirement; the department of public safety; providing that the amount received for permanent and total disability incurred in the performance of duty may not be less than fifteen thousand dollars per year if such disability is to the extent that it prevents the disabled from ever engaging in any gainful employment; and providing that lump sum payments for unused accrued annual leave may not enter into final average salary computation for purposes of retirement.

Be it enacted by the Legislature of West Virginia:

That section three, article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-nine, article two, chapter fifteen of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Officers, Programs, Etc.

15. Public Safety.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-3. Optional payment to employee in lump sum amount for accrued and unused annual leave at termination of employment; no withholding of any employee contribution deduction; exception.

Every eligible employee, as defined in section one of this article, at the time his or her active employment ends due to resignation, death, retirement or otherwise, may be paid in a lump sum amount, at his or her option, for accrued and unused annual leave at the employee's
usual rate of pay at such time. The lump sum payment shall be made by the time of what would have been the employee's next regular payday had his employment continued. In determining the amount of annual leave entitlement, weekends, holidays or other periods of normal, noncountable time shall be excluded, and no deductions may be made for contributions toward retirement from lump sum payments for unused, accrued annual leave, since no period of service credit is granted in relation thereto; however, such lump sum payment may not be a part of final average salary computation; and where any such deduction of employee contribution may have been heretofore made, a refund of such shall be granted the former employee and made by the head of the respective former employer spending unit: Provided, That the superintendent of the department of public safety shall make deductions for retirement contributions of members of the department, since retirement benefits are based on cumulative earnings rather than period of service.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.


Any member of said department who has been or shall become physically or mentally permanently disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of said department and incurred pursuant to or while such member was or shall be engaged in the performance of his duties as a member of said department shall, if, in the opinion of the retirement board, he is by reason of such cause unable to perform adequately the duties required of him as a member of said department, be retired from active service by the retirement board and thereafter such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of such member or until
such disability shall sooner terminate, one or the other of two amounts, whichever is greater:

(1) An amount equal to five and one-half percent of the total salary which would have been earned during twenty-five years or actual service if more than twenty-five years in said department based on the average earnings of such member while employed as a member of said department; or

(2) The sum of six thousand dollars.

If such disability shall be permanent and total to the extent that such member is or shall be incapacitated ever to engage in any gainful employment, such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of such member or until such disability shall sooner terminate, an amount equal to eight and one-half percent of the total salary which would have been earned by such member during twenty-five years or actual service if more than twenty-five years of service in said department based on the average earnings of such member while employed as a member of said department: Provided, That on and after the first day of July, one thousand nine hundred eighty-nine, in no event may such amount be less than fifteen thousand dollars per annum.

The superintendent is authorized to expend moneys from funds appropriated for the department in payment of medical, surgical, laboratory, X-ray, hospital, ambulance and dental expenses and fees, and reasonable costs and expenses incurred in purchase of artificial limbs and other approved appliances which may be reasonably necessary for any member of said department who has or shall become temporarily, permanently or totally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the service required of members of said department and incurred pursuant to or while such member was or shall be engaged in the performance of duties as a member of said department.
Whenever the superintendent shall determine that any disabled member is ineligible to receive any of the aforesaid benefits at public expense the superintendent shall, at the request of such disabled member, refer such matter to the retirement board for hearing and final decision.

CHAPTER 179

(H. B. 2414—By Delegates Seacrist and Rollins)

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

AN ACT to amend and reenact section twenty, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section fourteen-cl, article three, chapter thirty-three of said code, all relating to retirement benefits for certain municipal employees; requiring municipalities to contribute a minimum amount to its pension and relief funds as determined by the actuarial report; and providing that once the actuarial report determines there is no deficiency in these funds, municipalities are not then required to contribute funds from the municipal pensions and protection fund.

Be it enacted by the Legislature of West Virginia:

That section twenty, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section fourteen-d, article three, chapter thirty-three of said code be amended and reenacted, all to read as follows:

Chapter


33. Insurance.

CHAPTER 8. MUNICIPAL CORPORATIONS.
ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICE-MEN'S PENSION AND RELIEF FUND; FIRE-MEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.


The board of trustees for each pension and relief fund shall have regularly scheduled actuarial valuation reports prepared by a qualified actuary. All of the following standards must be met:

(a) An actuarial valuation report shall be prepared at least once every three years commencing with the later of (1) the first day of July, one thousand nine hundred eighty-three, or (2) three years following the most recently prepared actuarial valuation report: Provided, That this most recently prepared actuarial valuation report meets all of the standards of this section.

(b) The actuarial valuation report shall consist of, but is not limited to, the following disclosures: (1) The financial objective of the fund and how the objective is to be attained, (2) the progress being made toward realization of the financial objective, (3) recent changes in the nature of the fund, benefits provided, or actuarial assumptions or methods, (4) the frequency of actuarial valuation reports and the date of the most recent actuarial valuation report, (5) the method used to value fund assets, (6) the extent to which the qualified actuary relies on the data provided and whether the data was certified by the fund's auditor or examined by the qualified actuary for reasonableness, (7) a description and explanation of the actuarial assumptions and methods, and (8) any other information the qualified actuary feels is necessary or would be useful in fully and fairly disclosing the actuarial condition of the fund.

(c) After the thirtieth day of June, one thousand nine hundred eighty-three, and thereafter, the financial objective of each municipality shall not be less than to contribute to the fund annually an amount which, together with the contributions from the members and the allocable portion of the state premium tax fund for
municipal pension and relief funds established under section fourteen-d, article three, chapter thirty-three of this code and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years: Provided, That for those funds in existence on the first day of July, one thousand nine hundred eighty-one, its actuarial deficiency, if any, shall not be amortized over a period longer than that which remains under its current schedule. For purposes of determining this minimum financial objective, (1) the value of the fund's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value, and (2) all costs, deficiencies, rate of interest, and other factors under the fund shall be determined on the basis of actuarial assumptions and methods which, in aggregate, are reasonable (taking into account the experience of the fund and reasonable expectations) and which, in combination, offer the qualified actuary's best estimate of anticipated experience under the fund. If as a result of this legislation a municipality's financial commitment to the fund is materially increased, the municipality may elect to phase in this increase over the five fiscal years commencing the first day of July, one thousand nine hundred eighty-three.

Notwithstanding any other provision of this section or article to the contrary, each municipality shall contribute annually to the fund an amount which may not be less than the normal cost, as determined by the actuarial report.

(d) For purposes of this section the term “qualified actuary” means only an actuary who is a member of the society of actuaries or the American academy of actuaries. The qualified actuary shall be designated a fiduciary and shall discharge his duties with respect to a fund solely in the interest of the members and member's beneficiaries of that fund. In order for the standards of this section to be met, the qualified actuary shall certify that the actuarial valuation report is complete and accurate and that in his opinion the
technique and assumptions used are reasonable and meet the requirements of this section of this article.

(e) The cost of the preparation of the actuarial valuation report shall be paid by the fund.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

(a) For the purpose of providing additional revenue for municipal policemen's and firemen's pension and relief funds and additional revenue for volunteer and part volunteer fire companies and departments, there is hereby levied and imposed, on and after the first day of January, one thousand nine hundred eighty-two, an additional premium tax equal to one percent of gross direct premiums collected, less premiums returned to policyholders because of cancellation of policies, for fire insurance and casualty insurance policies. For purposes of this section, casualty insurance shall not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition and collection of the regular premium tax are applicable to the levy, imposition and collection of the additional tax.

All moneys collected from this additional tax shall be received by the commissioner and paid by him into a special account in the state treasury, designated the municipal pensions and protection fund. The net proceeds of this tax after appropriation thereof by the Legislature shall be distributed in accordance with the provisions of subsection (c) of this section.

(b) Before the first day of August, one thousand nine hundred eighty-three, and before the first day of August
of each calendar year thereafter, the treasurer of each municipality in which a municipal policemen’s or firemen’s pension and relief fund has been established shall report to the state treasurer the average monthly number of members who worked at least one hundred hours per month of municipal policemen’s or firemen’s pension systems during the preceding fiscal year. Before the first day of August, one thousand nine hundred eighty-three, and before the first day of August of each calendar year thereafter, the state fire marshal shall report to the state treasurer the names and addresses of all volunteer and part volunteer fire companies and departments within the state which meet the eligibility requirements established in section eight-a, article fifteen, chapter eight of this code.

Before the first day of September, one thousand nine hundred eighty-three, and before the first day of September of each calendar year thereafter, the state treasurer shall allocate and authorize for distribution the revenues in the municipal pensions and protection fund which were collected during the preceding calendar year to municipal policemen’s and firemen’s pension and relief funds and to volunteer and part volunteer fire companies and departments. Seventy-five percent of the aforementioned revenues allocated shall be allocated to municipal policemen’s and firemen’s pension and relief funds and twenty-five percent of such allocated revenues shall be allocated to volunteer and part volunteer fire companies and departments: Provided, That in any year the actuarial report required by section twenty, article twenty-two, chapter eight of this code indicates no actuarial deficiency in the municipal policemen’s or firemen’s pension and relief fund, no revenues may be allocated from the municipal pensions and protection fund to that fund. The revenues from the municipal pensions and protection fund shall then be allocated to all other pension funds which have an actuarial deficiency.

(c) (1) Each municipal pension and relief fund shall have allocated and authorized for distribution a pro rata share of the revenues allocated to municipal policemen’s
and firemen's pension and relief funds based upon the corresponding municipality's average monthly number of members who worked at least one hundred hours per month during the preceding fiscal year. All moneys received by municipal pension and relief funds under this section may be expended only for the purposes described in sections sixteen through twenty-eight, article twenty-two, chapter eight of this code.

(2) Each volunteer fire company or department shall receive an equal share of the revenues allocated for volunteer and part volunteer fire companies and departments.

(3) In addition to the share allocated and distributed in accordance with subdivision (1) of this subsection, each municipal fire department composed of full-time paid members and volunteers and part volunteer fire companies and departments shall receive a share equal to the share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to such share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen's pension system to the total number of members of such fire department.

(d) The allocation and distribution of revenues provided for in this section are subject to the provisions of section twenty, article twenty-two, and sections eight-a and eight-b, article fifteen, chapter eight of this code.

CHAPTER 180
(H. B. 2322—By Delegate Seacrist)

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

AN ACT to amend and reenact section three, article ten-c, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to contributions paid public employees who are members of the firemen's pension and relief fund and policemen's pension and relief fund.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-3. Definitions.

1 The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

2 (1) "Accumulated contributions" means the sum of all amounts credited to a member's individual account in the members' deposit fund and includes both contributions deducted from the compensation of a member and contributions of a member picked up and paid by the member's participating public employer, plus applicable interest thereon.

3 (2) "Board of trustees" means, as appropriate: The board of trustees of the West Virginia public employees retirement system created in article ten, chapter five of this code; the retirement board of the West Virginia department of public safety death, disability and retirement fund created in section twenty-six, article two, chapter fifteen of this code; the retirement board of the state teachers and board of regents retirement system created in article seven-a, chapter eighteen of this code; the governing board of the board of regents supplemental and additional retirement plans created in section four-a, article twenty-three, chapter eighteen of this code; the retirement board of the judges' retirement system created in article nine, chapter fifty-one of this code; or the board of trustees of the firemen's and policemen's pension and relief funds created in article twenty-two, chapter eight of this code.

4 (3) "Employee" means any person, whether appointed, elected, or under contract, providing services for a public employer, for which compensation is paid and who is a member of the retirement system.
(4) "Member" means any employee who is included in a retirement system.

(5) "Member contributions" means, as appropriate: The contributions required by section twenty-nine, article ten, chapter five of this code, from employees who are members of the West Virginia public employees retirement system; the contributions required by section twenty-six, article two, chapter fifteen of this code, from employees who are members of the West Virginia department of public safety death, disability and retirement fund; the contributions required by section fourteen, article seven-a, chapter eighteen of this code, from employees who are members of the state teachers retirement system; the contributions authorized by section fourteen-a, article seven-a, chapter eighteen or by section four-a, article twenty-three, chapter eighteen, from employees who are members of the West Virginia board of regents retirement plans; the contributions required by section four, article nine, chapter fifty-one of this code, from employees who are members of the judges' retirement system; or the contributions required by section sixteen, article twenty-two, chapter eight of this code, from employees who are members of the firemen's and policemen's pension and relief funds.

(6) "Participating public employer" means the state of West Virginia, any board, commission, department, institution or spending unit, and shall include any agency created by rule of the supreme court of appeals having full-time employees, which for the purpose of this article shall be deemed a department of state government, and county boards of education with respect to teachers employed by them; 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; and any political subdivision in this state which is subject to the provisions of article twenty-two, chapter eight of this code.

(7) "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; 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, any agency or organization established by, or approved by the department of health for the provision of community health or mental retardation services, and which is supported in part by state, county or municipal funds.

(8) "Retirement system" means, as appropriate: The West Virginia public employees retirement system created in article ten, chapter five of this code; the West Virginia department of public safety death, disability and retirement fund created in sections twenty-six through thirty-eight, article two, chapter fifteen of this code; the state teachers retirement system created in article seven-a, chapter eighteen of this code; the West Virginia board of regents retirement plans created in section fourteen-a, article seven-a, chapter eighteen and section four-a, article twenty-three, chapter eighteen of this code; the judges’ retirement system created in article nine, chapter fifty-one of this code; the firemen’s pension and relief fund created in section sixteen, article twenty-two, chapter eight of this code; or the policemen’s pension and relief fund created in section sixteen, article twenty-two, chapter eight of this code.

(9) "Teacher" shall have the meaning ascribed to it in section three, article seven-a, chapter eighteen of this code.

CHAPTER 181
(Com. Sub. for S. B. 105—By Senators Whitlow and Felton)

[Passed April 7, 1989; in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-a, relating to the creation of an industrial
access road fund and providing funding therefor; specifying purposes for which moneys from the fund may be used; requiring that counties and municipalities guarantee proposed projects; specifying the criteria upon which the highways commissioner is to base his decision to allocate funds; approval of department of highways of proposed industrial access highway; request for funds by resolution of governing body of county or municipality; consultation by the department of highways; placing industrial access roads under the state road system; restrictions on use of the fund; limits on amount of funds to be allocated; eligible items of construction and engineering; disbursements from the fund; and annual audit of the fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. INDUSTRIAL ACCESS ROAD FUND.

§17-3A-1. Industrial access road fund created; construction guarantees by municipalities and counties.

§17-3A-2. Department of highways to determine construction of industrial access roads.

§17-3A-3. Industrial access roads to be part of state road system.

§17-3A-4. Restrictions on use of fund.

§17-3A-5. Disbursements from fund.

§17-3A-6. Annual audit to be made of receipts and expenditures of fund.

§17-3A-1.Industrial access road fund created; construction guarantees by municipalities and counties.

(a) Any other provision of this code notwithstanding, there is hereby created in the state treasury the "industrial access road fund," hereinafter referred to as "the fund." There shall be deposited into the fund one half of one percent of all state tax collections which are otherwise specifically dedicated by the provisions of this code to the state road fund. At the end of each fiscal year, all unused moneys in the fund shall revert to the state road fund.
(b) The moneys in the fund shall be expended by the department of highways for constructing and maintaining industrial access roads within counties and municipalities to industrial sites on which manufacturing, processing or other similar establishments, including publicly owned airports, are already constructed or are under firm contract to be constructed. In the event there is no industrial site already constructed or for which the construction is under firm contract, a county or municipality may guarantee to the department of highways by bond or other acceptable device that an industrial site will be constructed and, if no industrial site, acceptable to the department of highways, is constructed within the time limits of the bond, such bond shall be forfeited.

§17-3A-2. Department of highways to determine construction of industrial access roads.

In determining whether or not to construct or improve any industrial access road, and in determining the nature of the road to be constructed, the department of highways shall base its decision on the costs of the industrial access road in relation to the volume and nature of the traffic to be generated as a result of developing the industrial site within the total industrial area. In making a decision on any industrial site, the total volume of traffic to be generated shall be considered in regard to the overall cost of the project. The department of highways shall consult and work closely with the governor's office of community and industrial development in determining the use of industrial access road funds.

Prior to a formal request for the use of moneys from the fund to provide access to new or expanding industrial sites, the location of the industrial access road shall be submitted for approval of the department of highways. The department of highways shall consider the cost of the industrial access road as it relates to the project's location and as it relates to the possibility of future extensions of the road to serve other possible industrial sites as well as the future development of the surrounding area.
Prior to the allocation of moneys from the fund for the construction or maintenance of an industrial access road to an industry proposing to locate or expand in a county or municipality, the governing body of the county or municipality shall, by resolution, request moneys from the fund and shall be responsible for the preliminary negotiations with the industries and other interested parties. The department of highways shall be available for consultation with the governing bodies of the counties or municipalities and other interested parties, and may prepare surveys, plans, engineering studies and cost estimates for the proposed industrial access road.

§17-3A-3. Industrial access roads to be part of state road system.

Any industrial access road constructed under this article is a state local service road in the state road system and shall thereafter be maintained in accordance with the provisions of this chapter.

§17-3A-4. Restrictions on use of fund.

(a) The fund may not be used for the adjustment of utilities or for the construction of industrial access roads to schools, hospitals, libraries, armories, office buildings, shopping centers, apartment buildings, amusement facilities, government installations or similar facilities, whether public or private. The fund may not be used to construct industrial access roads on private property.

(b) Moneys from the fund may not be allocated until the governing body of the county or municipality certifies to the department of highways that the industrial site is constructed and operating or is under firm contract to be constructed or operated, or upon the presentation of acceptable surety in accordance with section one of this article.

(c) Not more than three hundred thousand dollars of unmatched moneys from the fund may be allocated for use in any one county in any fiscal year. The maximum amount of unmatched moneys which may be allocated from the fund is ten percent of the capital outlay of the
designated industrial establishment. The amount of unmatched funds allocated may be supplemented with additional matched moneys from the fund, in which case the matched moneys allocated from the fund may not exceed one hundred fifty thousand dollars, to be matched equally from sources other than the fund. The amount of matched moneys which may be allocated from the fund over and above the unmatched funds may not exceed five percent of the capital outlay of the designated industrial site.

(d) Funds may only be allocated to those items of construction and engineering which are essential to providing an adequate facility to serve the anticipated traffic. Funds may not be allocated for items such as storm sewers, curbs, gutters and extra pavement width unless necessary to extend or connect an existing access road.

§17-3A-5. Disbursements from fund.

Any claim of a contractor or others, not otherwise provided for, for labor done or for materials, services or supplies furnished to the department of highways pursuant to the provisions of this article, shall be audited by the commissioner of the department of highways. If the commissioner determines that the claim is valid and correct, the commissioner shall issue a requisition of the department upon the state auditor therefor, showing the nature of the claim and specifying whether the claim is for labor done or materials, services or supplies furnished for the construction or maintenance of state roads, or for other purposes, and the auditor shall issue his warrant upon the state treasurer therefor. The treasurer shall issue the warrant to the person, firm or corporation entitled thereto, out of the funds in the treasury provided for that purpose. The cost of acquiring a right-of-way shall be paid out of the fund.

§17-3A-6. Annual audit to be made of receipts and expenditures of fund.

The Legislature, acting through the joint committee on government and finance, shall cause an annual audit
to be made by a resident independent certified public
accountant of all books, accounts and records relating
to all receipts and expenditures of the fund. The
commissioner shall make available to the independent
auditor or auditors performing the audit all of the
department's books, accounts and records pertaining to
all moneys received and expended. The auditor or
auditors performing the audit shall make available
annually the audit report with copies thereof to the
members of the Legislature, the governor, the commis-
sioner of the department of highways, the secretary of
state, the state treasurer, the attorney general and the
state auditor. The audit report shall be available to the
public in the office of the secretary of state.

The Legislature, acting through the joint committee
on government and finance, shall obtain the services of
a resident independent certified public accountant for
this purpose, the cost of which shall be payable out of
funds appropriated by the Legislature. Any audits of the
funds which have been made by any official auditing
agency of the United States government shall be
accepted in lieu of the state audit.

CHAPTER 182
(Com. Sub. for S. B. 555—By Senators Loehr, Warner, Hylton,
Holliday, Wagner and Fellon)

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

AN ACT to amend chapter seventeen of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new article, designated
article twenty-five, relating to creating the West
Virginia Industrial Road Partnership Act of 1989;
setting forth legislative findings; defining terms;
allowing companies to apply for a road to be designated
an "industrial road"; funding for the construction or
upgrading of the industrial road; requiring the
commissioner of the department of highways to estab-
lish a program for designating industrial roads and
providing criteria therefor; creation of a special revenue fund; powers of the commissioner; expiration of the article; authorizing the commissioner to promulgate rules; and severability.

Be it enacted by the Legislature of West Virginia:

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


§17-25-1. Legislative finding.
§17-25-3. Application to designate industrial road.
§17-25-4. Industrial roads; how designated.
§17-25-5. Standards to be established by commissioner.
§17-25-6. Special revenue fund created.
§17-25-8. Expiration of article.
§17-25-10. Severability clause; interpretation.

§17-25-1. Legislative finding.

The Legislature hereby finds that the continued and future success of the coal industry is greatly dependent upon a quality network of roads and highways. Critical market forces make it imperative for such a road system to be constructed and maintained. It is the responsibility of the state and all industry to form a partnership to accomplish this goal. "Industrial roads," for the purposes of this article, may be construed to include a single bridge or combination of bridges.


(a) "Company" means an individual, partnership or corporation licensed under the laws of the state of West Virginia and engaged in any industrial business.

(b) "Industrial road" means a public road of ten miles or less in length which is vital to transporting of coal, or a road, which upon the designation of the commissioner, is determined to be vital to one or more companies.
(c) "Commissioner" means the commissioner of the department of highways.

(d) "Cost" means all funds needed to do engineering, right-of-way acquisition, construction or upgrading. Upgrading does not mean normal routine maintenance.

(e) "Department" means the department of highways.

(f) "Upgrading" means any work on a highway or bridge which is not routine maintenance.

§17-25-3. Application to designate industrial road.

Any company may apply to the commissioner to have a certain road designated an industrial road. The commissioner shall develop an application form. In such application the company shall agree to pay to the department one half of the amount of money needed to bring such road up to the standards needed to become an industrial road. All construction or upgrading to be performed under this article shall be bid out to an independent contractor in such a manner as prescribed in this code. Upon approval of the application by the commissioner the company shall transfer to a special revenue account for the department of highways in the state treasury as set forth in this article a sum equal to one half of costs needed to upgrade or construct the road to standard or the company shall deliver to the commissioner an irrevocable letter of credit drawn on a bank chartered by the state of West Virginia or the federal government in an amount equal to such cost:

Provided, That the company shall transfer the moneys before any construction or upgrading is contracted for.

The department shall then begin the process as outlined in this code to upgrade or construct such public road.

§17-25-4. Industrial roads; how designated.

The commissioner shall promulgate rules establishing a program for designating industrial public roads in the state. The criteria for such designation shall include:

(a) The economic impact of such road on the coal or other companies which use such public road;
(b) The impact on the citizens which use the road in their daily business; and

(c) The cost of any improvements which would be necessary to bring the road up to standard versus the benefits.

The commissioner shall publicize the program and allow any company to make such application.

§17-25-5. Standards to be established by commissioner.

The commissioner shall establish standards for construction and upgrading of industrial roads. In the design of these standards, he shall consult with representatives or organizations which represent companies. The standards shall provide for:

(a) Each road to be at least sixteen feet in width in addition to any berms or shoulders;

(b) Design and construction to handle the weight of coal and other industrial trucks and equipment as transported by the companies;

(c) Giving the citizens of the area a better road to travel;

(d) Having adequate drainage; and

(e) Any other feature which the commissioner determines is necessary to carry out the goals of this article.

§17-25-6. Special revenue fund created.

There shall be created in the state treasury a special revenue fund to be known as the "Industrial Road Construction Fund." The fund shall receive all funds contributed by companies for the construction of approved roads. Only moneys needed to pay the costs of the roads shall be withdrawn, however, the commissioner may use any moneys generated by any earned interest to offset his administrative costs in administering this article.


In addition to all other powers conferred upon the commissioner under other provisions of this code, the
§ 17-25-8. Expiration of article.

This article shall expire on the thirty-first day of December, one thousand nine hundred ninety-two, unless reauthorized by the Legislature of the state of West Virginia: Provided, That if the governor feels the continuation of this article, before the above mentioned date, would cause a hardship, he may cancel the program. However, any project which is approved by the commissioner shall be completed.


The commissioner shall have the authority to promulgate rules to effectuate this article.

§ 17-25-10. Severability clause; interpretation.

The provisions of this article are severable and if any of its provisions shall be held unconstitutional, the decision of the court shall not impair the remaining provisions of this article. This article shall be construed liberally.

CHAPTER 183

(H. B. 2868—By Delegate Farley)

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

AN ACT to amend and reenact section three, article one, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article two of said chapter; to amend and reenact section two-a, article seven, chapter six of said code; to amend and reenact section five, article two, chapter fifteen of said code; to amend and reenact section three, article one, chapter twenty-four of said code; to amend and reenact section ten-a, article one, chapter fifty-one of said code; and to amend and
reenact section thirteen, article two of said chapter fifty-one, all relating to salaries of certain state officers, judges and justices; setting the salaries of secretaries of departments; increasing the salaries of certain state officers; setting the salaries of certain other state appointed officers and employees; setting effective dates and providing for phase-in of certain salary increases; providing for filing sworn statement by certain state appointive officers as to compensation of their employees; making terms of public service commissioners at will and pleasure of governor; increasing salaries of members of department of public safety and providing effective date; increasing salaries of circuit court judges and supreme court justices and providing effective dates thereof.

Be it enacted by the Legislature of West Virginia:

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

Chapter
5F. Reorganization of the Executive Branch of State Government.

15. Public Safety.
51. Courts and Their Officers.

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

Article
2. Transfer of Agencies and Boards.
ARTICLE 1. GENERAL PROVISIONS.

§5F-1-3. Oath; bond; compensation.

(a) Each person appointed to serve as a secretary shall take the oath or affirmation prescribed by section five, article four of the constitution, and such oath shall be certified by the person who administers the same and filed in the office of the secretary of state.

(b) Each person so appointed shall give bond in the penalty of twenty-five thousand dollars conditioned for the faithful performance of the duties of the office, which bond shall be approved by the attorney general as to form and by the governor as to sufficiency. The surety of such bond may be a bonding or surety company, in which case the premium shall be paid out of the appropriation made for the administration of the department.

(c) Each secretary shall receive a salary of seventy thousand dollars per year.

(d) The salary and expenses necessary for each secretary and all expenditures for personal services for the office of secretary shall be paid from and within existing appropriations made to the agencies and boards transferred to the department headed by that secretary, and revised expenditure schedules shall be submitted to the commissioner of finance and administration and the legislative auditor stating the amount and source of funds to be expended: Provided, That for fiscal years beginning the first day of July, one thousand nine hundred eighty-nine, such amounts shall follow the procedures described in chapter five-a of this code.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-3. Administrators; appointment; oath; bond; compensation.

(a) Notwithstanding any other provision of this code (including subsections (h) and (i), section one of this article) to the contrary, each administrator required by other provisions of this code to be appointed by the governor shall:
(1) Continue to be appointed by the governor by and with the advice and consent of the Senate and each such administrator shall serve at the will and pleasure of the governor, and the governor may appoint a person to fill more than one such position of administrator and may appoint a secretary to fill one or more positions of such administrator, but each person appointed as such an administrator must possess whatever qualifications are elsewhere specified in this code as being required for appointment to such position;

(2) Take the oath of office or affirmation prescribed by section five, article four of the constitution, and such oath shall be certified by the person who administers the same and filed in the office of the secretary of state;

(3) Give bond in the penalty of fifteen thousand dollars conditioned for the faithful performance of the duties of the office, which bond shall be approved by the attorney general as to form and by the secretary as to sufficiency. The surety of such bond may be a bonding or surety company, in which case the premium shall be paid out of the appropriation made for the administration of the department; and

(4) Receive an annual salary as shall be fixed from time to time by law or as otherwise provided.

(b) Each administrator required by other provisions of this code to be appointed in any manner other than by the governor shall continue to be appointed, shall take such oath of office, give such bond and receive such salary as shall be so specified by such other provisions of this code.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

(a) Notwithstanding any other provision of this code
to the contrary, 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 such appointive state officers shall serve
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 such appointive state officers shall
hereafter be subject to the existing qualifications for
holding each such respective office and each shall have
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 such office.

Beginning on the first day of January, one thousand
nine hundred ninety, the annual salary of each such
named appointive state officer shall be as follows:

Administrator, division of highways, sixty thousand
dollars; administrator, division of health, fifty-seven
thousand two hundred dollars; administrator, division of
human services, forty-seven thousand eight hundred
dollars; administrator, state tax division, forty-nine
thousand nine hundred dollars; administrator, division
of energy, sixty-five thousand dollars; administrator,
division of finance and administration, forty-seven
thousand eight hundred dollars; administrator, division
of corrections, forty-five thousand dollars; administra-
tor, division of community and industrial development,
sixty-three thousand six hundred dollars; administrator,
division of workers' compensation, forty-five thousand
dollars; administrator, division of commerce, sixty-two
thousand five hundred dollars; administrator, division of
natural resources, forty-seven thousand eight hundred
dollars; administrator, division of public safety, forty-
four thousand six hundred dollars; administrator,
lottery division, sixty thousand dollars; director, public
employees insurance agency, fifty-five thousand dollars;
administrator, division of employment security, forty-
five thousand dollars; administrator, division of bank-
ing, thirty-eight thousand three hundred dollars;
administrator, division of insurance, thirty-six thousand
seven hundred dollars; administrator, division of culture
and history, thirty-eight thousand three hundred
dollars; chairman, public service commission, fifty
thousand dollars; members, public service commission,
fifty-six thousand two hundred dollars; administrator,
alcohol beverage control commission, thirty-eight
thousand three hundred dollars; administrator, division
of motor vehicles, forty thousand dollars; director,
division of personnel, thirty-eight thousand three
hundred dollars; adjutant general, thirty-five thousand
seven hundred dollars; chairman, health care cost
review authority, forty thousand dollars; members,
health care cost review authority, thirty-six thousand
five hundred dollars; director, human rights commis-
sion, forty thousand dollars; administrator, division of
labor, thirty-five thousand seven hundred dollars;
administrator, division of veterans affairs, thirty-two
thousand dollars; administrator, division of emergency
services, thirty-two thousand dollars; administrator,
nonintoxicating beer commission, thirty-two thousand
dollars; members, board of probation and parole,
twenty-eight thousand three hundred dollars; members,
employment security review board, seventeen thousand
dollars; members, workers’ compensation appeal board,
seventeen thousand eight hundred dollars.

Prior to the first day of January, one thousand nine
hundred ninety, each of the aforesaid officers shall
continue to receive the annual salaries they were
receiving as of the last day of March, one thousand nine
hundred eighty-nine.

(b) Notwithstanding any other provisions of this code
to the contrary, 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, except that any increase in salary over
and above the salary being received by any of the
following state officers as of the last day of March, one
thousand nine hundred eighty-nine, shall not become
effective until the first day of January, one thousand
nine hundred ninety:

Chancellor, board of regents, seventy thousand
dollars; state superintendent of schools, seventy thousand dollars; administrator, division of risk and insurance management, forty-two thousand dollars; director, division of rehabilitation services, fifty-five thousand dollars; executive director, educational broadcasting authority, forty-seven thousand five hundred dollars; secretary, library commission, forty-seven thousand five hundred dollars; director, geologic and economic survey, forty-seven thousand five hundred dollars; executive director, water development authority, fifty-four thousand two hundred dollars; executive secretary, teacher's retirement system, forty-seven thousand two hundred dollars; executive secretary, public employees retirement system, forty thousand one hundred dollars; director, air pollution control commission, forty-four thousand eight hundred dollars; executive director, public legal services council, forty seven thousand five hundred dollars; director, commission on aging, forty thousand dollars; commissioner, oil and gas conservation commission, forty thousand dollars; director, farm management commission, thirty-two thousand five hundred dollars; state fire administrator, twenty-five thousand two hundred dollars; executive secretary, municipal bond commission, thirty thousand two hundred dollars; director, railroad maintenance authority, thirty-two thousand five hundred dollars; executive secretary, women's commission, thirty thousand one hundred dollars; executive director, regional jail authority, forty-two thousand six hundred dollars; director, hospital finance authority, twenty-five thousand eight hundred dollars.

(c) No increase in the salary of any appointive state officer pursuant to this section shall be paid until and unless such appointive state officer shall have 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 such spending unit is in compliance with any general law providing for a salary increase for his employees. The attorney general shall prepare and distribute such form to the affected spending units: Provided, That no decrease in salary shall be effective for any current appointive state officer
provided, however, that such decreases shall take effect at such time as any appointive office is vacated.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-5. Salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

Members of the department shall receive annual salaries pursuant to appropriation by the Legislature, payable at least monthly as follows:

Any lieutenant colonel shall receive an annual salary of thirty-three thousand six hundred seventy-two dollars; any major shall receive an annual salary of thirty-one thousand fifty-six dollars; any captain shall receive an annual salary of twenty-eight thousand nine hundred forty-four dollars; any first lieutenant shall receive an annual salary of twenty-seven thousand three hundred seventy-two dollars; any second lieutenant shall receive an annual salary of twenty-five thousand eight hundred dollars; any master sergeant or first sergeant shall receive an annual salary of twenty-four thousand two hundred twenty-eight dollars; any sergeant shall receive an annual salary of twenty-two thousand six hundred fifty-six dollars; any corporal shall receive an annual salary of twenty-one thousand seventy-two dollars; any trooper first class shall receive an annual salary of nineteen thousand five hundred dollars; and any newly enlisted trooper shall receive a salary of one thousand four hundred five dollars monthly during the period of his basic training, and upon the satisfactory completion of such training and assignment to active duty, each such trooper shall receive, during the remainder of his first year's service, a salary of one thousand four hundred five dollars monthly; during the second year of his service in the department, each trooper shall receive an annual salary of eighteen thousand five hundred fifty-two dollars; during the third
year of his service each such trooper shall receive an annual salary of eighteen thousand eight hundred fifty-two dollars; and during the fourth and fifth year of such trooper’s service and for each year thereafter, he shall receive an annual salary of nineteen thousand ninety-two dollars: Provided, That effective on the first day of January, one thousand nine hundred ninety, any lieutenant colonel shall receive an annual salary of thirty-five thousand three hundred fifty-two dollars; any major shall receive an annual salary of thirty-two thousand six hundred four dollars; any captain shall receive an annual salary of thirty thousand three hundred ninety-six dollars; any first lieutenant shall receive an annual salary of twenty-eight thousand seven hundred forty dollars; any second lieutenant shall receive an annual salary of twenty-five thousand four hundred forty dollars; any master sergeant or first sergeant shall receive an annual salary of twenty-three thousand seven hundred eighty-four dollars; any sergeant shall receive an annual salary of twenty-two thousand one hundred twenty-eight dollars; any corporal shall receive an annual salary of twenty thousand four hundred seventy-two dollars; and any newly enlisted trooper shall receive a salary of one thousand four hundred seventy-five dollars monthly during the period of his basic training, and upon the satisfactory completion of such training and assignment to active duty, each such trooper shall receive, during the remainder of his first year’s service, a salary of one thousand five hundred ninety dollars monthly. During the second year of his service in the department, each trooper shall receive an annual salary of nineteen thousand four hundred seventy-six dollars; during the third year of his service each such trooper shall receive an annual salary of nineteen thousand eight hundred dollars; and during the fourth and fifth year of such trooper’s service and for each year thereafter, he shall receive an annual salary of twenty thousand fifty-two dollars.

Each member of the department whose salary is fixed and specified herein shall receive and be entitled to an
increase in salary over that hereinbefore set forth, for
grade in rank, based on length of service, including that
heretofore and hereafter served with the department as
follows: At the end of five years of service with the
department, such member shall receive a salary
increase of three hundred dollars to be effective during
his next three years of service and a like increase at
three-year intervals thereafter, with such increases to be
cumulative.

In applying the foregoing salary schedule where
salary increases are provided for length of service,
members of the department in service at the time this
article becomes effective shall be given credit for prior
service and shall be paid such salaries as the same
length of service will entitle them to receive under the
provisions hereof.

The Legislature finds and declares that there is
litigation pending in the circuit court of Kanawha
County on the question whether members of the
department of public safety are covered by the provi-
sions of the state wage and hour law, article five-c,
chapter twenty-one of this code. The Legislature further
finds and declares that because of the unique duties of
members of the department, it is not appropriate to
apply said wage and hour provisions to them. Accord-
ingly, members of the department of public safety are
hereby excluded from the provisions of said wage and
hour law. The express exclusion hereby enacted shall
not be construed as any indication that such members
were or were not heretofore covered by said wage and
hour law.

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 may
receive supplemental pay as hereinafter provided.

The superintendent shall, within thirty days after the
effective date hereof, promulgate a rule or regulation to
establish the number of hours per month which shall
constitute the standard work month for the members of
the department. Such rule or regulation shall further
establish, on a graduated hourly basis, the criteria for
receipt of a portion or all of such supplemental payment
when hours are worked in excess of said standard work
month. Such rule or regulation shall be promulgated
pursuant to the provisions of chapter twenty-nine-a of
this code. The superintendent shall certify monthly to
the department’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 shall be in an amount
equal to one and one-half percent of the annual salary
of a trooper during his second year of service, not to
exceed two hundred twenty-five dollars monthly:
Provided, That effective the first day of January, one
thousand nine hundred ninety, said supplemental
payment may be up to but not exceeding two hundred
thirty-six dollars monthly. The superintendent and
civilian employees of the department shall not be
eligible for any such supplemental payments.

Each member of the department, except the superin-
tendent and civilian employees, shall execute, before
entering upon the discharge of his duties, a bond with
security in the sum of five thousand dollars payable to
the state of West Virginia, conditioned upon the faithful
performance of his duties, and such bond shall be
approved as to form by the attorney general and to
sufficiency by the governor.

Any member of the department who is called to
perform active duty for 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 such active
duty for training or inactive duty training, and the time
so granted shall not be deducted from any leave
accumulated as a member of the department.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.
§24-1-3. Commission continued; membership; chairman; compensation.

(a) The public service commission of West Virginia, heretofore established, is continued and directed as provided by this chapter, chapter twenty-four-a and chapter twenty-four-b. In addition, after having conducted a performance audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the public service commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the public service commission shall continue to exist until the first day of July, one thousand nine hundred ninety-two. The public service commission may sue and be sued by that name. Such public service commission shall consist of three members who shall be appointed by the governor with the advice and consent of the Senate. The commissioners shall be citizens and residents of this state and at least one of them shall be duly licensed to practice law in West Virginia, of not less than ten years' actual experience at the bar. No more than two of said commissioners shall be members of the same political party. Each commissioner shall, before entering upon the duties of his office, take and subscribe to the oath provided by section five, article four of the constitution, which oath shall be filed in the office of the secretary of state. The governor shall designate one of the commissioners to serve as chairman at the governor's will and pleasure. The chairman shall be the chief administrative officer of the commission. The governor may remove any commissioner only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of subsection (c) of this section.

(b) The unexpired term of members of the public service commission at the time this subsection becomes effective are continued through the thirtieth day of June, one thousand nine hundred seventy-nine. In accordance with the provisions of subsection (a) of this section, the governor shall appoint three commissioners,
Salaries

one for a term of two years, one for a term of four years and one for a term of six years, all the terms beginning on the first day of July, one thousand nine hundred seventy-nine. All future appointments are for terms of six years, except that an appointment to fill a vacancy is for the unexpired term only. The commissioners whose terms are terminated by the provisions of this subsection are eligible for reappointment.

(c) No person while in the employ of, or holding any official relation to, any public utility subject to the provisions of this chapter, or holding any stocks or bonds thereof, or who is pecuniarily interested therein, may serve as a member of the commission or as an employee thereof. Nor may any such commissioner be a candidate for or hold public office, or be a member of any political committee, while acting as such commissioner; nor may any commissioner or employee of said commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of this chapter. In case any of the commissioners becomes a candidate for any public office or a member of any political committee, the governor shall remove him from office and shall appoint a new commissioner to fill the vacancy created.

(d) Effective the first day of July, one thousand nine hundred eighty-four, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive a salary of thirty-nine thousand two hundred forty dollars a year to be paid in monthly installments from the special funds in such amounts as follows:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, thirty thousand two hundred ten dollars;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, seven thousand five hundred twenty-five dollars; and
(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, one thousand five hundred five dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive three thousand five hundred dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the first day of July, one thousand nine hundred eighty-four.

(e) Effective the first day of July, one thousand nine hundred eighty-five, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive a salary of forty-one thousand dollars a year to be paid in monthly installments from the special funds in such amounts as follows:

1. From the public service commission fund collected under the provisions of section six, article three of this chapter, thirty-one thousand six hundred dollars;

2. From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, seven thousand nine hundred dollars; and

3. From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, one thousand five hundred dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive three thousand six hundred seventy-five dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the first day of July, one thousand nine hundred eighty-five.

(f) Effective the first day of July, one thousand nine hundred eighty-eight, and in light of the assignment of
new, substantial additional duties embracing new areas
and fields of activity under certain legislative enact-
ments, each commissioner shall receive a salary of forty-
four thousand dollars a year to be paid in monthly
installments from the special funds in such amounts as
follows:

(1) From the public service commission fund collected
under the provisions of section six, article three of this
chapter, thirty-three thousand nine hundred dollars;

(2) From the public service commission motor carrier
fund collected under the provisions of section six, article
six, chapter twenty-four-a of this code, eight thousand
five hundred dollars; and

(3) From the public service commission gas pipeline
safety fund collected under the provisions of section
three, article five, chapter twenty-four-b of this code,
one thousand six hundred dollars.

In addition to this salary provided for all commision-
ers, the chairman of the commission shall receive three
d thousand six hundred seventy-five dollars a year to be
paid in monthly installments from the public service
commission fund collected under the provisions of
section six, article three of this chapter, on and after the
first day of July, one thousand nine hundred eighty-
eight.

(g) Effective the first day of January, one thousand
nine hundred ninety, each commissioner shall receive
the salary set forth in section two-a, article seven,chapter six of this code to be paid in monthly instal-
ments from the special funds in such amounts as
follows:

(1) From the public service commission fund collected
under the provisions of section six, article three of this
chapter, thirty-five thousand five hundred ninety-five
dollars;

(2) From the public service commission motor carrier
fund collected under the provisions of section six, article
six, chapter twenty-four-a of this code, eight thousand
nine hundred twenty-five dollars; and
(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, one thousand six hundred eighty dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive three thousand eight hundred dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the first day of January, one thousand nine hundred ninety.

CHAPTER 51. COURTS AND THEIR OFFICERS.

Article
1. Supreme Court of Appeals.
2. Circuit Courts; Circuit Judges.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

The salary of each of the justices of the supreme court of appeals shall be fifty-five thousand dollars per year: Provided, That beginning the first day of January, one thousand nine hundred ninety, the salary of each of the justices of the supreme court shall be seventy-two thousand dollars per year.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.


The salaries of the judges of the various circuit courts shall be paid solely out of the state treasury. No county, county commission, board of commissioners or other political subdivision shall supplement or add to such salaries.

The annual salary of all circuit judges shall be fifty thousand dollars per year: Provided, That beginning the first day of January, one thousand nine hundred ninety, the annual salary of all circuit judges shall be sixty-five thousand dollars per year.
AN ACT to amend and reenact section twenty-two, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four, article twenty-six, chapter sixteen of said code; to amend and reenact sections one, two and eight, article nine, chapter twenty of said code; to further amend said article nine by adding thereto four new sections, designated sections five-a, twelve-a, twelve-b and twelve-c; to further amend said chapter twenty by adding thereto two new articles, designated articles ten and eleven; to amend and reenact sections one and four-b, article two, chapter twenty-four of said code; to amend article two of said chapter twenty-four by adding thereto a new section, designated section one-f; and to amend article two, chapter twenty-four-a by adding thereto a new section, designated section four-a, all relating to solid and hazardous waste disposal generally; county solid waste assessment fees authorized; establishing the West Virginia solid waste management board; short title; definitions; redesignation of West Virginia resource recovery—solid waste disposal authority as the West Virginia solid waste management board; organization; appointment; qualifications; terms of office; compensation and expenses; director; designation and establishment of disposal sheds; construction and maintenance of disposal projects; loans; compliance with state and federal law; powers, duties, and responsibilities of board; power of board to collect service charges; exercise of other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights; development and designation of solid waste disposal
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sheds by the board; funds and use of health department employees for study and engineering of proposed projects; records to be kept; repayment to department; solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance; trustee for bondholders; contents of trust agreement; remedies of bondholders and trustees; bonds and notes not a debt of state, county, municipality or any political subdivision; expenses incurred pursuant to article; use of funds and properties by board; restrictions thereon; investment of funds by board; rentals, fees, service charges, and other revenues from solid waste disposal projects; contracts and leases of board; cooperation of other governmental agencies; bonds of such agencies; maintenance, operation, and repair of projects; repair of damaged property; reports by board to governor and Legislature; exemption from taxation; governmental agencies authorized to convey property; gratuities and financial interest in contracts and projects prohibited; penalties; conduct of proceedings of board; regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; testimony at commission hearings; cooperation of board and enforcement agencies in the collection and disposal of abandoned appliances and motor vehicles; findings and purposes; definitions; election by county commission to assume powers and duties of the county solid waste authority; assistance to county or regional solid waste authorities; commercial solid waste facilities siting plan; facilities subject to plan; criteria; approval by West Virginia solid waste management board; effect on facilities siting; public hearings; rules and regulations; interim siting approval for commercial solid waste facilities; solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties; creation of commercial hazardous waste management siting board; purpose and legislative findings; definitions; establishment of commercial hazardous waste management facility siting board; composition; appointment; compensation; powers; rules
and procedures; effect of certification; commercial hazardous waste management facility siting fund created; fees; judicial review; remedies; short title; West Virginia recycling program; short title; findings and purpose; recycling goals; recycling plans; establishment of county recycling programs for solid waste; petition for referendum and ballot form; referendum election procedure; effect of election; establishment of state recycling programs for solid waste; procurement of recycled products; jurisdiction of commission; waiver of jurisdiction; jurisdiction of public service commission with respect to solid waste facilities; procedures for changing rates of electric, natural gas, telephone cooperatives and municipally operated public utilities; motor carrier transporting solid waste; and pass through of landfill tip fee as rate surcharge.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four of article twenty-six, chapter sixteen of said code be amended and reenacted; that sections one, two and eight, article nine, chapter twenty of said code be amended and reenacted; that article nine of said chapter be further amended by adding thereto four new sections, designated sections five-a, twelve-a, twelve-b and twelve-c; that said chapter twenty be further amended by adding thereto two new articles, designated articles ten and eleven; that sections one and four-b, article two, chapter twenty-four of said code be amended and reenacted; that article two of said chapter twenty-four be further amended by adding thereto a new section, designated section one-f; and that article two, chapter twenty-four-a be amended by adding thereto a new section, designated section four-a, all to read as follows:

Chapter

7. County Commissions and Officers.
20. Natural Resources.
24A. Motor Carriers of Passengers and Property for Hire.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-22. County solid waste assessment fees authorized.

Each county commission is hereby authorized to impose a similar solid waste assessment fee to that imposed by section five, article five-f, chapter twenty of this code at a rate not to exceed fifty cents per ton or part thereof upon the disposal of solid waste in that county: Provided, That in counties wherein one or more municipalities operate their own solid waste collection programs and solid waste disposal facilities, such municipality or municipalities shall receive one half of the assessments collected under this section. Such amount shall be divided pro-rata amongst said municipalities and shall be deposited in their general revenue fund. All assessments due the county shall be applied to the reasonable costs of administration of that county's regional or county solid waste authority including the necessary and reasonable expenses of its members.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 26. WEST VIRGINIA SOLID WASTE MANAGEMENT BOARD.

§16-26-1. Short title.
§16-26-3. Definitions.
§16-26-4. West Virginia resource recovery—solid waste disposal authority redesignated West Virginia solid waste management board; organization of board; appointment and qualification of board members; their term of office, compensation and expenses; director of board.
§16-26-5. Board to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law.
§16-26-6. Powers, duties and responsibilities of board generally.
§16-26-7. Power of board to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.
§16-26-9. Expenditure of funds and use of health department employees for study and engineering of proposed projects; records to be kept; repayment to department.

§16-26-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

§16-26-11. Trustee for bondholders; contents of trust agreement.

§16-26-12. Legal remedies of bondholders and trustees.

§16-26-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.

§16-26-14. Use of funds, properties, etc., by board; restrictions thereon.

§16-26-15. Investment of funds by board.

§16-26-16. Rentals, fees, service charges and other revenues from solid waste disposal projects; contracts and leases of board; cooperation of other governmental agencies; bonds of such agencies.

§16-26-17. Maintenance, operation and repair of projects; repair of damaged property; reports by board to governor and Legislature.

§16-26-19. Exemption from taxation.

§16-26-20. Governmental agencies authorized to convey property.

§16-26-21. Financial interest in contracts; projects, etc., prohibited; gratuities prohibited; penalty.

§16-26-22. Conduct of proceedings of board.

§16-26-23. Regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; giving testimony at commission hearings.

§16-26-24. Cooperation of board and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.

§16-26-1. Short title.

1 This article shall be known and cited as the "West Virginia Solid Waste Management Board Act."

§16-26-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

3 (1) "Board" means the West Virginia solid waste management board created in section four of this article, heretofore known as the West Virginia state solid waste authority, the duties, powers, responsibilities and functions of which are specified in this article. All references in this code to the West Virginia resource recovery—solid waste disposal authority shall be construed as references to the West Virginia solid waste management board.
(2) "Bond" or "solid waste disposal revenue bond" means a revenue bond or note issued by the West Virginia solid waste management board, heretofore known as the West Virginia resource recovery—solid waste disposal authority, to effect the intents and purposes of this article.

(3) "Construction" includes reconstruction, enlargement, improvement and providing furnishings or equipment for a solid waste disposal project.

(4) "Cost" means, as applied to solid waste disposal projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property, rights, easements, franchise rights and interests required by the board for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which such buildings or structures may be moved; the cost of diverting highways, interchange of highways and access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment; all financing charges and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to solid waste disposal facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project; the financing of such acquisition or construction, including the amount authorized in the resolution of the board providing for the issuance of solid waste disposal revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing of any such project in operation. Any obligation or expenses incurred after the effective date of this article
by any governmental agency, with the approval of the board, for surveys, borings, preparation of plans and specifications and other engineering services in connection with the acquisition or construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed out of the proceeds of loans or solid waste disposal revenue bonds as authorized by the provisions of this article.

(5) “Governmental agency” means the state government or any agency, department, division or unit thereof; counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct or operate solid waste disposal facilities; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(6) “Industrial waste” means any solid waste substance resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resource.

(7) “Owner” includes all persons, partnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(8) “Person” means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; solid waste disposal shed district; partnership; trust; estate; individual; group of individuals
(9) "Pollution" means the discharge, release, escape or deposit, directly or indirectly, of solid waste of whatever kind or character, on lands or in waters in the state in an uncontrolled, unregulated or unapproved manner.

(10) "Revenue" means any money or thing of value collected by, or paid to, the West Virginia solid waste management board as rent, use fee, service charge or other charge for use of, or in connection with, any solid waste disposal project, or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the West Virginia solid waste management board to governmental agencies to finance in whole or in part the acquisition or construction of any solid waste development project or projects, or other money or property which is received and may be expended for or pledged as revenues pursuant to this article.

(11) "Solid waste" means all putrescible and nonputrescible solid waste substances, except human excreta, including, but not limited to, garbage, rubbish, ashes, incinerator residue, street refuse, dead animals, demolition and construction waste, vehicles and parts thereof, tires, appliances, sewage plant sludge, commercial and industrial waste and special waste, including, but not limited to, explosives, pathological waste and radioactive material, except those commercial and industrial wastes and special wastes which are under the control of the department of natural resources, the department of energy or the West Virginia air pollution control commission, or both, or of the United States government.

(12) "Solid waste disposal facility" means any method, system or facility to collect, transport, treat, neutralize, dispose of, stabilize, segregate, recover, recycle or hold solid waste, including, without limiting, the generality of the foregoing, the equipment, furnishings and appurtenances thereof.

(13) "Solid waste disposal project" or "project" means
any solid waste disposal facility the acquisition or construction of which is authorized by the West Virginia solid waste management board or any acquisition or construction which is financed in whole or in part from funds made available by grant or loan by, or through, the board as provided in this article, including all buildings and facilities which the board deems necessary for the operation of the project, together with all property, rights, easements and interests which may be required for the operation of the project.

(14) “Solid waste disposal shed” or “shed” means a geographical area which the West Virginia solid waste management board designates as provided in section eight of this article for solid waste management.

§16-26-4. West Virginia resource recovery—solid waste disposal authority redesignated West Virginia solid waste management board; organization of board; appointment and qualification of board members; their term of office, compensation and expenses; director of board.

The West Virginia resource recovery—solid waste disposal authority is hereby continued in all respects as heretofore constituted but is hereafter designated and shall be known as the West Virginia solid waste management board. All references in this code to the West Virginia resource recovery—solid waste disposal authority shall be construed as references to the West Virginia solid waste management board. The board is a governmental instrumentality of the state and a body corporate. The exercise by the board of the powers conferred on it by this article and the carrying out of its purposes and duties are essential governmental functions and are for a public purpose.

The board shall be composed of seven members. The director of the department of health and the director of the department of natural resources, or their designees, shall be members ex officio of the board. The other five members of the board shall be appointed by the governor, on the effective date of this section, by and
with the advice and consent of the Senate, for terms of
one, two, three, four and five years, respectively. Two
appointees shall be persons having at least three years
of professional experience in solid waste management,
civil engineering or regional planning and three
appointees shall be representatives of the general public.
The successor of each such appointed member shall be
appointed for a term of five years in the same manner
the original appointments were made and so that the
representation on the board as set forth in this section
is preserved, except that any person appointed to fill a
vacancy occurring prior to the expiration of the term for
which his predecessor was appointed shall be appointed
only for the remainder of such term. Each board
member shall serve until the appointment and qualifi-
cation of his successor.

No more than three of the appointed board members
may at any one time be from the same congressional
district or belong to the same political party. No
appointed board member may be an officer or employee
of the United States or this state. Appointed board
members may be reappointed to serve additional terms.
All members of the board shall be citizens of the state.
Each appointed member of the board, before entering
upon his duties, shall comply with the requirements of
article one, chapter six of this code and give bond in the
sum of twenty-five thousand dollars. Appointed
members may be removed from the board only for the
same causes as elective state officers may be removed.

Annually the board shall elect one of its appointed
members as chairman, another as vice chairman and
appoint a secretary-treasurer, who need not be a
member of the board. Four members of the board shall
constitute a quorum and the affirmative vote of four
members shall be necessary for any action taken by vote
of the board. No vacancy in the membership of the
board shall impair the rights of a quorum by such vote
to exercise all the rights and perform all the duties of
the board. The person appointed as secretary-treasurer
shall give bond in the sum of fifty thousand dollars. If
a board member is appointed as secretary-treasurer, he
shall give bond in the sum of twenty-five thousand dollars in addition to the bond required in the preceding paragraph.

The ex officio members of the board shall not receive any compensation for serving as a board member. Each of the five appointed members of the board shall receive compensation of fifty dollars for each day actually spent in attending meetings of the board or in the discharge of his duties as a member of the board, but not to exceed two thousand five hundred dollars in any fiscal year. Each of the seven board members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the board. All such compensation and expenses incurred by board members shall be payable solely from funds of the board or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the board beyond the extent to which moneys are available from funds of the board or from such appropriation.

The board shall meet at least four times annually and at any time upon the call of its chairman or upon the request in writing to the chairman of four board members.

The board shall appoint a director as its chief executive officer. The director shall have successfully completed an undergraduate education and, in addition, shall have two years of professional experience in solid waste management, civil engineering, public administration or regional planning.

§16-26-5. Board to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law.

To accomplish the public policy and purpose and to meet the responsibility of the state as set forth in this article, the West Virginia solid waste management board shall designate and establish solid waste disposal sheds and it may initiate, acquire, construct, maintain, repair and operate solid waste disposal projects or cause
the same to be operated pursuant to a lease, sublease or agreement with any person or governmental agency; may make loans and grants to persons and to governmental agencies for the acquisition or construction of solid waste disposal projects by such persons and governmental agencies; and may issue solid waste disposal revenue bonds of this state, payable solely from revenues, to pay the cost of, or finance, in whole or in part, by loans to governmental agencies, such projects. A solid waste disposal project shall not be undertaken unless the board determines that the project is consistent with federal law, with its solid waste disposal shed plan, with the standards set by the state water resources board and the division of water resources of the department of natural resources for any waters of the state which may be affected thereby, with the air quality standards set by the West Virginia air pollution control commission and with health standards set by the department of health. Any resolution of the board providing for acquiring or constructing such projects or for making a loan or grant for such projects shall include a finding by the board that such determinations have been made. A loan agreement shall be entered into between the board and each governmental agency to which a loan is made for the acquisition or construction of a solid waste disposal project, which loan agreement shall include, without limitation, the following provisions:

(1) The cost of such project, the amount of the loan, the terms of repayment of such loan and the security therefor, which may include, in addition to the pledge of all revenues from such project after a reasonable allowance for operation and maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on such project;

(2) The specific purposes for which the proceeds of the loan shall be expended, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the governmental agency in regard to the construction or acquisition of the project;

(3) The agreement of the governmental agency to impose, collect, and, if required to repay the obligations
of such governmental agency under the loan agreement,
increase service charges from persons using said
project, which service charges shall be pledged for the
repayment of such loan together with all interest, fees
and charges thereon and all other financial obligations
of such governmental agency under the loan agreement;
and

(4) The agreement of the governmental agency to
comply with all applicable laws, rules and regulations
issued by the board or other state, federal and local
bodies in regard to the construction, operation, mainte-
nance and use of the project.

The board shall comply with all of the provisions of
federal law and of article one of this chapter and any
rules and regulations promulgated thereunder which
pertain to solid waste collection and disposal.

§16-26-6. Powers, duties and responsibilities of board
generally.

1 The West Virginia solid waste management board
may exercise all powers necessary or appropriate to
carry out and effectuate its corporate purpose. The
board may:

(1) Adopt, and from time to time, amend and repeal
bylaws necessary and proper for the regulation of its
affairs and the conduct of its business, and rules and
regulations, promulgated pursuant to the provisions of
chapter twenty-nine-a of this code, to implement and
make effective its powers and duties.

(2) Adopt an official seal.

(3) Maintain a principal office which shall be in
Kanawha County, and, if necessary, regional suboffices
at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and
be impleaded in its own name, and particularly to
enforce the obligations and covenants made under
sections ten, eleven and sixteen of this article. Any
actions against the board shall be brought in the circuit
court of Kanawha County.
(5) Make loans and grants to persons and to governmental agencies for the acquisition or construction of solid waste disposal projects and adopt rules and procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for operation by a governmental agency or person, solid waste disposal projects, and, in accordance with chapter twenty-nine-a of this code, adopt rules and regulations for the use of such projects.

(7) Make available the use or services of any solid waste disposal project to one or more persons, one or more governmental agencies, or any combination thereof.

(8) Issue solid waste disposal revenue bonds and notes and solid waste disposal revenue refunding bonds of the state, payable solely from revenues as provided in section nine of this article unless the bonds are refunded by refunding bond, for the purpose of paying all or any part of the cost of or financing by loans to governmental agencies one or more solid waste disposal projects or parts thereof.

(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such public or private lands, or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article, but excluding the acquisition by the exercise of the right of eminent domain of any solid waste disposal facility operated under permits issued pursuant to the provisions of article five-f, chapter twenty of this code and owned by any person or governmental agency. This article does not authorize the board to take or disturb property or
facilities belonging to any public utility or to a common
carrier, which property or facilities are required for the
proper and convenient operation of such public utility
or common carrier, unless provision is made for the
restoration, relocation or duplication of such property or
facilities elsewhere at the sole cost of the board.

(11) Make and enter into all contracts and agreements
and execute all instruments necessary or incidental to
the performance of its duties and the execution of its
powers. When the cost under any such contract or
agreement, other than compensation for personal
services, involves an expenditure of more than two
thousand dollars, the board shall make a written
contract with the lowest responsible bidder after public
notice published as a Class II legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code, the publication area for such
publication to be the county wherein the work is to be
performed or which is affected by the contract, which
notice shall state the general character of the work and
the general character of the materials to be furnished,
the place where plans and specifications therefor may
be examined and the time and place of receiving bids.
A contract or lease for the operation of a solid waste
disposal project constructed and owned by the board or
an agreement for cooperation in the acquisition or
construction of a solid waste disposal project pursuant
to section sixteen of this article is not subject to the
foregoing requirements and the board may enter into
such contract or lease or such agreement pursuant to
negotiation and upon such terms and conditions and for
such period as it finds to be reasonable and proper
under the circumstances and in the best interests of
proper operation or of efficient acquisition or construc-
tion of such project. The board may reject any and all
bids. A bond with good and sufficient surety, approved
by the board, shall be required of all contractors in an
amount equal to at least fifty percent of the contract
price, conditioned upon the faithful performance of the
contract.

(12) Employ managers, superintendents, engineers,
accountants, auditors and other employees, and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be payable solely from the proceeds of solid waste disposal revenue bonds or notes issued by the board, from revenues and from funds appropriated for such purpose by the Legislature.

(13) Receive and accept from any federal agency, subject to the approval of the governor, grants for or in aid of the construction of any solid waste disposal project or for research and development with respect to solid waste disposal projects and solid waste disposal sheds and receive and accept from any source aid or contributions of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made.

(14) Engage in research and development with respect to solid waste disposal projects and solid waste disposal sheds.

(15) Purchase fire and extended coverage and liability insurance for any solid waste disposal project and for the principal office and suboffices of the board, insurance protecting the board and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the board may agree to provide under any resolution authorizing the issuance of solid waste disposal revenue bonds or in any trust agreement securing the same.

(16) Charge, alter and collect rentals and other charges for the use or services of any solid waste disposal project as provided in this article, and charge and collect reasonable interest, fees and other charges in connection with the making and servicing of loans to governmental agencies in furtherance of the purposes of this article.

(17) Establish or increase reserves from moneys
received or to be received by the board to secure or to pay the principal of and interest on the bonds and notes issued by the board pursuant to this article.

(18) Do all acts necessary and proper to carry out the powers expressly granted to the board in this article.

§16-26-7. Power of board to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.

In order to ensure that the public purposes to be served by the board may be properly carried out and in order to assure the timely payment to the board of all sums due and owing under loan agreements with governmental agencies, as referred to in section five of this article, notwithstanding any provision to the contrary elsewhere contained in this code, in event of any default by a governmental agency under such a loan agreement, the board shall have, and may, at its option, exercise the following rights and remedies in addition to the rights and remedies conferred by law or pursuant to said loan agreement:

(1) The board may directly impose, in its own name and for its own benefit, service charges determined by it to be necessary under the circumstances upon all users of the solid waste disposal project to be acquired or constructed pursuant to such loan agreement, and proceed directly to enforce and collect such service charges, together with all necessary costs of such enforcement and collection.

(2) The board may exercise, in its own name or in the name of and as agent for the governmental agency, all of the rights, board, powers and remedies of the governmental agency with respect to the solid waste disposal project or which may be conferred upon the governmental agency by statute, rule, regulation or judicial decision, including, without limitation, all rights and remedies with respect to users of such solid waste disposal project.
(3) The board may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by such governmental agency of all of the terms and conditions of such loan agreement including, without limitation, the adjustment and increase of service charges as required to repay the loan or otherwise satisfy the terms of such loan agreement, the enforcement and collection of such service charges and the enforcement by such governmental agency of all rights and remedies conferred by statute, rule, regulation or judicial decision.


The board shall maintain the division of the state into geographical areas for solid waste management which shall be known as solid waste disposal sheds. The board may, from time to time, modify the boundaries of such sheds in a manner consistent with the provisions of this section. Before it modifies the sheds, the board shall consult with the affected municipalities and county or regional solid waste authorities and obtain and evaluate their opinions as to how many sheds there should be and where their boundaries should be located. The board shall then cause feasibility and cost studies to be made in order for it to designate the solid waste disposal sheds within each of which the most dependable, effective, efficient and economical solid waste disposal projects may be established. The sheds shall not overlap and shall cover the entire state.

The board shall designate the sheds so that:

(1) The goal of providing solid waste collection and disposal service to each household, business and industry in the state can reasonably be achieved.

(2) The total cost of solid waste collection and disposal and the cost of solid waste collection and disposal within each shed and per person can be kept as low as possible.

(3) Solid waste collection and disposal service, facilities and projects can be integrated in the most feasible, dependable, effective, efficient and economical manner.
(4) No county is located in more than one shed. Provided, That the board may divide a county among two or more sheds upon request of the appropriate county or regional solid waste authority.

The board, in modifying the boundaries of solid waste disposal sheds, is exempt from the provisions of chapter twenty-nine-a.

§16-26-9. Expenditure of funds and use of health department employees for study and engineering of proposed projects; records to be kept; repayment to department.

With the approval of the board, the director of the department of health shall expend out of any funds available for the purpose such moneys as are necessary for the study and engineering of any proposed solid waste disposal project and may use its employees and consultants for that purpose. All such expenses incurred by the director of the department of health prior to the issuance of solid waste disposal revenue bonds or notes under this article shall be paid by him and charged to the appropriate solid waste disposal project. The director of the department of health shall keep proper records and accounts showing the amounts so charged. Upon the sale of solid waste disposal revenue bonds or notes for a solid waste disposal project, the moneys so expended by the director of the department of health with the approval of the board in connection with such project shall be repaid to the department of health from the proceeds of such bonds or notes.

§16-26-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

The board is hereby empowered to issue, from time to time, solid waste disposal revenue bonds and notes of the state in such principal amounts as the board deems necessary to pay the cost of or finance in whole or in part by loans to governmental agencies, one or more solid waste development projects, but the aggregate amount of all issues of bonds and notes outstanding at
one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues received from such projects, and shall not exceed in the aggregate the sum of fifty million dollars.

The board may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of solid waste disposal revenue refunding bonds of the state. Except as may otherwise be expressly provided in this article or by the board, every issue of its bonds or notes shall be obligations of the board payable out of the revenues and reserves created for such purposes by the board, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge shall be valid and binding from the time the pledge is made and the revenue so pledged and thereafter received by the board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the board irrespective of whether such parties have notice thereof. All such bonds and notes shall have all the qualities of negotiable instruments.

The bonds and notes shall be authorized by resolution of the board, shall bear such dates and shall mature at such times, in the case of any such note or any renewals thereof not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution may provide. The bonds and notes shall bear interest at such rate, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment, at such place and be subject to such terms of redemption as the board may authorize. The board may sell such bonds and notes at public or private sale, at the price the board determines. The bonds and notes
shall be executed by the chairman and vice chairman
of the board, both of whom may use facsimile signa-
tures. The official seal of the board or a facsimile thereof
shall be affixed thereto or printed thereon and attested,
manually or by facsimile signature, by the secretary-
treasurer of the board, and any coupons attached thereto
shall bear the signature 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 had remained in office until such
delivery and, in case the seal of the board 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.

Any resolution authorizing any bonds or notes or any
issue thereof may contain provisions (subject to such
agreements with bondholders or noteholders as may
then exist, which provisions shall be a part of the
contract with the holders thereof) as to pledging all or
any part of the revenues of the board to secure the
payment of the bonds or notes or of any issue thereof; a
covenant to fix, alter and collect rentals, fees, service
charges and other charges so that pledged revenues will
be sufficient to pay the costs of operation, maintenance
and repairs, pay principal of and interest on bonds or
notes secured by the pledge of such revenues and
provide such reserves as may be required by the
applicable resolution or trust agreement; the setting
aside of reserve funds, sinking funds or replacement and
improvement funds and the regulation and disposition
thereof; the crediting of the proceeds of the sale of bonds
or notes to and among the funds referred to or provided
for in the resolution authorizing the issuance of the
bonds or notes; the use, lease, sale or other disposition
of any solid waste disposal project or any other assets
of the board; limitations on the purpose to which the
proceeds of sale of bonds or notes may be applied and
pledging such proceeds to secure the payment of the
bonds or notes or of any issue thereof; agreement of the
board to do all things necessary for the authorization,
issuance and sale of bonds in such amounts as may be
necessary for the timely retirement of notes issued in
anticipation of the issuance of bonds; limitations on the
issuance of additional bonds or notes; the terms upon
which additional bonds or notes may be issued and
secured; the refunding of outstanding bonds or notes; the
procedure, if any, by which the terms of any contract
with bondholders or noteholders may be amended or
abrogated, the holders of which must consent thereto,
and the manner in which such consent may be given;
limitations on the amount of moneys to be expended by
the board for operating, administrative or other
expenses of the board; securing any bonds or notes by
a trust agreement; and any other matters, of like or
different character, which in any way affect the security
or protection of the bonds or notes.

In the event that the sum of all reserves pledged to
the payment of such bonds or notes shall be less than
the minimum reserve requirements established in any
resolution or resolutions authorizing the issuance of such
bonds or notes, the chairman of the board shall certify,
on or before the first day of December of each year, the
amount of such deficiency to the governor of the state,
for inclusion, if the governor shall so elect, of the amount
of such deficiency in the budget to be submitted to the
next session of the Legislature for appropriation to the
board to be pledged for payment of such bonds or notes:

Provided, That the Legislature shall not be required to
make any appropriation so requested, and the amount
of such deficiencies shall not constitute a debt or liability
of the state.

Neither the members of the board nor any person
executing the bonds or notes shall be liable personally
on the bonds or notes or be subject to any personal
liability or accountability by reason of the issuance
thereof.

§16-26-11. Trustee for bondholders; contents of trust
agreement.
In the discretion of the board, any solid waste disposal revenue bonds or notes or solid waste disposal revenue refunding bonds issued by the board under this article may be secured by a trust agreement between the board and a corporate trustee, which trustee may be any trust company or banking institution having the powers of a trust company within or without this state.

Any such trust agreement may pledge or assign revenues of the board to be received, but shall not convey or mortgage any solid waste disposal project or any part thereof. Any such trust agreement or any resolution providing for the issuance of such bonds or notes may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as are reasonable and proper and not in violation of law, including the provisions contained in section nine of this article, covenants setting forth the duties of the board in relation to the acquisition of property, the construction, improvement, maintenance, repair, operation and insurance of the solid waste disposal project, the cost of which is paid in whole or in part from the proceeds of such bonds or notes, the rentals or other charges to be imposed for the use or services of any solid waste disposal project, provisions with regard to the payment of the principal of and interest, charges and fees on loans made to governmental agencies from the proceeds of such bonds or notes, the custody, safeguarding, and application of all moneys and provisions for the employment of consulting engineers in connection with the construction or operation of such solid waste disposal project. Any banking institution or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or notes or of revenues shall furnish such indemnifying bonds or pledge such securities as are required by the board. Any such trust agreement may set forth the rights and remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of action by bondholders and noteholders as customarily provided in trust agreements or trust indentures securing similar bonds. Such trust agreement may contain such other provisions as the
board deems reasonable and proper for the security of
the bondholders or noteholders. All expenses incurred in
carrying out the provisions of any such trust agreement
may be treated as a part of the cost of the operation of
the solid waste disposal project. Any such trust agree-
ment or resolution authorizing the issuance of solid
waste disposal revenue bonds may provide the method
whereby the general administrative overhead expenses
of the board shall be allocated among the several
projects acquired or constructed by it as a factor of the
operating expenses of each such project.

§16-26-12. Legal remedies of bondholders and trustees.

Any holder of solid waste disposal revenue bonds
issued under the authority of this article or any of the
coupons appertaining thereto and the trustee under any
trust agreement, except to the extent the rights given
by this article may be restricted by the applicable
resolution or such trust agreement, may by civil action,
mandamus or other proceeding, protect and enforce any
rights granted under the laws of this state or granted
under this article, by the trust agreement or by the
resolution authorizing the issuance of such bonds, and
may enforce and compel the performance of all duties
required by this article, or by the trust agreement or
resolution, to be performed by the board or any officer
or employee thereof, including the fixing, charging and
collecting of sufficient rentals, fees, service charges or
other charges.

§16-26-13. Bonds and notes not debt of state, county,
municipality or of any political subdivision;
expenses incurred pursuant to article.

Solid waste disposal revenue bonds and notes and solid
waste disposal revenue refunding bonds issued under
authority of this article and any coupons in connection
therewith shall not constitute a debt or a pledge, of the
faith and credit or taxing power of this state or of any
county, municipality or any other political subdivision
of this state, and the holders or owners thereof shall
have no right to have taxes levied by the Legislature or
taxing authority of any county, municipality or any
other political subdivision of this state for the payment
of the principal thereof or interest thereon, but such
bonds and notes shall be payable solely from the
revenues and funds pledged for their payment as
authorized by this article unless the notes are issued in
anticipation of the issuance of bonds or the bonds are
refunded by refunding bonds issued under authority of
this article, which bonds or refunding bonds shall be
payable solely from revenues and funds pledged for
their payment as authorized by this article. All such
bonds and notes shall contain on the face thereof a
statement to the effect that the bonds or notes, as to both
principal and interest, are not debts of the state or any
county, municipality or political subdivision thereof, but
are payable solely from revenues and funds pledged for
their payment.

All expenses incurred in carrying out the provisions
of this article shall be payable solely from funds
provided under authority of this article. This article
does not authorize the board to incur indebtedness or
liability on behalf of or payable by the state or any
county, municipality or political subdivision thereof.

§16-26-14. Use of funds, properties, etc., by board; restrictions thereon.

All moneys, properties and assets acquired by the
board, whether as proceeds from the sale of solid waste
disposal revenue bonds or as revenues or otherwise, shall
be held by it in trust for the purposes of carrying out
its powers and duties, and shall be used and reused in
accordance with the purposes and provisions of this
article. Such moneys shall at no time be commingled
with other public funds. Such moneys, except as
otherwise provided in any resolution authorizing the
issuance of solid waste disposal revenue bonds or in any
trust agreement securing the same, or except when
invested pursuant to section fifteen of this article, shall
be kept in appropriate depositories and secured as
provided and required by law. The resolution authoriz-
ing the issuance of such bonds of any issue or the trust
agreement securing such bonds shall provide that any
officer to whom, or any banking institution or trust
company to which, such moneys are paid shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and such resolution or trust agreement provide. 

§16-26-15. Investment of funds by board. 

The board is hereby authorized and empowered to invest any funds not needed for immediate disbursement in any of the following securities: 

(1) Direct obligations of or obligations guaranteed by the United States of America; 

(2) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan bank system; Export-Import Bank of the United States; federal land banks; the Federal National Mortgage Association or the Government National Mortgage Association; 

(3) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under any annual contributions contract or contracts with the United States of America; or temporary notes issued by public agencies or municipalities or preliminary loan notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America; 

(4) Certificates of deposit secured by obligations of the United States of America; 

(5) Direct obligations of or obligations guaranteed by the state of West Virginia; or 

(6) Direct and general obligations of any other state within the territorial United States, to the payment of the principal of and interest on which the full faith and credit of such state is pledged: Provided, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond-rating agency.
Funds of the board in excess of current needs, except as otherwise provided in any resolution authorizing the issuance of its solid waste disposal revenue bonds or in any trust agreement securing the same, may be invested by the board in any security or securities in which the West Virginia state board of investments is authorized to invest under sections nine and ten, article six, chapter twelve of this code, except those securities specified in subsections (f) and (g) of said section nine. Income from all such investments of moneys in any fund shall be credited to such funds as the board determines, subject to the provisions of any such resolution or trust agreement and such investments may be sold at such times as the board determines.

§16-26-16. Rentals, fees, service charges and other revenues from solid waste disposal projects; contracts and leases of board; cooperation of other governmental agencies; bonds of such agencies.

This section shall apply to any solid waste disposal project or projects which are owned in whole or in part by the board.

The board may charge, alter and collect rentals, fees, service charges or other charges for the use or services of any solid waste disposal project, and contract in the manner provided by this section with one or more persons, one or more governmental agencies, or any combination thereof, desiring the use or services thereof, and fix the terms, conditions, rentals, fees, service charges or other charges for such use or services. Such rentals, fees, service charges or other charges shall not be subject to supervision or regulation by any other authority, department, commission, board, bureau or agency of the state, and such contract may provide for acquisition by such person or governmental agency of all or any part of such solid waste disposal project for such consideration payable over the period of the contract or otherwise as the board in its sole discretion determines to be appropriate, but subject to the
provisions of any resolution authorizing the issuance of solid waste disposal revenue bonds or notes or solid waste disposal revenue refunding bonds of the board or any trust agreement securing the same. Any governmental agency which has power to construct, operate and maintain solid waste disposal facilities may enter into a contract or lease with the board whereby the use or services of any solid waste disposal project of the board will be made available to such governmental agency and pay for such use or services such rentals, fees, service charges or other charges as may be agreed to by such governmental agency and the board.

Any governmental agency or agencies or combination thereof may cooperate with the board in the acquisition or construction of a solid waste disposal project and shall enter into such agreements with the board as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties, including, without limitation, the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the board to the extent necessary or appropriate for purposes of the issuance of solid waste disposal revenue bonds by the board. Any governmental agency may provide such contribution as is required under such agreements by the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection thereof, by the issuance of bonds or notes or by the levying of taxes or assessments and the issuance of bonds or notes in anticipation of the collection thereof, and by the payment of such appropriated money or the proceeds of such bonds or notes to the board pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote of the electors in an election held before or after
the effective date of this section for the purpose of issuing bonds to provide funds to acquire, construct or equip, or provide real estate and interests in real estate for a solid waste disposal project, whether or not the governmental agency at the time of such election had the board to pay the proceeds from such bonds or notes issued in anticipation thereof to the board as provided in this section, may issue such bonds or notes in anticipation of the issuance thereof and pay the proceeds thereof to the board in accordance with an agreement between such governmental agency and the board: Provided. That the legislative board of the governmental agency finds and determines that the solid waste disposal project to be acquired or constructed by the board in cooperation with such governmental agency will serve the same public purpose and meet substantially the same public need as the project otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.

§16-26-17. Maintenance, operation and repair of projects; repair of damaged property; reports by board to governor and Legislature.

1 Each solid waste development project, when constructed and placed in operation, shall be maintained and kept in good condition and repair by the board or if owned by a governmental agency, by such governmental agency, or the board or such governmental agency shall cause the same to be maintained and kept in good condition and repair. Each such project owned by the board shall be operated by such operating employees as the board employs or pursuant to a contract or lease with a governmental agency or person. All public or private property damaged or destroyed in carrying out the provision of this article and in the exercise of the powers granted hereunder with regard to any project shall be restored or repaired and placed in its original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided in accordance with the provisions of this article.

As soon as possible after the close of each fiscal year, the board shall make an annual report of its activities
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20 for the preceding fiscal year to the governor and the
21 Legislature. Each such report shall set forth a complete
22 operating and financial statement covering the board's
23 operations during the preceding fiscal year. The board
24 shall cause an audit of its books and accounts to be made
25 at least once each fiscal year by certified public
26 accountants and the cost thereof may be treated as a
27 part of the cost of construction or of operation of its
28 projects. A report of the audit shall be submitted to the
29 governor and the Legislature.

§16-26-19. Exemption from taxation.

1 The board shall not be required to pay any taxes or
2 assessments upon any solid waste disposal project or
3 upon any property acquired or used by the board or
4 upon the income therefrom. Bonds and notes issued by
5 the board and all interest and income thereon shall be
6 exempt from all taxation by this state, or any county,
7 municipality, political subdivision or agency thereof,
8 except inheritance taxes.

§16-26-20. Governmental agencies authorized to convey
property.

1 All governmental agencies, notwithstanding any
2 provision of law to the contrary, may lease, lend, grant
3 or convey to the board, at its request, upon such terms
4 as the proper authorities of such governmental agencies
5 deem reasonable and fair and without the necessity for
6 an advertisement, auction, order of court or other action
7 or formality, other than the regular and formal action
8 of the governmental agency concerned, any real prop-
9 erty or interests therein, including improvements
10 thereto or personal property which is necessary or
11 convenient to the effectuation of the authorized purposes
12 of the board, including public roads and other real
13 property or interests therein, including improvements
14 thereto or personal property already devoted to public
15 use.

§16-26-21. Financial interest in contracts, projects, etc.,
prohibited; gratuities prohibited; penalty.

1 No officer, member or employee of the board may be
financially interested, directly or indirectly, in any contract of any person with the board, or in the sale of any property, real or personal, to or by the board. This section does not apply to contracts or purchases of property, real or personal, between the board and any governmental agency.

No officer, member or employee of the board may have or acquire any financial interest, either direct or indirect, in any project or activity of the board or in any services or material to be used or furnished in connection with any project or activity of the board. If an officer, member or employee of the board has any such interest at the time he becomes an officer, member or employee of the board, he shall disclose and divest himself of it. Failure to do so shall be cause for dismissal from the position he holds with the authority.

This section does not apply in instances where a member of the board who is a contract solid waste hauler either seeks or has a financial interest, direct or indirect, in any project or activity of the board or in any services or material to be used or furnished in connection with any project or activity of the board: Provided, that that member shall fully disclose orally and in writing to the board the nature and extent of any interest, prior to any vote by the board which involves his interest, withdraw from any deliberation or discussion by the board of matters involving his interest, and refrain from voting on any matter which directly or indirectly affects him.

No officer, member or employee of the board may accept a gratuity from any person doing business with the board or from any person for the purpose of gaining favor with the board.

Any officer, member or employee of the board who has any financial interest prohibited by this section or who fails to comply with its provisions is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.
§16-26-22. Conduct of proceedings of board.  

1 The board shall comply with all of the requirements  
2 in article nine-a, chapter six of this code.

§16-26-23. Regulation of solid waste collectors and  
haulers to continue under public service  
commission; bringing about their com-  
pliance with solid waste disposal shed plan  
and solid waste disposal projects; giving  
testimony at commission hearings.

1 Solid waste collectors and haulers who are “common  
carriers by motor vehicle,” as defined in section two,  
article one, chapter twenty-four-a of this code, shall  
continue to be regulated by the public service commis-  
sion in accordance with the provisions of chapter  
twenty-four-a and rules and regulations promulgated  
thereunder. Nothing in this article shall give the board  
any power or right to regulate such solid waste  
collectors and haulers in any manner, but the public  
service commission, when it issues a new certificate of  
convenience and necessity, or when it alters or adjusts  
the provisions of any existing certificate of convenience  
and necessity, or when it approves the assignment or  
transfer of any certificate of convenience and necessity,  
shall consult with the board regarding what action it  
could take which would most likely further the imple-  
mentation of the board's solid waste disposal shed plan  
and solid waste disposal projects and shall take any  
reasonable action that will lead to or bring about  
compliance of such waste collectors and haulers with  
such plan and projects.

22 At any hearing conducted by the public service  
commission pertaining to solid waste collectors and  
haulers on any of these matters, any member of the  
board, the director or an employee of the board  
designated by the director may appear before the  
commission and present evidence.

§16-26-24. Cooperation of board and enforcement agen-  
cies in collecting and disposing of aban-  
doned household appliances and motor  
vehicles, etc.
The provisions of this article are complementary to those contained in article twenty-four, chapter seventeen of this code, and do not alter or diminish the authority of any enforcement agency, as defined in section two thereof, to collect and dispose of abandoned household appliances and motor vehicles, inoperative household appliances and junked motor vehicles and parts thereof, including tires. The board and such enforcement agencies shall cooperate fully with each other in collecting and disposing of such solid waste.

CHAPTER 20. NATURAL RESOURCES.

Article
9. County and Regional Solid Waste Authorities.
11. West Virginia Recycling Program.

ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§20-9-1. Legislative findings and purposes.
§20-9-5a. Election by county commission to assume powers and duties of the county solid waste authority.
§20-9-8. Assistance to county or regional solid waste authorities by West Virginia state solid waste management board, department of natural resources, department of health and the attorney general.
§20-9-12a. Commercial solid waste facility siting plan; facilities subject to plan, criteria; approval by West Virginia state solid waste management board; effect on facility siting; public hearings; rules and regulations.
§20-9-12b. Interim siting approval for commercial solid waste facilities.
§20-9-12c. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.

§20-9-1. Legislative findings and purposes.

The Legislature finds that the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in: (1) A public nuisance and a clear and present danger to the citizens of West Virginia, (2) the degradation of the state's environmental quality including both surface and groundwaters which provide essential and irreplaceable sources of domestic and industrial water.
supplies, (3) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare, (4) decreases public and private property values and results in the blight and deterioration of the natural beauty of the state, (5) has adverse social and economic effects on the state and its citizens, and (6) results in the waste and squandering of valuable nonrenewable resources contained in such solid wastes which can be recovered through proper recycling and resource-recovery techniques with great social and economic benefits for the state.

The Legislature further finds that the proper collection, transportation, processing, recycling and disposal of solid waste is for the general welfare of the citizens of the state and that the lack of proper and effective solid waste collection services and disposal facilities demands that the state of West Virginia and its political subdivisions act promptly to secure such services and facilities in both the public and private sectors.

The Legislature further finds that other states of these United States of America have imposed stringent standards for the proper collection and disposal of solid waste and that the lack of such standards and enforcement for such activities in West Virginia has resulted in the importation and disposal into the state of increasingly large amounts of infectious, dangerous and undesirable solid waste and hazardous waste from other states by persons and firms who wish to avoid the costs and requirements for proper, effective and safe disposal of such wastes in the states of origin.

Therefore, it is the purpose of the Legislature to protect the public health and welfare by providing for a comprehensive program of solid waste collection, processing, recycling and disposal to be implemented by state and local government in cooperation with the private sector. The Legislature intends to accomplish this goal by establishing county and regional solid waste authorities throughout the state to develop and implement litter and solid waste control plans. It is the further purpose of the Legislature to restrict and
regulate persons and firms from exploiting and endangering the public health and welfare of the state by disposing of solid wastes and other dangerous materials which would not be accepted for disposal in the location where such wastes or materials were generated.

The Legislature further finds that the potential impacts of proposed commercial solid waste facilities may have a deleterious and debilitating impact upon the transportation network, property values, economic growth, environmental quality, other land uses and the public health and welfare in affected communities. The Legislature also finds that the siting of such facilities is not being adequately addressed to protect these compelling interests of counties and local communities.

The Legislature further finds that affected citizens and local governments often look to state environmental regulatory agencies to resolve local land use conflicts engendered by these proposed facilities. The Legislature also finds that such local land use conflicts are most effectively resolved in a local governmental forum where citizens can most easily participate in the decision-making process and the land use values of local communities most effectively identified and incorporated into a comprehensive policy which reflects the values and goals of those communities.

Therefore, it is the purpose of the Legislature to enable local citizens to resolve the land use conflicts which may be created by proposed commercial solid waste facilities through the existing forum of county or regional solid waste authorities.


Unless the context clearly requires a different meaning, as used in this article the terms:

(a) "Approved solid waste facility" means a commercial solid waste facility or practice which has a valid permit or compliance order under article five-f of this chapter;

(b) "Commercial solid waste facility" means any solid waste facility which accepts solid waste generated by
sources other than the owner or operator of the facility and shall not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or such person and other person on a cost-sharing or nonprofit basis and shall not include the legitimate reuse and recycling of materials for structural fill, road base, mine reclamation, and similar applications;

(c) "Compliance order" means an administrative order issued pursuant to section five, article five-f, chapter twenty of this code authorizing a solid waste facility to operate without a solid waste permit;

(d) "Open dump" means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment;

(e) "Person" means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever;

(f) "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin;

(g) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including carcasses of any dead animal or any other offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial,
commercial, mining or from community activities but
does not include solid or dissolved material in sewage,
or solid or dissolved materials in irrigation return flows
or industrial discharges which are point sources and
have permits under article five-a, chapter twenty of this
code, or source, special nuclear or by-product material
as defined by the Atomic Energy Act of 1954, as
amended, or a hazardous waste either identified or
listed under article five-e, chapter twenty of this code
or refuse, slurry, overburden or other waste or material
resulting from coal-fired electric power generation, the
exploration, development, production, storage and
recovery of coal, oil and gas, and other mineral
resources placed or disposed of at a facility which is
regulated under chapter twenty-two, twenty-two-a or
twenty-two-b of this code, so long as such placement or
disposal is in conformance with a permit issued
pursuant to said chapters; “solid waste” shall also not
include materials which are recycled by being used or
reused in an industrial process to make a product, as
effective substitutes for commercial products, or are
returned to the original process as a substitute for raw
material feedstock;

(h) “Solid waste disposal” means the practice of
disposing solid waste including placing, depositing,
dumping or throwing or causing to be placed, deposited,
dumped or thrown any solid waste;

(i) “Solid waste disposal shed” means the geographical
area which the resource recovery—solid waste disposal
authority designates and files in the state register
pursuant to section eight, article twenty-six, chapter
sixteen of this code; and

(j) “Solid waste facility” means any system, facility,
land, contiguous land, improvements on the land,
structures or other appurtenances or methods used for
processing, recycling or disposing of solid waste,
including landfills, transfer stations, resource recovery
facilities and other such facilities not herein specified.

§20-9-5a. Election by county commission to assume
powers and duties of the county solid waste
authority.
Notwithstanding any provision of this article, any county commission which, on the first day of July, one thousand nine hundred eighty-eight, held a valid permit or compliance order for a commercial solid waste transfer station issued pursuant to article five-f of this chapter, may elect to assume all the duties, powers, obligations, rights, title and interests vested in the county solid waste authority by this chapter. A county commission may, prior to the first day of October, one thousand nine hundred eighty-nine, exercise this right of election by entering an order declaring such election and serving a certified copy thereof upon the resource recovery—solid waste disposal authority. Thirty days after entry of said order by the county commission the county solid waste authority shall cease to exist and the county commission shall assume all the duties, powers, obligations, rights, title and interest vested in the former authority pursuant to this chapter.

§20-9-8. Assistance to county or regional solid waste authorities by West Virginia state solid waste management board, department of natural resources, department of health and the attorney general.

The department of natural resources, the resource recovery—solid waste disposal authority, and the department of health shall provide technical assistance to each county and regional solid waste authority as reasonable and practicable for the purposes of this article within the existing resources and appropriations of each agency available for such purposes. The attorney general shall provide legal counsel and representation to each county and regional solid waste authority for the purposes of this article within the existing resources and appropriations available for such purposes, or with the written approval of the attorney general, said authority may employ counsel to represent it.

§20-9-12a. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by West Virginia state solid waste management board; effect on facility siting; public hearings; rules and regulations.
(a) On or before the first day of July, one thousand nine hundred ninety, each county or regional solid waste authority shall prepare and complete a commercial solid waste facilities siting plan for the county or counties within its jurisdiction: Provided, That the West Virginia state solid waste management board may authorize any reasonable extension of up to one year for the completion of the said siting plan by any county or regional solid waste authority. The siting plan shall identify zones within each county where siting of the following facilities is authorized or prohibited:

(1) Commercial solid waste landfills which may accept an aggregate of more than ten thousand tons of solid waste per month.

(2) Commercial solid waste landfills which shall accept only less than an aggregate of ten thousand tons of solid waste per month.

(3) Commercial solid waste transfer stations or commercial facilities for the processing or recycling of solid waste.

The siting plan shall include an explanation of the rationale for the zones established therein based on the criteria established in subsection (b) of this section.

(b) The county or regional solid waste authority shall develop the siting plan authorized by this section based upon the consideration of one or more of the following criteria: The efficient disposal of solid waste, including all solid waste generated within the county or region, economic development, transportation facilities, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic and cultural resources, the present or potential land uses for residential, commercial, recreational, environmental conservation or industrial purposes and the public health, welfare and convenience. The plan shall be developed based upon information readily available. Due to the limited funds and time available the plan need not be an exhaustive and technically detailed analysis of the criteria set forth above. Unless the information readily available clearly
establishes that an area is suitable for the location of a
commercial solid waste facility or not suitable for such
a facility, the area shall be designated as an area in
which the location of a commercial solid waste facility
is tentatively prohibited. Any person making an
application for the redesignation of a tentatively
prohibited area shall make whatever examination is
necessary and submit specific detailed information in
order to meet the provision established in subsection
(g) of this section.

(c) Prior to completion of the siting plan, the county
or regional solid waste authority shall complete a draft
siting plan and hold at least one public hearing in each
county encompassed in said draft siting plan for the
purpose of receiving public comment thereon. The
authority shall provide notice of such public hearings
and encourage and solicit other public participation in
the preparation of the siting plan as required by the
rules and regulations promulgated by the West Virginia
state solid waste management board for this purpose.
Upon completion of the siting plan, the county or
regional solid waste authority shall file said plan with
the West Virginia state solid waste authority.

(d) The siting plan shall take effect upon approval by
the West Virginia state solid waste management board
pursuant to the rules and regulations promulgated for
this purpose. Upon approval of said plan, the West
Virginia state solid waste management board shall
transmit a copy thereof to the director of the department
of natural resources and to the clerk of the county
commission of the county encompassed by said plan
which county clerk shall file the plan in an appropriate
manner and shall make the plan available for inspection
by the public.

(e) Effective upon approval of the siting plan by the
West Virginia state solid waste management board, it
shall be unlawful for any person to establish, construct,
install or operate a commercial solid waste landfill or
transfer station at a site not authorized by the siting
plan: Provided, That an existing commercial solid waste
landfill or transfer station which, on the effective date
of this section, held a valid solid waste permit or
compliance order issued by the department of natural
resources pursuant to article five-f of this chapter may
continue to operate but may not expand the spatial land
area of the said facility beyond that authorized by said
solid waste permit or compliance order, and may not
increase the aggregate monthly solid waste capacity in
excess of ten thousand tons monthly unless such a
facility is authorized by the siting plan.

(f) The county or regional solid waste authority may,
from time to time, amend the siting plan in a manner
consistent with the requirements of this section for
completing the initial siting plan and the rules and
regulations promulgated by the West Virginia state
solid waste management board for the purpose of such
amendments.

(g) Notwithstanding any provision of this code to the
contrary, upon application from a person who has filed
a pre-siting notice pursuant to section five-c, article five-
f of this chapter, the county or regional solid waste
authority or county commission, as appropriate, may
amend the siting plan by redesignating a zone that has
been designated as an area where a commercial solid
waste facility is tentatively prohibited to an area where
one is authorized. In such case, the person seeking the
change has the burden to affirmatively and clearly
demonstrate, based on the criteria set forth in subsection
(b) of this section, that a solid waste facility could be
appropriately operated in the public interest at such
location. The West Virginia state solid waste manage-
ment board shall provide, within available resources,
technical support to a county or regional solid waste
authority or county commission, as appropriate, when
requested by such authority or commission to assist it
in reviewing an application for any such amendment.

(h) The West Virginia state solid waste management
board shall prepare and adopt a siting plan for any
county or regional solid waste authority which does not
complete and file with the said state authority such a
siting plan in compliance with the provisions of this
section and the rules and regulations promulgated
thereunder. Any siting plan adopted by the West Virginia state solid waste authority pursuant to this subsection shall comply with the provisions of this section, and the rules and regulations promulgated thereunder, and shall have the same effect as a siting plan prepared by a county or regional solid waste authority and approved by the said state authority.

(i) The siting plan adopted pursuant to this section shall incorporate the provisions of the litter and solid waste control plan, as approved by the West Virginia state solid waste management board pursuant to section seven of this article, regarding collection and disposal of solid waste and the requirements, if any, for additional commercial solid waste landfill and transfer station capacity.

(j) The West Virginia state solid waste management board is authorized and directed to promulgate rules and regulations specifying the public participation process, content, format, amendment, review and approval of siting plans for the purposes of this section.

§20-9-12b. Interim siting approval for commercial solid waste facilities.

(a) Until the first day of July, one thousand nine hundred ninety-one, or the effective date of the commercial solid waste facility siting plan authorized by section twelve-a of this article, whichever date occurs first, it shall be unlawful for any person to establish, construct or install a commercial solid waste landfill or transfer station, or to expand the spatial land area of such an existing facility, without a certificate of site approval from the county or regional solid waste authority for the county in which the facility would be situated: Provided, That a person, who, on the effective date of this section, holds a valid Class A approval permit issued by a county commission, may obtain site approval from the county commission for the county in which the facility would be situated: Provided, however, That no such certificate will be required for such an existing commercial solid waste facility which on the effective date of this section held a valid solid waste permit or compliance order
issued by the department of natural resources unless such facility increases its spatial land area beyond that authorized by such solid waste permit or compliance order.

(b) The county or regional solid waste authority, or county commission, as appropriate, shall issue or deny the certificate of site approval based upon the consideration of the effects of the proposed commercial solid waste landfill or transfer station upon one or more of the following criteria: The efficient disposal of solid waste generated within the county or region, economic development, transportation facilities, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic or cultural resources, the present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes and the public health, welfare and convenience.

(c) The county or regional solid waste authority, or county commission, as appropriate, shall issue or deny the certificate of site approval within a reasonable period upon receiving the pre-siting notice for the proposed commercial solid waste facility required by section five-c of article five-f of this chapter.

(d) The county or regional solid waste authority, or county commission, as appropriate, shall hold a public hearing prior to the issuance of a certificate of site approval for the purpose of receiving public comment upon the siting of the proposed commercial solid waste facility. The authority shall provide notice of such public hearing with publication of a Class II legal advertisement in a qualified newspaper serving the county where the proposed site is situated.

(e) The county or regional solid waste authority, or county commission, as appropriate, shall complete findings of fact and conclusions relating to the criteria authorized in subsection (b) hereof which support its decision to issue or deny a certificate of site approval.

(f) Any person adversely affected by a decision of a county or regional solid waste authority, or county
commission, as appropriate, to issue or deny a certificate of site approval pursuant to this section may appeal that decision to the circuit court for the county in which the proposed commercial solid waste facility would be located.

§20-9-12c. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.

(a) *Imposition.*—Effective the first day of July, one thousand nine hundred eighty-nine, a solid waste assessment interim fee is hereby levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state to be collected at the rate of one dollar per ton or part thereof of solid waste. Said interim fee shall expire on the thirtieth day of June, one thousand nine hundred ninety-one. The fee imposed by this section shall be in addition to all other fees levied by law.

(b) *Collection, return, payment and record.*—The fee herein imposed shall be paid by the person disposing of solid waste at a solid waste disposal facility and shall be collected by the operator of such facility and remitted to the state tax commissioner. The fee accrues at the time the solid waste is disposed of in this state. The fee imposed by this section shall be due and payable on or before the fifteenth day of the month next succeeding the month in which the fee accrued together with a return on such form or forms as prescribed by the state tax commissioner. 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 state tax commissioner may by regulation require.

(c) *Regulated motor carriers.*—The fee imposed by this section and section twenty-two, article five, chapter seven of this code shall be 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.

(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. Nothing herein shall be construed to authorize in any way the creation or operation of or contribution to an open dump.

(e) **Exemptions.**—The following transactions shall be 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 it 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; and

(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 director of the department of natural resources by regulation as exempt from the fee imposed pursuant to section five-a, article five-f, chapter twenty of this code.

(f) **Procedure and administration.**—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 by this section with like effect as if said sections were the only fee imposed by this section and were set forth in extenso herein.
(h) **Dedication of proceeds.**—The net proceeds of the interim fee collected pursuant to this section shall be transferred to a special revenue account designated as the “Solid Waste Planning Fund” as such proceeds are received by the state tax commissioner. The West Virginia state solid waste management board shall allocate the proceeds of the said fund as follows:

(1) Fifty percent of the total proceeds shall be divided equally among, and paid over to, each county solid waste authority to be expended for the purposes of this article: Provided, That where a regional solid waste authority exists, such funds shall be paid over to the regional solid waste authority to be expended for the purposes of this article in an amount equal to the total share of all counties within the jurisdiction of said regional solid waste authority; and

(2) Fifty percent of the total proceeds shall be expended by the West Virginia state solid waste management board for: (i) Grants to the county or regional solid waste authorities for the purposes of this article; (ii) administration, technical assistance or other costs of the state solid waste management board necessary to implement the purposes of this article.

(i) **Severability.**—If any provision of this section or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(j) **Effective date.**—This section is effective on the first day of July, one thousand nine hundred eighty-nine.

**ARTICLE 10. COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING BOARD.**

§20-10-1. Purpose and legislative findings.

§20-10-2. Definitions.

§20-10-3. Establishment of commercial hazardous waste management facility siting board; composition; appointment; compensation; powers; rules; and procedures.
§20-10-1. Purpose and legislative findings.

(a) The purpose of this article is to establish a state commercial hazardous waste management facility siting board and to establish the procedure for which approval certificates shall be granted or denied for commercial hazardous waste management facilities.

(b) The Legislature finds that hazardous waste is generated throughout the state as a by-product of the materials used and consumed by individuals, businesses, enterprise and governmental units in the state, and that the proper management of hazardous waste is necessary to prevent adverse effects on the environment and to protect public health and safety. The Legislature further finds that:

(1) The availability of suitable facilities for the treatment, storage and disposal of hazardous waste is necessary to protect the environment resources and preserve the economic strength of this state and to fulfill the diverse needs of its citizens;

(2) Whenever a site is proposed for the treatment, storage or disposal of hazardous waste, the nearby residents and the affected county and municipalities may have a variety of reasonable concerns regarding the location, design, construction, operation, closing and long-term care of facilities to be located at the site, the effect of the facility upon their community's economic development and environmental quality and the incorporation of such concerns into the siting process;

(3) Local authorities have the responsibility for promoting public health, safety, convenience and general welfare, encouraging planned and orderly land use development, recognizing the needs of industry and business, including solid waste disposal and the treatment, storage and disposal of hazardous waste and that
reasonable concerns of local authorities should be considered in the siting of commercial hazardous waste management facilities; and

(4) New procedures are needed to resolve many of the conflicts which arise during the process of siting commercial hazardous waste management facilities.

§20-10-2. Definitions.

1 Unless the context clearly requires a different meaning, as used in this article the terms;

(a) "Board" means the commercial hazardous waste management facility siting board established pursuant to section three of this article;

(b) "Commercial hazardous waste management facility" means any hazardous waste treatment, storage or disposal facility which accepts hazardous waste, as identified or listed by the director of the department of natural resources under article five-e of this chapter, generated by sources other than the owner or operator of the facility and shall not include an approved hazardous waste facility owned and operated by a person for the sole purpose of disposing of hazardous wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis;

(c) "Hazardous waste management facility" means any facility including land and structures, appurtenances, improvements and equipment used for the treatment, storage or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. For the purposes of this article, it does not include: (i) Facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an on-site production process; or (ii) facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works. A facility may consist of one or more treatment, storage or disposal operational units.

§20-10-3. Establishment of commercial hazardous waste management facility siting board; composition; appointment; compensation; powers; rules; and procedures.
(a) There is hereby established a commercial hazardous waste management facility siting board consisting of nine members including the director of the department of natural resources and the director of the air pollution control commission who shall be nonvoting members ex officio, two ad hoc members appointed by the county commission of the county in which the facility is or is proposed to be located and who shall be residents of said county, and five other permanent members to be appointed by the governor with the advice and consent of the Senate, two of whom shall be representative of industries engaged in business in this state and three of whom shall be representative of the public at large. No two or more of the five permanent voting members of the board appointed by the governor shall be from the same county. Upon initial appointment, which shall be made by the governor within thirty days of the effective date of this article, one of said other five members shall be appointed for five years, one for four years, one for three years, one for two years and one for one year which terms shall commence on the effective date of this article. Thereafter, said permanent members shall be appointed for terms of five years each. Vacancies occurring other than by expiration of a term shall be filled by the governor in the same manner as the original appointment for the unexpired portion of the term. The term of the ad hoc members shall continue until a final determination has been made in the particular proceeding for which they are appointed. Four of the voting members on the board shall constitute a quorum for the transaction of any business, and the decision of four voting members of the board shall constitute action of the board. No person shall be eligible to be an appointee of the governor to the board who has any direct personal financial interest in any commercial hazardous waste management enterprise. The five permanent voting members of the board shall annually elect from among themselves a chairman no later than the thirty-first day of July of each calendar year. The board shall meet upon the call of the chairman or upon the written request of at least three of the voting members of the board.
(b) Each member of the board, other than the two members ex officio, shall be paid, out of funds appropriated for such purpose as compensation for his or her services on the board, the sum of seventy-five dollars for each day or substantial portion thereof that he or she is actually engaged in their duties pursuant to this article. In addition, each member, including members ex officio, shall be reimbursed, out of moneys appropriated for such purpose, all reasonable sums which he or she necessarily shall expend in the discharge of duties as a member of the board. The department of natural resources shall make available to the board such professional and support staff and services as may be necessary in order to support the board in carrying out its responsibilities within the limit of funds available for this purpose. The office of the attorney general shall provide legal advice and representation to the board as requested, within the limit of funds available for this purpose, or the board, with the written approval of the attorney general, may employ counsel to represent it.

(c) After the effective date of this article, no person shall construct or commence construction of a commercial hazardous waste management facility without first obtaining a certificate of site approval issued by the board in the manner prescribed herein. For the purpose of this section, "construct" and "construction" shall mean (i) with respect to new facilities, the significant alteration of a site to install permanent equipment or structures or the installation of permanent equipment or structures; (ii) with respect to existing facilities, the alteration or expansion of existing structures or facilities to include accommodation of hazardous waste, or expansion of more than fifty percent the area or capacity of an existing hazardous waste facility, or any change in design or process of a hazardous waste facility that will result in a substantially different type of facility. Construction does not include preliminary engineering or site surveys, environmental studies, site acquisition, acquisition of an option to purchase or activities normally incident thereto.

(d) Upon receiving a written request from the owner
or operator of the facility, the board may allow, without
going through the procedures of this article, any
changes in the facilities which are designed (1) to
prevent a threat to human health or the environment
because of an emergency situation; (2) to comply with
federal or state laws and regulations; or (3) to result in
demonstrably safer or environmentally more acceptable
processes.

(e) An application for certificate of site approval shall
consist of a copy of all hazardous waste permits, if any,
and permit applications, if any, issued by or filed with
any state permit-issuing authority pursuant to article
five-e of this chapter and a detailed written analysis
with supporting documentation of the following factors:

(1) The nature of the probable environmental and
economic impacts, including, but not limited to, speci-
fication of the predictable adverse effects on quality of
natural environment, public health and safety, scenic,
historic, cultural and recreational values, water and air
quality, wildlife, property values, transportation net-
works, and an evaluation of measures to mitigate such
adverse effects;

(2) The nature of the environmental benefits likely to be
derived from such facility, including the resultant
decrease in reliance upon existing waste disposal
facilities which do not comply with applicable laws and
regulations, and a reduction in fuel consumption and
vehicle emissions related to long-distance transportation
of hazardous waste; and

(3) The economic benefits likely to be derived from
such facility, including, but not limited to, a reduction
in existing costs for the disposal of hazardous waste,
 improvement to the state's ability to retain and attract
business and industry due to predictable and stable
waste disposal costs, and any economic benefits which
may accrue to the municipality or county in which the
facility is to be located.

(f) On or before sixty calendar days after the receipt
of such application, the board shall mail written notice to the applicant as to whether or not such application is complete. If, or when, the application is complete, the board shall notify the applicant and the county commission of the county in which the facility is or is proposed to be located. Said county commission shall thereupon, within thirty days of receipt of such notice, appoint the two ad hoc members of the board to act upon the application.

(g) Immediately upon determining that an application is complete, the board shall, at the applicant's expense, cause a notice to be published in the state register, which shall be no later than thirty calendar days after the date of such written notice of completeness, and shall provide notice to the chief executive office of each municipality in which the proposed facility is to be located and to the county commission of the county in which the facility is proposed to be located, and shall direct the applicant to provide reasonable notice to the public which shall, at a minimum, include publication as a Class I-O legal advertisement in at least two newspapers having general circulation in the vicinity in which the proposed facility is to be located identifying the proposed location, type of facility and activities involved, the name of the permittee, and the date, time and place at which the board will convene a public hearing with regard to the application. The date of the hearing shall be set by the board and shall commence within sixty days of the date of notice of completeness of an application.

(h) The board shall conduct a public hearing upon the application in the county in which the facility is to be located and shall keep an accurate record of such proceedings by stenographic notes and characters or by mechanical or electronic means. Such proceedings shall be transcribed at the applicant's expense. The board may accept both written and oral comments on the application.

(i) The commercial hazardous waste management facility siting board request further information of the applicant and shall render a decision based upon the
application and the record, either, requesting further
information, granting a certificate of site approval,
denying it, or granting it upon such terms, conditions
and limitations as the board deems appropriate. The
board shall base its decision upon the factors set forth
in subsection (e). The written decision of the board
containing its findings and conclusions shall be mailed
by certified mail to the applicant and to any requesting
person on or before sixty calendar days after receipt by
the board of a complete record of the hearing.

(j) The board may exercise all powers necessary or
appropriate to carry out the purposes and duties
provided in this article, including the power to promul-
gate rules in compliance with chapter twenty-nine-a of
this code.

§20-10-4. Effect of certification.

A grant of an approval certificate shall supersede any
local ordinance or regulation that is inconsistent with
the terms of the approval certificate. Nothing in this
chapter shall affect the authority of the host community
to enforce its regulations and ordinances to the extent
that they are not inconsistent with the terms and
conditions of the approval certificate. Grant of an
approval certificate shall not preclude or excuse the
applicant from the requirement to obtain approval or
permits under this chapter or other state or federal
laws.

§20-10-5. Commercial hazardous waste management
facility siting fund created; fees.

(a) There is hereby created and established in the
state treasury a special revenue fund entitled the
"commercial hazardous waste management facility
siting fund" which may be expended by the director of
the department of natural resources for the following:

(1) The necessary expenses of the board which may
include expenses and compensation for each member of
the board as authorized by this article.

(2) Administration, professional and support services
provided by the department to the board.
(3) Legal counsel and representation provided by the attorney general to the board for the purposes of this article.

(b) The director of the department of natural resources shall promulgate rules and regulations, pursuant to section one, article one, chapter twenty-nine-a of this code, establishing reasonable fees to be charged each applicant for a certificate of site approval. Such fees shall be calculated to recover the reasonable and necessary expenses of the board, department of natural resources and attorney general which such agencies incur as pursuant to this article.


(a) Any person having an interest adversely affected by a final decision made and entered by the board is entitled to judicial review thereof in the Circuit Court of Kanawha County, or the circuit court of the county in which the facility is, or is proposed to be, situated, such appeal to be perfected by the filing of a petition with the court within sixty days of the date of receipt by the applicant of the board's written decision.

(b) The review shall be conducted by the court without a jury and shall be upon the record made before the board except that in cases of alleged irregularities in procedure before the board not shown in the record, testimony thereon may be taken before the court. The court may hear oral arguments and require written briefs.

The court may affirm the order or decision of the board or remand the case for further proceedings. It may reverse, vacate or modify the order or decision of the board if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision or order are:

(1) In violation of constitutional or statutory provisions; or
(2) In excess of the statutory authority or jurisdiction of the board; or
(3) Made upon unlawful procedures; or
(4) Affected by other error of law; or
(5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. The petition seeking such review must be filed with said supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

(d) Legal counsel and services for the board in all appeal proceedings shall be provided by the attorney general.

§20-10-7. Remedies.

(a) Any person who violates this section shall be compelled by injunction, in a proceeding instituted in the circuit court or the locality where the facility or proposed facility is to be located, to cease the violation.

(b) Such an action may be instituted by the board, director of the department of natural resources, air pollution control commission, political subdivision in which the violation occurs, or any other person aggrieved by such violation. In any such action, it shall not be necessary for the plaintiff to plead or prove irreparable harm or lack of an adequate remedy at law. No person shall be required to post any injunction bond or other security under this section.

(c) No action may be brought under this section after an approval certificate has been issued by the board, notwithstanding the pendency of any appeals or other challenges to the board's action.

(d) In any action under this section, the court may
award reasonable costs of litigation, including attorney
and expert witness fees, to any party if the party
substantially prevails on the merits of the case and if
in the determination of the court the party against
whom the costs are requested has acted in bad faith.


This article may be known and cited as the “Commercial
Hazardous Waste Management Facility Siting Act.”

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-1. Short title.

This article shall be known and cited as the “West
Virginia Recycling Act of 1989.”

§20-11-2. Legislative findings and purpose

The Legislature finds that many citizens desire a
recycling program in their county in order to conserve
limited natural resources, reduce litter, recycle valuable
materials, extend the useful life of solid waste landfills
and reduce the need for new landfills.

The Legislature further finds that the identification
and creation of local, regional, state and national
markets for recyclable materials are necessary for the
implementation of effective recycling programs.

The Legislature further finds that recycling programs
can most successfully be established by encouraging the
source separation of solid waste.

Therefore, it is the purpose of the Legislature to
establish goals for the recycling of solid waste; to
authorize each county commission, or the citizens of a
county by referendum, to adopt a comprehensive
recycling program for solid waste; to encourage source
SOLID WASTE DISPOSAL [Ch. 184

separation of solid waste; to increase the purchase of recycled products by the various agencies and instrumentalities of government; and to educate the public concerning the benefits of recycling.


(a) It is the goal of this state to reduce the solid waste stream by thirty percent by the year two thousand.

(b) It is an interim goal of this state to reduce the solid waste stream by twenty percent by the first day of January, one thousand nine hundred ninety-four.

§20-11-4. Recycling plans.

(a) Each county or regional solid waste authority, as part of the comprehensive litter and solid waste control plan required pursuant to the provisions of section seven, article nine of this chapter, shall prepare and adopt a comprehensive recycling plan to assist in the implementation of the recycling goals in section four of this article.

(b) Each recycling plan required by this section shall include, but not be limited to:

(1) Designation of the recyclable materials that can be most effectively source separated in the region or county, which shall include at least three recyclable materials; and

(2) Designation of potential strategies for the collection, marketing and disposition of designated source separated recyclable materials in each region or county.

§20-11-5. Establishment of county recycling programs for solid waste; petition for referendum to be placed on ballot; referendum election procedure; effect of such election.

(a) A comprehensive recycling program for solid waste may be established in any county of this state by action of a county commission in accordance with the provisions of this section. Such program shall require:

(1) That, prior to collection at its source, all solid waste shall be segregated into separate identifiable
recyclable materials by each person, partnership, corporation and governmental agency subscribing to a solid waste collection service in the county or transporting solid waste to a commercial solid waste facility in the county;

(2) That each commercial solid waste facility located in the county and each person engaged in the commercial collection, transportation, processing or disposal of solid waste within the county shall accept only such solid waste from which recyclable materials in accordance with said county's comprehensive recycling program have been segregated; and

(3) That the provisions of the recycling plan prepared pursuant to section four of this article shall, to the extent practicable, be incorporated in said county's comprehensive recycling program.

(b) For the purposes of this article, recyclable materials shall include, but not be limited to, steel and bi-metallic cans, aluminum, glass, paper, and such other solid waste materials as may be specified by the county commission with the advice of the county or regional solid waste authority.

(c) A referendum to determine whether it is the will of the voters of a county that a comprehensive recycling program for solid waste be established in the county may be held at any regular primary or general election or in conjunction with any other election. Any election at which the question of establishing a policy of comprehensive recycling for solid waste is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable.

(d) The county commission, upon the written petition of qualified voters residing within the county equal to at least five percent of the number of persons who voted in that county in the preceding general election, which petition may be in any number of counterparts, shall order a referendum be placed upon the ballot at the next
primary, general or special election to determine
whether it is the will of the voters of said county that
a policy of comprehensive recycling of solid waste be
established in the county.

(e) The ballot, or the ballot labels where voting
machines are used, shall have printed thereon substan-
tially the following:

"Shall the County Commission be required to establish
a comprehensive recycling program for solid waste in
______________ County, West Virginia?

☐ For Recycling

☐ Against Recycling

(Place a cross mark in the square opposite your
choice.)"

(f) If a majority of legal votes cast upon the question
be for the establishment of a policy of comprehensive
recycling of solid waste, the county commission shall,
after the certification of the results of the referendum,
thereafter establish by ordinance a comprehensive
recycling program for solid waste in the county within
ninety days of said certification. If a majority of the
legal votes cast upon the question be against the
establishment of a policy of comprehensive recycling of
solid waste, said policy shall not take effect, but the
question may again be submitted to a vote at any
subsequent election in the manner herein provided.

(g) Any comprehensive recycling program adopted by
referendum pursuant to this section may be rescinded
only by a subsequent referendum adopted pursuant to
the following procedures:

(1) The county commission, upon the written petition
of qualified voters residing within the county equal to
at least five percent of the number of persons who voted
in that county in the next preceding general election,
which petition may be in any number of counterparts,
shall order a referendum be placed upon the ballot at
the next primary, general or special election to deter-
mine whether it is the will of the voters of said county
that the policy of comprehensive recycling of solid waste previously established in the county be terminated.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the County Commission be required to terminate the comprehensive recycling program for solid waste in ________________ County, West Virginia?

☐ Continue Recycling

☐ End Recycling

(Place a cross mark in the square opposite your choice.)"

(h) If a majority of legal votes cast upon the question be for the termination of a policy of comprehensive recycling of solid waste previously established in the county, the county commission shall, after the certification of the results of the referendum, thereafter rescind by ordinance the comprehensive recycling program for solid waste in the county within ninety days of said certification. If a majority of the legal votes cast upon the question be for the continuation of the policy of comprehensive recycling of solid waste, said ordinance shall not be rescinded, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

§20-11-6. Establishment of state recycling program for solid waste.

Notwithstanding any provision of this article to the contrary, all agencies and instrumentalities of the state shall implement programs to recycle solid waste. Such programs shall include, but not be limited to, the following:

(a) Source separation of at least two recyclable materials;

(b) In the absence of a comprehensive county recycling plan pursuant to section five of this article,
collection and transportation of source separated recycled materials to an appropriate location.


(a) It is the goal of the Legislature that, to the maximum extent possible, the state purchase recycled products.

(b) In furtherance of the aforesaid goal, the director of the department of finance and administration shall develop a procurement plan for recycled paper products. Such plan shall include a review of existing procurement policies and a cost analysis of the impacts of such plan. The director shall submit a report on the thirty-first day of January, one thousand nine hundred ninety, summarizing the plan and any recommendations for its implementation. Said report shall be submitted to the governor, speaker of the House of Delegates and president of the Senate.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

The jurisdiction of the commission shall extend to all public utilities in this state, and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air; whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other
utilities for service to the public, whether directly or
through a distributing utility; supplying water, gas or
electricity, by municipalities or others; sewer systems
servicing twenty-five or more persons or firms other
than the owner of the sewer systems; any public service
district created under the provisions of article thirteen-
a, chapter sixteen of this code; toll bridges, wharves,
ferries; solid waste facilities, pursuant to section one-f
of this article; and any other public service: Provided,
That natural gas producers who provide natural gas
service to not more than twenty-five residential custo-
mers are exempt from the jurisdiction of the commission
with regard to the provisions of such residential service:
Provided, however, That upon request of any of the
customers of such natural gas producers, the commis-
sion may, upon good cause being shown, exercise such
authority as the commission may deem appropriate over
the operation, rates and charges of such producer and
for such length of time as the commission may consider
to be proper: Provided further, That the jurisdiction the
commission may exercise over the rates and charges of
municipally operated public utilities is limited to that
authority granted the commission in section four-b of
this article: And provided further, That the decision-
making authority granted to the commission in sections
four and four-a of this article shall, in respect to an
application filed by a public service district, be
delegated to a single hearing examiner appointed from
the commission staff, which hearing examiner shall be
authorized to carry out all decision-making duties
assigned to the commission by said sections, and to issue
orders having the full force and effect of orders of the
commission.

The commission may, upon application, waive its
jurisdiction and allow a utility operating in an adjoining
state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably
and economically served by a utility licensed to operate
within the state of West Virginia;

(2) Said area can be provided with utility service by
Section 24-2-1f

Jurisdiction of Commission over Solid Waste Facilities

Effective the first day of July, one thousand nine hundred eighty-nine, in addition to all other powers and duties of the commission as defined in this article, the commission shall establish, prescribe and enforce rates and fees charged by commercial solid waste facilities, as defined in subsection (b), section two, article nine, chapter twenty of this code: Provided, That an owner of a commercial solid waste facility that is not in existence on the effective date of this article that has executed or executes an agreement with a county commission or county or regional solid waste authority, establishing disposal rates or fees for said county or region, shall not be subject to the requirements of this chapter upon the approval of said disposal rates or fees by the commission for the term of such agreement: Provided, however, That any revisions to rates or fees or any renewals or extensions of said agreement would be similarly subject to such approval. The purpose of this provision is to encourage the development of solid waste disposal facilities which meet the environmental standards and requirements of article five-f of chapter twenty of this code and which provide for quality waste disposal for the county or region at reasonable rates. If any provisions of this section shall be held unconstitutional,
all commercial solid waste facilities shall be subject to
the jurisdiction of the commission as provided herein.

§24-2-4b. Procedures for changing rates of electric,
natural gas, telephone cooperatives and
municipally operated public utilities.

(a) Electric cooperatives, natural gas cooperatives,
telephone cooperatives and municipally operated public
utilities, except for municipally operated commercial
solid waste facilities as defined in section two-h, article
five-f, chapter twenty of this code, 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, telephone cooperatives and
municipally operated public utilities shall be just,
reasonable, applied without unjust discrimination or
preference and based primarily on the costs of providing
these services. Such 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 such 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, such other reasonable notices as will allow
filing of timely objections to such rate change. Such
rates and charges shall be filed with the commission
together with such information showing the basis of
such rates and charges and such other information as
the commission considers necessary. Any change in such
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, telephone cooperative, or municipality has
failed to file with the commission such rates and charges
with such information showing the basis of rates and charges and such 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 such rates upon the filing of a petition within thirty days of the adoption of the ordinance or resolution changing said 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 such municipally operated public utility, or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state; or

(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 said rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said 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 said rates or charges would otherwise go into effect, or until an order is issued as provided herein.

(2) 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 said rates or charges would otherwise go into effect or until an order is issued as provided herein.

(e) The commission shall forthwith appoint a hearing examiner from its staff to review the grievances raised by the petitioners. Said hearing examiner shall conduct a public hearing, and shall within one hundred days from the date the said 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. The commission may determine the method by which such 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 such a hearing.

(g) 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 future modification, if it is determined that
such interim or emergency rate is necessary to protect the municipality from financial hardship and if that financial hardship is attributable solely to the purchase of the utility commodity sold. In such cases, the commission may waive the forty-five-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.

(h) Notwithstanding any other provision, the commission shall have 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 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.

§24A-2-4a. Motor carriers transporting solid waste; pass through of landfill tip fees as rate surcharge.

Any common carrier transporting solid waste in this state pursuant to authority granted under section five, article two, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, may make application to the commission for approval of a rate surcharge to pass through any increase in the disposal rate charged by the landfill at which solid waste is disposed by the motor carrier, commonly known as the tip fee, to commercial and residential customers, including increases which are the direct result of fees, charges, taxes, or any other assessment imposed upon the landfill by a governmental body. The commission shall within fourteen days of receipt of said application notify the motor carrier of approval of the requested rate surcharge, or approval of a rate surcharge other than in the amount requested and the reason therefor. The effective date of the approved rate surcharge shall be the same date as the effective date of the increase in the tip fee to which the
surcharge relates; except that in the event the application for approval of the rate surcharge is received by the commission more than sixty days after the effective date of the tip fee increase, then the effective date of the approved rate surcharge shall be the date said application was received by the commission.

26. The commission shall immediately promulgate emergency rules which set forth the procedures for the filing of the tip fee rate surcharge application. It is the purpose of this statute to provide an expedited process which will allow the subject motor carriers to pass through tip fee increases to all customers. Only that data necessary to review in accordance with this statute may be required by the commission to be submitted by the motor carrier.

CHAPTER 185
(S. B. 249—Originating in the Committee on Finance)

[Passed February 28, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirty, article fifteen, chapter eleven of said code, all relating to authorizing the governor to incur indebtedness to redeem previous liabilities for the ordinary expenses of the state; specifying maximum amount of indebtedness and setting the time of repayment; providing the manner of issuance of such indebtedness; authorizing the governor to enter into trust agreements and covenants and to contract for professional and technical services in connection with such issuance; specifying that evidences of such indebtedness shall be negotiable instruments; providing for exemption of principal and interest on such indebtedness from taxation by the state and its political subdivisions; specifying that such indebtedness shall not be an obligation of the state; creating special fund for receipt of proceeds of such issuance and providing the purpose
for which such proceeds may be expended; creating a special fund for repayment of principal and interest on such indebtedness; pledging and dedicating certain portion of consumers sales tax for said repayment; and authorizing repayments from such fund to the occupational pneumoconiosis fund.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirty, article fifteen, chapter eleven of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, etc.

ARTICLE 1. THE GOVERNOR.

§5-1-19. Temporary loans.

1 The governor may raise, from time to time, by temporary loans, not having over eighteen months to run, nor bearing a greater interest than two cents per hundred dollars per day, so much as may be needed to supply the wants of the treasury: Provided, That the governor may, on or before the thirtieth day of June, one thousand nine hundred eighty-nine, issue notes, revenue bonds, certificates or other evidences of indebtedness of the state as provided in this section to redeem previous liabilities for the ordinary expenses of the state. Such notes, revenue bonds, certificates or other evidences of indebtedness may not exceed in the aggregate the principal sum of one hundred thirty-five million dollars and shall provide for repayment of principal and
The issuance of such notes, revenue bonds, certificates or other evidences of indebtedness shall be authorized by an executive order, and such notes, revenue bonds, certificates or other evidences of indebtedness shall be payable in such medium of payment and at such place or places, within or without the state, and may have such other terms and conditions as the governor determines. Such notes, revenue bonds, certificates or other evidences of indebtedness shall be signed by the governor, under the great seal of the state, and attested by the secretary of state. The governor and secretary of state may sign and attest such notes, revenue bonds, certificates or other evidences of indebtedness by facsimile signature. Such notes, revenue bonds, certificates or other evidences of indebtedness may be issued at such interest rate or rates as the governor deems reasonable and necessary to serve the best interests of the state and to enhance their marketability. Such notes, revenue bonds, certificates or other evidences of indebtedness shall be sold in such manner and on such terms and conditions as the governor may determine to be in the best interests of the state. Any revenue bonds issued hereunder shall be in registered form.

The governor may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the executive order authorizing the issuance of such notes, revenue bonds, certificates or other evidences of indebtedness he may enter into valid and legally binding covenants with the holders of such notes, revenue bonds, certificates or other evidences of indebtedness as to the custody, safekeeping and disposition of the moneys within the "Fiscal Responsibility Fund" hereinafter created and as to any other matters or provisions which are deemed necessary or advisable by the governor to serve the best interests of the state and to enhance the marketability of such notes, revenue bonds, certificates or other evidences of indebtedness. The governor may contract for the provision of such professional and technical
services as he may deem necessary or advisable in connection with the issuance of such notes, revenue bonds, certificates or other evidences of indebtedness, including without limitation accounting, actuarial, consulting, financial and legal services. The fees and expenses of such professionals and any and all other costs associated with the issuance of such notes, revenue bonds, certificates or other evidences of indebtedness shall be payable from the proceeds of such issuance.

Such notes, revenue bonds, certificates or other evidences of indebtedness shall be and constitute negotiable instruments under the Uniform Commercial Code of this state; shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such notes, revenue bonds, certificates or other evidences of indebtedness shall not be deemed to be general obligations or debts of the state within the meaning of the constitution of the state of West Virginia, and the credit or the taxing power of the state shall not be pledged therefor, but such notes, revenue bonds, certificates or other evidences of indebtedness shall be payable only from the revenue pledged therefor as provided in this section.

The proceeds of any indebtedness issued hereunder shall be paid into a special fund hereby created in the state treasury named "The Fund for Redemption of Previous Liabilities". The governor may make disbursements from this fund to pay the reasonable fees, expenses and costs associated with the issuance of the indebtedness authorized by this section, and such other disbursements as he deems necessary to redeem previous liabilities for the ordinary expenses of the state.

There is hereby created in the state treasury a special fund named the "Fiscal Responsibility Fund" into which shall be paid on and after the first day of July, one thousand nine hundred eighty-nine, the amounts as and when specified in section thirty, article fifteen, chapter eleven of this code. All moneys deposited in said fund are pledged to the repayment of principal and interest
on any notes, revenue bonds, certificates or other evidences of indebtedness issued pursuant to this section. A lien on the fund shall exist in favor of the holders of any notes, revenue bonds, certificates or other evidences of indebtedness issued under this section to the extent of such indebtedness. Any moneys not needed for repayment of principal and interest on and costs associated with the notes, revenue bonds, certificates or other evidences of indebtedness authorized by this section may be used to repay principal and interest on moneys previously transferred from the occupational pneumoconiosis fund pursuant to section eight-a, article four-b, chapter twenty-three of this code. Repayment to the occupational pneumoconiosis fund, if any, shall be made into the special account created in the state treasury by said section eight-a. Any amounts remaining in the “Fiscal Responsibility Fund” after provisions for repayment of indebtedness issued pursuant to this section and not otherwise used for repayment of moneys previously transferred from the occupational pneumoconiosis fund shall be transferred to the general revenue fund of this state on or before the first day of August, one thousand nine hundred ninety-two.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.


The proceeds of the tax imposed by this article shall be deposited in the general revenue fund of the state: Provided, That beginning the first day of July, one thousand nine hundred eighty-nine, and continuing each month thereafter through the last day of July, one thousand nine hundred ninety-two, the first five million dollars of proceeds of this tax for each month shall be paid into the “Fiscal Responsibility Fund” created by section nineteen, article one, chapter five of this code and used for the purposes specified therein: Provided, however, That for the fiscal year one thousand nine hundred eighty-nine, one million dollars of the proceeds of the tax imposed by this article shall be dedicated to
the cancer center at West Virginia University and eight
million dollars of the proceeds of the tax imposed by this
article shall be dedicated to the "Higher Education
Salary Fund" which is hereby created in the state
treasury. All moneys credited to the higher education
salary fund shall be expended by the board of regents
for further implementation of the fee schedules estab-
lished in articles twenty-two and twenty-six-b, chapter
eighteen of this code.

CHAPTER 186
(Com. Sub. for H. B. 2051—By Delegate Love)
[Passed April 7, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten,
chapter four of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to
scheduling governmental agencies or programs for
termination pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of governmental entities or
programs.

The following governmental entities and programs
shall be terminated on the date indicated but no
governmental entity or program shall be terminated
under this article unless a performance audit has been
conducted of such entity or program, except as autho-
rized under section fourteen of this article:

(1) On the first day of July, one thousand nine
hundred eighty-one: Judicial council of West Virginia;
motor vehicle certificate appeal board; child welfare
licensing board.
(2) On the first day of July, one thousand nine hundred eighty-two: Ohio River basin commission; commission on postmortem examination; state commission on manpower, training and technology.

(3) On the first day of July, one thousand nine hundred eighty-three: Anatomical board; economic opportunity advisory committee; community development authority board.

(4) On the first day of July, one thousand nine hundred eighty-four: The following programs of the department of natural resources: Rabies control, work incentive program; West Virginia alcoholic beverage control licensing advisory board.

(5) On the first day of July, one thousand nine hundred eighty-five: Beautification commission; labor management advisory council.

(6) On the first day of July, one thousand nine hundred eighty-six: Health resources advisory council.

(7) On the first day of July, one thousand nine hundred eighty-seven: Civil service commission advisory board; council of finance and administration; and the motorcycle safety standards and specifications board.

(8) On the first day of July, one thousand nine hundred eighty-eight: Veteran's council; labor management relations board; records management and preservation advisory committee; minimum wage rate board; commission on mass transportation; real estate commission; the department of labor; the division of archives and history of the department of culture and history; and the public employees insurance board.

(9) On the first day of July, one thousand nine hundred eighty-nine: Mental retardation advisory committee; board of school finance; veteran's affairs advisory council; reclamation commission.

(10) On the first day of July, one thousand nine hundred ninety: Consumer affairs advisory council; savings and loan association; forest industries industrial foundation; U.S. geological survey program within the
department of natural resources; drivers' license advisory board; women's commission; office of workers' compensation commissioner; child advocate office, department of human services; board of investments; and the department of corrections.

(11) On the first day of July, one thousand nine hundred ninety-one: State advisory council of the department of employment security; department of human services; oil and gas conservation commission; the family law masters system; state lottery commission; the department of commerce; West Virginia health care cost review authority; the following divisions or programs of the department of agriculture: Soil conservation committee, rural resource division, meat inspection program; interagency committee on pesticides; pesticides board of review; and the geological and economic survey.

(12) On the first day of July, one thousand nine hundred ninety-two: State water resources board; water resources division, department of natural resources; whitewater advisory board; state board of risk and insurance management; West Virginia's membership in the interstate commission on the Potomac River basin; board of banking and financial institutions; state building commission; the capitol building and grounds preservation commission; the board of examiners in counseling; and the public service commission: Provided, That in the case of the public service commission, the performance and fiscal audit required by this article shall be completed and transmitted to the joint committee on government and finance on or before the first day of July, one thousand nine hundred ninety-one, in order that the joint committee or its designated subcommittee may review the audit pursuant to the provisions of section one, article one, chapter twenty-four of this code.

(13) On the first day of July, one thousand nine hundred ninety-three: Commission on uniform state laws; state structural barriers compliance board; and the oil and gas inspectors examining board.

(14) On the first day of July, one thousand nine
AN ACT to amend and reenact article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia parkways, economic development and tourism authority; dissolving and terminating the West Virginia turnpike commission as of the first day of June, one thousand nine hundred eighty-nine, and creating as of the same date the West Virginia parkways, economic development and tourism authority; amending and reenacting existing provisions relating to turnpike commission; providing for construction, operation and financing of parkway, economic development and tourism projects; declaring construction of modern highways and promotion and enhancement of tourism and economic development in state as goals of authority, including, but not limited to, development, construction, improvement and enhancement of state parks and tourist facilities and attractions; providing that bonds issued by authority not debt of state or any political subdivision thereof; providing for composition of authority, terms of members and procedural matters relating thereto; transferring powers, obligations, liabilities, duties, functions, personnel, property and other assets of turnpike commission to authority; defining certain terms used in article; setting forth powers of authority including, but not limited to, power
to issue revenue and revenue refunding bonds to finance projects, to construct, reconstruct, improve, repair, maintain and operate projects, to fix and revise tolls, rents, fees and other charges, and to make and enter into contracts and agreements necessary or incidental to the performance of its duties; authorizing construction of grade separations at intersection of any project; authorizing acquisition of land, property, rights and other interests in land as authority may deem necessary; authorizing condemnation proceedings in certain circumstances; authorizing issuance of revenue bonds generally for purposes of paying all or any part of cost of projects, and specifying form and terms thereof and rights of holders thereof; authorizing issuance of revenue bonds to pay cost of West Virginia turnpike, including repayment to state of funds owed to it in connection with upgrading turnpike to federal interstate standards and, to the extent permitted by federal law, paying all or any part of the cost of related parkway projects, and limiting issuance of such bonds to an aggregate principal amount of eighty-three million dollars; specifying uses of bond proceeds; providing that bonds may be secured by trust agreement with any trust company and certain banks; providing that authority may fix, revise, charge and collect tolls, rents, fees, charges and other revenues and requiring competitive bidding on certain contracts; exempting authority from payment of taxes; designating all money received by authority as trust funds; setting forth bondholder and trustee remedies; requiring that all private property damaged or destroyed by authority be repaired or restored by authority from its funds; authorizing commissioner of highways department to expend funds to study feasibility of projects and reimbursing commissioner from bond proceeds; establishing penalty for defrauding authority; providing for cessation of tolls under certain circumstances; requiring removal of certain tolls on turnpike by specified date; providing that parkway projects shall constitute part of state road system; authorizing issuance of revenue refunding bonds generally to refund outstanding bonds of authority and, if deemed advisable by authority, to pay all or any part
of the cost of new project or projects, and to repay to state funds owed to it in connection with upgrading turnpike to federal interstate standards, and providing form and terms thereof and rights of holders thereof; authorizing issuance of special revenue refunding bonds in an aggregate principal amount not to exceed sixty million dollars to eliminate outstanding debt on West Virginia turnpike and, to the extent permissible under federal law, to pay all or any part of the cost of additional parkway projects or to repay to state funds owed to it in connection with upgrading turnpike to federal interstate standards; establishing special highway fund, to be separate and distinct from state road fund and general revenues, consisting of funds disbursed by the authority to department of highways in repayment of state funds used to upgrade West Virginia turnpike, and all appropriations, grants, gifts and other contributions to fund, and all interest earned on moneys held in fund; authorizing governor to transfer up to thirty-five million dollars from special highway fund to economic development authority insurance fund, and specifying that balance of special highway fund to be subject to legislative appropriation; providing that act to be deemed to provide additional and alternative methods for accomplishing purposes thereof; authorizing issuance of special obligation bonds; requiring preparation of annual report of financial condition and operations; providing for development of exit awareness signs; providing severability clause; and providing effective date of first day of June, one thousand nine hundred eighty-nine.

Be it enacted by the Legislature of West Virginia:

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

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

§17-16A-1. Constructing, operating, financing, etc., parkway, economic development and tourism projects.

§17-16A-2. Parkway revenue bonds and revenue refunding bonds not debt of state or political subdivisions; statement on bonds.
§17-16A-3. Dissolution and termination of West Virginia turnpike commission; West Virginia parkways, economic development and tourism authority generally.

§17-16A-4. Transfer of powers, duties, functions, assets and liabilities of turnpike commission to parkways authority.


§17-16A-6. Parkways authority's powers.


§17-16A-8. Acquisition of land, property, easements, etc.


§17-16A-13. Tolls, rents, fees, charges and revenues; competitive bidding on contracts.


§17-16A-17. Repair, etc., of damaged property; conveyances, etc., by counties, cities, etc., to parkways authority; maintenance and policing of projects; defrauding parkways authority; evading payment of tolls, rents, fees or charges; trespassing.


§17-16A-20. Parkway projects part of state road system; pledge of limited funds by state department of highways in case of deficit.


§17-16A-23. Special highway fund; appropriations from fund.

§17-16A-24. Article deemed to provide additional and alternative methods.

§17-16A-25. Additional powers of parkways authority; issuance of special obligation bonds.


§17-16A-29. Effective date.

§17-16A-1. Constructing, operating, financing, etc., parkway, economic development and tourism projects.

In order to remove the present handicaps and hazards on the congested highways and roads in the state of West Virginia, to facilitate vehicular traffic throughout the state, to promote and enhance the tourism industry and to develop and improve tourist facilities and attractions in the state, to promote the agricultural, economic and industrial development of the state, and to provide for
the construction of modern express highways including
center divisions, ample shoulder widths, long sight
distances, the bypassing of cities, multiple lanes in each
direction and grade separations at all intersections with
other highways and railroads, to provide for the
development, construction, improvement and enhance-
ment of state parks, tourist facilities and attractions,
and to provide for the improvement and enhancement
of state parks presently existing, the West Virginia
parkways, economic development and tourism authority
(hereinafter created) is hereby authorized and empow-
ered to construct, reconstruct, improve, maintain, repair
and operate parkway projects, economic development
projects and tourism projects (as those terms are
hereinafter defined in section five of this article) at such
locations as shall be approved by the state department
of transportation, and to issue parkway revenue bonds
of the state of West Virginia, payable solely from
revenues, to pay the cost of such projects.

§17-16A-2. Parkway revenue bonds and revenue refund-
ing bonds not debt of state or political
subdivisions; statement on bonds.

Parkway revenue bonds and revenue refunding bonds
issues under the provisions of this article shall not be
deemed to constitute a debt of the state or of any
political subdivision thereof or a pledge of the faith and
credit of the state or of any such political subdivision,
but such bonds shall be payable solely from the funds
herein provided therefrom from revenues. All such
parkway revenue bonds and revenue refunding bonds
shall contain on the face thereof a statement to the effect
that neither the state nor any political subdivision
thereof shall be obligated to pay the same or the interest
thereon except from revenues of the project or projects
for which they are issued and that neither the faith and
credit nor the taxing power of the state or any political
subdivision thereof is pledged to the payment of the
principal of or the interest on such bonds.

§17-16A-3. Dissolution and termination of West Virginia
turnpike commission; West Virginia park-
ways, economic development and tourism
authority generally.
On and after the first day of June, one thousand nine hundred eighty-nine, the West Virginia turnpike commission is hereby abolished in all respects, and there is hereby created the "West Virginia Parkways, Economic Development and Tourism Authority," and by that name the parkways authority may sue and be sued and plead and be impleaded. The parkways authority is hereby constituted an agency of the state, and the exercise by the parkways authority of the powers conferred by this article in the construction, reconstruction, improvement, operation and maintenance of parkway, economic development and tourism projects shall be deemed and held to be an essential governmental function of the state.

The West Virginia parkways, economic development and tourism authority shall consist of seven members, including the transportation secretary, who shall serve as chairman of the parkways authority, and six members, including no less than one from each of the counties which have land bordering parkway projects, appointed by the governor, by and with the advice and consent of the Senate. The appointed members shall be residents of the state, and shall have been qualified electors therein for a period of at least one year next preceding their appointment. Upon the effective date of this legislation, the governor shall forthwith appoint six members of the parkways authority for staggered terms. The terms of the parkways authority members first taking office on or after the effective date of this legislation shall expire as designated by the governor at the time of the nomination, one at the end of the first year, one at the end of the second year, one at the end of the third year, one at the end of the fifth year, one at the end of the sixth year, and one at the end of the seventh year, after the first day of June, one thousand nine hundred eighty-nine. As these original appointments expire, each subsequent appointment shall be for a full eight-year term. Any member whose term has expired shall serve until his successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any
member shall be eligible for reappointment. The term
of any person serving as a member of the West Virginia
turnpike commission immediately preceding the effec-
tive date of this legislation shall cease and otherwise
expire upon such effective date: Provided, That any such
member shall be eligible for reappointment. Each
appointed member of the parkways authority before
entering upon his duties shall take an oath as provided
by section five of article four of the Constitution of the
state of West Virginia.

The parkways authority shall elect one of the ap-
pointed members as vice chairman, and shall also elect
a secretary and treasurer who need not be members of
the parkways authority. Four members of the parkways
authority shall constitute a quorum and the vote of a
majority of members present shall be necessary for any
action taken by the parkways authority. No vacancy in
the membership of the parkways authority shall impair
the right of a quorum to exercise all the rights and
perform all the duties of the parkways authority. The
parkways authority shall meet at least monthly and
either the chairman or any four members shall be
empowered to call special meetings for any purpose or
purposes: Provided, That notice of any such meeting
shall be given to all members of the parkways authority
not less than ten days prior to said special meetings.

Before the issuance of any parkway revenue bonds or
revenue refunding bonds under the provisions of this
article, each appointed member of the parkways
authority shall execute a surety bond in the penal sum
of twenty-five thousand dollars and the secretary and
treasurer shall execute a surety bond in the penal sum
of fifty thousand dollars, each such surety bond to be
conditioned upon the faithful performance of the duties
of his office, to be executed by a surety company
authorized to transact business in the state of West
Virginia as surety and to be approved by the governor
and filed in the office of the secretary of state.

The members of the parkways authority shall not be
entitled to compensation for their services, but each
member shall be reimbursed for his actual expenses
necessarily incurred in the performance of his duties. All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation shall be incurred by the parkways authority hereunder beyond the extent to which moneys shall have been provided under the authority of this article.

§17-16A-4. Transfer of powers, duties, functions, assets and liabilities of turnpike commission to parkways authority.

(a) The duties, powers and functions of the West Virginia turnpike commission are hereby transferred to the parkways authority.

(b) All obligations, indebtedness and other liabilities of, and all rights, assets and other property owned by or used in the administration of, the West Virginia turnpike commission as of the first day of June, one thousand nine hundred eighty-nine, and all personnel of said turnpike commission as of said date are hereby assumed by and transferred to the parkways authority, which is hereby constituted the successor in interest to said commission in all respects.

(c) All books, papers, maps, charts, plans, literature and other records in the possession of the West Virginia turnpike commission as of the first day of June, one thousand nine hundred eighty-nine, shall be delivered or turned over to the parkways authority.

(d) The unexpended balance of appropriations or other funds available for use of the West Virginia turnpike commission as of the first day of June, one thousand nine hundred eighty-nine, is hereby transferred to the parkways authority for the use of the parkways authority.


As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:
(a) The words "parkways authority" mean the West Virginia parkways, economic development and tourism authority created by section three of this article, or if said parkways authority shall be abolished, the board, body, commission or authority succeeding to the principal functions thereof or to whom the powers given by this article to the parkways authority shall be given by law.

(b) The words "parkway project" mean any expressway, turnpike, trunkline, feeder road, state local service road or park and forest road which the parkways authority may at any time determine to construct, reconstruct, maintain, improve or repair under the provisions of this article, or any expressway, turnpike or other road constructed by the West Virginia turnpike commission pursuant to the authority granted to it under the laws of this state prior to the first day of June, one thousand nine hundred eighty-nine, and shall embrace all bridges, tunnels, overpasses, underpasses, interchanges, entrance plazas, approaches, toll houses, service stations and administration, storage and other buildings, which the parkways authority may deem necessary for the operation of the parkway project, or which is used in the operation of a parkway project constructed prior to the first day of June, one thousand nine hundred eighty-nine, together with all property, rights, easements and interests which may be acquired by the parkways authority for the construction or the operation of the parkway project or which were acquired in connection with or are used in the operation of a parkway project constructed prior to the first day of June, one thousand nine hundred eighty-nine.

(c) The words "tourism project" mean (i) any park or tourist facility and attraction which the parkways authority may at any time determine to create, develop, construct, reconstruct, improve, maintain or repair under the provisions of this article, and shall embrace all roads, interchanges, entrance plazas, approaches, services stations, administration, storage and any other buildings or service stations, structures which the parkways authority may deem necessary for the oper-
ation of the tourism project, together with all property
rights, easements and interests which may be acquired
by the parkways authority for the construction or
operation of the tourism project; and (ii) the construc-
tion, reconstruction, improvement, maintenance and
repair of any park or tourist facility and attraction
owned by the state as of the first day of June, one
thousand nine hundred eighty-nine.

(d) The words "economic development project" mean
any land or water site, structure, facility or equipment
which the parkways authority may at any time deter-
mine to acquire, create, develop, construct, reconstruct,
 improve or repair under the provisions of this article to
promote the agricultural, economic or industrial
development of the state, together with all property
rights, easements and interests which may be acquired
by the parkways authority for the development, con-
struction or operation of such project.

(e) The words "project" or "projects" mean a parkway
project, economic development project or tourism
project, or any combination thereof.

(f) The words "transportation secretary" mean the
secretary of the state department of transportation.

(g) The words "West Virginia turnpike commission"
mean the state turnpike commission existing as of the
first day of June, one thousand nine hundred eighty-
nine.

(h) The words "tourist facility and attraction" mean
cabins, lodges, recreational facilities, restaurants, and
other revenue producing facilities, any land or water
site, and any information center, visitors' center or rest
stop which the parkways authority determines may
improve, enhance or contribute to the development of
the tourism industry in the state.

(i) The word "turnpike" means the West Virginia
Turnpike or any other toll road in the state.

(j) The word "expressway" means any road serving
major intrastate and interstate travel, including federal
interstate routes.
(k) The word "trunkline" means any road serving major city to city travel.

(l) The words "feeder roads" mean any road serving community to community travel or collects and feeds traffic to an expressway or turnpike.

(m) The words "local service road" mean any local arterialized and spur roads which provide land access and socioeconomic benefits to abutting properties.

(n) The words "park and forest roads" mean any road serving travel within state parks, state forests and public hunting and fishing areas.

(o) The word "cost" as applied to any project, including without limitation the West Virginia Turnpike in sections eleven and twenty-two of this article, embraces the cost of construction, reconstruction, maintenance, improvement, repair and operation of the project, the cost of the acquisition of all land, rights-of-way, property, rights, easements and interests acquired by the parkways authority for such construction, reconstruction, maintenance, improvement and repair, the cost of all machinery, equipment, material and labor which are deemed essential thereto, the cost of improvements, the cost of financing charges, interest prior to and during construction and for one year after completion of construction, the cost of traffic estimates and of engineering, consultant, accounting, architects', trustees' and legal fees and expenses, plans, specifications, surveys, estimates of cost and of revenues, other costs and expenses necessary or incident to determining the feasibility or practicability of constructing any such project, administrative expenses and such other costs and expenses as may be necessary or incident to the construction of the project, the financing of such construction and the placing of the project in operation or to the operation of the project. Any obligation or expense hereafter incurred by the commissioner of the department of highways with the approval of the parkways authority for traffic surveys, borings, preparation of plans and specifications, and other engineering and consulting services in connection with the construc-
tion of a project shall be regarded as a part of the cost
of such project and shall be reimbursed to the state out
of the proceeds of parkway revenue bonds or revenue
refunding bonds hereinafter authorized.

(p) The word "owner" includes all individuals,
copartnerships, associations or corporations having any
title or interest in any property, rights, easements and
interests authorized to be acquired by this article.

(q) The words "West Virginia Turnpike" mean the
turnpike from Charleston to a point approximately one
mile south of the intersection of Interstate 77 and U. S.
Route 460 near Princeton in Mercer County, West
Virginia, which road is presently a part of the federal
interstate highway system.

§17-16A-6. Parkways authority's powers.

(a) The parkways authority is hereby authorized and
empowered:

(1) To adopt bylaws for the regulation of its affairs
and the conduct of its business;
(2) To adopt an official seal and alter the same at
pleasure;
(3) To maintain an office at such place or places within
the state as it may designate;
(4) To sue and be sued in its own name, plead and be
impleaded. Any and all actions against the parkways
authority shall be brought only in the county in which
the principal office of the parkways authority shall be
located;
(5) To construct, reconstruct, improve, maintain,
repair and operate projects at such locations within the
state as may be determined by the parkways authority:
Provided, That the parkways authority shall be prohi-
bited from constructing motels or any other type of
lodging facility within five miles of the West Virginia
Turnpike;
(6) To issue parkway revenue bonds of the state of
West Virginia, payable solely from revenues, for the
purpose of paying all or any part of the cost of any one
or more projects, which costs may include, with respect
to the West Virginia Turnpike, such funds as are
necessary to repay to the state of West Virginia all or
any part of the state funds used to upgrade the West
Virginia Turnpike to federal interstate standards;

(7) To issue parkway revenue refunding bonds of the
state of West Virginia, payable solely from revenues, for
any one or more of the following purposes: (i) Construct-
ing improvements, enlargements or extensions to the
project in connection with which the bonds to be
refunded were issued; (ii) paying all or part of the cost
of any additional project or projects; (iii) refunding any
bonds which shall have been issued under the provisions
of this article or any predecessor thereof; and (iv)
repaying to the state all or any part of the state funds
used to upgrade the West Virginia Turnpike to federal
interstate standards;

(8) To fix and revise from time to time tolls for transit
over each parkway project constructed by it or by the
West Virginia turnpike commission;

(9) To fix and revise from time to time rents, fees or
other charges, of whatever kind or character, for the use
of each tourism project or economic development project
constructed by it or for the use of any building,
structure or facility constructed by it in connection with
a parkway project;

(10) To acquire, hold, lease and dispose of real and
personal property in the exercise of its powers and the
performance of its duties under this article;

(11) To acquire in the name of the state by purchase
or otherwise, on such terms and conditions and in such
manner as it may deem proper, or by the exercise of the
right of condemnation in the manner hereinafter
provided, such public or private lands, including public
parks, playgrounds or reservations, or parts thereof or
rights therein, rights-of-way, property, rights, eas-
ements and interests, as it may deem necessary for
carrying out the provisions of this article. No compen-
sation shall be paid for public lands, playgrounds, parks,
parkways or reservations so taken, and all public
property damaged in carrying out the powers granted
by this article shall be restored or repaired and placed
in its original condition as nearly as practicable;

(12) To designate the locations, and establish, limit
and control such points of ingress to and egress from
each project as may be necessary or desirable in the
judgment of the parkways authority to ensure the
proper operation and maintenance of such project, and
to prohibit entrance to such project from any point or
points not so designated;

(13) To make and enter into all contracts and agree-
ments necessary or incidental to the performance of its
duties and the execution of its powers under this article,
and to employ consulting engineers, attorneys, accoun-
tants, architects, construction and financial experts,
trustees, superintendents, managers and such other
employees and agents as may be necessary in its
judgment, and to fix their compensation. All such
expenses shall be payable solely from the proceeds of
parkway revenue bonds or parkway revenue refunding
bonds issued under the provisions of this article, tolls or
from revenues;

(14) To make and enter into all contracts, agreements
or other arrangements with any agency, department,
division, board, bureau, commission, authority or other
governmental unit of the state to operate, maintain or
repair any project;

(15) To receive and accept from any federal agency
grants for or in aid of the construction of any project,
and to receive and accept aid or contributions from any
source of either money, property, labor or other things
of value, to be held, used and applied only for the
purposes for which such grants and contributions may
be made;

(16) To do all acts and things necessary or convenient
to carry out the powers expressly granted in this article;

(17) To file the necessary petition or petitions pursuant
to Title 11, United States Code, Sec. 401 (being section 81 of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, as amended) and to prosecute to completion all proceedings permitted by Title 11, United States Code, Secs. 401-403 (being sections 81 to 83, inclusive, of said act of Congress). The state of West Virginia hereby consents to the application of said Title 11, United States Code, Secs. 401-403, to the parkways authority.

(b) Nothing in this article shall be construed to prohibit the issuance of parkway revenue refunding bonds in a common plan of financing with the issuance of parkway revenue bonds.


The parkways authority shall have authority to construct grade separations at intersections of any project with public roads and state highways and to change and adjust the lines and grades of such roads and highways so as to accommodate the same to the design of such grade separation. The cost of such grade separations and any damage incurred in changing and adjusting the lines and grades of such roads and highways shall be ascertained and paid by the parkways authority as a part of the cost of such project.

If the parkways authority shall find it necessary to change the location of any portion of any public road or state highway, it shall cause the same to be reconstructed at such location as the parkways authority shall deem most favorable and of substantially the same type and in as good condition as the original road or highway. The cost of such reconstruction and any damage incurred in changing the location of any such road or highway shall be ascertained and paid by the parkways authority as a part of the cost of such project.

Upon the request of the parkways authority, the commissioner of the state department of highways shall relocate or discontinue any road or highway over which he has authority and control which is affected by the construction of any project.
In addition to the foregoing powers, the parkways authority and its authorized agents and employees may enter upon any lands, waters and premises in the state for the purpose of making surveys, soundings, drillings and examinations as it may deem necessary or convenient for the purposes of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending. The parkways authority shall make reimbursement for any actual damages resulting to such lands, waters and premises as a result of such activities.

The state of West Virginia hereby consents to the use of all lands owned by it, including lands lying under water, which are deemed by the parkways authority to be necessary for the construction or operation of any project.

§17-16A-8. Acquisition of land, property, easements, etc.

The parkways authority is hereby authorized and empowered to acquire by purchase, whenever it shall deem such purchase expedient, any land, property, rights, rights-of-way, franchises, easements and other interests in lands as it may deem necessary or convenient for the construction or operation of any project upon such terms and at such price as may be considered by it to be reasonable and can be agreed upon between the parkways authority and the owner thereof, and to take title thereto in the name of the state.


Whenever a reasonable price cannot be agreed upon, or whenever the owner is legally incapacitated, or is absent, unknown or unable to convey valid title, the parkways authority is hereby authorized and empowered to acquire, by the exercise of the power of condemnation in accordance with and subject to the provisions of any and all existing laws and statutes applicable to the exercise of the power of condemnation of property for public use, any land, property, rights, rights-of-way, franchises, easements or other property deemed necessary or convenient for the construction or
the efficient operation of any project or necessary in the restoration of public or private property damaged or destroyed. In any condemnation proceedings the court having jurisdiction of the suit, action or proceeding may make such orders as may be just to the parkways authority and to the owners of the property to be condemned and may require an undertaking or other security to secure such owners against any loss or damage by reason of the failure of the parkways authority to accept and pay for the property, but neither such undertaking or security nor any act or obligation of the parkways authority shall impose any liability upon the state or the parkways authority except such as may be paid from the funds provided under the authority of this article.


1 The parkways authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of parkway revenue bonds of the state for the purpose of paying all or any part of the cost of one or more projects: Provided, That this section shall not be construed as authorizing the issuance of parkway revenue bonds for the purpose of paying the cost of the West Virginia Turnpike, which parkway revenue bonds may be issued only as authorized under section eleven of this article. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates as may be determined by the parkways authority in its sole discretion, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the parkways authority, and may be made redeemable before maturity, at the option of the parkways authority, at such price or prices and under such terms and conditions as may be fixed by the parkways authority prior to the issuance of the bonds. The parkways authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of
principal and interest, which may be at any bank or
trust company within or without the state. The bonds
shall be executed by manual or facsimile signature by
the governor and by the chairman of the parkways
authority, and the official seal of the parkways authority
shall be affixed to or printed on each bond, and attested,
manually or by facsimile signature, by the secretary and
treasurer of the parkways authority, and any coupons
attached to any bond shall bear the manual or facsimile
signature of the chairman of the parkways authority. In
case any officer whose signature or a facsimile of whose
signature appears on any bonds or coupons shall cease
to be such officer before the delivery of such bonds, such
signature or facsimile shall nevertheless be valid and
sufficient for all purposes the same as if he had
remained in office until such delivery; and, in case the
seal of the parkways authority has been changed after
a facsimile has been imprinted on such bonds, such
facsimile seal will continue to be sufficient for all
purposes. All bonds issued under the provisions of this
article shall have and are hereby declared to have all
the qualities and incidents of negotiable instruments
under the negotiable instruments law of the state. The
bonds may be issued in coupon or in registered form,
or both, as the parkways authority may determine, and
 provision may be made for the registration of any
coupon bonds as to principal alone and also as to both
principal and interest, and for the reconversion into
coupon bonds of any bonds registered as to both
principal and interest. The parkways authority may sell
such bonds in such manner, either at public or at private
sale, and for such price, as it may determine to be in
the best interests of the state.

The proceeds of the bonds of each issue shall be used
solely for the payment of the cost of the parkway project
or projects for which such bonds shall have been issued,
and shall be disbursed in such manner and under such
restrictions, if any, as the parkways authority may
provide in the resolution authorizing the issuance of
such bonds or in the trust agreement hereinafter
mentioned securing the same. If the proceeds of the
bonds of any issue, by error of estimates or otherwise,
shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed the cost of the project or projects for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the parkways authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The parkways authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau or agency of the state, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article.


The parkways authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of parkway revenue bonds of the state in an aggregate principal amount not to exceed eighty-three million dollars for the purpose of paying (i) all or any part of the cost of the West Virginia Turnpike, which cost may include, but not be limited to, an amount equal to the state funds used to upgrade the West Virginia Turnpike to federal interstate standards, and (ii) to the extent permitted by federal law, all or any part of the cost of any related parkway project. For purposes of this section eleven only, a “related parkway
"project" means any information center, visitors' center or rest stop, or any combination thereof, and any expressway, turnpike, trunkline, feeder road, state local service road or park and forest road which connects to or intersects with the West Virginia Turnpike and is located within seventy-five miles of said turnpike as it exists on the first day of June, one thousand nine hundred eighty-nine, or any subsequent expressway, trunkline, feeder road, state local service road or park and forest road constructed pursuant to this article: Provided, That nothing herein shall be construed as prohibiting the parkways authority from issuing parkway revenue bonds pursuant to section ten of this article for the purpose of paying all or any part of the cost of any such related parkway project: Provided, however, That none of the proceeds of the issuance of parkway revenue bonds under this section shall be used to pay all or any part of the cost of any economic development project, except as provided in section twenty-three of this article: Provided further, That nothing herein shall be construed as prohibiting the parkways authority from issuing additional parkway revenue bonds to the extent permitted by applicable federal law for the purpose of constructing, maintaining and operating any highway constructed in whole or in part with money obtained from Appalachian Regional Commission so long as said highway connects to the West Virginia Turnpike as it existed as of the first day of June, one thousand nine hundred eighty-nine. Except as otherwise specifically provided in this section, the issuance of parkway revenue bonds pursuant to this section, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the parkways authority in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable.


In the discretion of the parkways authority any bonds issued under the provisions of this article may be secured by a trust agreement by and between the parkways authority and a corporate trustee, which may
be any trust company or bank having the powers of a
trust company within or without the state. Any such
trust agreement may pledge or assign the tolls, rents,
fees, charges and other revenues to be received, but shall
not convey or mortgage any project or any part thereof.
Any such trust agreement or any resolution providing
for the issuance of such bonds may contain such
provisions for protecting and enforcing the rights and
remedies of the bondholders as may be reasonable and
proper and not in violation of law, including covenants
setting forth the duties of the parkways authority in
relation to the acquisition of property and the construc-
tion, reconstruction, improvement, maintenance, repair,
operation and insurance of the project or projects in
connection with which such bonds shall have been
authorized, and the custody, safeguarding and applica-
tion of all moneys, and provisions for the employment
of consulting engineers in connection with the construc-
tion or operation of such project or projects. It shall be
lawful for any bank or trust company incorporated
under the laws of the state which may act as depository
of the proceeds of bonds or of revenues to furnish such
indemnifying bonds, or to pledge such securities as may
be required by the parkways authority. Any such trust
agreement may set forth the rights and remedies of the
bondholders and of the trustee, and may restrict the
individual right of action by bondholders as is custom-
ary in trust agreements or trust indentures securing
bonds and debentures of corporations. In addition to the
foregoing, any such trust agreement may contain such
other provisions as the parkways authority may deem
reasonable and proper for the security of the bond-
holders. All expenses incurred in carrying out the
provisions of any such trust agreement may be treated
as a part of the cost of the operation of the project or
projects to which the trust agreement applies.

§17-16A-13. Tolls, rents, fees, charges and revenues;
competitive bidding on contracts.

(a) The parkways authority is hereby authorized to
fix, revise, charge and collect tolls for the use of each
parkway project and the different parts or sections
thereof, and to fix, revise, charge and collect rents, fees,
charges and other revenues, of whatever kind or character, for the use of each economic development project or tourism project, or any part or section thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right-of-way adjoining the paved portion, for placing thereon telephone, telegraph, electric light, power or other utility lines, gas stations, garages, stores, hotels, restaurants and advertising signs, or for any other purpose except for tracks for railroad or railway use, and to fix the terms, conditions, rents and rates of charges for such use. Such tolls, rents, fees and charges shall be so fixed and adjusted in respect of the aggregate of tolls, or in respect of the aggregate rents, fees and charges, from the project or projects in connection with which the bonds of any issue shall have been issued as to provide a fund sufficient with other revenues, if any, to pay (a) the cost of maintaining, repairing and operating such project or projects and (b) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such tolls, rents, fees and other charges shall not be subject to supervision or regulation by any other commission, board, bureau, department or agency of the state. The tolls, rents, fees, charges and all other revenues derived from the project or projects in connection with which the bonds of any issue shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of (1) the interest upon such bonds as such interest shall fall due, (2) the principal of such bonds as the same shall fall due, (3) the necessary charges of paying agents for paying principal and interest, and (4) the redemption price or the purchase price of bonds retired by call or purchase as therein provided. The use and disposition of moneys
to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. The moneys in the sinking fund, less such reserve as may be provided in such resolution or trust agreement, if not used within a reasonable time for the purchase of bonds for cancellation as above provided, shall be applied to the redemption of bonds at the redemption price then applicable.

(b) The parkways authority shall cause, as soon as it is legally able to do so, all contracts to which it is a party and which relate to the operation, maintenance or use of any restaurant, motel or other lodging facility, truck and automobile service facility, food vending facility or any other service facility located along the West Virginia Turnpike, to be renewed on a competitive bid basis. All contracts relating to any facility or services entered into by the parkways authority with a private party with respect to any project constructed after the effective date of this legislation shall be let on a competitive bid basis only. If the parkways authority receives a proposal for the development of a project, such proposal shall be made available to the public in a convenient location in the county wherein the proposed facility may be located. The parkways authority shall publish a notice of the proposal by a Class I legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the county in which the proposed facility would be located. Any citizen may communicate by writing to the parkways authority his or her opposition to or approval to such proposal within a period of time not less than forty-five days from the publication of the notice. No contract for the development of a project may be entered into by the parkways authority until a public hearing is held in the vicinity of the location of the proposed project with at least twenty days notice of such hearing by a Class I publication pursuant to section two, article three,
chapter fifty-nine of this code. The parkways authority shall make written findings of fact prior to rendering a decision on any proposed project. All studies, records, documents and other materials which are considered by the parkways authority in making such findings shall be made available for public inspection at the time of the publication of the notice of public hearing and at a convenient location in the county where the proposed project may be located. The parkways authority shall promulgate rules in accordance with chapter twenty-nine-a of this code for the conduct of any hearing required by this section. Persons attending any such hearing shall be afforded a reasonable opportunity to speak and be heard on the proposed project.


All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds, to be held and applied solely as provided in this article. The resolution authorizing the issuance of bonds of any issue or the trust agreement securing such bonds shall provide that any officer to whom, or any bank or trust company to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this article and such resolution or trust agreement may provide.


Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the state or granted hereunder or under such trust agreement or the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article or by such trust agree-

(a) The exercise of the powers granted by this article will be in all respects for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of projects by the parkways authority will constitute the performance of essential governmental functions, the parkways authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the parkways authority under the provisions of this article or upon the income therefrom, and the bonds issued under the provisions of this article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the state.

(b) In lieu of payment by the parkways authority of county property taxes and other assessments on restaurant and gas service facilities owned by it, or upon any facility described in subsection (b) of section thirteen herein which is leased to any private person, corporation, or entity, the parkways authority shall make an annual payment as provided herein to the county commission of such county. Any parkways authority project which is leased and is exempt from taxation shall be subject to a payment in lieu of taxes. Said payment shall be made to the county commission of the county in which the project is located and shall be in an amount equal to the property taxes otherwise payable. The county commission receiving such in lieu of payment shall distribute such payment to the different levying bodies in that county in the same manner as are property taxes. Nothing contained herein may be construed to prohibit the parkways authority from collecting such in lieu payment from any private party by contract or otherwise.
§17-16A-17. Repair, etc., of damaged property; conveyances, etc., by counties, cities, etc., to parkways authority; maintenance and policing of projects; defrauding parkways authority; evading payment of tolls, rents, fees or charges; trespassing.

1 All private property damaged or destroyed in carrying out the powers granted by this article shall be restored or repaired and placed in its original condition as nearly as practicable or adequate compensation made therefor out of funds provided under the authority of this article.

2 All counties, cities, villages, townships and other political subdivisions and all public agencies and commissions of the state of West Virginia, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the parkways authority at its request upon such terms and conditions as the proper authorities of such counties, cities, villages, townships, other political subdivisions or public agencies and commissions of the state may deem reasonable and fair and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the parkways authority, including public roads and other real property already devoted to public use.

3 Each project when constructed and opened to traffic or use shall be maintained and kept in good condition and repair by the parkways authority. The parkways authority and the superintendent of the department of public safety may by agreement provide that such project or projects shall be policed by members of such department under such terms and conditions as they may determine, excepting that all costs thereof, either direct or indirect, including overhead costs attributable thereto, shall be paid unto such department by the parkways authority at regular intervals not to exceed one year.
Whoever shall knowingly or intentionally defraud or attempt to defraud the parkways authority, any of its tolltakers or other employees in regard to the payment of tolls, rents, fees or charges established by the parkways authority for the use of any such project or evade or attempt to evade or whoever shall aid another to evade or attempt to evade the payment of such toll, rent, fee or charge or whoever shall intentionally and knowingly trespass upon any project shall be guilty of a misdemeanor; and for every such offense shall upon conviction thereof be fined not in excess of fifty dollars. Magistrate courts shall have jurisdiction of misdemeanors created by this paragraph concurrently with circuit courts.


(a) Except as provided herein, when all bonds issued under the provisions of this article in connection with any parkway project or projects and the interest thereon shall have been paid or a sufficient amount for the payment of all such bonds and the interest thereon to the maturity thereof shall have been set aside in trust for the benefit of the bondholders, such project or projects, if then in good condition and repair to the satisfaction of the commissioner of the state department of highways, shall be transferred to the state department of highways and shall thereafter be maintained by the state department of highways free of tolls: Provided, That the parkways authority may thereafter charge tolls for the use of any such project and for the reconstruction, improvement, maintenance and repair thereof, except as may be limited by applicable federal laws, and pledge such tolls to the payment of bonds issued under the provisions of this article in connection with another project or projects, or any combination thereof, but any such pledge of tolls of a parkway project to the payment of bonds issued in connection with another project or projects shall not be effectual until the principal of and the interest on the bonds issued in connection with the first mentioned project shall have been paid or provision made for their payment.

(b) No later than the first day of February, one
thousand nine hundred ninety, the parkways authority
shall discontinue, remove and not relocate all toll
collection facilities on the West Virginia Turnpike
except for the three main toll collection facilities
existing on the West Virginia Turnpike as of the
effective date of this legislation: Provided, That nothing
herein may be construed to prohibit placement of new
tolls to the extent permitted by federal law for any new
expressway, turnpike, trunkline, feeder road, state local
service road, or park and forest road connected to the
West Virginia Turnpike and constructed after the first
of June, one thousand nine hundred eighty-nine.


1 The commissioner of the state department of high-
ways is hereby authorized in his discretion to expend out
of any funds available for the purpose such moneys as
may be necessary for the study of any parkway, 
-economic development or tourism project or projects and
to use the department of highway's engineering and
other forces, including consulting engineers and traffic
engineers, for the purpose of effecting such study and
to pay for such additional engineering and traffic and
other expert studies as he may deem expedient; and all
such expenses incurred by the state department of
highways prior to the issuance of parkway revenue
bonds or revenue refunding bonds under the provisions
of this article shall be paid by the state department of
highways and charged to the appropriate project or
projects, and the state department of highways shall
keep proper records and accounts showing each amount
so charged. Upon the sale of parkway revenue bonds or
revenue refunding bonds for any project or projects, the
funds so expended by the state department of highways
in connection with such project or projects shall be
reimbursed to the state department of highways from
the proceeds of such bonds.

§17-16A-20. Parkway projects part of state road system;
pledge of limited funds by state depart-
ment of highways in case of deficit.

1 It is hereby declared that any expressway, turnpike,
feeder road, state local service road or park and forest road or other road, or any subsequent expressway, turnpike feeder road, state local service road, park and forest road or other road constructed pursuant to this article shall be a part of the state road system, although subject to the provisions of this article and of any bonds or trust agreements entered into pursuant thereto, and that the construction of such parkway projects shall be considered as developments of the state road system. Any other provisions of this article to the contrary notwithstanding, in order to encourage the development of the state road system, the state is authorized in its discretion to pledge by resolution and agreement annually to pay from the state road fund, subject to all prior commitments of such fund which shall be stated in the resolution and agreement, the amount of any yearly deficit between the principal and interest requirements of any such parkway project or portion thereof hereafter constructed and the amount available in the hands of the parkways authority to pay such requirements, up to three fourths of one percent of the estimated or actual construction cost of such parkway project or portion thereof for which such pledge is made, until any bonds issued and interest due upon the basis of such a pledge have been fully paid and satisfied: Provided, That the state department of highways shall enter into no agreement with underwriters on any bond issue for the purpose of constructing or aiding in the construction of any toll road unless and until there is filed with the parkways authority a report and finding of reputable traffic engineers of national standing, showing that the earnings from the proposed toll road will be sufficient to provide annual income in an amount at least large enough to cover the annual cost of retiring the indebtedness, including interest, sinking fund and operating costs of such toll highway.


The parkways authority is hereby authorized to provide by resolution for the issuance of parkway revenue refunding bonds of the state for the purpose of
refund any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds; and, if deemed advisable by the parkways authority, for the additional purpose of constructing improvements, extensions or enlargements of the project or projects in connection with which the bonds to be refunded shall have been issued: Provided, That this section shall not be construed as authorizing the issuance of parkway revenue refunding bonds for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, or any predecessor thereof, in connection with the construction of the West Virginia Turnpike, which revenue refunding bonds may be issued only as authorized under section twenty-two of this article. The parkways authority is further authorized to provide by resolution for the issuance of parkway revenue bonds of the state for the combined purpose of two or more of the following: (a) Refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds; (b) paying all or any part of the cost of any additional project or projects; and (c) repaying to the state all or any part of the state funds used to upgrade the West Virginia Turnpike to federal interstate standards. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the parkways authority in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable.


The parkways authority is hereby authorized to provide by resolution for the issuance of parkway revenue refunding bonds of the state in an aggregate principal amount not to exceed sixty million dollars for the purpose of refunding any bonds which shall have
been issued under this article, or any predecessor thereof, in connection with the construction of the West Virginia Turnpike, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, to the extent permissible under federal law and if deemed advisable by the parkways authority, for either or both of the following purposes: (a) Paying all or any part of the cost of any additional parkway project or projects, and (b) repaying to the state all or any part of the state funds used to upgrade the West Virginia Turnpike to federal interstate standards: Provided, That any proceeds derived from the issuance of such bonds which are used on any parkway project other than the West Virginia Turnpike must be used solely on parkway projects (i) which are either connected to or intersect with the West Virginia Turnpike and are within seventy-five air miles of said Turnpike as it exists on the first day of June, one thousand nine hundred eighty-nine, or any subsequent expressway, trunkline, turnpike, feeder road, state local service road or park and forest road constructed pursuant to this article, and (ii) which involve the upgrading or addition of interchanges, the construction of expressways or feeder roads, or the upgrading or construction of information centers, visitors' centers, rest stops, or any combination thereof: Provided, however, That none of the proceeds of the issuance of parkway revenue refunding bonds issued under this section shall be used to pay all or any part of the cost of any economic development project, except as provided in section twenty-three of this article. Except as otherwise specifically provided in this section, the issuance of parkway revenue refunding bonds pursuant to this section, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the parkways authority in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable.

§17-16A-23. Special highway fund; appropriations from fund.

(a) There is hereby created a special fund in the state
treasury which shall be designated and known as the
"West Virginia special highway fund." The special
highway fund shall consist of (i) all funds allocated and
disbursed to the state department of highways by the
parkways authority, including without limitation the
proceeds of any parkway revenue bonds or revenue
refunding bonds issued by the parkways authority
pursuant to sections eleven, twenty-one or twenty-two of
this article, in repayment of the amount of state funds
used to upgrade the West Virginia Turnpike to federal
interstate standards, (ii) any appropriations, grants,
gifts, contributions or other revenues received by the
special highway fund from any source, and (iii) all
interest earned on moneys held in the fund. When any
funds are received by the state department of highways
from the parkways authority pursuant to this section,
they shall be paid into the state treasury by the
commissioner of the department of highways and
credited to the special highway fund, and shall be
disbursed in the manner set forth in subsections (b) and
(c) of this section. The special highway fund shall not
be treated by the auditor and treasurer as part of the
state road fund or as part of the general revenues of the
state.

(b) The governor shall have the authority to transfer
to the insurance fund created in section eight, article
fifteen, chapter thirty-one of this code, on any date or
dates after the enactment of this section, up to thirty-
five million dollars of the funds received or earned by
the special highway fund, which funds may be used and
applied by the West Virginia economic development
authority in the manner and to the extent set forth in
article fifteen of said chapter thirty-one. On or before
the thirty-first day of December, one thousand nine
hundred ninety-four, the economic development author-
ity shall retransfer to the special highway fund the
thirty-five million dollars advanced to the insurance
fund pursuant to this section. All interest earned on the
thirty-five million dollars while being held in the
insurance fund shall remain in, and be the property of,
said insurance fund.
(c) Upon the transfer of thirty-five million dollars to the insurance fund as provided in subsection (b) of this section, the Legislature shall annually appropriate all or any part of the balance of the funds deposited in the special highway fund for the construction, reconstruction, improvement, maintenance or repair of any parkway project or projects: Provided, That all of such funds shall be appropriated to (i) the upgrading or addition of interchanges; (ii) the construction of expressways or feeder roads; or (iii) the upgrading or construction of information centers, visitors’ centers, rest stops, or any combination thereof, and that all such feeder roads, expressways, interchanges, information centers, visitors’ centers or rest stops shall connect to the West Virginia Turnpike and be within seventy-five air miles of the West Virginia Turnpike as it existed on the effective date of this legislation, or any subsequent expressway, turnpike or feeder road constructed pursuant to this subsection. The appropriation of funds pursuant to this subsection shall be expended on more than one project.

§17-16A-24. Article deemed to provide additional and alternative methods.

This article shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby, and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing. The issuance of special obligation bonds under the provisions of this article need not comply with the requirements of any other law applicable to the issuance of bonds.

§17-16A-25. Additional powers of parkways authority; issuance of special obligation bonds.

(a) In addition to all powers granted by the foregoing sections of this article, the parkways authority in connection with a proceeding prosecuted to completion under Title 11, United States Code, Secs. 401-403, as permitted by subdivision (17), section six of this article is hereby authorized to provide by resolution for the
issuance of special obligation bonds of the state for the purpose of exchanging such special obligation bonds for all bonds then outstanding which shall have been issued under the provisions of this article. Special obligation bonds issued under the provisions of this section shall not be deemed to constitute a debt of the state or of any political subdivision thereof or a pledge of the faith and credit of the state or of any such political subdivision, but such bonds shall be payable solely from the funds herein provided therefor from pledged property and income therefrom as provided in subdivision (1) of this subsection. All such special obligation bonds shall contain on the face thereof a statement in accordance with the preceding sentence. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the parkways authority in respect of the same shall be governed by the provisions of this article insofar as the same may be applicable with the following express exceptions:

(1) The principal of and the interest on such special obligation bonds shall not be payable from tolls, rents, fees, charges or revenues of any parkway project but shall be payable solely from such other property purchased and pledged as security therefor as the parkways authority shall determine together with the income derived therefrom which other property may include direct obligations of, or obligations the principal of and the interest on which are guaranteed by, the United States government or participation certificates or other obligations issued by or by authority of the United States government; and

(2) Following the issuance of such special obligation bonds there shall be no obligation to fix, revise, charge and collect tolls for the use of any parkway project and any parkway project shall be transferred to the state department of highways and shall thereafter be maintained by the state department of highways free of tolls. At such time as the special obligation bonds are issued, then section eighteen of this article shall be of no further force and effect.
(b) Financial, legal, engineering and feasibility consultants may be employed to perform such services as the parkways authority shall deem necessary or desirable in connection with the Title 11 proceedings mentioned above and the issuance and exchange of the special obligation bonds.

(c) The entire powers herein granted by this section to the parkways authority may be exercised by the state department of highways in which event the special obligation bonds herein authorized shall be executed by manual or facsimile signature by the governor and by the commissioner of the department of highways, and the official seal of the department of highways shall be affixed to or printed on each bond, and any coupons attached to such bonds shall bear the manual or facsimile signature of the commissioner of the state department of highways. In the event that the state department of highways shall elect to exercise the powers granted by this section, it shall file a statement to that effect in the office of the chairman of the parkways authority and in the office of the secretary of state, and upon the issuance of the special obligation bonds herein provided for, the state department of highways shall succeed immediately to the principal functions of the parkways authority and the parkways authority shall then be abolished.

(d) The state department of highways is hereby empowered to acquire by purchase the parkways authority and all its rights-of-way, equipment, facilities and any and all other rights or interest the parkways authority has or had in any project, from any funds available to it, and to pay any expenses incident to such acquisition under the provisions of this article: Provided, That the contribution of the state department of highways in making such acquisition shall not exceed the sum of twenty million dollars from all sources of public moneys of the state of West Virginia, excluding any funds reimbursed or reimbursable or otherwise provided or to be provided by the federal government. No funds derived from the sale of the three hundred fifty million dollars bond issue authorized by the roads
89 development amendment shall be included in the
90 acquisition of the West Virginia Turnpike.


1 The parkways authority shall prepare on an annual
2 basis and provide to each member of the West Virginia
3 Legislature who so requests an annual report detailing
4 the financial condition and operations of the parkways
5 authority. The parkways authority shall provide to the
6 joint committee on government and finance any finan-
7 cial statements as may be required under any trust
8 agreement to which the parkways authority is a party.


1 Consistent with applicable federal laws, rules and
2 regulations, the parkways authority shall develop and
3 prepare a uniform roadway sign identifying the avail-
4 ability of restaurants, gas stations, hotel accommoda-
5 tions and emergency services available off each exit of
6 the West Virginia Turnpike. At every tourism project
7 maintained or operated by the parkways authority and
8 which is constructed after the effective date of this
9 legislation, and, to the extent permitted under the terms
10 of the applicable lease, at every currently existing
11 service station, gas station, hotel or restaurant, garage
12 or store maintained, operated or leased by the parkways
13 authority, the parkways authority shall at no charge or
14 cost permit the placement of, in a conspicuous place, all
15 reasonably sized advertising literature prepared and
16 delivered by hotels, restaurants and other tourist
17 attractions, whether public or private, located within
18 the state of West Virginia.


1 If any section, subsection, subdivision, subparagraph,
2 sentence or clause of this article is adjudged to be
3 unconstitutional or invalid, such adjudication shall not
4 affect the validity of the remaining portions of this
5 article, and, to this end, the provisions of this article are
6 hereby declared to be severable.
§17-16A-29. Effective date.

The provisions of this article as amended or added by this act shall take effect on the first day of June, one thousand nine hundred eighty-nine.

CHAPTER 188
(H. B. 2025—By Delegate Love)

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

AN ACT to amend and reenact section three, article twelve-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the interagency committee on pesticides.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12C. INTERAGENCY COMMITTEE ON PESTICIDES.

§19-12C-3. Committee created; membership; chairman; continuation.

(a) There is hereby created an interagency committee on pesticides to consist of the (1) commissioner of the department of agriculture, (2) director of the department of natural resources, (3) director of the department of public health, (4) director of the West Virginia University agricultural experiment station, and (5) director of the air pollution control commission.

(b) The commissioner of agriculture shall be chairman of this committee. Each member of the committee may designate some person in his department to serve in his stead on the committee.

(b) After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter
four of this code, the Legislature hereby finds and declares that the interagency committee on pesticides should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the interagency committee on pesticides shall continue to exist until the first day of July, one thousand nine hundred ninety-one.

CHAPTER 189

(H. B. 2052—By Delegates Love and Ashley)

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

AN ACT to amend article sixteen-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to continuation of the pesticides board of review.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16A. PESTICIDES.

§19-16A-4a. Continuation of board.

1 After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the pesticides board of review should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the pesticides board of review shall continue to exist until the first day of July, one thousand nine hundred ninety-one.
AN ACT to amend and reenact section two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the department of corrections.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-2. Reestablishment of department; findings.

1 After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the department of corrections should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the department of corrections shall continue to exist until the first day of July, one thousand nine hundred ninety.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1D. OHIO RIVER VALLEY WATER SANITATION COMMISSION.

§29-lD-6. When article effective; findings; continuation.

This article shall take effect and become operative and the compact be executed for and on behalf of this state only from and after the approval, ratification, and adoption, and entering into thereof by the states of New York, Pennsylvania, Ohio, and Virginia.

After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that West Virginia should remain a member of the compact. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, West Virginia shall continue to be a member of this compact until the first day of July, one thousand nine hundred ninety-four.

CHAPTER 192

(H. B. 2618—By Delegates Schoonover and M. Burke)

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

AN ACT to amend and reenact section twelve, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assessment of corporate property; reports to assessor by corporation.

Be it enacted by the Legislature of West Virginia:

That section twelve, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-12. Assessment of corporate property; reports to assessor by corporations.

1. Each incorporated company, foreign or domestic, having its principal office or chief place of business in this state, or owning property subject to taxation in this state, except railroad, telegraph and express companies, telephone companies, pipeline, car line companies and other public utility companies, banking institutions, national banking associations, building and loan associations, federal savings and loan associations and industrial loan companies, shall annually, between the first day of the assessment year and the first day of October, make a written report, verified by the oath of the president or chief accounting officer, to the assessor of the county in which its principal office or chief place of business is situated or in which such property subject to taxation in this state is located if such corporation does not have a principal office or chief place of business in this state, showing the following items, viz: (a) The amount of capital authorized to be employed by it; (b) the amount of cash capital paid on each share of stock; (c) the amount of credits and investments other than its own capital stock held by it on said date, with their true and actual value; (d) the quantity, location and true and actual value of all of its real estate, and the tax district or districts in which it is located; and (e) the kinds, quantity and true and actual value of all its tangible property in each tax district in which it is located.

The oath required for this section shall be substantially as follows, viz:

State of West Virginia, County of __________, ss:

I, ________________, president (treasurer or manager) of (here insert name of corporation), do solemnly swear (or affirm) that the foregoing is, to the best of my knowledge and judgment, true in all respects; that it contains a statement of all the real estate and personal property, including credits and investments belonging to said corporation; that the value affixed to such property is, in my opinion, its true and actual
The officer administering such oath shall append thereto the following certificate, viz:

Subscribed and sworn to before me by _______ this the ___ day of ___, 19__.

CHAPTER 193
(Com. Sub. for H. B. 2703—By Delegates Mezzatesta and Murphy)

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

AN ACT to amend and reenact sections two and three, article six-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the homestead property tax exemption; requiring an owner to legally reside in the state for the four consecutive taxable years and have paid taxes on any homestead in this state for the four consecutive taxable years prior to filing of exemption claim in order to receive such exemption and providing an exception thereto; requiring proof of residence; and defining legally resided.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article six-b, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-2. Definitions.
§11-6B-3. Twenty thousand dollar homestead exemption allowed.

§11-6B-2. Definitions.

1 For purposes of this article, the term:
2 (1) “Assessed value” means the value of property as
determined under article three of this chapter.
3 (2) “Claimant” means a person who is age sixty-five
or older or who is certified as being permanently and
totally disabled, and who owns a homestead that is used
and occupied by the owner thereof exclusively for
residential purposes.
4 (3) “Homestead” means a single family residential
house, including a modular home, and the land sur­
rounding such structure; or a mobile home regardless
of whether the land upon which such mobile home is
situated is owned or leased.
5 (4) “Legally resided” means the person shall have been
domiciled in this state for more than six consecutive
months of the taxable year.
6 (5) “Owner” means the person who is possessed of the
homestead, whether in fee or for life. A person seized
or entitled in fee subject to a mortgage or deed of trust
securing a debt or liability shall be deemed the owner
until the mortgagor or trustee takes possession, after
which such mortgagee or trustee shall be deemed the
owner. A person who has an equitable estate of freehold,
or is a purchaser of a freehold estate who is in possession
before transfer of legal title shall also be deemed the
owner. Personal property mortgaged or pledged shall,
for the purpose of taxation, be deemed the property of
the party in possession.
7 (6) “Permanently and totally disabled” means a person
who is unable to engage in any substantial gainful
activity by reason of any medically determinable
physical or mental condition which can be expected to
result in death or which has lasted or can be expected
to last for a continuous period of not less than twelve
months.
"Sixty-five years of age or older" includes a person who attains the age of sixty-five on or before the thirtieth day of June following the July first assessment date.

"Used and occupied exclusively for residential purposes" means that the property is used as an abode, dwelling or habitat for more than six consecutive months of the year by the owner and that the property is used only as an abode, dwelling or habitat to the exclusion of any commercial use: Provided, That this six-month period shall not prevent a prior resident from filing a claim to exemption in accordance with section three, article six-b, chapter eleven of this code.

"Tax year" means the calendar year following the July first assessment day.

§11-6B-3. Twenty thousand dollar homestead exemption allowed.

(a) General.—An exemption from ad valorem property taxes shall be allowed for the first twenty thousand dollars of assessed value of a homestead that is used and occupied by the owner thereof exclusively for residential purposes, when such owner is sixty-five years of age or older or is certified as being permanently and totally disabled: Provided, That the owner has legally resided in the state of West Virginia for the four consecutive taxable years and has paid taxes on any homestead in this state for the four taxable years prior to filing a claim for exemption: Provided, however, That when a resident of West Virginia establishes residency out of West Virginia and subsequently returns and reestablishes residency in West Virginia within a period of five years, such resident may file a claim for exemption without regard to the requirement of four years consecutive residency: Provided further, That such resident show proof of residency including, but not limited to, either a voter's registration card issued in this state or a motor vehicles registration card issued in this state. Only one exemption shall be allowed for each homestead used and occupied exclusively for residential purposes by the owner thereof, regardless of the number of qualified owners residing therein.
(b) Attachment of exemption.—This exemption shall attach to the homestead occupied by the qualified owner on the July first assessment date and shall be applicable to taxes for the following tax year. An exemption shall not be transferred to another homestead until the following July first. If the homestead of an owner qualified under this article is transferred by deed, will or otherwise, the twenty thousand dollar exemption shall be removed from the property on the next July first assessment date unless the new owner qualifies for the exemption.

CHAPTER 194
(S. B. 622—Originating in the Committee on Ways and Means)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and two-e, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the business and occupation tax; providing definitions relating to net number of dekatherms injected and withdrawn from a storage reservoir and amending definition of storage reservoir; and amending the calculation of the rate of tax imposed on persons engaging or continuing in state in the gas storage business.

Be it enacted by the Legislature of West Virginia:

That sections one and two-e, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-1. Definitions.
§11-13-2e. Business of gas storage; effective date.

§11-13-1. Definitions.

1 (a) General.—When used in this article, or in the
administration of this article, the terms defined in
subsection (b) shall have the meanings ascribed to them
by this section, unless a different meaning is clearly
required by either the context in which the term is used
or by specific definition.

(b) Terms defined.

(1) "Person" or the term "company," herein used
interchangeably, includes any individual, firm, copart-
nership, joint adventure, association, corporation, trust
or any other group or combination acting as a unit, and
the plural as well as the singular number, unless the
intention to give a more limited meaning is disclosed by
the context.

(2) "Sale," "sales" or "selling" includes any transfer of
or title to property or electricity, whether for money or
in exchange for other property.

(3) "Taxpayer" means any person liable for any tax
hereunder.

(4) "Gross income" means the gross receipts of the
taxpayer, received as compensation for personal services
and the gross receipts of the taxpayer derived from
trade, business, commerce or sales and the value
proceeding or accruing from the sale of tangible
property (real or personal), or service, or both, and all
receipts by reason of the investment of the capital of the
business engaged in, including rentals, royalties, fees,
reimbursed costs or expenses or other emoluments
however designated and including all interest, carrying
charges, fees or other like income, however denomi-
nated, derived by the taxpayer from repetitive carrying
of accounts, in the regular course and conduct of his
business, and extension of credit in connection with the
sale of any tangible personal property or service, and
without any deductions on account of the cost of
property sold, the cost of materials used, labor costs,
taxes, royalties paid in cash or in kind or otherwise,
interest or discount paid or any other expenses
whatsoever.

(5) "Gross proceeds of sales" means the value, whether
in money or other property, actually proceeding from
the sale of tangible property without any deduction on
account of the cost of property sold or expenses of any
kind.

(6) “Business” shall include all activities engaged in
or caused to be engaged in with the object of gain or
economic benefit, either direct or indirect. “Business”
shall include the rendering of gas storage service by any
person for the gain or economic benefit of any person,
including, but not limited to, the storage operator,
whether or not incident to any other business activity.

(7) “Gas” means either natural gas unmixed, or any
mixture of natural and artificial gas or any other gas.

(8) “Storage reservoir” means that portion of any
subterranean sand or rock stratum or strata into which
gas has been injected for the purpose of storage prior
to the first day of March, one thousand nine hundred
eighty-nine.

(9) “Gas storage service” means the injection of gas
into a storage reservoir, the storage of gas for any period
of time in a storage reservoir, or the withdrawal of gas
from a storage reservoir. Such gas may be owned by the
storage operator or any other person.

(10) “Net number of dekatherms of gas injected”
means the sum of the daily injection of dekatherms of
gas in excess of the sum of the daily withdrawals of
dekatherms of gas during a tax month.

(11) “Net number of dekatherms of gas withdrawn”
means the sum of the daily withdrawal of dekatherms
of gas in excess of the sum of the daily injection of
dekatherms of gas during a tax month.

(12) “Gas storage operator” means any person who
operates a storage reservoir or provides a storage
service as defined herein, either as owner or lessee.

(13) “Month” or “tax month” means the calendar
month.

(14) “Dekatherm” means the thermal energy unit
equal to one million British thermal units (BTU's) or
the equivalent of one thousand cubic feet of gas having
a heating content of one thousand BTU's per cubic foot.

(15) "Taxable year" means the calendar year, or the
fiscal year ending during such calendar year, upon the
basis of which tax liability is computed under this
article. "Taxable year" means, in case of a return made
for a fractional part of a year under the provisions of
this article, or under regulations promulgated by the tax
commissioner, the period for which such return is made.

§11-13-2e. Business of gas storage; effective date.

(a) Rate of tax.—Upon every person engaging or
continuing within this state in any gas storage business
utilizing one or more gas storage reservoirs located
within this state, the tax imposed by section two of this
article shall be equal to five cents multiplied by the sum
of either (1) the net number of dekatherms of gas
.injected into such a gas storage reservoir during a tax
month or (2) the net number of dekatherms of gas
withdrawn from such a gas storage reservoir during a
tax month, whichever is applicable for that month,
whether or not such gas is owned by, or is injected or
withdrawn for, the storage operator or any other person.
Fractional parts of dekatherms shall be included in the
measure of tax as provided in regulations promulgated
by the tax commissioner.

(b) Effective date.—The measure of tax under this
section shall include gas injected into, or withdrawn
from, a gas storage reservoir after the twenty-eighth
day of February, one thousand nine hundred eighty-

(c) Administration; installment payments.—The tax
due under this section shall be administered, collected
and enforced as provided in this article and articles nine
and ten of this chapter. The tax due under this section
shall be remitted in periodic installments as provided in
section four of this article, except that such periodic
installment payments shall be remitted on or before the
twentieth day of the month following the month or
quarter in which the tax accrues.
CHAPTER 195
(H. B. 2716—By Delegates Whit and Farley)

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

AN ACT to amend and reenact section sixteen, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sales tax returns and payment; and providing that certain amounts in the drunk driving prevention fund may be used by the department of public safety personal services for the fiscal year one thousand nine hundred ninety.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES TAX.


1 The taxes levied by this article shall be due and payable in monthly installments, on or before the fifteenth day of the month next succeeding the month in which the tax accrued. The taxpayer shall, on or before the fifteenth 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: (a) The total gross proceeds of his business for that month; (b) the gross proceeds of his business upon which the tax is based; (c) the amount of the tax for which he is liable; and (d) any further information necessary in the computation and collection of the tax which the tax commissioner may require. A remittance for the amount of the tax shall accompany the return:

Provided, That notwithstanding the provisions of section thirty of this article, any such 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: Provided, however, That any balances in the drunk driving prevention fund on the first day of July, one thousand nine hundred eighty-nine, and all moneys received into such fund during the fiscal year commencing the first day of July, one thousand nine hundred eighty-nine, may, up to a maximum of seven hundred fifty thousand dollars, be used by the department of public safety for personal services, employee benefits and unclassified expenditures for the time period commencing the first day of July, one thousand nine hundred eighty-nine, and ending the last day of June, one thousand nine hundred ninety, subject to appropriation by the Legislature. A monthly return shall be signed by the taxpayer or his duly authorized agent.

CHAPTER 196

(H. B. 2711—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

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

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the personal income tax and updating the meaning of certain terms.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.


Any term used in this article shall have 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
shall mean the provisions of the Internal Revenue Code
of 1986, as amended, and such other provisions of the
laws of the United States as relate to the determination
of income for federal income tax purposes. All amend-
ments made to the laws of the United States prior to
the first day of January, one thousand nine hundred
eighty-nine, shall be given effect in determining the
taxes imposed by this article for any taxable year
beginning the first day of January, one thousand nine
hundred eighty-eight, or thereafter, but no amendment
to the laws of the United States made on or after the
first day of January, one thousand nine hundred eighty-
ine, shall be given effect.

CHAPTER 197
(Com. Sub. for S. B. 189—By Senator Hawse)

[Passed April 7, 1989: in effect July 1, 1989. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-two,
chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to increase of county excise tax on transfer of real estate;
requiring county commission to approve increase; and
requiring notice of meeting at which such increase is to
be considered.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING
REAL PROPERTY.

§11-22-2. Rate of tax; when and by whom payable;
additional county tax.
Every person who delivers, accepts or presents for recording any document, or in whose behalf any document is delivered, accepted or presented for recording, shall be subject to pay for and in respect to the transaction or any part thereof, a state excise tax upon the privilege of transferring title to real estate at the rate of one dollar and ten cents for each five hundred dollars' value or fraction thereof as represented by such document as defined in section one hereof, which state tax shall be payable at the time of delivery, acceptance or presenting for recording of such document.

Effective January first, one thousand nine hundred sixty-eight and thereafter, there is hereby imposed an additional county excise tax for the privilege of transferring title to real estate at the rate of fifty-five cents for each five hundred dollars' value or fraction thereof as represented by such document as defined in section one hereof, which county tax shall be payable at the time of delivery, acceptance or presenting for recording of such document: Provided, That after the first day of July, one thousand nine hundred eighty-nine, the county may increase said excise tax to an amount equal to the state excise tax. The additional tax hereby imposed is declared to be a county tax and to be used for county purposes: Provided, however, That only one such state tax and one such county tax shall be paid on any one document and shall be collected in the county where the document is first admitted to record, and the same shall be paid by the grantor therein unless the grantee accepts the same without such tax having been paid, in which event such tax shall be paid by the grantee: Provided further, That on any transfer of real property from a trustee or a county clerk transferring real estate sold for taxes, such tax shall be paid by the grantee.

The county excise tax imposed under this section may not be increased in any county unless the increase is approved by a majority vote of the members of the county commission of such county. Any county commission intending to increase the excise tax imposed in its county shall publish a notice of its intention to increase
such tax not less than thirty days nor more than sixty
days prior to the meeting at which such increase will
be considered, such notice to be 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 shall be the county in which such
county commission is located.

CHAPTER 198

(H. B. 2712—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk,
By Request of the Executive)

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

AN ACT to amend and reenact sections three and three-a, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the business franchise tax; updating the meaning of certain terms; expanding and clarifying certain definitions; and providing the tax commissioner authority to determine additional items in capital so that income is properly reflected.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-3. Meaning of terms; specific terms defined.

§11-23-3a. Meaning of terms; general rule.

§11-23-3. Meaning of terms; specific terms defined.

1 (a) General.—When used in this article, or in the
administration of this article, terms defined in this
section shall have the meanings ascribed to them herein
unless a different meaning is clearly required by either
the context in which the term is used, or by specific
definition in this article.
(b) Terms defined.

(1) Business income.—The term "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(2) Capital.—The term "capital" of a taxpayer shall mean:

(A) Corporations.—In the case of a corporation, except an electing small business corporation, the average of the beginning and ending year balances of the sum of the following entries from Schedule L of Federal Form 1120, prepared following generally accepted accounting principles and as filed by the taxpayer with the Internal Revenue Service for the taxable year:

(i) The value of all common stock and preferred stock of the taxpayer;

(ii) The amount of paid-in or capital surplus;

(iii) The amount of retained earnings, appropriated and unappropriated;

(iv) Less the cost of treasury stock.

(B) S Corporations.—In the case of an electing small business corporation, the average of the beginning and ending year balances of the sum of the following entries from Schedule L of Federal Form 1120S, prepared following generally accepted accounting principles and as filed by the taxpayer with the Internal Revenue Service for the taxable year:

(i) The value of all common stock and preferred stock of the taxpayer;

(ii) The amount of paid-in or capital surplus;

(iii) Retained earnings, appropriated and unappropriated;
(iv) The amount of shareholders’ undistributed taxable income;

(v) The amount of the accumulated adjustments account;

(vi) The amount of the other adjustments account;

(vii) Less the cost of treasury stock.

(C) Partnerships.—In the case of a partnership, the average of the beginning and ending year balances of the value of partner’s capital accounts from Schedule L of Federal Form 1065, prepared following accepted accounting principles and as filed by the taxpayer with the Internal Revenue Service for the taxable year.

(D) Additional items in capital.—The term “capital” for purposes of this article shall include such adjustments thereto as the tax commissioner deems necessary to properly reflect capital and such additional items from the accounts of the taxpayer as the tax commissioner may by regulation prescribe, which fairly represent the net equity of the taxpayer as defined in accordance with generally accepted accounting principles.

(E) Allowance for certain government obligations and obligations secured by residential property.—As to both corporations and partnerships, capital shall be multiplied by a fraction equal to one minus a fraction:

(i) The numerator of which is the average of the monthly beginning and ending account balances during the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120 or Federal Form 1065) of the following:

(I) Obligations and securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy;
(II) Obligations of this state and any political subdivision of this state;

(III) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients; and

(IV) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(ii) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer as shown on Schedule L of Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service or, in the case of partnerships, Schedule L of Federal Form 1065, as filed by the taxpayer with the Internal Revenue Service.

(3) Commercial domicile.—The term “commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed.

(4) Commissioner or tax commissioner.—The terms “commissioner” or “tax commissioner” are used interchangeably herein and mean the tax commissioner of the state of West Virginia, or his delegate.

(5) Compensation.—The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) Corporation.—The term “corporation” includes any corporations, S corporation, joint-stock company and any association or other organization which is taxable as a corporation under federal income tax laws or the income tax laws of this state.

(7) Delegate.—The term “delegate” in the phrase “or his delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions
(8) Doing business.—The term “doing business” means any activity of a corporation or partnership which enjoys the benefits and protection of the government and laws of this state, except the activity of agriculture and farming, which shall mean the production of food, fiber and woodland products (but not timbering activity) by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, horticulture, or any other plant or animal production and all farm practices related, usual or incidental thereto, including the storage, packing, shipping and marketing, but not including any manufacturing, milling or processing of such products by persons other than the producer thereof.

The activity of agriculture and farming shall mean such activity, as above defined, occurring on not less than five acres of land and the improvements thereon, used in the production of the aforementioned activities, and shall mean the production of at least one thousand dollars of products per annum through the conduct of such principal business activities as set forth in section ten, article one-a, chapter eleven of this code.

(9) Domestic corporation.—The term “domestic corporation” means a corporation organized under the laws of this state, and certain corporations organized under the laws of the state of Virginia before the twentieth day of June, one thousand eight hundred sixty-three. Every other corporation is a foreign corporation.

(10) Federal Form 1120.—The term “Federal Form 1120” means the annual federal income tax return of any corporation made pursuant to the United States Internal Revenue Code of 1986, as amended, or in successor provisions of the laws of the United States, in respect to the taxable income of a corporation, and filed with the federal Internal Revenue Service. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such
corporation Federal Form 1120 means its pro forma Federal Form 1120.

(11) Federal Form 1065.—The term “Federal Form 1065” means the annual federal income tax return of a partnership made pursuant to Section 6031 of the United States Internal Revenue Code of 1986, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to the taxable income of a partnership, and filed with the federal Internal Revenue Service.

(12) Fiduciary.—The term “fiduciary” means, and includes, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(13) Financial organization.—The term “financial organization” includes any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, finance company, investment company, investment broker or dealer, and any other similar business organization at least ninety percent of the assets of which consist of intangible personal property and at least ninety percent of the gross receipts of which consist of dividends, interest and other charges derived from the use of money or credit.

(14) Fiscal year.—The term “fiscal year” means an accounting period of twelve months ending on any day other than the last day of December, and on the basis of which the taxpayer is required to report for federal income tax purposes.

(15) Includes and including.—The term “includes” and “including” when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(16) Parent and subsidiary corporations.—A corporation which owns on average during the taxable year more than fifty percent of the stock of all classes of another corporation is defined to be the “parent corporation” and the corporation which is so owned by the parent is defined to be a “subsidiary corporation.”
(17) Partnership and partner.—The term “partnership” includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate, a corporation or a sole proprietorship or an unincorporated organization which under Section 761 of the Internal Revenue Code of 1986, as amended, and is not treated as a partnership for the taxable year for federal income tax purposes. The term “partner” includes a member in such a syndicate, group, pool, joint venture or other unincorporated organization which is a partnership.

(18) Person.—The term “person” includes any corporation or partnership.

(19) Pro forma return.—The term “pro forma return” when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of a consolidated group.

(20) Sales.—The term “sales” means all gross receipts of the taxpayer that are “business income,” as defined in this section.

(21) State.—The term “state” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, and any foreign country or political subdivision thereof.

(22) Stock.—The term “stock” includes shares in a corporation, association or joint-stock company. It shall not include nonvoting stock which is limited and preferred as to dividends, or treasury stock. “Stock owned by a corporation” shall include stock owned directly by such corporation and stock which is subject to an option to acquire stock.

(23) Taxable year.—The term “taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. “Taxable year” means, in
case of a return made for a fractional part of a year
(1) Taxable in another state.—The term "taxable in
another state" for purposes of apportionment under this
article, means a taxpayer who:
(A) Is subject to a net income tax, a franchise tax
measured by net income, a franchise tax for the
privilege of doing business or a corporate stock tax; or
(B) Would be subject to a net income tax if such other
state imposed such a tax.
(25) Taxpayer.—The term "taxpayer" means any
person (as defined in this section) subject to the tax
imposed by this article.
(26) This code.—The term "this code" means the code
of West Virginia, one thousand nine hundred thirty-one,
as amended.
(27) This state.—The term "this state" means the state
of West Virginia.
(28) Treasury stock.—The term "treasury stock"
means shares of a corporation which have been issued
and have been subsequently acquired by and belong to
such corporation, and have not been canceled or restored
to the status of authorized but unissued shares. Treasury
stock is deemed to be issued shares, but not outstanding
shares.
§11-23-3a. Meaning of terms; general rule.
Any term used in this article shall have the 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 of this article. Any reference in this article
to the laws of the United States, or to the Internal
Revenue Code, or to the federal income tax law shall
mean the provisions of the laws of the United States as
related to the determination of income for federal
income tax purposes. All amendments made to the laws
of the United States prior to the first day of January, one thousand nine hundred eighty-nine, shall be given effect in determining the taxes imposed by this article for the tax period beginning the first day of January, one thousand nine hundred eighty-eight, and thereafter, but no amendment to laws of the United States made on or after the first day of January, one thousand nine hundred eighty-nine, shall be given effect.

CHAPTER 199

(H. B. 2709—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

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

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the corporation net income tax and updating the meaning of certain terms.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article shall have 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 shall mean the provisions of the Internal Revenue Code of 1986, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred eighty-nine, shall be given effect in determining the taxes imposed
AN ACT to amend article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to the corporation net income tax; providing special rules for motor carriers to apportion their business income; permitting tax commissioner to specify other special formula or formulae; and providing effective date.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 11. TAXATION.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-7a. Special apportionment rules.

(a) General.—The Legislature hereby finds that the general formula set forth in section seven of this article for apportioning the business income of corporations taxable in this as well as in another state is inappropriate for use by certain businesses due to the particular characteristics of those businesses or the manner in which such businesses are conducted. Accordingly, the general formula set forth in section seven of this article may not be used to apportion business income when a specific formula established under this section applies to the business of the taxpayer. The Legislature further finds that the tax commissioner has the authority under chapter eleven of this code to promulgate by legislative regulations special formula or formulae by which a specified classification of taxpayers is required to apportion its business income. Accordingly, this section shall not be construed as prohibiting the tax commissioner from exercising his authority to promulgate legislative regulations which set forth such other special formula or formulae and in that regulation requiring a specified classification of taxpayers to apportion their business income as provided in that special formula, instead of apportioning their business income employing the general formula set forth in section seven of this article, when he believes that such formula or formulae will more fairly and more reasonably allocate and apportion to this state the adjusted federal taxable income of the taxpayer. Additionally, nothing in this section shall prevent the tax commissioner from requiring the use, or the taxpayer from petitioning to use, as the case may be, some other method of allocation or apportionment as provided in subsection (h), section seven of this article. Permission granted to a taxpayer under subsection (h), section seven of this article to use another method of allocation or apportionment shall be
valid for a period of five consecutive taxable years, beginning with the taxable year for which such authorization is granted, provided there is no material change of fact or law which materially affects the fairness and reasonableness of the result reached under such other method of allocation or apportionment. Upon expiration of any such authorization the taxpayer may again petition under section seven of this article to use another method of apportionment. A material change of fact or law which materially affects the fairness and reasonableness of the result reached under such other method of allocation or apportionment automatically revokes authorization to use that other method beginning with the taxable year in which the material change of fact occurred or the taxable year for which a material change in law first takes effect, whichever occurs first.

(b) Motor carriers. — Motor carriers of property or passengers shall apportion the business income component of their adjusted federal taxable income to this state by the use of the ratio which their total vehicle miles in this state during the taxable year bears to total vehicle miles of the corporation everywhere during the taxable year, except as otherwise provided in this subsection.

(1) Definitions. — For purposes of this subsection (b):

(A) "Motor carrier" means any person engaging in the transportation of passengers or property or both, for compensation by motor propelled vehicle over roads in this state, whether traveling on a scheduled route or otherwise.

(B) "Vehicle mile" means the operation of a motor carrier over a distance of one mile, whether owned or operated by a corporation.

(2) The provisions of this subsection (b) shall not apply to a motor carrier:

(A) Which neither owns nor rents real or tangible personal property located in this state, which has made no pick-ups or deliveries within this state, and which has traveled less than fifty thousand vehicle miles in this state during the taxable year; or
(B) Which neither owns nor rents any real or tangible personal property located in this state, except vehicles, and which makes no more than twelve trips into or through this state during a taxable year.

The mileage traveled under fifty thousand miles or the mileage traveled in this state during the twelve trips into or through this state may not represent more than five percent of the total motor vehicle miles traveled in all states during the taxable year.

(c) The manner in which the taxpayer is required or permitted to apportion its business income under this article does not control or otherwise affect how that taxpayer apportions its capital for purposes of the business franchise tax imposed by article twenty-three of this chapter.

(d) Effective date.—The provisions of this section shall apply to all taxable years beginning on or after the first day of January, one thousand nine hundred eighty-nine, and to all years that begin prior to that date which are still open to audit and assessment.

CHAPTER 201

(Com. Sub. for S. B. 303—By Senators Tucker, Mr. President, J. Manchin, Jones and Loehr)

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

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; to amend and reenact section nine, article twelve of said chapter; to amend article thirteen-d of said chapter by adding thereto a new section, designated section three-b; to amend and reenact sections two, four-b, seven, eight-a, nine, nine-b, nine-c, nine-d, eighteen and thirty-three, article fifteen of said chapter; to further amend said article fifteen by adding thereto a new section, designated section eight-b; to amend and reenact sections three-b, three-c, three-d and twenty-
nine, article fifteen-a of said chapter; to further amend said article fifteen-a by adding thereto two new sections, designated sections two-a and six-a; to amend and reenact section twelve, article twenty-one of said chapter; to amend article twenty-four of said chapter by adding thereto a new section, designated section nine-c; and to amend and reenact section three, article one, chapter seventeen of said code, all relating to the Tax Act of 1989; allowing tax commissioner to be represented by staff attorneys in legal proceedings; limiting the penalty for failure to renew business registration certificates; allowing credit for research and development projects to be applied against corporation net income taxes; amending definitions of terms used in consumers sales tax; making purchaser liable for payment of sales tax due that was not paid to vendor; equalizing sales tax burden on property use in business as between integrated and nonintegrated businesses; providing transition rules; requiring registration of security for payment of sales tax and from nonresident contractors; amending existing exemptions from sales tax and adding several new exemptions; providing methods for claiming exemptions; making issuance of direct pay permits discretionary; combining consumers sales tax and use tax direct pay permit returns; providing rules for filing such returns; dedicating sales tax on aviation fuel to state aeronautical commission for use to obtain federal funds for airports; specifying effective dates; equalizing use tax burden on property used in business as between integrated and nonintegrated businesses; providing methods for claiming use tax exemptions; making issuance of direct pay permits discretionary; combining use tax, direct pay permit and sales tax direct pay permits to be combined and providing return due dates; requiring certain other out-of-state retailers to collect use taxes on sales of property or taxable services to customers in this state; specifying effective dates; providing additional adjustments to federal adjusted gross income for personal income tax purposes; allowing credit against corporation net income taxes for research and development expenditures; amending definition of “road”, “public
road” and “highway”; making other technical corrections; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section ten-a; that section nine, article twelve of said chapter be amended and reenacted; that article thirteen-d of said chapter be amended by adding thereto a new section, designated section three-b; that sections two, four-b, seven, eight-a, nine, nine-b, nine-c, nine-d, eighteen and thirty-three, article fifteen of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eight-b; that sections three-b, three-c, three-d and twenty-nine, article fifteen-a of said chapter be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections two-a and six-a; that section twelve, article twenty-one of said chapter be amended and reenacted; that article twenty-four of said chapter be amended by adding thereto a new section, designated section nine-c; and that section three, article one, chapter seventeen be amended and reenacted, all to read as follows:

Chapter
11. Taxation.
17. Roads and Highways.

CHAPTER 11. TAXATION.

Article
10. Procedure and Administration.
13D. Business and Occupation Tax Credit for Industrial Expansion and Revitalization and for Research and Development Projects.
15. Consumers Sales Tax.
15.A. Use Tax.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-10a. Legal services.

1 Notwithstanding anything in this code to the contrary,
2 the tax commissioner may utilize any full-time attorney
or attorneys employed by the tax department as staff
counsel to institute, prosecute, or defend any suits,
actions, or other legal proceedings, and it shall be in the
sole judgment and discretion of the tax commissioner
whether to utilize such staff attorney or attorneys or the
attorney general, whether on a case by case basis or for
all of the needs of the department for legal services:
Provided, That nothing contained herein may be
construed to authorize the administrator to engage, hire
or employ outside counsel without first obtaining the
permission of the attorney general.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-9. Penalties.

1. In addition to the provisions of article ten of this
chapter, any person engaging in or prosecuting any
business contrary to the provisions of this article,
whether without obtaining a business registration
certificate therefor before commencing the same, or by
continuing the same after the termination of the
effective period of any such certificate may, in addition
to paying the business registration tax, additions to tax,
penalties and interest, be liable for a penalty of fifty
dollars for each month or fraction thereof during which
he has been in default of the business registration tax.

2. It shall be the duty of the tax commissioner to collect
the full amount of the business registration tax,
additions to tax, interest, and all penalties imposed:
Provided, That in no event may the total penalty for
failure to renew a business registration certificate
exceed fifty dollars per registration certificate.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR
INDUSTRIAL EXPANSION AND REVITALIZATION AND FOR RESEARCH AND DEVELOPMENT PROJECTS.


1. For taxable years ending on and after the first day
of July, one thousand nine hundred eighty-nine, the
credits allowed under section three shall continue to be
applied as provided in section three-a. In addition, the
credit allowed under subsection (f) of section three that
remains after its application as provided in section three-a of this article shall be applied to reduce the tax imposed by article twenty-four of this chapter: Provided, That this credit may not reduce by more than fifty percent the amount of the net tax liability of the taxpayer for the taxable year under article twenty-four of this chapter, which amount of net tax liability shall be determined before application of the credit allowed by article thirteen-c of this chapter.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-4b. Liability of purchaser; assessment and collection.
§11-15-7. Tax on gross proceeds of sales or value of manufactured, etc., products.
§11-15-8b. Nonresident contractor—Registration, bond, etc.
§11-15-9b. Method for claiming exemptions, refunds of tax, credit against other taxes.
§11-15-9d. Direct pay permits.
§11-15-33. Effective date.


For the purpose of this article:

(a) "Persons" means any individual, partnership, association, corporation, state or its political subdivisions or agency of either, guardian, trustee, committee, executor or administrator.

(b) "Tax commissioner" means the state tax commissioner;

(c) "Gross proceeds" means the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses shall not be deducted, but any credit or refund made for goods returned may be deducted.

(d) "Sale," "sales" or "selling" includes any transfer of the possession or ownership of tangible personal
property for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his agent for consumption or use or any other purpose.

(e) "Vendor" means any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property.

(f) "Ultimate consumer" or "consumer" means a person who uses or consumes services or personal property.

(g) "Business" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

(h) "Tax" includes all taxes, interest and penalties levied hereunder.

(i) "Service" or "selected service" includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but shall not include contracting, personal services or the services rendered by an employee to his employer or any service rendered for resale.

(j) "Purchaser" means a person who purchases tangible personal property or a service taxed by this article.

(k) "Personal service" includes those:

(1) Compensated by the payment of wages in the ordinary course of employment;

(2) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services.

(l) "Taxpayer" means any person liable for the tax imposed by this article.
(m) "Drugs" includes all sales of drugs or appliances to a purchaser, upon prescription of a physician or dentist and any other professional person licensed to prescribe.

(n) (1) "Directly used or consumed" in the activities of manufacturing, transportation, transmission, communication or the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of such activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to such activities.

(2) Uses of property or consumption of services which constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources includes only:

(A) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources;

(B) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(C) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production, or production of natural resources;

(D) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(E) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(F) Directly and physically recording the flow of property undergoing transportation, communication,
transmission, manufacturing production or production of natural resources;

(G) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(H) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(I) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;

(J) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources, or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(K) Maintenance or repair of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(L) Storage, removal or transportation of economic waste resulting from the activities of manufacturing, transportation, communication, transmission or the production of natural resources;

(M) Pollution control or environmental quality or protection activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources; or

(N) Otherwise be used as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources.
(3) Uses of property or services which would not constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources includes, but are not limited to:

(A) Heating and illumination of office buildings;

(B) Janitorial or general cleaning activities;

(C) Personal comfort of personnel;

(D) Production planning, scheduling of work, or inventory control;

(E) Marketing, general management, supervision, finance, training, accounting and administration; or

(F) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of such activities.

(o) "Contracting."

(1) **In general.**—"Contracting" means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor or subcontractor) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property.

(2) **Form of contract not controlling.**—An activity that falls within the scope of the definition of contracting shall constitute contracting regardless of whether such contract governing the activity is written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-plus contract, a time and materials contract (whether or not open-ended), or any other kind of construction contract.
(3) Special rules.—For purposes of this definition:

(A) The term “structure” includes, but is not limited to, everything built up or composed of parts joined together in some definite manner and affixed to real property, or which adds utility to real property or any part thereof, or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time.

(B) The term “alteration” means and is limited to alterations which are capital improvements to a building or structure or to real property.

(C) The term “repair” means and is limited to repairs which are capital improvements to a building or structure or to real property.

(D) The term “decoration” means and is limited to decorations which are capital improvements to a building or structure or to real property.

(E) The term “improvement” means and is limited to improvements which are capital improvements to a building or structure or to real property.

(F) The term “capital improvement” means improvements that are affixed to or attached to and become a part of a building or structure or the real property or which add utility to real property or any part thereof and that last, or are intended to be relatively permanent. As used herein, “relatively permanent” means lasting at least a year or longer in duration without the necessity for regularly scheduled recurring service to maintain such capital improvement. “Regular recurring service” means regularly scheduled service intervals of less than one year.

(G) Contracting does not include the furnishing of work, or both materials and work in the nature of hookup, connection, installation or other services if such service is incidental to the retail sale of tangible personal property from the service provider’s inventory: Provided, That such hookup, connection or installation of the foregoing is incidental to the sale of the same and performed by the seller thereof or performed in
accordance with arrangements made by the seller thereof. Examples of transactions that are excluded from the definition of contracting pursuant hereto include, but are not limited to, the sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup, and connection of mobile homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other household appliances, drapery rods, window shades, venetian blinds, canvas awnings, free standing industrial or commercial equipment and other similar items of tangible personal property. Repairs made to the foregoing are within the definition of contracting if such repairs involve permanently affixing to or improving real property or something attached thereto which extends the life of the real property or something affixed thereto or allows or is intended to allow such real property or thing permanently attached thereto to remain in service for a year or longer.

(p) "Manufacturing" means a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

(q) "Transportation" means the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location.

(r) "Transmission" means the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes.

(s) "Communication" means all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers
and shall include commercial broadcast radio, commercial broadcast television and cable television.

(t) "Production of natural resources" means the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith.

§11-15-4b. Liability of purchaser; assessment and collection.

If any purchaser refuses or otherwise does not pay to the vendor the tax imposed by section three of this article, or in the case of a sale subject to section nine of this article, a purchaser refuses to sign and present to the vendor a proper certificate indicating the sale is not subject to this tax, or signs or presents to the vendor a false certificate, or after signing and presenting a proper certificate uses the items purchased in such manner that the sale would be subject to the tax, he shall be personally liable for the amount of tax applicable to the transaction or transactions: Provided, That nothing herein relieves any purchaser who owes the tax and who has not paid the tax imposed by section three of this article from liability therefor.

In such cases the tax commissioner has authority to make an assessment against such purchaser, based upon any information within his possession or that may come into his possession. This assessment and notice thereof shall be made and given in accordance with sections seven and eight, article ten of this chapter.

This section may not be construed as relieving the vendor from liability for the tax.

§11-15-7. Tax on gross proceeds of sales or value of manufactured, etc., products.

(a) A person exercising the privilege of producing for sale, profit or commercial use, any natural resources, product or manufactured product, and either engaged in the business of selling such product not otherwise
exempted herein, or engaged in a business or activity in which such natural resource, product or manufactured product is used or consumed by him and such use or consumption is not otherwise exempt under this article, shall make returns of the gross proceeds of such sales or, in the absence of sale, the gross value of the natural resource, product or manufactured product, so used or consumed by him, and pay the tax imposed by this article.

(b) The tax commissioner shall promulgate such uniform and equitable rules as he deems necessary for determining the gross value upon which the tax imposed by this article is levied in the absence of a sale, which value shall correspond as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by the same person or by another person.

(c) The provisions of this section, as amended by this act, shall apply to natural resources, products or manufactured products, used or consumed by the producer or manufacturer thereof on or after the first day of May, one thousand nine hundred eighty-nine.


(a) The provisions of this article shall not apply to contracting services. However, purchases by a contractor of tangible personal property or taxable services for use or consumption in the providing of a contracting service shall be taxable beginning the first day of March, one thousand nine hundred eighty-nine, except as otherwise provided in this article.

(b) Transition rules.—The exemption from payment of tax on purchases of tangible personal property or taxable services directly used or consumed in the activity of contracting, as defined in section two of this article, which expires as of the first day of March, one thousand nine hundred eighty-nine, shall nevertheless remain in effect with respect to:

(1) Tangible personal property or taxable services purchased by a contractor on or after said first day of March in fulfillment of a written contract for contract-
ing, as defined in section two of this article, that was
executed and legally binding on the parties thereto on
or before the fifteenth day of February, one thousand
nine hundred eighty-nine; or in fulfillment of a written
contract entered into after the said fifteenth day of
February pursuant to a written bid for contracting that
was made on or before the said fifteenth day of
February that was binding on the contractor, but only
to the extent that the bid is subsequently incorporated
into a written contract; or

(2) Tangible personal property or taxable services
purchased by a contractor on or after the said first day
of March pursuant to a written contract executed on or
before the fifteenth day of February, one thousand nine
hundred eighty-nine, to purchase in specified quantities
identified tangible personal property or specified
taxable services; or

(3) Tangible personal property or taxable services
purchased by a contractor for consumption or use in
fulfillment of a written contract entered into before the
first day of September, one thousand nine hundred
eighty-nine, when such contract is for the construction
of a new improvement to real property the construction
or operation of which was approved by a federal or state
regulatory body prior to the first day of February, one
thousand nine hundred eighty-nine, or pursuant to a
federal grant awarded prior to such first day of
February.

(c) Renewals and extensions.—A renewal of any
contract shall constitute a new contract for purposes of
this section, and the date of entry into a contract
renewal by the parties, the date or dates of tender of
consideration and the time of performance of any
contractual obligations under a renewed contract shall
be treated as the dates for determining application of
this section to the renewed contract. Extensions of time
granted or agreed upon by the parties to a contract for
performance of the contract or for tender of consider-
ation under the contract shall not be treated as contract
renewals. Contracts to which such extensions apply shall
be treated under these transition rules as if the original
contractual provisions for performance and tender of consideration remain in effect.

(d) Definitions.—For purposes of this section:

(1) The term “contract” or “contracts” means written agreements reciting or setting forth a fixed price consideration or a consideration based upon cost plus a stated percentage or a stated monetary increment. This term shall not mean or include ongoing sales contracts, contracts whereby any element of the consideration or the property or services sold or to be rendered in performance of the contract are undefined, or determined, as to either nature or quantity, subsequent to the making of the contract, or any open-ended contract.

(2) The term “contract renewal” or “renewal” means a covenant or agreement entered into or assumed by parties which have a current contractual relation or which have had a past contractual relation, whereby the parties agree to incur obligations beyond those which they were, or would have been, required, at the minimum, to carry out under their current or past contractual relation.

§11-15-8b. Nonresident contractor—Registration, bond, etc.

(a) Every nonresident contractor shall register with the tax commissioner prior to engaging in the performance of a contract in this state.

(b) (1) At the time of registration, the contractor shall deposit with the tax commissioner six percent of the amount the contractor is to receive for the performance of the contract which shall be held within a Contractors Use Tax Fund pending the completion of the contract, the determination of the taxes due this state under this article and article fifteen-a of this chapter because of such contract and the payment of the tax.

(2) In lieu of the deposit, the contractor may provide a corporate surety bond to be approved by the tax commissioner as to form, sufficiency, value, amount, stability, and other features necessary to provide a guarantee of payment of the compensating tax due this state.
(c) In addition, within thirty days after registration, under this section, the contractor shall file a statement with the tax commissioner itemizing the machinery, materials, supplies, and equipment that he has or will have on hand at the time he begins the fulfillment of the contract, including where such tangible personal property has been brought, shipped, or transported from outside this state upon which neither the tax imposed by this article nor article fifteen-a of this chapter has been paid, and shall pay the tax due thereon at the time of filing and thereafter shall report and pay the taxes as required by this article and article fifteen-a of this chapter.


The following sales and services are exempt:

(a) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;

(b) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia department of education or West Virginia board of regents;

(c) Sales of property or services to the state, its institutions or subdivisions, and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

(d) Sales of vehicles which are titled by the department of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of this code, or like tax;

(e) Sales of property or services to churches and bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption herein granted shall apply only to services, equipment, supplies, food for meals and materials directly used or consumed by these organizations, and shall not apply to purchases of gasoline or special fuel;
(f) Sales of tangible personal property or services to a corporation or organization which has a current registration certificate issued under article twelve of this chapter is exempt from federal income taxes under section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and is:

(1) A church or a convention or association of churches as defined in section 170 of the Internal Revenue Code of 1986, as amended;

(2) An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its educational activities are regularly carried on;

(3) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions, or membership fees; or

(4) An organization which has no paid employees and its gross income from fund raisers, less reasonable and necessary expenses incurred to raise such gross income (or the tangible personal property or services purchased with such net income), is donated to an organization which is exempt from income taxes under section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(5) For purposes of this subsection:

(A) The term “support” includes, but is not limited to:

(i) Gifts, grants, contributions or membership fees;

(ii) Gross receipts from fund raisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business (within the meaning of section 513 of the Internal Revenue Code of 1986, as amended);

(iii) Net income from unrelated business activities,
whether or not such activities are carried on regularly as a trade or business;

(iv) Gross investment income as defined in section 509(e) of the Internal Revenue Code of 1986, as amended;

(v) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of such organization; and

(vi) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset, or the value of an exemption from any federal, state or local tax or any similar benefit;

(B) The term "charitable contribution" means a contribution or gift to or for the use of a corporation or organization, described in section 170(c)(2) of the Internal Revenue Code of 1986, as amended;

(C) The term "membership fee" does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

(6) The exemption allowed by this subsection (f) does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in section 513 of the Internal Revenue Code of 1986, as amended. The provisions of this subsection as amended by this act shall apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine: Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials used or consumed in the activities for which such organizations qualify as tax exempt organizations under the Internal Revenue Code by these
organizations and shall not apply to purchases of gasoline or special fuel;

(g) Sales of property or services to persons engaged in this state in the business of manufacturing, transportation, transmission, communication or in the production of natural resources: Provided, That the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the businesses or organizations named above, and shall not apply to purchases of gasoline or special fuel: Provided, however, That on and after the first day of July, one thousand nine hundred eighty-seven, the exemption provided in this subsection shall apply only to services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication or the production of natural resources in the businesses or organizations named above and shall not apply to purchases of gasoline or special fuel;

(h) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by such owner or on his account by such representative: Provided, That nothing contained herein may be construed to prevent an owner who sells, transfers or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided herein, regardless where such isolated sale takes place. The tax commissioner may adopt such legislative rule pursuant to chapter twenty-nine-a of this code he deems necessary for the efficient administration of this exemption;

(i) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article or which would
141 have been subject to tax under this article: *Provided,*
142 That sales of tangible personal property and services to
143 be used or consumed in the construction of or permanent
144 improvement to real property and sales of gasoline and
145 special fuel shall not be exempt;
146
147 (j) Sales of tangible personal property to a person for
148 the purpose of resale in the form of tangible personal
149 property: *Provided,* That sales of gasoline and special
150 fuel by distributors and importers shall be taxable
151 except when the sale is to another distributor for resale:
152 *Provided, however,* That sales of building materials or
153 building supplies or other property to any person
154 engaging in the activity of contracting, as defined in this
155 article, which is to be installed in, affixed to or
156 incorporated by such person or his agent into any real
157 property, building or structure shall not be exempt
158 under this subsection, except that sales of tangible
159 personal property to a person engaging in the activity
160 of contracting pursuant to a written contract with the
161 United States, this state, or with a political subdivision
162 thereof, or with a public corporation created by the
163 Legislature or by another government entity pursuant
164 to an act of the Legislature, for a building or structure
165 (or improvement thereto) or other improvement to real
166 property that is or will be owned and used by the
167 governmental entity for a governmental or proprietary
168 purpose, who incorporates such property in such
169 building, structure or improvement shall, with respect
170 to such tangible personal property, nevertheless be
171 deemed to be the vendor of such property to the
172 governmental entity and any person seeking to qualify
173 for and assert this exception must do so pursuant to such
174 legislative rules and regulations as the tax commissioner
175 may promulgate and upon such forms as the tax
176 commissioner may prescribe. A subcontractor who,
177 pursuant to a written subcontract with a prime contrac-
178 tor who qualifies for this exception, provides equipment,
179 or materials, and labor to such a prime contractor shall
180 be treated in the same manner as the prime contractor
181 is treated with respect to the prime contract under this
182 exception and the legislative rules and regulations
183 promulgated by the tax commissioner;
(k) Sales of property or services to nationally char- 
tered fraternal or social organizations for the sole 
purpose of free distribution in public welfare or relief 
work: Provided, That sales of gasoline and special fuel 
shall be taxable;

(l) Sales and services, fire fighting or station house 
equipment, including construction and automotive, 
made to any volunteer fire department organized and 
incorporated under the laws of the state of West 
Virginia: Provided, That sales of gasoline and special 
fuel shall be taxable;

(m) Sales of newspapers when delivered to consumers 
by route carriers;

(n) Sales of drugs dispensed upon prescription and 
sales of insulin to consumers for medical purposes;

(o) Sales of radio and television broadcasting time, 
preprinted advertising circulars and newspaper and 
outdoor advertising space for the advertisement of goods 
or services;

(p) Sales and services performed by day-care centers;

(q) Casual and occasional sales of property or services 
not conducted in a repeated manner or in the ordinary 
course of repetitive and successive transactions of like 
character by a corporation or organization which is 
exempt from tax under subsection (f) of this section on 
its purchases of tangible personal property or services:

(1) For purposes of this subsection, the term "casual 
and occasional sales not conducted in repeated manner 
or in the ordinary course of repetitive and successive 
transactions of like character" means sales of tangible 
personal property or services at fund raisers sponsored 
by a corporation or organization which is exempt, under 
subsection (f) of this section, from payment of the tax 
imposed by this article on its purchases, when such fund 
raisers are of limited duration and are held no more 
than six times during any twelve-month period and 
limited duration means no more than eighty-four 
consecutive hours;
(2) The provisions of this subsection (q), as amended by this act, shall apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine;

(r) Sales of property or services to a school which has approval from the West Virginia board of regents to award degrees, which has its principal campus in this state, and which is exempt from federal and state income taxes under section 501(c)(3) of the Internal Revenue Code of 1986, as amended: *Provided*, That sales of gasoline and special fuel shall be taxable;

(s) Sales of mobile homes to be utilized by purchasers as their principal year-round residence and dwelling: *Provided*, That these mobile homes shall be subject to tax at the three percent rate;

(t) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state lottery commission, under the provisions of article twenty-two, chapter twenty-nine of this code;

(u) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days. This exemption shall apply to leases executed on or after the first day of July, one thousand nine hundred eighty-seven, and to payments under long-term leases executed before such date, for months thereof beginning on or after such date;

(v) Notwithstanding the provisions of subsection (g) of this section or any provisions of this article to the contrary, sales of property and services to persons subject to tax under article thirteen, thirteen-a or thirteen-b of this chapter: *Provided*, That the exemption herein granted shall apply both to property or services directly or not directly used or consumed in the conduct of privileges which are subject to tax under such articles but shall not apply to purchases of gasoline or special fuel;

(w) Sales of propane to consumers for poultry house heating purposes, with any seller to such consumer who may have prior paid such tax in his price, to not pass
on the same to the consumer, but to make application
and receive refund of such tax from the tax commis-
sioner, pursuant to rules and regulations which shall be
promulgated by the tax commissioner; and notwith-
standing the provisions of section eighteen of this article
or any other provisions of such article to the contrary;

(x) Any sales of tangible personal property or services
purchased after the thirtieth day of September, one
thousand nine hundred eighty-seven, and lawfully paid
for with food stamps pursuant to the federal food stamp
program codified in 7 United States Code, §2011, et seq.,
as amended, or with drafts issued through the West
Virginia special supplemental food program for women,
infants and children codified in 42 United States Code,
§1786;

(y) Sales of tickets for activities sponsored by elemen-
tary and secondary schools located within this state;

(z) Sales of electronic data processing services and
related software: Provided, That for the purposes of this
subsection (z) “electronic data processing services”
means (1) the processing of another’s data, including all
processes incident to processing of data such as key-
punching, keystroke verification, rearranging or sorting
of previously documented data for the purpose of data
entry or automatic processing, and changing the
medium on which data is sorted, whether these pro-
cesses are done by the same person or several persons;
and (2) providing access to computer equipment for the
purpose of processing data or examining or acquiring
data stored in or accessible to such computer equipment;

(aa) Tuition charged for attending educational
summer camps;

(bb) Sales of building materials or building supplies
or other property to an organization qualified under
section 501 (c)(3) or (c)(4) of the Internal Revenue Code
of 1986, as amended, which are to be installed in, affixed
to or incorporated by such organization or its agent into
real property, or into a building or structure which is
or will be used as permanent low-income housing,
transitional housing, emergency homeless shelter,
300 domestic violence shelter or emergency children and
301 youth shelter if such shelter is owned, managed,
302 developed or operated by an organization qualified
303 under section 501(c)(3) or (c)(4) of the Internal Revenue
304 Code of 1986, as amended;
305
306 (cc) Dispensing of services performed by one corpora-
307 tion for another corporation when both corporations are
308 members of the same controlled group. Control means
309 ownership, directly or indirectly, of stock possessing
310 fifty percent or more of the total combined voting power
311 of all classes of the stock of a corporation entitled to vote
312 or ownership, directly or indirectly, of stock possessing
313 fifty percent or more of the value of the corporation;
314
315 (dd) Food for the following shall be exempt:
316
317 (1) Food purchased or sold by public or private
318 schools, school sponsored student organizations, or
319 school sponsored parent-teacher associations to students
320 enrolled in such school or to employees of such school
321 during normal school hours; but not those sales of food
322 made to the general public;
323
324 (2) Food purchased or sold by a public or private
325 college or university or by a student organization
326 officially recognized by such college or university to
327 students enrolled at such college or university when
328 such sales are made on a contract basis so that a fixed
329 price is paid for consumption of food products for a
330 specific period of time without respect to the amount of
331 food product actually consumed by the particular
332 individual contracting for the sale and no money is paid
333 at the time the food product is served or consumed;
334
335 (3) Food purchased or sold by a nonprofit organiza-
336 tion or a governmental agency under a program funded
337 by a state or the United States to low-income elderly
338 persons at or below cost;
339
340 (4) Food sold in an occasional sale by a charitable or
341 nonprofit organization including volunteer fire depart-
342 ments and rescue squads, if the purpose of the sale is
343 to obtain revenue for the functions and activities of the
344 organization and the revenue so obtained is actually
345 expended for that purpose;
(5) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying on such functions and activities: Provided, That purchases made by such organizations shall not be exempt as a purchase for resale;

(ee) Sales of food by little leagues, midget football leagues, youth football or soccer leagues and similar types of organizations including scouting groups and church youth groups if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: Provided, That such purchases made by such organizations shall not be exempt as a purchase for resale;

(ff) Charges for room and meals by fraternities and sororities to their members: Provided, That such purchases made by a fraternity or sorority shall not be exempt as a purchase for resale;

(gg) Sales of or charges for the transportation of passengers in interstate commerce;

(hh) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the constitution of this state; and

(ii) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the provisions of any other chapter of this code.

§11-15-9b. Method for claiming exemptions, refunds of tax, credit against other taxes.

(a) Any person having a right or claim to any exemption set forth in section nine of this article except
those exemptions set forth in subsections (a), (b), (c), (d),
(f), (h), (i), (j), (m), (n), (o), (p), (q), (r), (s), (t), (u), (w),
(x), (y), (z), (aa), (cc), (dd), (ee), (ff), (gg), (hh), and (ii) of
said section nine, or the exemption of sales of property
or services to churches under subsection (e) of said
section nine, shall pay to the vendor the tax imposed by
this article and may exercise or assert such exemption
only in accordance with subsection (b) or subsection
(c) of this section.

(b) Any person who has paid the tax imposed by this
article and who may lawfully claim exemption from the
tax under a subsection of section nine of this article not
enumerated in subsection (a) of this section may
exercise or assert such claim by filing a claim for refund
of consumers sales and service tax overpayments on
such form and in such manner as the tax commissioner
may require and in accordance with the requirements
of this section. The tax commissioner shall cause a
refund to be made within thirty days of receipt of a
lawful and accurate claim.

(c) In lieu of filing a claim for refund of consumers
sales and service tax overpayments, the taxpayer may,
at his option, file a claim for credit on such form and
in such manner as the tax commissioner may require
and credit the amount of consumers sales and service
tax overpayments against certain payments of tax due
in accordance with the requirements of this section as
follows:

(1) If the taxpayer is required to remit the tax
imposed under this article or article fifteen-a of this
chapter pursuant to section five or subsection (b) of
section nine-d of this article or subsection (b) of section
three-d of said article fifteen-a, the taxpayer may credit
the amount of consumers sales and service tax overpay-
ments against the remittance of the tax imposed under
said articles otherwise due; or

(2) If the taxpayer is subject to the tax imposed under
article thirteen of this chapter, the taxpayer may credit
the amount of consumers sales and service tax overpay-
ments remaining after application of part (1) of this
subsection against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen otherwise due; or

(3) If the taxpayer is subject to the tax imposed under article twelve-a of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1) and (2) of this subsection against the taxpayer's annual or semianual remittance of the tax imposed under said article twelve-a otherwise due; or

(4) If the taxpayer is subject to the tax imposed under article thirteen-a of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3) of this subsection against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen-a otherwise due; or

(5) If the taxpayer is subject to the tax imposed under article thirteen-b of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4) and (5) of this subsection against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen-b otherwise due; or

(6) If the taxpayer is subject to the tax imposed under article twenty-four of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4) and (5) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-four and otherwise due under section seventeen, article twenty-four of this chapter; or

(7) If the taxpayer is subject to the tax imposed under article twenty-one of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4), (5) and (6) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-one and otherwise due under section fifty-six, article twenty-one of this chapter; or
(8) If the taxpayer is subject to the tax imposed under article twenty-three of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4), (5), (6) and (7) of this subsection against the taxpayer's annual remittance of the tax imposed under said article twenty-three and otherwise due; or

(9) If the taxpayer is required to deduct and withhold tax under article twenty-one of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4), (5), (6), (7) and (8) of this subsection against the taxpayer's monthly remittance of the tax withheld under said article twenty-one and otherwise due.

(d) Any person asserting or exercising a claim of exemption from the tax imposed by this article under subsections (b) or (c) of this section shall file with the tax commissioner an application for exemption in such form as the tax commissioner shall prescribe and such affidavits, invoices, sales slips, records or documents as the tax commissioner may require to prove or verify the taxpayer's right and entitlement to such exemption. The tax commissioner may inspect or examine the records, books, papers, documents, affidavits, sales slips and invoices of a taxpayer or any other person to verify the truth and accuracy of any report or return or to ascertain whether the tax imposed by this article has been paid.

In addition to the powers of the tax commissioner set forth in article ten of this chapter, as a further means of obtaining the records, books, papers, documents, affidavits, sales slips or invoices of a taxpayer or any other person and ascertaining the amount of taxes paid or due under this article or any report, form, document or affidavit required under this article, the commissioner shall have the power to examine witnesses under oath; and if any witness shall fail or refuse at the request of the commissioner to grant access to the books, records, papers, documents, affidavits, sales slips or invoices requested by the commissioner, the commis-
sioner shall certify the facts and the names to the circuit
court of the county having jurisdiction over the party
and such court shall thereupon issue a subpoena duces
tecum to such party to appear before the commissioner,
at a place designated within the jurisdiction of such
court, on a day fixed.

(e) All claims for refund of consumers sales and
service tax overpayments under subsection (b) of this
section shall be filed within the time limitation for filing
claims for refund set forth in section fourteen, article
ten of this chapter. Any claim for such refund or claim
of entitlement to such refund made or asserted after the
said time limitation shall be null and void, and if the
consumers sales and service tax overpayment has not
otherwise been credited against tax remittances in
accordance with this section, the said claims shall be
forfeited.

(f) Any credit of consumers sales and service tax
overpayments against taxes under subsection (c) of this
section shall be taken within one year after the payment
of the said consumers sales and service tax by the
consumer to the vendor. Any such credit or claim of
entitlement to such credit made or asserted more than
one year after the payment of such tax by the consumer
to the vendor shall be null and void, and such consumers
sales and service tax overpayments shall be forfeited
unless refunded under subsection (b) of this section.

(g) Any assignment of the right or entitlement to a
refund or credit arising under this section shall be
subject to strict proof, and any assignee claiming a right
or entitlement to an assigned refund or credit shall
submit an affidavit in such form as the tax commis-
sioner shall prescribe signed by the assignor acknowl-
eding the assignment. The assignee shall attest to the
assignment and the terms thereof on his signed applic-
ation filed under subsection (d) of this section for
refund or credit, and will be subject to the penalties
provided under West Virginia law for perjury for any
falsehood set forth therein and will be subject to the
penalties set forth in article nine of this chapter for any
violation thereof. Except as provided in this subsection
(g), no payment of a refund arising under this section shall be made to any person other than the taxpayer making the original overpayment of consumers sales and service tax.

(h) No refund shall be due and no credit shall be allowed under this section unless the taxpayer or assignee shall have filed a claim for refund or a claim for credit, as appropriate, with the tax commissioner in accordance with this section.

(i) Any claim for a refund of consumers sales and service tax overpayments or for a tax credit for consumers sales and service tax overpayments which is not timely filed or not filed in proper form or in accordance with the requirements of this section shall not be construed to constitute a moral obligation of the state of West Virginia for payment. No overpayment of consumers sales and service tax made under this section shall be subject to subsection (d), section seventeen, article ten of this chapter or subdivision (1), subsection (e), section seventeen, article ten of this chapter.

(j) The provisions of this section become effective after the thirtieth day of June, one thousand nine hundred eighty-seven.


Persons having a right or claim to any exemption set forth in subsections (a), (b), (c), (d), (f), (h), (i), (j), (m), (n), (o), (p), (q), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (cc), (dd), (ee), (ff), (gg), (hh), and (ii) of section nine of this article shall, in lieu of paying the tax imposed by this article, execute a certificate of exemption in such form as the tax commissioner may require, and such executed exemption certificate shall be delivered to the vendor in such manner as the tax commissioner may require: Provided, That the tax commissioner may identify exemptions for which exemption certificates are not required and as soon as practical may specify by regulation exemptions for which exemption certificates are not required.
§11-15-9d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the tax commissioner may, pursuant to rules and regulations promulgated by him in accordance with article three, chapter twenty-nine-a of this code, authorize a person (as defined in section two) that is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided, to pay any tax levied by this article or article fifteen-a of this chapter directly to the tax commissioner and waive the collection of the tax by that person's vendor. No such authority shall be granted or exercised except upon application to the tax commissioner and after issuance by the tax commissioner of a direct pay permit. Upon issuance of such direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen-a of this chapter on sales and leases of tangible personal property and sales of taxable services from the vendors thereof shall be made directly to the tax commissioner by the permit holder.

(b) On or before the fifteenth day of each month, every permit holder shall make and file with the tax commissioner a consumer sales and use tax direct pay permit return for the preceding month in the form prescribed by the tax commissioner showing the total value of the tangible personal property so used, the amount of taxable services purchased, the amount of consumers sales and use taxes due from the permit holder, which amount shall be paid to the tax commissioner with such return, and such other information as the tax commissioner deems necessary: Provided, That if the amount of consumers sales and use taxes due averages less than one hundred dollars per month, the tax commissioner may permit the filing of quarterly returns in lieu of monthly returns and the amount of tax shown thereon to be due shall be remitted on or before the fifteenth day following the close of the calendar quarter; and if the amount due averages less than fifty dollars per calendar quarter, the tax commissioner may permit the filing of an annual direct pay permit return and the amount of
41 tax shown thereon to be due shall be remitted on or
42 before the last day of January each year. The tax
43 commissioner, upon written request by the permit
44 holder, may grant a reasonable extension of time, upon
45 such terms as the tax commissioner may require, for the
46 making and filing of direct pay permit returns and
47 paying the tax due. Interest on such tax shall be
48 chargeable on every such extended payment at the rate
49 specified in section seventeen, article ten of this chapter.
50 (c) A permit issued pursuant to this section shall
51 continue to be valid until expiration of the taxpayers
52 registration year under article twelve of this chapter.
53 This permit shall automatically be renewed when the
54 taxpayers business registration certificate is issued for
55 the next succeeding fiscal year, unless the permit is
56 surrendered by the holder or canceled for cause by the
57 tax commissioner.
58 (d) Persons who hold a direct payment permit which
59 has not been canceled shall not be required to pay the
tax to the vendor as otherwise provided in this article
60 or article fifteen-a of this chapter. Such persons shall
61 notify each vendor from whom tangible personal
62 property is purchased or leased or from whom services
63 are purchased of their direct payment permit number
64 and that the tax is being paid directly to the tax
65 commissioner. Upon receipt of such notice, such vendor
66 shall be absolved from all duties and liabilities imposed
67 by this chapter for the collection and remittance of the
68 tax with respect to sales of tangible personal property
69 and sales of services to such permit holder. Vendors who
70 make sales upon which the tax is not collected by reason
71 of the provisions of this section shall maintain records
72 in such manner that the amount involved and identity
73 of each such purchaser may be ascertained.
74 (e) Upon the expiration, cancellation or surrender of
75 a direct payment permit, the provisions of this chapter,
76 without regard to this section, shall thereafter apply to
77 the person who previously held such permit, and such
78 person shall promptly so notify in writing vendors from
79 whom tangible personal property or services are
80 purchased or leased of such cancellation or surrender.
Upon receipt of such notice, the vendor shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales, distributions, leases or storage of tangible personal property, thereafter made to or for such person.


(a) General.—All sales of gasoline or special fuel by distributors or importers, except when to another distributor for resale in this state, when delivery is made in this state, shall be subject to the tax imposed by this article, notwithstanding any provision of this article to the contrary. Sales of gasoline or special fuel by a person who paid the tax imposed by this article on his purchases of fuel, shall not thereafter be again taxed under the provisions of this article. This section shall be construed so that all gallons of gasoline or special fuel sold and delivered, or delivered, in this state are taxed one time.

(b) Measure of tax.—The measure of tax on sales of gasoline or special fuel by distributors or importers shall be the average wholesale price as defined and determined in subsection (c), section thirteen, article fifteen-a of this chapter. For purposes of maintaining revenue for highways, and recognizing that the tax imposed by this article is generally imposed on gross proceeds from sales to ultimate consumers, whereas the tax on gasoline and special fuel herein is imposed on the average wholesale price of such gasoline and special fuel; in no case, for the purposes of taxation under this article, shall such average wholesale price be deemed to be less than ninety-seven cents per gallon of gasoline or special fuel for all gallons of gasoline and special fuel sold during the reporting period, notwithstanding any provision of this article to the contrary.

(c) Definitions.—For purposes of this section:

(1) “Aircraft” shall include any airplane or helicopter that lands in this state on a regular or routine basis, and transports passengers or freight.

(2) “Aircraft fuel” shall mean gasoline and special fuel suitable for use in any aircraft engine.
35 (3) "Distributor" shall mean and include every person:
36 (A) Who produces, manufactures, processes or other-
37 wise alters gasoline or special fuel in this state for use
38 or for sale; or
39 (B) Who engages in this state in the sale of gasoline
40 or special fuel for the purpose of resale or for distribu-
41 tion; or
42 (C) Who receives gasoline or special fuel into the
43 cargo tank of a tank wagon in this state for use or sale
44 by such person.
45 (4) "Gasoline" shall mean and include any product
46 commonly or commercially known as gasoline, regard-
47 less of classification, suitable for use as fuel in an
48 internal combustion engine, except special fuel as
49 hereinafter defined, including any product obtained by
50 blending together any one or more products, with or
51 without other products, if the resultant product is
52 capable of the same use.
53 (5) "Importer" shall mean and include every person,
54 resident or nonresident, other than a distributor, who
55 receives gasoline or special fuel outside this state for use,
56 sale or consumption within this state, but shall not
57 include the fuel in the supply tank of a motor vehicle
58 that is not a motor carrier.
59 (6) "Motor carrier" shall mean and include: (A) Any
60 passenger vehicle which has seats for more than nine
61 passengers in addition to the driver, any road tractor,
62 tractor truck or any truck having more than two axles,
63 which is operated or caused to be operated, by any
64 person on any highway in this state using gasoline or
65 special fuel; and (B) any aircraft, barge or other
66 watercraft, or locomotive transporting passengers or
67 freight in or through this state.
68 (7) "Motor vehicle" shall mean and include automo-
69 biles, motor carriers, motor trucks, motorcycles and all
70 other vehicles or equipment, engines or machines which
71 are operated or propelled by combustion of gasoline or
72 special fuel.
(8) "Retail dealer of gasoline or special fuel" shall mean and include any person not a distributor, who sells gasoline or special fuel from a fixed location in this state to users.

(9) "Special fuel" shall mean and include any gas or liquid, other than gasoline, used or suitable for use as fuel in an internal combustion engine. The term "special fuel" shall include products commonly known as natural or casinghead gasoline and shall include gasoline and special fuel for heating any private residential dwelling, building or other premises; but shall not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not commonly used nor practicably suited for use as fuel in an internal combustion engine.

(10) "Supply tank" shall mean any receptacle on a motor vehicle from which gasoline or special fuel is supplied for the propulsion of the vehicle or equipment located thereon, exclusive of a cargo tank. A supply tank includes a separate compartment of a cargo tank used as a supply tank, and any auxiliary tank or receptacle of any kind or cargo tank, from which gasoline or special fuel is supplied for the propulsion of the vehicle, whether or not such tank or receptacle is directly connected to the fuel supply line of the vehicle.

(11) "Tank wagon" shall mean and include any motor vehicle or vessel with a cargo tank or cargo tanks ordinarily used for making deliveries of gasoline or special fuel, or both, for sale or use.

(12) "Taxpayer" shall mean any person liable for the tax imposed by this article.

(13) "User" shall mean any person who purchases gasoline or special fuel for use or consumption.

(d) Tax due.—The tax on sales of gasoline and special fuel shall be paid by each taxpayer on or before the twenty-fifth day of each month, by check, bank draft, certified check or money order, payable to the tax commissioner for the amount of tax due for the
preceding month, notwithstanding any provision of this article to the contrary.

(e) Monthly return.—On or before the twenty-fifth day of each month, the taxpayer shall make and file a return for the preceding month showing such information as the tax commissioner may require, notwithstanding any provision of this article to the contrary.

(f) Compliance.—To facilitate ease of administration and compliance by taxpayers, the tax commissioner may require distributors, importers and other persons liable for the tax imposed by this article on sales of gasoline or special fuel, to file a combined return and make a combined payment of the tax due under this article on sales of gasoline and special fuel, and the tax due under article fourteen of this chapter, on gasoline and special fuel. In order to encourage use of a combined return each month and the making of a single payment each month for both taxes, the due date of the return and tax due under article fourteen of this chapter is hereby changed from the last day of each month to the twenty-fifth day of each month, notwithstanding any provision in article fourteen of this chapter to the contrary.

(g) Dedication of tax to highways.—All tax collected under the provisions of this section after deducting the amount of any refunds lawfully paid, shall be deposited in the “road fund” in the state treasurer’s office, and shall be used only for the purpose of construction, reconstruction, maintenance and repair of highways, and payment of principal and interest on state bonds issued for highway purposes: Provided, That notwithstanding any provision to the contrary, any tax collected on the sale of aircraft fuel shall be deposited in the state treasurer’s office and transferred to the state aeronautical commission to be used for the purpose of matching federal funds available for the reconstruction, maintenance and repair of public airports and airport runways.

(h) Construction.—This section shall not be construed as taxing any sale of gasoline or special fuel which this state is prohibited from taxing under the constitution of
this state or the constitution or laws of the United
States.

(i) Effective date.—The provisions of chapter one
hundred seventy-nine of the Acts of the Legislature, one
thousand nine hundred eighty-three, shall take effect on
the first day of April, one thousand nine hundred eighty-
three. The amendments to this section made by the
Legislature in the Regular Session, one thousand nine
hundred eighty-nine, shall be effective on the first day
of July, one thousand nine hundred eighty-nine.

§11-15-33. Effective date.

1 (a) The provisions of this article as amended or added
by Senate Bill No. 1 took effect on the first day of
March, one thousand nine hundred eighty-nine, and
apply to all sales made on or after that date: Provided,
That if an effective date was expressly provided in a
provision of such act, that specific effective date
controlled in lieu of this general effective date provision.

(b) The provisions of this article as amended or added
by this act shall take effect on the first day of July, one
thousand nine hundred eighty-nine, and apply to all
sales made on or after that date: Provided, That if an
effective date is expressly provided in such provision,
that specific effective date shall control in lieu of this
general effective date provision.

ARTICLE 15A. USE TAX.

§11-15A-2a. Tax on value of property used or consumed in this state.
§11-15A-3b. Method for claiming exemptions, refunds of tax, credit against
other taxes.
§11-15A-3c. Delivery of a certificate of exemption in lieu of tax.
§11-15A-3d. Direct pay permits.
§11-15A-6a. Collection by certain other retailers.
§11-15A-29. Effective date.

§11-15A-2a. Tax on value of property used or consumed
in this state.

(a) Except as otherwise provided, a person who
produces for sale, profit or commercial use, any natural
resource, product or manufactured product, and uses or
consumes such natural resource, product or manufac-
tured product, in this state shall make returns of the
gross value of the natural resource, product or manu-
factured product, so used or consumed by him in this
state, and pay the tax imposed by this article, when such
use or consumption is not otherwise exempt under this
article.

(b) The tax commissioner shall promulgate such
uniform and equitable rules as he deems necessary for
determining the gross value upon which the tax imposed
by this article is levied in the absence of a sale, which
value shall correspond as nearly as possible to the gross
proceeds from the sale of similar products of like quality
or character by the same person or by another person.

(c) A person who purchases or leases machinery or
equipment or other tangible personal property for use
in another state and then uses or consumes such
property in this state shall pay the tax imposed by this
article on the value of the property so used or consumed
in this state. The tax commissioner shall promulgate
such uniform and equitable rules as he deems necessary
for determining the measure of the tax imposed by this
article with respect to such property.

(d) The provisions of this section shall apply to
property used or consumed in this state on or after the
first day of May, one thousand nine hundred eighty-nine.

§11-15A-3b. Method for claiming exemptions, refunds of
tax, credit against other taxes.

(a) Any person having a right or claim to an exempt-
tion from the tax imposed by this article by reason of
any exemption set forth in section nine, article fifteen
of this chapter except those exemptions set forth in
subsections (a), (b), (c), (d), (f), (h), (i), (j), (m), (n), (o),
(p), (q), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (cc), (dd),
(ee), (ff) (gg), (hh) and (ii) of said section nine, shall pay
to the vendor the tax imposed by this article and may
exercise or assert such exemption only in accordance
with subsection (b) or subsection (c) of this section.

(b) Any person who has paid the tax imposed by this
article and who may lawfully claim under section three
of this article any exemption set forth under a subsec‐
tion of section nine of article fifteen not enumerated in
subsection (a) of this section may exercise or assert such
claim by filing a claim for refund of use tax overpay‐
ments on such form and in such manner as the tax
commissioner may require and in accordance with the
requirements of this section.

(c) In lieu of filing a claim for refund of use tax
overpayments, the taxpayer may, at his option, file a
claim for credit on such form and in such manner as
the tax commissioner may require and credit the
amount of use tax overpayments against certain pay‐
ments of tax due in accordance with the requirements
of this section as follows:

(1) If the taxpayer is required to remit the tax
imposed under this article or article fifteen of this
chapter pursuant to section five or subsection (b) of
section nine-d of said article fifteen or subsection (b) of
section three-d of this article, the taxpayer may credit
the amount of use tax overpayments against the
remittance of the tax imposed under said articles
otherwise due; or

(2) If the taxpayer is subject to the tax imposed under
article thirteen of this chapter, the taxpayer may credit
the amount of use tax overpayments remaining after
application of part (1) of this subsection against the
taxpayer's quarterly or monthly remittance of the tax
imposed under said article thirteen otherwise due; or

(3) If the taxpayer is subject to the tax imposed under
article twelve-a of this chapter, the taxpayer may credit
the amount of use tax overpayments remaining after
application of parts (1) and (2) of this subsection against
the taxpayer's annual or semiannual remittance of the
tax imposed under said article twelve-a otherwise due; or

(4) If the taxpayer is subject to the tax imposed under
article thirteen-a of this chapter, the taxpayer may
credit the amount of use tax overpayments remaining
after application of parts (1), (2) and (3) of this
subsection against the taxpayer's quarterly or monthly
remittance of the tax imposed under said article thirteen-a otherwise due; or

(5) If the taxpayer is subject to the tax imposed under article thirteen-b of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3) and (4) of this subsection against the taxpayer's quarterly or monthly remittance of the tax imposed under said article thirteen-b otherwise due; or

(6) If the taxpayer is subject to the tax imposed under article twenty-four of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3), (4) and (5) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-four and otherwise due under section seventeen, article twenty-four of this chapter; or

(7) If the taxpayer is subject to the tax imposed under article twenty-one of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3), (4), (5) and (6) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-one and otherwise due under section fifty-six, article twenty-one of this chapter; or

(8) If the taxpayer is subject to the tax imposed under article twenty-three of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3), (4), (5), (6) and (7) of this subsection against the taxpayer's annual remittance of the tax imposed under said article twenty-three and otherwise due; or

(9) If the taxpayer is required to deduct and withhold tax under article twenty-one of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3), (4), (5), (6), (7) and (8) of this subsection against the taxpayer's monthly remittance of the tax withheld under said article twenty-one and otherwise due.
(d) Any person asserting or exercising a claim of exemption from the tax imposed by this article under subsections (b) or (c) of this section shall file with the tax commissioner an application for exemption in such form as the tax commissioner shall prescribe and such affidavits, invoices, sales slips, records or documents as the tax commissioner may require to prove or verify the taxpayer's right and entitlement to such exemption. The tax commissioner may inspect or examine the records, books, papers, documents, affidavits, sales slips and invoices of a taxpayer or any other person to verify the truth and accuracy of any report or return or to ascertain whether the tax imposed by this article or article fifteen of this chapter has been paid.

In addition to the powers of the tax commissioner set forth in article ten of this chapter, as a further means of obtaining the records, books, papers, documents, affidavits, sales slips or invoices of a taxpayer or any other person and ascertaining the amount of taxes paid or due under this article or article fifteen of this chapter or any report, form, document or affidavit required under this article or article fifteen of this chapter, the commissioner shall have the power to examine witnesses under oath; and if any witness shall fail or refuse at the request of the commissioner to grant access to the books, records, papers, documents, affidavits, sales slips or invoices requested by the commissioner, the commissioner shall certify the facts and the names to the circuit court of the county having jurisdiction of the party, and such court shall thereupon issue a subpoena duces tecum to such party to appear before the commissioner, at a place designated within the jurisdiction of such court, on a day fixed.

(e) All claims for refund of use tax overpayments under subsection (b) of this section shall be filed within the time limitation for filing claims for refund set forth in section fourteen, article ten of this chapter. Any claim for such refund or claim of entitlement to such refund made or asserted after the said time limitation shall be null and void, and if the use tax overpayment has not otherwise been credited against tax remittances in
accordance with this section, the said claims shall be forfeited.

(f) Any credit of use tax overpayments against taxes under subsection (c) of this section shall be taken within one year after the payment of the tax by the taxpayer to the vendor. Any such credit or claim of entitlement to such credit made or asserted more than one year after the payment of such tax by the taxpayer to the vendor shall be null and void, and such tax overpayments shall be forfeited.

(g) Any assignment of the right or entitlement to a refund or credit arising under this section shall be subject to strict proof, and any assignee claiming a right or entitlement to an assigned refund or credit shall submit an affidavit in such form as the tax commissioner shall prescribe signed by the assignor acknowledging the assignment. The assignee shall attest to the assignment and the terms thereof of his signed application filed under subsection (e) of this section for refund or credit, and will be subject to the penalties provided under West Virginia law for perjury for any falsehood set forth therein and will be subject to the penalties set forth in article nine of this chapter for any violation thereof. Except as provided in this subsection (h), no payment of a refund arising under this section shall be made to any person other than the taxpayer making the original overpayment of consumers sales and service tax.

(h) No refund shall be due and no credit shall be allowed unless the taxpayer or assignee shall have filed a claim for refund or a claim for credit, as appropriate, with the tax commissioner in accordance with this section.

(i) Any claim for a refund of use tax overpayments or a tax credit for use tax overpayments which is not timely filed or not filed in proper form or in accordance with the requirements of this section shall not be construed to constitute a moral obligation of the state of West Virginia for payment. No overpayment of use tax made under this section shall be subject to subsec-
§11-15A-3c. Delivery of a certificate of exemption in lieu of tax.

Persons having a right or claim under section three of this article, to any exemption set forth in subsections (a), (b), (c), (d), (f), (h), (i), (j), (m), (n), (o), (p), (q), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (cc), (dd), (ee), (ff), (gg), (hh) and (ii), section nine, article fifteen of this chapter shall, in lieu of paying the tax imposed by this article, execute a certificate of exemption in such form as the tax commissioner may require, and such executed exemption certificate shall be delivered to the vendor in such manner as the tax commissioner may require: Provided, That the tax commissioner may identify exemptions for which exemption certificates are not required and as soon as practical may specify by regulation exemptions for which exemption certificates are not required.

§11-15A-3d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the tax commissioner may, pursuant to rules and regulations promulgated by him in accordance with article three, chapter twenty-nine-a of this code, authorize a person (as defined in section two of article fifteen) that is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided to pay any tax levied by this article or article fifteen of this chapter directly to the tax commissioner and waive the collection of the tax by that person's vendor. No such authority shall be granted or exercised except upon application to the tax commissioner and after issuance by the tax commissioner of a direct pay permit. Upon issuance of such direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen of this chapter on sales and leases of tangible personal
property and sales of taxable services from the vendors thereof shall be made directly to the tax commissioner by the permit holder.

(b) On or before the fifteenth day of each month, every permit holder shall make and file with the tax commissioner a consumers sales and use tax direct pay permit return for the preceding month in the form prescribed by the tax commissioner showing the total value of the tangible personal property so used, the amount of taxable services purchased, the amount of tax due from the permit holder, which amount shall be paid to the tax commissioner with such return, and such other information as the tax commissioner deems necessary: Provided, That if the amount of consumers sales and use taxes due averages less than one hundred dollars per month, the tax commissioner may permit the filing of quarterly returns in lieu of monthly returns and the amount of tax shown thereon to be due shall be remitted on or before the fifteenth day following the close of the calendar quarter; and if the amount due averages less than fifty dollars per calendar quarter, the tax commissioner may permit the filing of an annual direct pay permit return and the amount of tax shown thereon to be due shall be remitted on or before the last day of January each year. The tax commissioner, upon written request filed by the permit holder before the due date of the return, may grant a reasonable extension of time, upon such terms as the tax commissioner may require, for the making and filing of direct pay permit returns and paying the tax due. Interest on such tax shall be chargeable on every such extended payment at the rate specified in section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section shall continue to be valid until expiration of the taxpayer's registration year under article twelve of this chapter. This permit shall automatically be renewed when the taxpayer's business registration certificate is issued for the next succeeding fiscal year, unless the permit is surrendered by the holder or canceled for cause by the tax commissioner.

(d) Persons who hold a direct payment permit which
has not been canceled shall not be required to pay the
tax to the vendor as otherwise provided in this article
or article fifteen of this chapter. Such persons shall
notify each vendor from whom tangible personal
property is purchased or leased or from whom services
are purchased of their direct payment permit number
and that the tax is being paid directly to the tax
commissioner. Upon receipt of such notice, such vendor
shall be absolved from all duties and liabilities imposed
by this chapter for the collection and remittance of the
tax with respect to sales, distributions, leases or storage
of tangible personal property and sales of services to
such permit holder. Vendors who make sales upon
which the tax is not collected by reason of the provisions
of this section shall maintain records in such manner
that the amount involved and identity of each such
purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of
a direct payment permit, the provisions of this chapter,
without regard to this section, shall thereafter apply to
the person who previously held such permit, and such
person shall promptly so notify in writing vendors from
whom tangible personal property or services are
purchased of such cancellation or surrender. Upon
receipt of such notice, the vendor shall be subject to the
provisions of this chapter, without regard to this section,
with respect to all sales of tangible personal property
or taxable services, thereafter made to or for such
person.

§11-15A-6a. Collection by certain other retailers.

(a) Duty to collect tax.—For purposes of this article
and for collection of use tax required under section six
of this article, a retailer engaging in business in this
state also means and includes any of the following:

(1) Any retailer soliciting orders from persons located
in this state for the sale of tangible personal property
or taxable services by means of a telecommunication or
television shopping system which utilizes a telephone or
mail ordering system, including toll free telephone
numbers, reverse charge telephone systems or other
11 telephone ordering systems and which is intended by the
12 retailer to be broadcast by cable television or other
13 means of broadcasting, to consumers located in this
14 state: Provided, That such retailer has physical presence
15 in this state in the form of employees, offices, agents or
16 sales outlets in this state, or any other presence that
17 provides the necessary minimum contacts for a constitu-
18 tionally sufficient nexus for a state to require such a
19 retailer to collect and remit use taxes.

20 (2) Any retailer who solicits orders from persons
21 located in this state for the sale of tangible personal
22 property or taxable services by means of advertising
23 that is broadcast from, printed at, or distributed from,
24 a location in this state if the advertising is primarily
25 intended to be disseminated to consumers located in this
26 state and is only secondarily or incidentally dissemi-
27 nated to bordering jurisdictions. For purposes of this
28 paragraph, advertising which is broadcast from a radio
29 or television station located in this state or is printed in
30 or distributed by a newspaper published in this state is
31 rebuttably presumed to be primarily intended for
32 dissemination to consumers located in this state:
33 Provided, That such retailer has physical presence in
34 this state in the form of employees, offices, agents or
35 sales outlets in this state, or any other presence that
36 provides the necessary minimum contacts for a constit-
37 utionally sufficient nexus for a state to require such a
38 retailer to collect and remit use taxes.

39 (3) Any retailer soliciting orders from persons located
40 in this state for the sale of tangible personal property
41 or taxable services by mail if the solicitations are
42 substantial and recurring and if the retailer economi-
43 cally benefits from any banking, financing, debt
44 collection, telecommunication or marketing activities
45 occurring in this state or economically benefits from the
46 location in this state of an authorized installation,
47 servicing or repair facility, regardless of whether such
48 facility is owned or operated by such retailer or by a
49 related or unrelated person: Provided, That such retailer
50 has physical presence in this state in the form of
51 employees, offices, agents or sales outlets in this state,
or any other presence that provides the necessary minimum contacts for a constitutionally sufficient nexus for a state to require such a retailer to collect and remit use taxes.

(4) Any retailer having a franchisee or licensee operating in this state under the retailer’s trade name, if the franchisee or licensee is required to collect the tax imposed by this article or article fifteen of this chapter: Provided, That such retailer has physical presence in this state in the form of employees, offices, agents or sales outlets in this state, or any other presence that provides the necessary minimum contacts for a constitutionally sufficient nexus for a state to require such a retailer to collect and remit use taxes.

(5) Any retailer who, pursuant to a contract with a cable television operator located in this state, solicits from persons located in this state orders for the sale of tangible personal property or taxable services by means of advertising which is transmitted or distributed over a cable television system in this state: Provided, That such retailer has physical presence in this state in the form of employees, offices, agents or sales outlets in this state, or any other presence that provides the necessary minimum contacts for a constitutionally sufficient nexus for a state to require such a retailer to collect and remit use taxes.

(b) Exemption from payment of business registration tax.—Any retailer required to collect use tax under the provisions of subsection (a) of this section shall be required to obtain a business registration certificate, as provided in article twelve of this chapter, but shall be exempt from payment of the tax levied by subsection (b), section three of said article twelve, unless the retailer has sufficient presence in this state so that required payment of the tax does not violate any provision of the constitution or laws of this state or of the United States.

(c) Effective date.—The provisions of this section shall become effective the first day of July, one thousand nine hundred eighty-nine, and apply to sales of tangible personal property or taxable services made on or after that date.
§11-15A-29.  Effective date.

(a) The provisions of this article as amended or added by Senate Bill No. 1 took effect on the first day of March, one thousand nine hundred eighty-nine, and apply to all purchases made or used in this state on or after that date: Provided, That if an effective date was expressly provided in a provision of such act, that specific effective date controlled in lieu of this general effective date provision.

(b) The provisions of this article as amended or added by this act shall take effect on the first day of July, one thousand nine hundred eighty-nine, and apply to all purchases made or used in this state on or after that date: Provided, That if an effective date is expressly provided in such provision, that specific effective date shall control in lieu of this general effective date provision.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

(a) General.—The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income.—There shall be added to federal adjusted gross income unless already included therein the following items:

(1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;
(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount allowed as a deduction from federal gross income under section 221 of the Internal Revenue Code by married couples who file a joint federal return for the federal taxable year: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(7) The deferral value of certain income that is not recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal adjusted gross income pursuant to the accelerated cost recovery system under section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the following recovery property: Three-year property—no modification; five-year property—ten percent; ten-year property—fifteen percent; fifteen-year public utility property—twenty-five percent; and fifteen-year real property—thirty-five percent: Provided, That this modification shall not apply to any person whose federal deduction is determined by the use of the straight line method: Provided, however, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred
eighty-six; and

(8) The amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes.

(c) Modifications reducing federal adjusted gross income.—There shall be subtracted from federal adjusted gross income to the extent included therein:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the state of West Virginia to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the state of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under section 852 of the Internal Revenue Code for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-seven;

(3) Any gain from the sale or other disposition of property having a higher fair market value on the first day of January, one thousand nine hundred sixty-one, than the adjusted basis at said date for federal income tax purposes:Provided, That the amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between such fair market value and such adjusted basis:Provided, however, That if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to forty percent of such portion of the gain:Provided further, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;
(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia public employees retirement system, the West Virginia state teachers retirement system and all forms of military retirement, including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes: Provided, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first two thousand dollars of benefits received under the West Virginia public employees retirement system, the West Virginia state teachers retirement system and all forms of military retirement including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and the first two thousand dollars of benefits received under any federal retirement system to which Title 4 USC § 111 applies: Provided, however, That the total modification under this paragraph shall not exceed two thousand dollars per person receiving such retirement benefits and this limitation shall apply to all returns or amended returns filed after the last day of December, one thousand nine hundred eighty-eight;

(6) Retirement income received in the form of pensions and annuities after the thirty-first day of December, one thousand nine hundred seventy-nine, under any West Virginia police, West Virginia firemen's retirement system or the West Virginia department of public safety death, disability and retirement fund, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes;

(7) Federal adjusted gross income in the amount of
eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That if a person has a medical certification from a prior year and he is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: Provided, however, That (i) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is eight thousand dollars per person or more, no deduction shall be allowed under this subdivision; and (ii) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of modifications under such subdivisions; (8) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That (i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision; and (ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than
eight thousand dollars per person, the total modification
allowed under this subdivision for all gross income
received by such person shall be limited to the differ-
ence between eight thousand dollars and the sum of such
subdivisions;

(9) Any pay or allowances received, after the thirty-
first day of December, one thousand nine hundred
seventy-nine, by West Virginia residents who have not
attained the age of sixty-five, as compensation for active
service in the armed forces of the United States: 
Provided, That such deduction shall be limited to an
amount not to exceed four thousand dollars: Provided,
however, That this modification shall not be made for
taxable years beginning after the thirty-first day of
December, one thousand nine hundred eighty-six;

(10) Gross income to the extent included in federal
adjusted gross income under section 86 of the Internal
Revenue Code for federal income tax purposes: 
Provided, That this modification shall not be made for
taxable years beginning after the thirty-first day of
December, one thousand nine hundred eighty-six;

(11) The amount of any lottery prize awarded by the
West Virginia state lottery commission, to the extent
properly included in gross income for federal income tax
purposes; and

(12) Any other income which this state is prohibited
from taxing under the laws of the United States.

(d) Modification for West Virginia fiduciary adjust-
ment.—There shall be added to or subtracted from
federal adjusted gross income, as the case may be, the
taxpayer's share, as beneficiary of an estate or trust, of
the West Virginia fiduciary adjustment determined
under section nineteen of this article.

(e) Partners and S corporation shareholders.—The
amounts of modifications required to be made under this
section by a partner or an S corporation shareholder,
which relate to items of income, gain, loss or deduction
of a partnership or an S corporation, shall be deter-
mined under section seventeen of this article.
(f) Husband and wife.—If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-9c. Research and development credit against primary tax.

A credit shall be allowed against the primary tax imposed by this article, which shall be the research and development credit as provided in sections three and three-b, article thirteen-d of this chapter for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-eight: Provided, That the amount of this credit may not reduce by more than fifty percent the amount of the net tax liability of the taxpayer for the taxable year: Provided, however, That one-tenth of the entire amount of the eligible investment, upon which the credit is predicated pursuant to sections three and three-b, article thirteen-d of this chapter, taken as a deduction in determining its federal taxable income for the taxable year shall be an adjustment increasing federal taxable income under section six of this article: Provided further, That the taxpayer may at its option elect in lieu of claiming the credit allowable by this section to not increase its federal taxable income under section six of this article and thereby take as a full deduction under this article for the taxable year the amount of its eligible investment in research and development for the taxable year, which was taken as a deduction on its federal return for such taxable year.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 1. DEFINITIONS.

§17-1-3. "Road"; "public road"; "highway."

The words or terms "road," "public road," or "highway" shall be deemed to include, but shall not be limited to, the right-of-way, roadbed and all necessary culverts,
sluices, drains, ditches, waterways, embankments, slopes, retaining walls, bridges, tunnels and viaducts necessary for the maintenance of travel, dispatch of freight and communication between individuals and communities; and such public road or highway shall be taken to include any road to which the public has access and which it is not denied the right to use, or any road or way leading from any other public road over the land of another person, and which shall have been established pursuant to law. Any road shall be conclusively presumed to have been established when it has been used by the public for a period of ten years or more, and public moneys or labor have been expended thereon, whether there be any record of its conveyance, dedication or appropriation to public use or not. In the absence of any other mark or record, the center of the traveled way shall be taken as the center of the road and the right-of-way shall be designated therefrom an equal distance on each side, but a road may be constructed on any part of the located right-of-way when it is deemed advisable so to do.

The Legislature notes that there are public highways that run over the surface of this land, over and through the navigable streams, rivers and waterways on this earth and above the surface of this earth in the form of highways in the sky, commonly known as airways. The Legislature finds that each of these types of public highways are essential to the development of this state and that the health and safety of each of the citizens of this state are affected daily by the availability of each of these three types of public highways, and that it is the best interests of the people of this state that each of these be recognized and included within the meaning of public highways. The Legislature further recognizes that airports are an important and integral part of the public highways existing above the surface of this state, and that airports are necessary to access such highways, and therefore airports, including runways, taxiways, parking ramps, access roads and air traffic control facilities located at airports, are hereby declared to be part of the public highway system of this state.
AN ACT to amend and reenact sections seven, ten and seventeen-b, article five, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section eleven, article seven, chapter twenty-one-a of said code; to amend and reenact sections nineteen and twenty-one, article ten, chapter twenty-one-a of said code; and to further amend said article ten by adding thereto a new section, designated section twenty-two, all relating to unemployment compensation.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.


§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.


1 (1) The commissioner shall maintain a separate
account for each employer, and shall credit his account with all contributions paid by him prior to July first, one thousand nine hundred sixty-one. On and after July first, one thousand nine hundred sixty-one, the commissioner shall maintain a separate account for each employer, and shall credit said employer's account with all contributions of such employer in excess of seven tenths of one percent of taxable wages; and on and after July first, one thousand nine hundred seventy-one, the commissioner shall maintain a separate account for each employer, and shall credit said employer's account with all contributions of such employer in excess of four tenths of one percent of taxable wages: Provided, That any adjustment made in any employer's account after the computation date shall not be used in the computation of the balance of an employer until the next following computation date: Provided, however, That nothing in this chapter shall be construed to grant an employer or individual in his service prior claims or rights to the amounts paid by him into the fund, either on his behalf or on behalf of such individuals. The account of any employer which had been inactive for a period of four consecutive calendar years shall be terminated for all purposes.

(2) Benefits paid to an eligible individual for regular and extended total or partial unemployment beginning after the effective date of this article shall be charged to the account of the last employer with whom he has been employed as much as thirty working days, whether or not such days are consecutive: Provided, That no employer's account shall be charged with benefits paid to any individual who has been separated from a noncovered employing unit in which he was employed as much as thirty days, whether or not such days are consecutive: Provided, however, That no employer's account shall be charged with more than fifty percent of the benefits paid to an eligible individual as extended benefits under the provisions of article six-a of this chapter: Provided further, That state and local government employers shall be charged with one hundred percent of the benefits paid to an eligible individual as extended benefits. Beginning on July one, one thousand
nine hundred eighty-four, benefits paid to an individual are to be charged to the accounts of his employers in the base period, the amount of such charges, chargeable to the account of each such employer, to be that portion of the total benefits paid such individual as the wages paid him by such employer in the base period are to the total wages paid him during his base period for insured work by all his employers in the base period. For the purposes of this section, no base period employer's account shall be charged for benefits paid under this chapter to a former employee, provided such base period employer furnishes separation information within fourteen days from the date the notice was mailed or delivered, which results in a disqualification under the provision set forth in subsection one, section three, article six, or subsection two, section three, article six of this chapter or would have resulted in a disqualification under such subsection except for a subsequent period of covered employment by another employing unit. Further, no contributory base period employer's experience rating account shall be charged for benefits paid under this chapter to an individual who has been continuously employed by that employer on a part-time basis, if the part-time employment continues while the individual is separated from other employment and is otherwise eligible for benefits. One half of extended benefits paid to an individual after July one, one thousand nine hundred eighty-four, and subsequent years are to be charged to the accounts of his employers, except state and local government employers, in the base period in the same manner provided for the charging of regular benefits. Effective the first day of January, one thousand nine hundred eighty-eight, the entire state share of extended benefits paid to an individual shall be charged to the accounts of his base period employers. The provisions of this section permitting the noncharging of contributory employers' accounts have no application to benefit charges imposed upon reimbursable employers.

(3) The commissioner shall, for each calendar year hereafter, classify employers in accordance with their actual experience in the payment of contributions on
their own behalf and with respect to benefits charged
against their accounts, with a view of fixing such
contribution rates as will reflect such experiences. For
the purpose of fixing such contribution rates for each
calendar year, the books of the department shall be
closed on July thirty-one of the preceding calendar year,
and any contributions thereafter paid, as well as
benefits thereafter paid with respect to compensable
weeks ending on or before June thirty of the preceding
calendar year, shall not be taken into account until the
next annual date for fixing contribution rates: Provided,
That if an employer has failed to furnish to the
commissioner on or before July thirty-one of such
preceding calendar year the wage information for all
past periods necessary for the computation of the
contribution rate, such employer's rate shall be, if it is
immediately prior to such July thirty-one, less than
three and three-tenths percent, increased to three and
three-tenths percent: Provided, however, That any
payment made or any information necessary for the
computation of a reduced rate furnished on or before the
termination of an extension of time for such payment or
reporting of such information granted pursuant to a
regulation of the commissioner authorizing such exten-
sion, shall be taken into account for the purposes of
fixing contribution rates: Provided further, That when
the time for filing any report or making any payment
required hereunder falls on Saturday, Sunday, or a legal
holiday, the due date shall be deemed to be the next
succeeding business day: And provided further, That
whenever, through mistake or inadvertence, erroneous
credits or charges are found to have been made to or
against the reserved account of any employer, the rate
shall be adjusted as of January one of the calendar year
in which such mistake or inadvertence is discovered, but
payments, made under any rate assigned prior to
January one of such year, shall not be deemed to be
erroneously collected.

(4) The commissioner may prescribe regulations for
the establishment, maintenance and dissolution of joint
accounts by two or more employers, and 

by two or more employers to establish such an account, or to merge their several individual accounts in a joint account, maintain such joint account as if it constituted a single employer's account.

(5) State and local government employers are hereby authorized to enter into joint accounts and to maintain such joint account or accounts as if it or they constituted a single employer's account or accounts.

(6) Effective on and after July one, one thousand nine hundred eighty-one, if an employer has failed to furnish to the commissioner on or before August thirty-one of one thousand nine hundred eighty, and each year thereafter, with the exception of one thousand nine hundred eighty-one, which due date shall be September thirty, one thousand nine hundred eighty-one, the wage information for all past periods necessary for the computation of the contribution rate, such employer's rate shall be, if it is immediately prior to July one, one thousand nine hundred eighty-one, less than seven and five-tenths percent, increased to seven and five-tenths percent.

§21A-5-10. Experience ratings; decreased rates; adjustment of accounts and rates; debit balance account rates.

On and after July one, one thousand nine hundred eighty-one, an employer's payment shall remain two and seven-tenths percent, until:

(1) There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer's account was chargeable with benefits.

(2) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least the percent of his average annual payroll as shown in Column B of Table II. His rate shall be the amount appearing in Column C of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred percent
but are less than one hundred twenty-five percent of the average benefit payments from the trust fund for the three preceding calendar years, an employer's rate shall be the amount appearing in Column D of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred twenty-five percent but are less than one hundred fifty percent, an employer's rate shall be the amount appearing in Column E of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred fifty percent, an employer's rate shall be the amount appearing in Column F of Table II on line with the percentage in Column B.

**TABLE II**

<table>
<thead>
<tr>
<th>Class</th>
<th>Credits Exceed</th>
<th>Employer's Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Charges</td>
<td></td>
</tr>
<tr>
<td>(1)</td>
<td>0.0 to 6.0</td>
<td>4.5  3.5  2.5</td>
</tr>
<tr>
<td>(2)</td>
<td>6.0</td>
<td>4.1  3.1  2.1</td>
</tr>
<tr>
<td>(3)</td>
<td>7.0</td>
<td>3.9  2.9  1.9</td>
</tr>
<tr>
<td>(4)</td>
<td>8.0</td>
<td>3.7  2.7  1.7</td>
</tr>
<tr>
<td>(5)</td>
<td>9.0</td>
<td>3.5  2.5  1.5</td>
</tr>
<tr>
<td>(6)</td>
<td>10.0</td>
<td>3.3  2.3  1.3</td>
</tr>
<tr>
<td>(7)</td>
<td>10.5</td>
<td>3.1  2.1  1.1</td>
</tr>
<tr>
<td>(8)</td>
<td>11.0</td>
<td>2.9  1.9  0.9</td>
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<td>(9)</td>
<td>11.5</td>
<td>2.7  1.7  0.7</td>
</tr>
<tr>
<td>(10)</td>
<td>12.0</td>
<td>2.5  1.5  0.5</td>
</tr>
<tr>
<td>(11)</td>
<td>12.5</td>
<td>2.3  1.3  0.3</td>
</tr>
<tr>
<td>(12)</td>
<td>13.0</td>
<td>2.1  1.1  0.1</td>
</tr>
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<td>(13)</td>
<td>14.0</td>
<td>1.9  0.9  0.0</td>
</tr>
<tr>
<td>(14)</td>
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<td>1.7  0.7  0.0</td>
</tr>
<tr>
<td>(15)</td>
<td>18.0 and over</td>
<td>1.5  0.5  0.0</td>
</tr>
</tbody>
</table>

All employer accounts in which charges for all past years exceed credits for such past years shall be
57 adjusted effective June thirty, one thousand nine
58 hundred sixty-seven, so that as of said date, for the
59 purpose of determining such employer's rate of contri-
60 bution, the credits for all past years shall be deemed to
61 equal the charges to such accounts.
62
63 Effective on and after the computation date of June
64 thirty, one thousand nine hundred eighty-four, the
65 noncredited contribution identified in section seven of
66 this article shall not be added to the employer's debit
67 balance to determine the employer contribution rate.
68
69 Effective on and after the computation date of June
70 thirty, one thousand nine hundred sixty-seven, all
71 employers with a debit balance account in which the
72 benefits charged to their account for all past years
73 exceed the payments credited to their account for such
74 past years by an amount up to and including ten percent
75 of their average annual payroll, shall make payments to
76 the unemployment compensation fund at the rate of
77 three percent of wages paid by them with respect to
78 employment; except that effective on and after July one,
79 one thousand nine hundred eighty-one, all employers
80 with a debit balance account in which the benefits
81 charged to their account for all past years exceed the
82 payments credited to their account for such past years
83 by an amount up to and including five percent of their
84 average annual payroll, shall make payments to the
85 unemployment compensation fund at the rate of five and
86 five-tenths percent of wages paid by them with respect
87 to employment.
88
89 Effective on or after July one, one thousand nine
90 hundred eighty-one, all employers with a debit balance
91 account in which the benefits charged to their account
92 for all past years exceed the payments credited to their
93 account for such past years by an amount in excess of
94 five percent but less than ten percent of their average
95 annual payroll, shall make payments to the unemploy-
96 ment compensation fund at the rate of six and five-
97 tenths percent of wages paid by them with respect to
98 employment.
99
100 Effective on and after the computation date of June
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thirty, one thousand nine hundred sixty-seven, all
employers with a debit balance account in which the
benefits charged to their account for all past years
exceed the payments credited to their account for such
past years by an amount of ten percent or above of their
average annual payroll, shall make payments to the
unemployment compensation fund at the rate of three
and three-tenths percent of wages paid by them with
respect to employment; except that effective on and
after July one, one thousand nine hundred eighty-one,
such payments to the unemployment compensation fund
shall be at the rate of seven and five-tenths percent of
wages paid by them with respect to employment or at
such other rate authorized by this article.

"Debit balance account" for the purpose of this section
means an account in which the benefits charged for all
past years exceed the payments credited for such past
years.

"Credit balance account" for the purposes of this
section means an account in which the payments
credited for all past years exceed the benefits charged
for such past years.

Once a debit balance account rate is established for
an employer's account for a year, it shall apply for the
entire year.

"Due date" means the last day of the month next
following a calendar quarter. In determining the
amount in the fund on any due date, contributions
received, but not benefits paid, for such month next
following the end of a calendar quarter shall be
included.

(a) Notwithstanding any other provision of this
section, every employer subject to the provisions of this
chapter shall, in addition to any other tax provided for
in this section, pay contributions at the rate of one
percent surtax on wages paid by him with respect to
employment, beginning January first, one thousand nine
hundred eighty-one, until such time that the commis-

sioner determines that the fund assets equal or exceed
the average benefits payments from the fund for the
preceding three calendar years at which time such surtax shall be discontinued, and the commissioner shall so notify the employers subject to the provisions of this chapter.

(b) Notwithstanding any other provision of this section, every debit balance employer subject to the provisions of this chapter, and any foreign corporation or business entity engaged in the construction trades which has not been an employer in the state of West Virginia for thirty-six consecutive months ending on the computation date, shall, in addition to any other tax provided for in this section, pay contributions at the rate of one percent surtax on wages paid by him with respect to employment for a period of eight years, beginning January first, one thousand nine hundred eighty-six.

(c) Effective June thirty, one thousand nine hundred eighty-five, and each computation date thereafter, the reserve balance of a debit balance employer shall be reduced to fifteen percent if such balance exceeds fifteen percent. The amount of noncredited tax shall be reduced by an amount equal to the eliminated charges. If the eliminated charges exceed the amount of noncredited tax, the noncredited tax shall be reduced to zero.


The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state. The commissioner in the name of this state is hereby empowered to sue in the courts of any other jurisdiction which extends such comity, to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state, to collect for such contributions and interest and penalties if any, due such state; in any such case the commissioner of employment security of this state may through his legal assistant or assistants institute and conduct such suit for such other state.

Notwithstanding any other provisions of this chapter,
the commissioner may recover an overpayment of
benefits paid to any individual under this state or
another state law or under an unemployment benefit
program of the United States.

ARTICLE 7. CLAIM PROCEDURE.


Benefits found payable by decision of a deputy, appeal
tribunal, the board or court shall be immediately paid
in accordance therewith up to the week in which a
subsequent appellate body renders a decision, by order,
finding that benefits were not or are not payable. If, at
any appeal stage, benefits are found to be payable which
were found before such appeal stage to be not payable,
the commissioner shall immediately reinstate the
payment benefits. If the final decision in any case
determines that a claimant was not lawfully entitled to
benefits paid to him pursuant to a prior decision, such
amount of benefits so paid shall be deemed overpaid.
The commissioner shall recover such amount by civil
action or in any manner provided in this code for the
collection of past-due payment and shall withhold, in
whole or in part, as determined by the commissioner,
any future benefits payable to the individual and credit
such amount against the overpayment until it is repaid
in full. If the final decision in any case determines that
the claimant was not lawfully entitled to the benefits
paid to him pursuant to a prior order, any benefits so
paid pursuant to such prior order shall not be charge-
able to the employer's account.

(a) Whenever the commissioner finds that a claimant
has received back pay at his customary wage rate from
his employer such employee shall be liable to repay the
benefits, if any, paid to such individual for the time he
was unemployed. In any case in which, under this
section, an employee is liable to repay benefits to the
commissioner, such sum shall be collectible by civil
action in the name of the commissioner.

(b) Whenever an employer subject to this chapter is
required to make a payment of back pay to an individual
who has received unemployment compensation benefits
during the same period covered by the back pay award, the employer shall withhold an amount equal to the unemployment compensation benefits and shall repay the amount withheld to the unemployment compensation trust fund. If an employer fails to comply with this section, the commissioner shall have the right to recover from the employer the amount of unemployment compensation benefits which should have been withheld by a civil action.

ARTICLE 10. GENERAL PROVISIONS.


(1) The department of employment security shall disclose, upon request, to officers or employees of any state or local child support enforcement agency, to employees of the secretary of health and human services, any wage information with respect to an identified individual which is contained in its records.

The term “state or local child support enforcement agency” means any agency of a state or political subdivision thereof operating pursuant to a plan described in sections 453 and 454 of the Social Security Act, which has been approved by the secretary of health and human services under Part D, Title IV of the Social Security Act.

(2) The requesting agency shall agree that such information is to be used only for the purpose of establishing and collecting child support obligations from, and locating, individuals owing such obligations which are being enforced pursuant to a plan described in sections 453 and 454 of the Social Security Act which has been approved by the secretary of health and human services under Part D, Title IV of the Social Security Act.

(3) The information shall not be released unless the
requesting agency agrees to reimburse the costs involved for furnishing such information.

(4) In addition to the requirements of this section, all other requirements with respect to confidentiality of information obtained in the administration of this chapter and the sanctions imposed on improper disclosure shall apply to the use of such information by officers and employees of child support agencies.


A person who, by reason of error, irrespective of the nature of said error, has received a sum as a benefit under this chapter, shall either have such sum deducted from a future benefit payable to him or shall repay to the commissioner the amount which he has received. Collection shall be made in the same manner as collection of past due payment: Provided, That such collection or deduction of benefits shall be barred after the expiration of two years.


(1) The department of employment security shall disclose, upon request, to officers and employees of the department of housing and urban development and to representatives of public housing agencies, any wage information with respect to an identified individual which is contained in its records. The term "public housing agencies" means any agency described in section 3(b)(6) of the United States Housing Act of 1937.

(2) The requesting agency shall agree that such information is to be used only for the purpose of determining an individual's eligibility for benefits, or the amount of benefits under any housing assistance program of the department of housing and urban development.

(3) The information shall not be released unless the requesting agency agrees to reimburse the costs involved for furnishing such information.
18 (4) In addition to the requirements of this section, all
19 other requirements with respect to confidentiality of
20 information obtained in the administration of this
21 chapter and the sanctions imposed on improper disclo-
22 sure shall apply to the use of such information by
23 officers and employees of any public housing agency or
24 the department of housing and urban development.

CHAPTER 203
(S. B. 40—By Senator Tucker, Mr. President)

[Passed March 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred six, article three, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of sum certain.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. COMMERCIAL PAPER.

PART 1. SHORT TITLE, FORM AND INTERPRETATION.

§46-3-106. Sum certain.

1 (1) The sum payable is a sum certain even though it
2 is to be paid:
3 (a) With stated interest or by stated installments; or
4 (b) With stated different rates of interest before and
5 after default or a specified date; or
6 (c) With a stated discount or addition if paid before
7 or after the date fixed for payment; or
8 (d) With exchange or less exchange, whether at a
9 fixed rate or at the current rate; or
10 (e) With costs of collection or an attorney's fee or both
11 upon default; or
(f) With a variable interest rate; or
(g) With the current interest rate; or
(h) With a bank interest rate: Provided, That the name
and location of the bank are stated on the instrument.
(2) Nothing in this section shall validate any term
which is otherwise illegal.

CHAPTER 204
(Com. Sub. for S. B. 41—By Senator Tucker, Mr. President)

[Passed April 6, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four hundred one and four hundred seven, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article one, chapter fifty-nine of said code, all relating to uniform commercial code; secured transactions; redefining the place of filing to perfect security interests; raising filing fees; establishment of an account to maintain the uniform commercial code program; and creation of rule and fee setting authority of the secretary of state.

Be it enacted by the Legislature of West Virginia:

That sections four hundred one and four hundred seven, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter
46. Uniform Commercial Code.
59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.

CHAPTER 46. UNIFORM COMMERCIAL CODE.
ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPERS.

§46-9-401. Place of filing; erroneous filing; removal of collateral.

§46-9-407. Information from filing officer; central indexing system for recording security interest in farm products; contents.

§46-9-401. Place of filing; erroneous filing; removal of collateral.

1 (1) The proper place to file in order to perfect a security interest is as follows:

2 (a) When the collateral is consumer goods, then in the office of the secretary of state and in the office of the clerk of the county commission of the debtor's residence or if the debtor is not a resident of this state then in the office of the clerk of the county commission where the goods are kept;

3 (b) When the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to the provisions of subsection five, section one hundred three of this article, or when the financing statement is filed as a fixture filing subject to the provisions of section three hundred thirteen of this article, and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

4 (c) In all other cases, in the office of the secretary of state.

5 (2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

6 (3) A filing which is made in the proper county continues effective after a change to another county of the debtor's residence or place of business or the location of the collateral, whichever controlled the original filing.
A change in the use of the collateral does not impair the effectiveness of the original filing.

(4) The rules stated in section one hundred three of this article determine whether filing is necessary in this state.

(5) Notwithstanding the preceding subsections, and subject to the provisions of subsection three, section three hundred two of this article, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. This filing constitutes a fixture filing as to the collateral described therein which is or is to become fixtures.

(6) For the purposes of this section, the residence of an organization is its place of business if it has one or its chief executive office if it has more than one place of business.

§46-9-407. Information from filing officer; central indexing system for recording security interest in farm products; contents.

(1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the secretary of state shall issue his certificate showing whether there is on file in his office on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be three dollars if the request for the certificate is in the standard form prescribed by the secretary of state and otherwise shall be five dollars plus fifty cents for each financing statement and for each
statement of assignment reported therein. Upon request
the filing officer shall furnish a copy of any filed
financing statement or statement of assignment for a
uniform fee of fifty cents per page.

(3) The secretary of state shall develop and implement
a central indexing system containing the information
filed with his office pursuant to subsection four, section
three hundred seven of this article. Under this system,
the secretary shall record the date and time of filing and
compile the information into a master list organized
according to farm products. The list shall be organized
within each farm product category in alphabetical order
according to the last name of the borrower, or in the
case of borrowers doing business other than as individ-
uals, the first word in the name of such borrower in
numerical order according to the social security or
 taxpayer identification number of the borrower, geogra-
phically by county and by crop year. The master list
shall also contain the name and address of the secured
party, the name and address of the borrower, a
description of the farm products, including amount
where applicable, subject to the security interest, and a
reasonable description of the real estate, including the
county where or upon which the farm products are
located.

(4) The secretary of state shall maintain a list of all
buyers of farm products, commission merchants and
selling agents who register with the secretary of state
indicating an interest in receiving the lists described in
subsection five of this section.

(5) The secretary of state shall distribute on a regular
basis as determined by the secretary of state to each
buyer, commission merchant and selling agent regis-
tered under subsection four, a copy in written or printed
form of those portions of the master list which the buyer,
commission merchant or selling agent has indicated an
interest in receiving.

(6) Upon the request of any person, the secretary of
state shall provide within twenty-four hours an oral
confirmation of the filing of the form described in
subsection four, section three hundred seven of this article, followed by a written confirmation.

(7) All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state in a separate fund in the state treasury and shall be expended solely for the purposes of this article, unless otherwise provided by appropriation or other action of the Legislature.

(8) The secretary of state shall, pursuant to the provisions of article three, chapter twenty-nine-a of this code, promulgate rules and set fees, not otherwise provided for by general law, to carry out the duties associated with this article.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by secretary of state.

1 Except as may be otherwise provided in article one, chapter thirty-one of this code, the secretary of state shall charge for services rendered in his office the following fees to be paid by the person to whom the service is rendered at the time it is done:

2 For each certificate of incorporation or copy thereof, including restatements of any such certificates issued on new agreements, and/or consolidations or all certificates of merger or consolidation or certificates authorizing a foreign corporation to do business within this state $10.00

3 For each certified copy of certificate of incorporation, not to exceed ten pages 10.00

4 If such copy contains in excess of ten pages, for each additional page .20

5 For filing and recording a trademark 5.00

6 For each certificate of change of name, of increase or decrease of authorized capital stock, of change of principal office, or of amendment to certificate of incorporation 5.00
| 22 | For recording a power of attorney and certificate thereof | 3.00 |
| 24 | For any other certificate, whether required by law or made at the request of any person | 5.00 |
| 26 | The foregoing fees shall include the tax on the great seal or the less seal impressed on any such document, as well as the filing, recording and indexing of the same. |
| 30 | For endorsing and filing reports of corporations, and all other papers, which shall include the indexing of the same, for each report or paper filed | 1.00 |
| 34 | For any search, not less than | 1.00 |
| 35 | For searches of more than one hour, for each hour or fraction thereof consumed in making such search | 5.00 |
| 38 | The cost of the search shall be in addition to the cost of any certificate issued pursuant thereto or based thereon. |
| 41 | For entering statement of satisfaction of conditional sale contract | 1.00 |
| 43 | For filing each financing, continuation or termination statement or other statement or writing permitted to be filed under chapter forty-six of the code | 3.00 |
| 47 | For recording any paper for which no specific fee is prescribed | 1.00 |
| 49 | Or at the rate, for each one hundred words recorded, of | .20 |
| 51 | For issuing commission to a notary public, or to a commissioner of deeds, which shall include the tax on the state seal thereon and other charges | 5.00 |
| 55 | For a testimonial | 1.50 |
| 56 | For a copy of any paper, if one sheet | 1.00 |
AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter seventeen-e, establishing the Uniform Commercial Driver’s License Act; definitions; setting forth limitations on the number of commercial driver’s licenses; providing for notification by the driver; setting forth employer responsibilities; requiring a commercial driver’s license; establishing exemptions to the commercial driver’s license requirements; setting commercial driver license qualification standards; providing for third party testing; indemnification of driver examiners; waiver of skills test; limitations on issuance of license; establishing a commercial driver’s instruction permit; setting forth the application requirements and information needed for a commercial driver’s license; providing for classifications, endorsements and restrictions; establishing an applicant record check; providing for the notification of license issuance; establishing expiration of license and license renewal procedures; establishing disqualification offenses and cancellation of a commercial motor vehicle license; prohibiting a commercial driver from operating with any alcohol in their system; establishing implied consent requirements for commercial motor vehicle drivers; providing for notification of traffic convictions; requiring driving record information to be furnished;
providing for rule-making authority; providing for authority to enter agreements; providing for reciprocity; setting forth a severability and savings clause; establishing effective dates; providing for funding for the commercial driver's license, providing for fees and establishing a special revolving fund; providing enforcement; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-1. Short title.
§17E-1-2. Statement of intent and purpose.
§17E-1-3. Definitions.
§17E-1-4. Limitation on number of driver's licenses.
§17E-1-5. Notification required by driver.
§17E-1-6. Employer responsibilities.
§17E-1-7. Commercial driver's license required.
§17E-1-8. Exemptions to the commercial driver's license requirements.
§17E-1-10. Application for commercial driver's license.
§17E-1-12. Classifications, endorsements and restrictions.
§17E-1-14. Commercial drivers prohibited from operating with any alcohol in system.
§17E-1-15. Implied consent requirements for commercial motor vehicles drivers.
§17E-1-16. Notification of traffic convictions.
§17E-1-17. Driving record information to be furnished.
§17E-1-19. Authority to enter agreements.
§17E-1-20. Reciprocity.
§17E-1-21. Severability and savings clause.
§17E-1-22. Effective dates.
§17E-1-23. Funding for the commercial driver's license fees.
§17E-1-25. Penalties.

§17E-1-1. Short title.

1 This article may be cited as the "Uniform Commercial
2 Driver's License Act."
§17E-1-2. Statement of intent and purpose.

1 The purpose of this article is to implement the federal commercial motor vehicle safety act of 1986 (Title XII of Public Law 99570) and reduce or prevent commercial motor vehicle accidents, fatalities and injuries by:
2  
3 (a) Permitting commercial drivers to hold only one license;
4  
5 (b) Disqualifying commercial drivers who have committed certain serious traffic offenses; and
6  
7 (c) Strengthening licensing and testing standards.
8  
9 This article is a remedial law and shall be liberally construed to promote the public health, safety and welfare. Where this article is silent, the general driver licensing provisions apply.

§17E-1-3. Definitions.

1 Notwithstanding any other provision of this code, the following definitions apply to this article:
2  
3 “Alcohol” means:
4  
5 (a) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol;
6  
7 (b) Beer, ale, port or stout and other similar fermented beverages (including sake or similar products) of any name or description containing one half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;
8  
9 (c) Distilled spirits or that substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced); or
10  
11 (d) Wine of not less than one half of one percent of alcohol by volume.
12  
13 “Alcohol concentration” means:
(a) The number of grams of alcohol per one hundred milliliters of blood; or
(b) The number of grams of alcohol per two hundred ten liters of breath; or
(c) The number of grams of alcohol per sixty-seven milliliters of urine.

"Commercial driver license" means a license issued in accordance with the requirements of this article to an individual which authorizes the individual to drive a class of commercial motor vehicle.

"Commercial driver license information system" is the information system established pursuant to the federal commercial motor vehicle safety act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

"Commercial driver instruction permit" means a permit issued pursuant to subsection (e), section nine of this article.

"Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:
(a) If the vehicle has a gross vehicle weight rating as determined by federal regulation;
(b) If the vehicle is designed to transport sixteen or more passengers, including the driver; or
(c) If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. part 172, sub-part F.

"Commissioner" means the commissioner of motor vehicles of this state.

"Controlled substance" means any substance so classified under the provisions of chapter sixty-a of this code (uniform controlled substances act) and includes all substances listed on Schedules I through V, article two of said chapter sixty-a, as they may be revised from time to time.
“Conviction” means the final judgment in a judicial or administrative proceeding or a verdict or finding of guilty, a plea of guilty, a plea of nolo contendere, an implied admission of guilt or a forfeiture of bond or collateral upon a charge of a disqualifying offense, as a result of proceedings upon any violation of the requirement of this article.

“Department” means the department of motor vehicles.

“Disqualification” means a prohibition against driving a commercial motor vehicle.

“Drive” means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of sections twelve, thirteen and fourteen of this article “drive” includes operation or physical control of a motor vehicle anywhere in this state.

“Driver” means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver license.

“Driver license” means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.

“Employee” means a person who is employed by an employer to drive a commercial motor vehicle, including independent contractors. An employee who is employed by himself or herself as a commercial motor vehicle driver must comply with both the requirements of this article pertaining to employees and employers.

“Employer” means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

“Farm vehicle” includes a motor vehicle or combination vehicle registered to the farm owner or entity operating the farm and used exclusively in the transpor-
tation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants and in the transportation of agricultural or horticultural supplies and machinery to such farms or orchards to be used thereon.

"Farmer" includes, but is not limited to, owner, tenant, lessee, occupant or person in control of the premises used substantially for agricultural or horticultural pursuits, who is at least eighteen years of age with two years licensed driving experience.

"Farmer vehicle driver" means the person employed and designated by the "farmer" to drive a "farm vehicle" as long as driving is not his sole or principal function on the farm, who is at least eighteen years of age with two years licensed driving experience.

"Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single or a combination (articulated) vehicle, or registered gross weight, whichever is greater. The gross vehicle weight rating of a combination (articulated) vehicle (commonly referred to as the "gross combination weight rating") is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of the towed unit or units.

"Hazardous materials" has the meaning as that found in Section 103 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.).

"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.

"Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

"Serious traffic violation" means:

(a) Operating a motor vehicle under the influence of
alcohol or a controlled substance in violation of the provisions of section two, article five, chapter seventeen-c of this code;

(b) Failure to stop and render aid and provide required information after involvement in a motor vehicle accident resulting in death, injury or property damage, as provided in section five, article three, chapter seventeen-b and sections one through five, inclusive, article four, chapter seventeen-c of this code;

(c) A felony in the commission of which a motor vehicle is used; as stated in subsection (2), section five, article three, chapter seventeen-b of this code;

(d) Excessive speeding defined as fifteen miles per hour in excess of all posted limits;

(e) Reckless driving as defined in section three, article five, chapter seventeen-c of this code including erratic lane changes and following the vehicle ahead too closely;

(f) A violation of state or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal traffic accident. Vehicle weight and vehicle defects are excluded as serious traffic violations;

(g) Violation of an out-of-service order; or

(h) Any other serious violations as may be determined by the U. S. Secretary of Transportation.

"State" means a state of the United States and the District of Columbia.

"At fault traffic accident" means for the purposes of waiving the road test, a determination, by the official filing the accident report, of fault as evidenced by an indication of contributing circumstances in the accident report.

§17E-1-4. Limitation on number of driver's licenses.

No person who drives a commercial motor vehicle may have more than one driver license at one time except during the ten-day period beginning on the date the person is issued a driver's license.
§17E-1-5. Notification required by driver.

(a) Notification of convictions.

(1) To state.—Any driver of a commercial motor vehicle holding a driver's license issued by this state, who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control, in any other state or federal, provincial, territorial or municipal laws of Canada, other than parking violations, shall notify the West Virginia department of motor vehicles in the manner specified by the commissioner within thirty days of the date of conviction.

(2) To employers.—Any driver of a commercial motor vehicle holding a driver's license issued by this state, who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this state or any other state or federal, provincial, territorial or municipal laws of Canada, other than parking violations, must notify his or her employer in writing of the conviction within thirty days of the date of conviction.

(b) Notification of suspensions, revocations, cancellations and expiration.—Each driver whose driver's license is suspended, revoked, canceled, or expired, by any state, who loses the privilege to drive a commercial motor vehicle in any state for any period, or who is disqualified from driving a commercial motor vehicle for any period, must notify his or her employer of that fact before the end of the business day following the day the driver received notice of that fact.

(c) Notification of previous employment.—Each person who applies to be a commercial motor vehicle driver must provide the employer, at the time of the application, with the following information for the ten years preceding the date of application:

(1) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;
(2) The dates between which the applicant drove for each employer; and
(3) The reason for leaving that employer.

The applicant must certify that all information furnished is true and complete. An employer may require an applicant to provide additional information.

§17E-1-6. Employer responsibilities.

(a) Each employer must require the applicant to provide the information specified in section five of this article.
(b) No employer may knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:
   (1) In which the driver has a driver's license suspended, revoked, or canceled by a state; has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle; or
   (2) In which the driver has more than one driver's license at one time except during the ten-day period beginning on the date the employee is issued a driver's license.

§17E-1-7. Commercial driver's license required.

(a) On or after the first day of April, one thousand nine hundred ninety-two, except when driving under a commercial driver's instruction permit accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds a commercial driver's license and applicable endorsements valid for the vehicle they are driving.
(b) No person may drive a commercial motor vehicle while their driving privilege is suspended, revoked, canceled, or expired, while subject to a disqualification, or in violation of an out-of-service order.
(c) Drivers of a commercial motor vehicle must have a commercial driver's license in their possession at all times while driving.
§17E-1-8. Exemptions to the commercial driver's license requirements.

(a) Farmers.—Bona fide farmers or farm vehicle drivers, as defined, operating a vehicle otherwise covered by the commercial driver's license requirements may be exempted from the provisions of this article only if the vehicle used is:

1. Driven by a farmer or farm vehicle driver;
2. Used only to transport either agricultural products, farm machinery, farm supplies, to or from a farm;
3. Not used in the operation of a common or contract motor carrier; and
4. Used within one hundred fifty miles of the qualifying farm.

Farmers who wish to be exempted from the commercial driver's license requirements must apply to the department of motor vehicles for a certificate of exemption.

(b) Military personnel.—Military personnel, including the national guard and reserve, will be exempt from the provision of this article, only:

1. When in uniform; and
2. Operating equipment owned by the United States department of defense, except during declared emergencies or disaster situations; and
3. On duty; and
4. In possession of a valid classified military driver's license for the class of vehicle being driven.

(c) Fire fighting and rescue equipment.—Operators of vehicles authorized to hold an "authorized emergency vehicle permit" for use of red signal lights only are exempt from the provision of this article while the "authorized emergency vehicle permit" is in force. Vehicles in this class include, but are not limited to, fire fighters and rescue equipment:
(1) Owned and operated by state, county and municipal fire departments.

(2) Owned and operated by state, county and municipal civil defense organizations.

(3) Owned and operated by a manufacturer engaged in a type of business that requires fire fighter equipment to protect the safety of their plants and its employees.

(4) Owned and operated by volunteer fire departments.

(d) The Commercial Motor Vehicles Safety Act of 1986 exempts vehicles used exclusively for personal use such as recreation vehicles and rental trucks used only to transport the driver's personal or household property.

**§17E-1-9. Commercial driver license qualification standards.**

(a) On or after the first day of July, one thousand nine hundred eighty-nine, the conversion process will phase out the existing West Virginia chauffeur's license which shall expire by the first day of April, one thousand nine hundred ninety-two. At the expiration of a chauffeur's license between the first day of July, one thousand nine hundred eighty-nine, and the first day of April, one thousand nine hundred ninety-two, an individual must either qualify for a commercial driver's license or renew with an operator's license. Anyone holding an operator's license on the first day of July, one thousand nine hundred eighty-nine, who either drives a commercial motor vehicle or expects to drive a commercial motor vehicle must qualify for a commercial driver's license by the first day of April, one thousand nine hundred ninety-two.

Those who qualify for a commercial driver's license after the first day of July, one thousand nine hundred eighty-nine, will be issued a provisional commercial driver's license. The provisional commercial driver's license will be valid until the driver's history record has been checked and recorded with the national commer-
23 cial driver's license information system. If the record
24 checks indicate no disqualifying problem, the qualified
25 driver will be issued a full commercial driver's license
26 at no additional fee. All provisional commercial driver
27 licenses will expire no later than the first day of April,
28 one thousand nine hundred ninety-two.
29
30 (b) (1) General.—No person may be issued a commer-
31 cial driver's license unless that person is a resident of
32 this state and has passed a knowledge and skills test for
33 driving a commercial motor vehicle which complies
34 with minimum federal standards established by federal
35 regulations enumerated in 49 C.F.R. part 383, sub-parts
36 G and H, and has satisfied all other requirements of the
37 Federal Commercial Motor Vehicle Safety Act in
38 addition to other requirements imposed by state law or
39 federal regulations. The tests will be administered by
40 the department of public safety according to rules
41 promulgated by the commissioner.
42
43 (2) Third party testing.—The commissioner may
44 authorize a person, including an agency of this or
45 another state, an employer, private individual or
46 institution, department, agency or instrumentality of
47 local government, to administer the skills test specified
48 by this section: Provided, That (i) the test is the same
49 which would otherwise be administered by the state and
50 (ii) the party has entered into an agreement with the
51 state which complies with the requirements of 49 C.F.R.
52 part 383.75.
53
54 (3) Indemnification of driver examiners.—No person
55 who has been officially trained and certified by the state
56 as a driver examiner, who administers any such driving
57 test, and no other person, firm or corporation by whom
58 or with which such person is employed or is in any way
59 associated, may be criminally liable for the administra-
60 tion of such tests, or civilly liable in damages to the
61 person tested or other persons or property unless for
62 gross negligence or willful or wanton injury.
63
64 (4) Monitoring of third party testing will be carried
65 out by the department of public safety according to rules
66 promulgated by the commissioner.
Waiver of skills test.—The commissioner may waive the skills test specified in this section for a commercial driver license applicant who meets the requirements of 49 C.F.R. part 383.77 and those requirements specified by the commissioner.

Limitations on issuance of license.—A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked or canceled in any state; nor may a commercial driver's license be issued by any other state unless the person first surrenders all such licenses to the department, which must be returned to the issuing state(s) for cancellation.

Commercial driver's instruction permit.—(1) A commercial driver's instruction permit may be issued to an individual who holds a valid operator or Class "D" driver license who has passed the vision and written tests required for issuance of a commercial driver license. (2) The commercial instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period. The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction or testing. (3) A commercial driver's instruction permit may only be issued to an individual who is at least eighteen years of age and has held an operator's or junior operator's license for at least two years. (4) The applicant for a commercial driver's instruction permit must also be otherwise qualified to hold a commercial driver's license.

§17E-1-10. Application for commercial driver's license.

(a) The application for a commercial driver's license or commercial driver's instruction permit must include at least the following:
(1) The full name and current mailing and residential address of the person;
(2) A physical description of the person including sex, height, weight, eye and hair color;
(3) Date of birth;
(4) The applicant's social security number;
(5) The person's signature;
(6) The person's color photograph;
(7) Certifications including those required by 49 C.F.R. part 383.71(a);
(8) Any other information required by the commissioner; and
(9) A consent to release driving record information.

(b) When a licensee changes his or her name, mailing address or residence, an application for a duplicate license must be made.

(c) No person who has been a resident of this state for thirty days or more may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.


The commercial driver's license must be marked "commercial driver's license" or "CDL," and must be, to the maximum extent practicable, tamper proof. It must include, but not be limited to, the following information:

(a) The name and residential address of the person;
(b) The person's color photograph;
(c) A physical description of the person including sex, height, weight, eye and hair color;
(d) Date of birth;
(e) The person's signature;
(f) The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsement(s) or restriction(s);
§17E-1-12. Classifications, endorsements and restrictions.

Commercial driver's licenses may be issued, with the following classifications, endorsements, and restrictions; the holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued, and all lesser classes of vehicles and vehicles which require an endorsement, unless the proper endorsement appears on the license:

(a) **Classifications:**

Class A—Any combination of vehicles with a gross vehicle weight rating of twenty-six thousand one pounds or more, provided the gross vehicle weight rating of the vehicle(s) being towed is in excess of ten thousand pounds or is a semi-trailer or a trailer with two or more axles.

Class B—Any single vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more, and any such vehicle towing a vehicle not in excess of ten thousand pounds or is a semi-trailer or a trailer with two or more axles.

Class C—Any single vehicle with a gross vehicle weight rating of less than twenty-six thousand one pounds or any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand pounds comprising:

(1) Vehicles designed to transport sixteen or more passengers, including the driver; and

(2) Vehicles used in the transportation of hazardous materials which requires the vehicle to be placarded under 49 C.F.R., part 172, sub-part F.

Class D—Automobiles, pickup trucks, and all other motor vehicles not specified in Class A, B, and C.
(b) **Endorsements and restrictions:**

"H" Authorizes the driver to drive a vehicle transporting hazardous materials.

"K" Restricts the driver to vehicles not equipped with airbrakes.

"T" Authorizes driving double and triple trailers.

"P" Authorizes driving vehicles carrying passengers.

"N" Authorizes driving tank vehicles.

"X" Represents a combination of hazardous materials and tank vehicle endorsements.

(c) **Applicant record check.**—Before issuing a commercial driver's license, the commissioner must obtain driving record information through the commercial driver's license information system, the national driver register and from each state in which the person has been licensed.

(d) **Notification of license issuance.**—Within ten days after issuing a commercial driver's license, the commissioner shall notify the commercial driver's license information system of that fact, providing all information required to ensure identification of the person.

(e) **Expiration of license.**—The commercial driver's license shall expire four years from date of issuance.

Commercial driver's licenses held by any person in the armed forces which expire while that person is on active duty shall remain valid for thirty days from the date on which that person reestablishes residence in West Virginia.

Any person applying to renew a commercial driver's license which has been expired for two years or more must follow the procedures for an initial issuance of a commercial driver's license, including the testing provisions.

(f) **License renewal procedures.**—When applying for renewal of a commercial driver's license, the applicant must complete the application form, providing updated
information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed.


(a) Disqualification offenses.—On or after the first day of April, one thousand nine hundred ninety-two, any person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:

(1) Driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(2) Driving a commercial motor vehicle while the alcohol concentration of the person’s blood or breath is four hundredths or more;

(3) Leaving the scene of an accident involving a commercial motor vehicle driven by the person;

(4) Using a commercial motor vehicle in the commission of any felony as defined in this article;

(5) Refusal to submit to a test to determine the driver's alcohol concentration while driving a commercial motor vehicle.

In addition, the conviction of any of the following offenses as an operator of any vehicle is a disqualification offense:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle as defined under the provisions of section five, article three, chapter seventeen-b, and section one, article five, chapter seventeen-c of this code;

(2) Driving while license is suspended or revoked, as defined under the provisions of section three, article four, chapter seventeen-b of this code;

(3) Perjury or making a false affidavit or statement under oath to the department of motor vehicles, as defined under the provisions of subsection (4), section five, article three, and section two, article four, chapter seventeen-b of this code.
If any of the above violations occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

(b) A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection (a) of this section, or any combination of those offenses, arising from two or more separate incidents.

(c) The commissioner may issue rules establishing guidelines, including conditions, under which a disqualification for life under subsection (b) of this section may be reduced to a period of not less than ten years.

(d) A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance.

(e) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(f) After suspending, revoking or cancelling a commercial driver's license, the department shall update its records to reflect that action within ten days.

§17E-1-14. Commercial drivers prohibited from operating with any alcohol in system.

(a) Notwithstanding any other provision of this article, a person may not drive, operate or be in physical control of a commercial motor vehicle while having any measurable alcohol in his or her system.

(b) In addition to any other penalties provided by this code, a person who drives, operates or is in physical
§17E-1-15. Implied consent requirements for commercial motor vehicles drivers.

(a) A person who drives a commercial motor vehicle within this state is deemed to have given consent, subject to provisions of section four, article five, chapter seventeen-c of this code, to take a test or tests of that person's blood, breath or urine for the purpose of determining that person's alcohol concentration, or the presence of other drugs.

(b) A test or tests may be administered at the direction of a law-enforcement officer, who after stopping or detaining the commercial motor vehicle driver, has reasonable cause to believe that driver was driving a commercial motor vehicle while having alcohol in his or her system.

(c) A person requested to submit to a test as provided in subsection (a) of this section must be warned by the law-enforcement officer requesting the test that a refusal to submit to the test will result in that person being disqualified from operating a commercial motor vehicle under section fifteen of this article.

(d) If the person refuses testing, or submits to a test which discloses an alcohol concentration of four hundredths or more, that law-enforcement officer must submit a sworn report to the department of motor vehicles certifying that the test was requested pursuant to subsection (a) of this section and that the person refused to submit to testing, or submitted to a test which disclosed an alcohol concentration of four hundredths or more.

(e) Upon receipt of the sworn report of a law-enforcement officer submitted under subsection (d) of this section, the commissioner must disqualify the driver
§17E-1-16. Notification of traffic convictions.

1 Within ten days after receiving a report of the conviction of any holder of a commercial driver license for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle, the commissioner must notify the driver licensing authority in the licensing state of the conviction and the United States department of transportation, federal highway administration, and the public service commission, transportation division.

§17E-1-17. Driving record information to be furnished.

1 Notwithstanding any other provision of law to the contrary, the commissioner must furnish full information regarding the driving record of any person:

(a) To the driver license administrator of any other state or province or territory of Canada requesting that information;

(b) To any employer or prospective employer;

(c) To insurers upon request;

(d) To credit reporting organizations and for other legitimate business transactions; or

(e) The driver himself.


1 The commissioner shall adopt rules and regulations necessary to carry out the provisions of this article.

§17E-1-19. Authority to enter agreements.

1 The commissioner may enter into or make agreements, arrangements or declarations to carry out the provisions of this chapter.

§17E-1-20. Reciprocity.

1 Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle if the person has
a commercial driver's license by any state in accordance
with the minimum federal standards for the issuance of
commercial motor vehicle driver licenses; if the license
is not suspended, revoked or canceled; and if the person
is not disqualified from driving a commercial motor
vehicle, or subject to an "out-of-service" order.

§17E-1-21. Severability and savings clause.

The provisions of any chapter or parts of chapters of
this code, which are inconsistent with the provisions of
this chapter, are repealed to the extent of such incon-
sistency.

§17E-1-22. Effective dates.

All provisions of this chapter are effective imme-
diately on passage except:
(a) Section seven—the first day of April, one thousand
nine hundred ninety-two.
(b) Section eight—the first day of July, one thousand
nine hundred eighty-nine.
(c) Section nine—the first day of July, one thousand
nine hundred eighty-nine.
(d) Section ten—the first day of July, one thousand
nine hundred eighty-nine.
(e) Sections eleven, twelve, thirteen, fourteen—the
first day of April, one thousand nine hundred ninety-
two.

§17E-1-23. Funding for the commercial driver's license
fees.

Each application for a commercial driver's license
shall be accompanied by the fees hereafter provided and
such fees shall be deposited in a special revolving fund
for the operation by the department of its functions
established by this chapter.

The fee for a commercial driver's license shall be
established by the commissioner to cover all necessary
costs for program administration. The fees for knowl-
edge and road testing shall also be established by the
commissioner to cover all program costs projected to be
incurred by the department of motor vehicles and the
department of public safety. The commissioner of motor
vehicles is authorized and directed to transfer into a
special revolving fund under the control of the super-
intendent of the department of public safety such
amounts required by the department of public safety
and determined by the commissioner as necessary to
administer its responsibilities under this article.


In addition to the officers of the department of public
safety, any police officer, or employee of the department
of highways designated by the commissioner of high-
ways as a weight enforcement officer, or any inspector
of the public service commission, motor carrier division,
may enforce the provisions of this article.

§17E-1-25. Penalties.

It is a misdemeanor for any person to violate any of
the provisions of this chapter unless such violation is by
this chapter or other law of this state declared to be a
felony.

Unless another penalty is provided in this chapter or
by the laws of this state, every person convicted of a
misdemeanor for the violation of any provisions of this
chapter shall be fined not less than one hundred dollars
nor more than one thousand dollars, or imprisoned for
not more than six months in the county jail, or both
fined and imprisoned, except that for the second
violation of section seven of this article and, upon
conviction thereof, the offender shall be fined not less
than five hundred dollars nor more than two thousand
dollars or imprisoned for not less than six months nor
more than nine months in the county jail, or both fined
and imprisoned. For the third or any subsequent
conviction for violation of section seven of this article,
upon conviction thereof, the offender shall be fined not
less than one thousand dollars nor more than two
thousand five hundred dollars, or imprisoned for not less
than nine months nor more than one year in the county
jail, or both fined and imprisoned.
AN ACT to amend and reenact article ten, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to enacting the uniform determination of death act; establishing standards for the determination of death; mandating uniform construction and application of the act; providing civil and criminal immunity for certain persons; and changing the short title from the uniform brain death act to the uniform determination of death act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. UNIFORM DETERMINATION OF DEATH ACT.

§16-10-1. Determination of death.

1 An individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

§16-10-2. Uniformity of construction and application.

1 This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

§16-10-3. Civil and criminal immunity.

1 A physician or any other person authorized by law to
§16-10-4. Short title.

This article may be cited as the “Uniform Determination of Death Act.”

CHAPTER 207

(S. B. 302—By Senators Brackenrich, Parker and Felton)

[Passed April 5, 1989; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five-a, article one; section two, article six; and section three, article eight, chapter sixty of said code, all relating to the permission of advertising of farm wineries; revising the definition of “farm winery” as inclusive of operating an offsite establishment and as exclusive of young implantations; providing permission for the holder of a farm winery license to sell wine to consumers at the winery and to other sellers without payment of a transport bond; relating to the permission and the regulation of the sale of West Virginia wine at fairs, festivals, restaurants and state stores; and providing for legislative rules.

Be it enacted by the Legislature of West Virginia:

That section seven, article twenty-two, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five-a, article one; section two, article six; and section three, article eight, chapter sixty of said code be amended and reenacted, all to read as follows:
CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 22. OUTDOOR ADVERTISING.

§17-22-7. Exceptions to prohibited signs; standards for excepted signs.

The provisions of section three of this article shall not apply to the following: (a) Directional and other official signs and notices required or authorized by law, including, but not limited to, signs and notices pertaining to natural wonders, farm wineries, scenic and historical attractions, which such signs and notices shall conform to standards respecting lighting, size, number, spacing and such other appropriate requirements as may be designated and specified by the secretary of transportation of the United States: Provided, That the commissioner of the department of highways shall not establish any standards respecting lighting, size, number, spacing and other appropriate requirements which are stricter than such standards designated and specified by the secretary of transportation of the United States; (b) signs, displays, and devices advertising the sale or lease of property upon which they are located; and (c) signs, displays, and devices advertising activities conducted on the property on which they are located, including markers of underground utility facilities.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

Article
8. Sale of Wines.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5a. Farm wineries defined.

For the purpose of this chapter: "Farm winery" means an establishment where in any year fifty thousand gallons or less of wine is manufactured exclusively by
natural fermentation from grapes, other fruit or honey, with twenty-five percent of such raw products being produced by the owner of such farm winery on the premises of that establishment, and no more than twenty-five percent of such produce originating from any source outside this state: Provided, That a farm winery may include one off-farm location: Provided, however, That the owner of a farm winery may provide to the commissioner evidence, accompanied by written findings by the West Virginia agriculture commissioner in support thereof, that the owner has planted on the premises of the farm winery young nonbearing fruit plants. The commissioner may grant permission for one off-farm location in an amount equal to that reasonably expected to be produced when the nonbearing fruit plants planted on the farm winery come into full production. The length of time of the permission to use an off-farm location shall be determined by the commissioner after consultation with the agriculture commissioner.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-2. When lawful to manufacture and sell wine and cider.

The provisions of this chapter shall not prevent:

(1) A person from manufacturing wine at his residence for consumption at his residence as permitted by section one of this article;

(2) A person from manufacturing and selling unfermented cider;

(3) A person from manufacturing and selling cider made from apples produced by him within this state, to persons holding distillery licenses, but such manufacture and sale shall be under the supervision and regulation of the commissioner;

(4) A person from manufacturing and selling wine made from fruit produced by him within this state to persons holding winery licenses, but such manufacture and sale shall be under the supervision and regulation of the commissioner; and
(5) The holder of a farm winery license from selling wine produced by it directly to consumers at the winery and at one off-farm winery location or to any other person who is licensed under this chapter to sell wine either at wholesale or at retail: Provided, That the winery may ship wines from the farm winery without the bonding requirements of a transporter: Provided, however, That notwithstanding any other provisions of law to the contrary, an individual or licensee in a state which affords the wineries of this state equal reciprocal shipping privileges may ship for personal use and not for resale not more than two cases of wine per month to any adult resident in this state.

ARTICLE 8. SALE OF WINES.

§60-8-3. Licenses; fees; general restrictions.

(a) Except as to farm wineries as defined by section five-a, article one of this chapter, no person may engage in business in the capacity of a distributor, retailer or private wine restaurant without first obtaining a license from the commissioner, nor shall a person continue to engage in any such activity after his license has expired, been suspended or revoked. No person may be licensed simultaneously as a distributor and a retailer, as a distributor and a private wine restaurant, or as a retailer and a private wine restaurant.

(b) The commissioner shall collect an annual fee for licenses issued under this article, as follows:

(1) Twenty-five hundred dollars per year for a distributor’s license and each separate warehouse or other facility from which a distributor sells, transfers or delivers wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of twenty-five hundred dollars as herein provided.

(2) One hundred fifty dollars per year for a retailer’s license.

(3) Fifty dollars per year for a wine tasting license.
(4) Fifty dollars for each sales representative of or
employed by a licensed distributor.

(5) Two hundred fifty dollars per year for a private
wine restaurant license, and each separate restaurant
from which a licensee sells wine shall be separately
licensed and there shall be collected with respect to each
such location the annual license fee of two hundred fifty
dollars as herein provided.

(c) The license period shall begin on the first day of
July of each year and end on the thirtieth day of June
of the following year, and if granted for a less period,
the same shall be computed semiannually in proportion
to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as
provided by article seven of this chapter.

(e) No retailer may be licensed as a Class A retail
dealer in nonintoxicating beer as provided by article
sixteen, chapter eleven of this code: Provided, That a
delicatessen which is a grocery store as defined in
section two of this article and which is licensed as a
Class A retail dealer in nonintoxicating beer, may be a
retailer under this article: Provided, however, That any
delicatessen licensed in both such capacities must
maintain average monthly sales exclusive of sales of
wine and nonintoxicating beer which exceed the average
monthly sales of nonintoxicating beer.

(f) A retailer under this article may also hold a wine
tasting license authorizing such retailer to serve
complimentary samples of wine in moderate quantities
for tasting. Such retailer shall organize a winetaster's
club, which has at least fifty duly elected or approved
dues paying members in good standing. Such club shall
meet on the retailer's premises not more than one time
per week and shall either meet at a time when the
premises are closed to the general public, or shall meet
in a separate segregated facility on the premises to
which the general public is not admitted. Attendance at
tastings shall be limited to duly elected or approved
dues paying members and their guests.
(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(h) The commissioner may issue a special license for the retail sale of wine at any festival or fair which is endorsed or sponsored by the governing body of a municipality or a county commission. Such special license shall be issued for a term of no longer than ten consecutive days and the fee therefor shall be two hundred fifty dollars regardless of the term of the license unless the applicant is the manufacturer of said wine on a farm winery as defined in section five-a, article one of this chapter, in which event the fee shall be twenty-five dollars. The application for such license shall contain such information as the commissioner may reasonably require and shall be submitted to the commissioner at least thirty days prior to the first day when wine is to be sold at such festival or fair. A farm winery licensed under this subsection may exhibit, conduct tastings, not to exceed a reasonable serving, and may sell wine only for consumption off the premises of such festival or fair. A special license issued other than to a farm winery may be issued to a “wine club” as defined hereinbelow. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words “wine club.” The license shall be issued in the name of the wine club. A licensee may not commence the sale of wine as provided for in this subsection until the wine club has at least fifty dues paying members who have been enrolled and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subsection may sell wine only to its members, and in portions not to exceed eight ounces per serving. Such sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to such
104 premises or area. A wine club licensee under the provisions of this subsection shall be authorized to serve complimentary samples of wine in moderate quantities for tasting.

108 A license issued under the provisions of this subsection and the licensee holding such license shall be subject to all other provisions of this article and the rules, regulations and orders of the commissioner relating to such special license: Provided, That the commissioner may by rule, regulation, or order provide for certain waivers or exceptions with respect to such provisions, rules, regulations, or orders as the circumstances of each such festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of section twelve of this article: Provided, however, That under no circumstances shall the provisions of subsections (c) or (d), section twenty of this article be waived nor shall any exception be granted with respect thereto.

124 A license issued under the provisions of this subsection and the licensee holding such license shall not be subject to the provisions of subsection (g) of this section.

127 (i) A license to sell wine granted to a private wine restaurant under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when such sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article. Such licensees are authorized to keep and maintain on their premises a supply of wine in such quantities as may be appropriate for the conduct of operations thereof. Any sale of wine so made shall be subject to all restrictions set forth in section twenty of this article. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code.

141 (j) With respect to subdivisions (h) and (i) of this section, the commissioner shall promulgate rules and regulations in regard to the form of the applications, the
suitability of both the applicant and location of the licensed premises and such other rules and regulations deemed necessary to carry the provisions of such subsections into effect.

(k) The commissioner shall promulgate rules and regulations in accordance with chapter twenty-nine-a to allow restaurants to serve West Virginia wine with meals, but not to sell the wine by the bottle. Each restaurant so licensed shall be charged a fee less than that charged for a wine license to a retail outlet, such fees to be set forth in the aforementioned rules and regulations promulgated pursuant to this subsection.

(l) The commissioner shall establish guidelines to permit West Virginia wines to be sold in state stores.

(m) Farm wineries as defined in section one-a of this article may advertise off premises as provided in section seven, article twenty-two of chapter seventeen and in any other media, including, but not limited to, newspaper, radio, television, magazines and direct mail solicitation.

CHAPTER 208
(H. B. 2672—By Delegates M. Burke and Rutledge)

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

AN ACT to amend and reenact section one, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to workers' compensation; disability and death benefits; providing that employees of the state and its political subdivisions may not simultaneously draw workers' compensation benefits and receive sick leave for the same period of time.

Be it enacted by the Legislature of West Virginia:

That section one, article four, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
CHAPTER 23. WORKERS’ COMPENSATION.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in “injury” and “personal injury”; definition of occupational pneumoconiosis and other occupational diseases.

Subject to the provisions and limitations elsewhere in this chapter set forth, the commissioner shall disburse the workers’ compensation fund to the employees of employers subject to this chapter, which employees have received personal injuries in the course of and resulting from their covered employment or to the dependents, if any, of such employees in case death has ensued, according to the provisions hereinafter made; and also for the expenses of the administration of this chapter, as provided in section two, article one of this chapter: Provided, That in the case of any employees of the state and its political subdivisions, including: counties; municipalities; cities; towns; 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; 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; any agency or organization established by the department of mental health for the provision of community health or mental retardation services and which is supported in whole or in part by state, county or municipal funds; board, agency, commission, department or spending unit including any agency created by rule of the supreme court of appeals, who have received personal injuries in the course of and resulting from their covered employment, such employees are ineligible to receive compensation while such employees are at the same time and for the same reason drawing sick leave benefits. Such state employees may only use sick leave for non-job related absences consistent with sick leave utilization, and may draw workers’ compensation benefits only where there is a job related
injury. This proviso shall not apply to permanent benefits: Provided, however, That such employees may collect sick leave benefits until receiving temporary total disability benefits. The division of personnel shall promulgate rules pursuant to chapter twenty-nine-a of this code relating to use of sick leave benefits by employees receiving personal injuries in the course of and resulting from covered employment: Provided further, That in the event an employee is injured in the course of and resulting from covered employment and such injury results in lost time from work, and such employee for whatever reason uses or obtains sick leave benefits and subsequently receives temporary total disability benefits for the same time period, such employee may be restored sick leave time taken by him or her as a result of the compensable injury by paying to his or her employer the temporary total disability benefits received or an amount equal to the temporary total disability benefits received. Such employee shall be restored sick leave time on a day for day basis which corresponds to temporary total disability benefits paid to the employer: And provided further, That since the intent of this paragraph is to prevent an employee of the state or any of its political subdivisions from collecting both temporary total disability benefits and sick leave benefits for the same time period, nothing herein may be construed to prevent an employee of the state or any of its political subdivisions from electing to receive either sick leave benefits or temporary total disability benefits but not both.

For the purposes of this chapter the terms "injury" and "personal injury" shall include occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and the commissioner shall likewise disburse the workers' compensation fund to the employees of such employers in whose employment such employees have been exposed to the hazards of occupational pneumoconiosis or other occupational disease and in this state have contracted occupational pneumoconiosis or other occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or other occupational disease, or to the dependents, if
any, of such employees, in case death has ensued, according to the provisions hereinafter made: Provided, That compensation shall not be payable for the disease of occupational pneumoconiosis, or death resulting therefrom, unless the employee has been exposed to the hazards of occupational pneumoconiosis in the state of West Virginia over a continuous period of not less than two years during the ten years immediately preceding the date of his last exposure to such hazards, or for any five of the fifteen years immediately preceding the date of such last exposure. An application for benefits on account of occupational pneumoconiosis shall set forth the name of the employer or employers and the time worked for each, and the commissioner may allocate to and divide any charges resulting from such claim among the employers by whom the claimant was employed for as much as sixty days during the period of three years immediately preceding the date of last exposure to the hazards of occupational pneumoconiosis. The allocation shall be based upon the time and degree of exposure with each employer.

For the purposes of this chapter disability or death resulting from occupational pneumoconiosis, as defined in the immediately succeeding sentence, shall be treated and compensated as an injury by accident.

Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of minute particles of dust over a period of time due to causes and conditions arising out of and in the course of the employment. The term “occupational pneumoconiosis” shall include, but shall not be limited to, such diseases as silicosis, anthracosilicosis, coal worker’s pneumoconiosis, commonly known as black lung or miner’s asthma, silico-tuberculosis (silicosis accompanied by active tuberculosis of the lungs), coal worker’s pneumoconiosis accompanied by active tuberculosis of the lungs, asbestosis, siderosis, anthrax and any and all other dust diseases of the lungs and conditions and diseases caused by occupational pneumoconiosis which are not specifically designated herein meeting the definition of occupational pneumoconiosis set forth in the immediately preceding sentence.
In determining the presence of occupational pneumo-
coniosis, X-ray evidence may be considered but shall not
be accorded greater weight than any other type of
evidence demonstrating occupational pneumoconiosis.

For the purposes of this chapter, occupational disease
means a disease incurred in the course of and resulting
from employment. No ordinary disease of life to which
the general public is exposed outside of the employment
shall be compensable except when it follows as an
incident of occupational disease as defined in this
chapter. Except in the case of occupational pneumoco-
niosis, a disease shall be deemed to have been incurred
in the course of or to have resulted from the employment
only if it is apparent to the rational mind, upon
consideration of all the circumstances (1) that there is
a direct causal connection between the conditions under
which work is performed and the occupational disease,
(2) that it can be seen to have followed as a natural
incident of the work as a result of the exposure
occasioned by the nature of the employment, (3) that it
can be fairly traced to the employment as the proximate
cause, (4) that it does not come from a hazard to which
workmen would have been equally exposed outside of
the employment, (5) that it is incidental to the character
of the business and not independent of the relation of
employer and employee, and (6) that it must appear to
have had its origin in a risk connected with the
employment and to have flowed from that source as a
natural consequence, though it need not have been
foreseen or expected before its contraction.

No award shall be made under the provisions of this
chapter for any occupational disease contracted prior to
the first day of July, one thousand nine hundred forty-
nine. An employee shall be deemed to have contracted
an occupational disease within the meaning of this
paragraph if the disease or condition has developed to
such an extent that it can be diagnosed as an occupa-
tional disease.

Claims for occupational disease as hereinbefore
defined, except occupational pneumoconiosis, shall be
processed in like manner as claims for all other personal
injuries.
CHAPTER 209

(S. B. 614—By Senator Dittmar)

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

AN ACT to extend the time for the county commission of Calhoun County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election to extend the additional county levy for emergency services in Calhoun County from between the seventh and twenty-eighth days of March until Thursday, the first day of June, one thousand nine hundred eighty-nine.

Be it enacted by the Legislature of West Virginia:

CALHOUN COUNTY COMMISSION MEETING AS A LEVYING BODY EXTENDED TO CONTINUE ADDITIONAL LEVY FOR EMERGENCY SERVICES.

§1. Extending time for Calhoun County commission to meet as levying body for election to continue additional levy for emergency services.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the county commission of Calhoun County is hereby authorized to extend the time for its meeting as a levying body and certifying its actions to the state tax commissioner from between the seventh and twenty-eighth days of March until Thursday, the first day of June, one thousand nine hundred eighty-nine, for the purpose of submitting to the voters of Calhoun County the extension of the additional county levy for emergency services in Calhoun County.

CHAPTER 210

(H. B. 2779—By Delegate Willison)

[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT to authorize the transfer by the Doddridge County board of education of the land and buildings of the Krenn School or the St. Clara community building.
Be it enacted by the Legislature of West Virginia:

THE KRENN SCHOOL, ALSO KNOWN AS THE ST. CLARA COMMUNITY BUILDING.

§1. School board authorized to transfer Krenn School to Historical Society.

The school board of Doddridge County is hereby authorized and empowered to convey to the Doddridge County Historical Society for a nominal sum, the one-room frame school building, accompanying outbuildings, and surrounding one-quarter acre described on pages seventy-one through seventy-three in Deed Book twenty-nine of the Doddridge County Commission and known collectively as the Krenn School or the St. Clara community meeting place. This conveyance shall be for the purpose of the historical preservation of the property.

CHAPTER 211
(Com. Sub. for S. B. 591—By Senator J. Manchin)

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

AN ACT to authorize Fairmont State College to use the Highgate Carriage House property located in Fairmont, Marion County, West Virginia.

Be it enacted by the Legislature of West Virginia:

HIGHGATE CARRIAGE HOUSE.

§1. Fairmont State College authorized to use Highgate Carriage House property.

Fairmont State College is hereby authorized, in the event the Highgate Carriage House property located in Fairmont, Marion County, West Virginia, is purchased by a qualified nonprofit organization approved by the Internal Revenue Service, to enter into contracts and leases permitting the college to occupy, use and maintain portions of said property as desired for operational or administrative purposes and for the
benefit and enhancement of the community. This legislation does not authorize Fairmont State College to purchase the property known as Highgate Carriage House.

CHAPTER 212
(Com. Sub. for S. B. 141—By Senator Hawse)

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

AN ACT authorizing the Hardy County commission and the Hardy County board of education to support financially the operation of the Hardy County extension service; authorizing annual levy for such purpose; authorizing contribution of other funds for such purpose; and providing for disposition of funds.

Be it enacted by the Legislature of West Virginia:

HARDY COUNTY EXTENSION SERVICE.

§1. Levies by county commission and county board of education to support the Hardy County extension service.

§2. Disposition of funds; participation by West Virginia University extension service.

§1. Levies by county commission and county board of education to support the Hardy County extension service.

In order to provide for the support, maintenance and operation of the Hardy County extension service, Hardy County, West Virginia, the board of education of the county of Hardy and the Hardy County commission, hereinafter described as the supporting agencies, may, if requested by the Hardy County extension service committee, levy annually on each one hundred dollars of assessed valuation of the property taxable according to the last assessment for state and county purposes, amounts as follows: By the board of education of the county of Hardy, Class I, two and six-tenths mills; Class II, five and two-tenths mills; Class III, ten and four-tenths mills; Class IV, ten and four-tenths mills; by the
county commission of Hardy County, Class I, nine and
one-half mills; Class II, nineteen mills; Class III, thirty-
eight mills; Class IV, thirty-eight mills.

Each year the Hardy County extension service
committee may request each of the supporting agencies
to levy the above rates on each one hundred dollars of
assessed valuation of property of the same class, and
each of the supporting agencies may levy the rates
aforesaid. In addition, each supporting agency may
contribute to the extension service any other general or
specific revenues or excess levy funds.

§2. Disposition of funds; participation by West Virginia
University extension service.

Money collected or appropriated by the supporting
agencies for the personnel services of the Hardy County
extension service shall be transferred to the West
Virginia University extension service and disbursed by
it for salaries and related expenses.

As long as the foregoing levy continues, West Virginia
University extension service may contribute from its
funds to the support of three full-time agent positions.

CHAPTER 213
(S. B. 138—By Senators Hawse and Lucht)

[Passed February 24, 1989; in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Jefferson
County to convey a parcel of county-owned land to the
Jefferson County Fairgrounds, reserving certain reversionary rights.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY.

§1. County commission authorized to convey land to the
Jefferson County Fairgrounds.

The Legislature hereby recognizes that an adequate
site is necessary for the citizens of Jefferson County to conduct a county fair to enable youth and adults to exhibit livestock, horticultural products, agricultural products and home economics skills. Accordingly, the Legislature hereby finds and declares that transfers of any property, real or personal, made by county commissions to any person, organization or corporation for the furtherance of such activities promotes the cultural and educational welfare of the public and, therefore, is a public purpose.

The county commission of Jefferson County is hereby authorized and empowered to transfer and convey unto the Jefferson County Fairgrounds, all that certain parcel of land situated within Middleway District of Jefferson County, West Virginia, more particularly bounded and described as:

DESCRIPTION OF SURVEY FOR JEFFERSON COUNTY FAIRGROUNDS

A tract or parcel of land located in Middleway District, Jefferson County, West Virginia, said tract or parcel situated north of the property presently owned by the Jefferson County Fair Association, Inc., and more particularly bound and described according to a survey and plat thereof made by Appalachian Surveys, Inc., said plat attached hereto and made a part of this description.

Beginning at a 5/8-inch rebar (202) to be set, said rebar SW 21-12-27 822.99 feet from a found stone (1), said stone a corner with the "parent" tract and with The Jefferson County Volunteer Fireman's Association, Inc.; thence two new lines with The Jefferson County Farm NW 74-22-26 508.15 feet to a 5/8 inch rebar (203) to be set; thence SW 21-12-27 300.00 feet to a found 3/8 inch rebar (5) to be set, said rebar a corner with the Jefferson County Farm and the property presently owned by the Jefferson County Association, Inc.; thence with said Association SE 74-22-26 508.15 feet to a 5/8-inch rebar (201) to be set, said rebar NW 74-22-26 41.85 feet from a corner wooden fence post (200); thence
with the Jefferson County Volunteer Fireman's
Association, Inc. NE 21-12-27 300.00 feet to the
point of beginning, containing 3.48 acres.

Being a part of the same tract or parcel conveyed by
Minor Hurst and Sarah S. Hurst, husband and wife, to
the "Overseers of the Poor For the County of Jefferson
in the State of Virginia" by deed dated December 26th,
1857 and recorded in the Office of the Clerk of the
Jefferson County Commission in Deed Book 38 at page
24.

CHAPTER 214
(H. B. 2663—By Delegates Manuel and Mezzatesta)

[Passed March 22, 1989; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the board of education of
Jefferson County, West Virginia, to meet as a levying
body to certify its actions to the state tax commissioner
for the purpose of presenting to the voters of the county
an election to increase the county excess levy of eighty-
seven and twenty-five one hundredths percent to one
hundred percent for textbooks, employees salaries and
benefits from Tuesday, the twenty-eighth day of March,
until Thursday, the first day of June, one thousand nine
hundred eighty-nine.

Be it enacted by the Legislature of West Virginia:

THE BOARD OF EDUCATION OF JEFFERSON COUNTY MEETING
AS LEVYING BODY EXTENDED TO INCREASE COUNTY EX-
CESS LEVY FOR TEXTBOOKS, EMPLOYEES SALARIES AND
BENEFITS.

§1. Extending time for board of education of Jefferson
County to meet as a levying body for election to
increase levy for textbooks, employee salaries and
benefits.

1 Notwithstanding the provisions of article eight,
2 chapter eleven of the code of West Virginia, one
3 thousand nine hundred thirty-one, as amended, to the
contrary, the board of education of Jefferson County is hereby authorized to extend the time for its meeting as a levying body to certify its actions to the state tax commissioner for the purpose of presenting to the voters of the county an election to increase the county excess levy of eighty-seven and twenty-five one hundredths percent to one hundred percent for textbooks, employees salaries and benefits from Tuesday, the twenty-eighth day of March, until Thursday, the first day of June, one thousand nine hundred eighty-nine.

CHAPTER 215
(H. B. 2524—By Delegates Manuel and Mezzatesta)
[Passed April 6, 1989; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Jefferson County to lease a certain parcel of real estate located in Shepherdstown District, Charles Town District and Harpers Ferry District, Jefferson County, West Virginia, for a period of up to ten years.

Be it enacted by the Legislature of West Virginia:

JEFFERSON COUNTY.

§1. County commission authorized to lease Samuel G. Michaels farm located in Shepherdstown District, Charles Town District and Harpers Ferry District.

The Legislature hereby recognizes that recreation is necessary for the welfare of the people of Jefferson County; and that the 137.424 acres Samuel G. Michaels Farm was conveyed to the county commission of Jefferson County for recreational purposes and that to generate the necessary moneys to develop the farm as a park the county commission of Jefferson County need be authorized to lease all or a portion of it to any person, firm or corporation for a period of up to ten years to generate funds to make necessary recreational improvements; and that such a rental would promote the general welfare of the public and, therefore, is a public purpose.

The county commission of Jefferson County, West
Virginia, is hereby authorized and empowered to lease for a period of up to ten years all or any portion of all that tract of land located on the south side of West Virginia secondary Route 22, being in Shepherdstown, Charles Town and Harpers Ferry District, Jefferson County, West Virginia, designated tract No. 1, as shown upon that certain map entitled "Plat of Survey of Samuel G. Michaels Property, Situated in Shepherdstown, Charles Town, and Harpers Ferry Districts, Jefferson County, West Virginia, containing 138.25 Acres By Survey and Being a Part of the Same Property Conveyed by William Engle, Trustee, to Samuel G. Michaels by Deed Dated April 1, 1874 — Deed Book C, Page 123," dated 1-29-76, approved by Samuel P. McClung, L.L.S. #380, and more particularly bounded and described as follows:

Beginning at corner #1, a corner fence post in the southern right-of-way line of West Virginia secondary Route 22 and a corner common to Robinson Ice and Storage Company; thence leaving said road right-of-way with a fence line common to Robinson Ice and Storage Company: S. 21 degrees — 58' W. 2,843.52 feet to corner #2, a corner fence post; thence leaving Robinson Ice and Storage Company land and with a fence line common to William E. Walker, thence N. 84 degrees — 13' W. 2,832.16 feet to corner #3, a corner fence post on or near the southern right-of-way of West Virginia secondary Route 22 at the intersection of a private road leading onto the William E. Walker 89.66 acre tract; thence leaving William E. Walker land and with the southern right-of-way line of West Virginia secondary Route 22 for the following calls: N. 25 degrees — 00' E. 523.13 feet to a locust hub, N. 28 degrees — 10' E. 140.44 feet on to a locust hub, N. 37 degrees — 14' E. 226.54 feet to a locust hub, N. 38 degrees — 44 feet E. 929.40 feet to a locust hub, N. 46 degrees — 44' E. 41.65 feet to a locust hub, N. 59 degrees — 54' E. 42.23 feet to a locust hub, N. 68 degrees — 39' E. 31.30 feet to a locust hub, N. 71 degrees — 24' E. 504.88 feet to a locust hub, N. 69 degrees — 34' E. 256.76 feet to a point in the southern right-of-way line, said point being 15 feet left of and at right angles to centerline station 23+00, thence south-
erly 25.00 feet to a point 40 feet left of and at right
glances to centerline station 23+00, thence northeasterly
270.00 feet to a point 45 feet left of and at right angles
to centerline station P.T. 20+30.28, thence northeasterly
385.00 feet to a point 40 feet left of and at right angles
to centerline station P.T. 16+53.94, thence northeasterly
272.00 feet to a point 40 feet left of and at right angles
to centerline station P.C. 13+45.61, thence N. 78 degrees
— 15' E. 245.61 feet to a point 40 feet left of and at right
angles to centerline station 11+00, thence northeasterly
25.00 feet to a point 15 feet left of and at right angles
to centerline station 11+00, thence N. 78 degrees — 53'
E. 913.58 feet to a locust hub, thence W. 70 degrees —
17' E. 183.39 feet to the beginning, containing 137.424
acres, more or less, and being the same property
conveyed by Samuel G. Michaels to the State of West
Virginia by will dated September 22, 1972, and
recorded in the Office of the Clerk of Jefferson County
in Will Book “P” at page 42, minus 0.826 of an acre
additional right-of-way conveyed by the State of West
Virginia, Public Land Corporation to the West Virginia
Department of Highways by deed dated September 2,
1977, and recorded in the Office of the Clerk of Jefferson
County in Deed Book 431, at page 608.

Any lease agreement shall require that all improve-
ments made to said farm shall remain upon the lease
terminating. The county commission of Jefferson
County, West Virginia, shall deposit all rental moneys
received from the lease of this farm or any portion
thereof in a special account which moneys may only be
used to improve and maintain said farm.

CHAPTER 216

(S. B. 171—By Senators Chafin, Heck, Jones and Tomblin)

[Passed February 20, 1989; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the city of Kenova, West
Virginia, to meet as a levying body for the purpose of
presenting to the voters of the city an election to extend
the city levy for the Ceredo-Kenova War Memorial,
Ceredo-Kenova Memorial Public Library, Kenova Volunteer Fire Department, athletics and recreation, and police, fire and other employee salaries, generally, in the city of Kenova from the twenty-eighth day of March until Monday, the first day of May, one thousand nine hundred eighty-nine.

Be it enacted by the Legislature of West Virginia:

CITY OF KENOVA LEVYING BODY EXTENDED TO CONTINUE LEVY FOR THE CEREDO-KENOVA WAR MEMORIAL, CEREDO-KENOVA MEMORIAL PUBLIC LIBRARY, KENOVA VOLUNTEER FIRE DEPARTMENT, ATHLETICS AND RECREATION, AND POLICE, FIRE AND OTHER KENOVA CITY EMPLOYEE SALARIES.

§1. Extending time for city of Kenova to meet as a levying body for election to continue levy for Ceredo-Kenova War Memorial, Ceredo-Kenova Memorial Public Library, Kenova Volunteer Fire Department, athletics and recreation, and police, fire and other Kenova city employee salaries.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the city council of Kenova is hereby authorized to extend the time for its meeting as a levying body and certifying its actions to the state tax commissioner from the twenty-eighth day of March until Monday, the first day of May, one thousand nine hundred eighty-nine, for the purpose of submitting to the voters of the city of Kenova the extension of the city levy for the Ceredo-Kenova War Memorial, Ceredo-Kenova Memorial Public Library, Kenova Volunteer Fire Department, athletics and recreation, and police, fire and other employee salaries, generally, in the city of Kenova.

CHAPTER 217

(S. B. 419—By Senators Tucker, Mr. President, and Spears)

[Passed March 20, 1989; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the city of Richwood, West Virginia, to meet as a levying body for the purpose of
presenting to the voters of the city an election to extend the city levy to supplement current expense funds for general repairs of existing streets, alleys and sewers; acquisition of rights-of-way and construction of new streets; for services related to protection against loss by fire and street maintenance; and for services related to collection and disposal of garbage in the city of Richwood from Tuesday, the twenty-eighth day of March, until Monday, the first day of May, one thousand nine hundred eighty-nine.

Be it enacted by the Legislature of West Virginia:

CITY OF RICHWOOD LevyING BODY EXTENDED TO CONTINUE LEVY FOR THE SUPPLEMENT OF CURRENT EXPENSE FUNDS FOR GENERAL REPAIRS OF EXISTING STREETS, ALLEYS AND SEWERS; ACQUISITION OF RIGHTS-OF-WAY AND CONSTRUCTION OF NEW STREETS; FOR SERVICES RELATED TO PROTECTION AGAINST LOSS BY FIRE AND STREET MAINTENANCE; AND FOR SERVICES RELATED TO COLLECTION AND DISPOSAL OF GARBAGE IN THE CITY OF RICHWOOD.

§1. Extending time for city of Richwood to meet as a levying body for election to continue levy to supplement current expense funds for general repairs of existing streets, alleys and sewers; acquisition of rights-of-way and construction of new streets; for services related to protection against loss by fire and street maintenance; and for services related to collection and disposal of garbage in the city of Richwood.

1 Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the city council of Richwood is hereby authorized to extend the time for its meeting as a levying body and certifying its actions to the state tax commissioner from Tuesday, the twenty-eighth day of March, until Monday, the first day of May, one thousand nine hundred eighty-nine, for the purpose of submitting to the voters of the city of Richwood the extension of the city levy to supplement current expense funds for general repairs of existing streets, alleys and sewers;
acquisition of rights-of-way and construction of new streets; for services related to protection against loss by fire and street maintenance; and for services related to collection and disposal of garbage in the city of Richwood.
Commemorating the 87th birthday of West Virginia's retired United States Senator, the Honorable Jennings Randolph.

Whereas, Jennings Randolph, West Virginia's retired United States Senator served with distinction in the United States Congress for 37 years, as a Senator (27 years) and Congressman (10 years); set an all-time Congressional record of 10,753 roll call votes; authored the 26th Amendment to the United States Constitution giving the right to vote to 18 to 20 year-old Americans; and served with nine United States Presidents, will on the eighth day of March, 1989, celebrate his 87th birthday; and

Whereas, This event in the life of this great West Virginia Statesman and American should not go unnoticed by the citizens of West Virginia and its elected representatives of the 69th Legislature; therefore, be it

Resolved by the Legislature of West Virginia:

That the members of the Legislature do hereby express their congratulations to the distinguished Statesman and fellow West Virginian in the celebration on March 8, 1989, of his 87th birthday and wish him many more such celebrations in the years to come; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution posthaste to Senator Randolph in time to be read on his birthday and that a copy suitable for framing be sent to members of his family as well.
Requiring the Joint Committee on Government and Finance to form a Property Tax Study Commission to examine the complete property tax system of the State of West Virginia.

WHEREAS, The Property Tax Limitation and Homestead Exemption Amendment of 1982 required the statewide reappraisal of all property to be completed, certified and published on or before March 31, 1985, for use when directed by the Legislature; and

WHEREAS, The Legislature has assigned and delegated to the State Tax Commissioner and other public officials responsibilities and duties to conduct the statewide reappraisal, to facilitate the correction of errors or defects and to provide further review of the results of the reappraisal, and to provide for the implementation of the reappraisal; and

WHEREAS, The matter of implementation of the statewide reappraisal affects every citizen of this State in that property taxation is required by the constitutional mandate of the people to be equal and uniform, and property taxes directly support local government and the public school system of the State; and

WHEREAS, The Legislature specifically delegated responsibility to the State Tax Commissioner to certify, upon completion of the review procedures, that the procedures have been substantially complied with and that the results are substantially correct so that final valuations produced by the reappraisal process may be used; and

WHEREAS, The State Tax Commissioner has not issued the certification as to the review process provided for by general law, the statewide property reappraisal has not been implemented, and the assessments and taxation in place prior to the adoption of the aforesaid Amendment of 1982 remain in effect; and

WHEREAS, Many citizens and public officials are concerned that the statewide reappraisal contains errors, inconsistencies, and other matters which undermine taxpayer confidence and raise issues as to the fiscal impact of reappraisal implemen-
tation upon public schools and local government financing and that continuing review is appropriate even though the reappraisal review procedures may have been substantially complied with and the results thereof may be substantially correct; and

WHEREAS, The Legislature recognizes that other aspects of state tax policy may also be affected by the property taxation system and that, as the Legislature has considered and enacted major reforms of the State's tax and revenue structure to advance fiscal and economic development policies which benefit the State, the taxation of property by the State should likewise be reviewed to determine whether and how property taxation can be designed to affect and contribute to such policies including innovations in tax policy which might provide appropriate means to ensure a fair distribution of tax burden to concentrated ownership of West Virginia's land, timber and minerals and to encourage rational, long-term planning and use of our State's resources; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature by the creation of the Property Tax Study Commission desires to provide an appropriate forum for the thorough review and consideration of the property tax system, including the statewide reappraisal and the relationship between such system and the State's goals of fiscal responsibility and economic development. This commission shall consist of fifteen members; five of whom shall be members of the State Senate, appointed by the President of the Senate, with no more than four of such members to be of the same political party; five of whom shall be members of the House of Delegates, appointed by the Speaker of the House of Delegates, with no more than four of such members to be of the same political party; and five members to be appointed by the Governor, one of whom shall be the State Tax Commissioner, with not more than four members to be of the same political party; and, be it

Further Resolved, That the President of the Senate, Speaker of the House of Delegates and the Governor shall confer together on their respective appointments prior to the same being made in order to ensure that the membership of the Property Tax Study Commission is reasonably diverse as to experience, knowledge, interest and representation; and, be it
Further Resolved, That the Governor shall select one of the members as Chairman, and one as Vice Chairman, and vacancies on the Commission shall be promptly filled by the original appointing authority; and, be it

Further Resolved, That the Commission may employ such professional, clerical and technical assistance as it deems necessary in order to perform its duties, and may request information from any State officers or agencies in order to assist the performance of its duties; and, be it

Further Resolved, That the Commission shall meet in Charleston or elsewhere as it may deem necessary or appropriate, and it shall convene at least monthly and at such other times as its duties may require. The first meeting shall be called jointly, by the President of the Senate and the Speaker of the House of Delegates, one of whom shall preside temporarily and until a chairman is selected; and, be it

Further Resolved, That compensation shall be paid and actual and necessary expenses shall be paid or reimbursed from legislative appropriations to the Joint Committee on Government and Finance, but no such compensation and expenses shall be incurred, paid or reimbursed without first obtaining the approval of the Joint Committee on Government and Finance; and, be it

Further Resolved, That the Commission is instructed to review and determine the status and quality of the statewide reappraisal review process and make such findings and recommendations as the Commission deems appropriate to provide for an equal and fair property tax system. The Commission shall consult with assessors; county commissioners; representatives of taxpayer groups, including, but not limited to, forestry, coal, and agriculture industries and small businesses; representatives of residential property owners; and other persons who possess knowledge, expertise, or information pertinent to the areas of inquiry identified by the Commission. The Commission or a subcommittee thereof may hold public hearings or meetings at such times and places as it deems appropriate to gather information and provide forums for public comment, in addition to its regular or special meetings. The Commission shall make interim reports
to the Joint Committee on Government and Finance periodically and shall prepare and deliver to the Joint Committee on Government and Finance a final report containing the findings and recommendations of the Commission on or before the 1st day of December, 1989; and, be it

Further Resolved, That the Commission is empowered to study, review, and make recommendations as to the following additional matters:

(1) The benefits, detriments, and viability of applying a two-tiered property tax structure to West Virginia's property tax system;

(2) The implications of adoption of an "excess acreage tax", "nonproduction tax" or similar tax upon land or natural resource holdings in the State;

(3) The prospects for integration of tax policies and structures to encourage production, processing and manufacturing activities to occur within West Virginia utilizing the natural resources and raw materials found within the State;

(4) The prospects of "roll back" or similar provisions in the property tax system to ensure fairness and an equitable sharing of the property tax burden when property is sold for development;

(5) Developing a more efficient system for the operation and training for those responsible for the identification, assessment and collection of real and personal property taxes; and

(6) Examine the feasibility of setting minimum tax rates so as to guarantee a stable base of tax revenue; and, be it

Further Resolved, That subject to prior approval of the Joint Committee on Government and Finance, the Commission may employ consultants to assist in the analysis and consideration of these subjects. The Commission shall report its findings and recommendations, if any, to the Legislature on the first day of the next Regular Session.
RESOLUTIONS

SENATE CONCURRENT RESOLUTION 3
(By Senators Tucker, Mr. President, Chernenko, Loehr, Blatnik and Wiedebusch)

[Adopted March 28, 1989]

Directing that the Wheeling Interstate 470 bridge spanning the Ohio River be hereafter named and referred to as the Vietnam Veterans Memorial Bridge.

WHEREAS, This state is proud of those Vietnam veterans who served with honor in the armed forces of the United States; and

WHEREAS, There should be a suitable memorial to those Vietnam veterans of this state and other states; and

WHEREAS, The Wheeling Interstate 470 bridge spanning the Ohio River will serve admirably as a memorial honoring those Vietnam veterans; therefore, be it

Resolved by the Legislature of West Virginia:

That the Wheeling Interstate 470 bridge spanning the Ohio River be hereafter named and known as the Vietnam Veterans Memorial Bridge, as an honor and memorial to Vietnam veterans everywhere; and, be it

Further Resolved That the Clerk is hereby directed to forward a copy of this resolution to the President of the Senate and the Speaker of the House of the Ohio General Assembly, to the Commissioner of the West Virginia Department of Highways, and to the national headquarters of the Vietnam Veterans of America, the Veterans of Foreign Wars and the American Legion.

SENATE CONCURRENT RESOLUTION 22
(By Senators Holliday, Pritt and Rundle)

[Adopted April 8, 1989]

Urging the Congress of the United States to enact legislation to restore interim black lung benefits to disabled coal miners which were put in jeopardy by a recent United States Supreme Court decision.

WHEREAS, It is already an ordeal, sometimes taking up to
five years, for a coal miner suffering from black lung to obtain benefits; and

WHEREAS, It is totally unfair to make it tougher for individuals with black lung to get this interim relief; and

WHEREAS, Studies involving more than 400 miners have shown that 90 percent to 95 percent of those with more than 20 years of mining experience showed signs of black lung at death; and

WHEREAS, The miners' plight is tough enough without asking them to provide reams of medical and legal paperwork; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States is urged to support Congressman Bob Wise's bill which will allow miners to receive interim benefits by submitting a single piece of evidence supporting a diagnosis of black lung, such as a positive chest X ray, blood test, ventilatory study or doctor's opinion; and, be it

Further Resolved, That a copy of this resolution is hereby directed to be sent to the Clerk of the United States House of Representatives, to Congressmen Bob Wise, Harley O. Staggers, Nick J. Rahall and Alan Mollohan, to Senators Robert C. Byrd and John D. Rockefeller IV, and to the Vice President and President of the United States.

SENATE CONCURRENT RESOLUTION 26
(By Senators Tucker, Mr. President, Whitlow, Parker, Hylton, Rundle, Holliday, Brackenrich, Chafin and Wagner)

[Adopted March 23, 1989]

Commemorating the passing of James Kee, former U.S. Representative, gentleman and statesman.

WHEREAS, James Kee was born April 15, 1917, at Bluefield, Mercer County, and died in the year 1989 at the age of seventy-one at Montgomery, Fayette County; and

WHEREAS, During his long and colorful life, James Kee served the Congress first as an employee and then as a U.S. Representative and made innumerable contributions to the
RESOLUTIONS 1617

state of West Virginia during his thirty-three years of service; and

WHEREAS, Mr. Kee, in giving unselfishly of himself to his community, his state and his country, left this world a better place than it was when he entered it; and

WHEREAS, The passing of James Kee should not go unnoticed; therefore, be it

Resolved by the Legislature of West Virginia:

That regret is hereby expressed by the members at the passing of James Kee, a great West Virginian; and, be it

Further Resolved, That the Clerk of this body is hereby directed to forward a copy of this resolution to the family of Mr. James Kee.

COMMITTEE SUBSTITUTE FOR HOUSE JOINT RESOLUTION 12

(By Mr. Speaker, Mr. Chambers, and Delegate Given)
(Originating in the House Committee on Constitutional Revision)

[Adopted April 1, 1989]

Proposing an amendment to the Constitution of the State of West Virginia, amending sections eight and thirteen, article nine thereof; and amending said article by adding thereto two new sections, designated sections fourteen and fifteen, all relating to municipal and county organization; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at a special election to be held on September ninth, one thousand nine hundred eighty-nine, which proposed amendment is that sections eight and thirteen, article nine, be amended; and that said article be further amended by adding thereto two new sections, designated
sections fourteen and fifteen, all to read as follows:

ARTICLE IX. COUNTY ORGANIZATION.

§8. Formation and consolidation of counties; allocation of liabilities.

1 No new county may hereafter be formed in this state except by the consolidation of counties. The Legislature shall provide by law for the consolidation of two or more counties or the division of a county and the consolidation of the division thereof with one or more other counties. No such consolidation may become effective without the consent of a majority of the voters residing within each county affected who vote on the question. The former areas shall be held responsible for their respective existing liabilities as provided by law.

§13. Optional forms of county organization and government; home rule for counties.

1 Notwithstanding any provision of this constitution to the contrary, the Legislature shall provide by law for not less than three forms of county organizations and governments, any one of which shall become effective in any county when submitted to the voters thereof in an election held for such purpose and approved by a majority of the voters who vote on the question. At least one such form of organization and government shall provide for either a county manager or county executive type of organization and government; at least one form of such organization and government shall be the form of government in effect in the counties upon the date of enactment of this amendment and shall include all elected county offices in effect as of that date; and at least one form of such organization and government shall provide for the consolidation of the offices and functions of one or more of the elected county officers provided for in the constitution and general laws of this state as they exist when this amendment takes effect. All such forms of organizations and governments shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by this constitution or by general laws.

Any of such forms of organizations and governments
may provide that counties have the power to pass such laws and ordinances relating to their local affairs as the Legislature may authorize.

§14. Consolidation of municipalities and counties; powers and duties of governing bodies; allocation of liabilities.

The Legislature shall provide by law that two or more municipal governments or municipal and county governments may be merged into one consolidated government with one set of officers but, as to a municipal and county merger into one consolidated government, the county shall remain as a geographical area after such consolidation. Such consolidated governments may be formed in a manner prescribed by law. The Legislature may provide that such consolidated governments may have all or any part of the combined taxing powers of municipalities and counties, that such consolidated governments may establish taxing districts within their jurisdiction in which different rates of taxes may be imposed based upon the type of services provided within each district, and that the officers or governing bodies of such governments may exercise any powers vested in, or perform any duties imposed upon, counties and municipalities and their offices and officers by this constitution or by general laws.

No county government shall conduct an election on a merger pursuant to this section without first receiving consent from a majority of the members of the governing body of any municipality proposed to be included in said consolidated government.

No such consolidated government may be formed without the consent of a majority of the electorate voting upon the question and residing within the boundaries of each incorporated municipality that is proposed to be merged into a consolidated government and a majority of the electorate voting upon the question and residing within the boundaries of the proposed consolidated county and not within the boundaries of any incorporated municipality included in the proposed consolidation. If any consolidation under this section includes a
municipality which has corporate boundaries extending into one or more county or counties, the consent of a majority of the voters residing in that portion of a county or counties not included in the consolidation shall be required.

The former areas shall be held responsible for their existing liabilities as provided by law.

§15. Legislature may increase salaries of elected officials during term.

Notwithstanding the provisions of article six, section thirty-eight of this constitution, the salary of a county commissioner, clerks of county commissions, clerks of circuit courts, sheriffs, prosecuting attorneys, assessors and any other official whose office is created pursuant to this article may be increased by the Legislature during their terms of office. Each commissioner shall receive the same salary as the other commissioners of the same county.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 2" and designated as the "County Organization Reform Amendment" and the purpose of the proposed amendment is summarized as follows: "To allow alternate forms of local government and consolidation."

COMMITTEE SUBSTITUTE
FOR
HOUSE JOINT RESOLUTION 21
(By Mr. Speaker, Mr. Chambers)
[By Request of the Executive]
[Adopted March 28, 1989.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section two of article twelve thereof, relating to education and supervision of free schools; eliminating the office of state superintendent of
free schools as a constitutional office and the West Virginia board of education as a constitutional board; providing that the powers and duties of such office and board shall be exercised and performed by such department or person as shall be prescribed by law; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at a special election to be held on the ninth day of September, one thousand nine hundred eighty-nine, for the purpose of presenting to the voters of the State the question of ratification or rejection of one or more constitutional amendments, which proposed amendment is that section two of article twelve be amended to read as follows:

ARTICLE XII. EDUCATION.

§2. Supervision of free schools.

1 The supervision of the free schools of the State shall be vested in such department within the executive branch of state government as shall be prescribed by law, which department shall have such powers and perform such duties as shall be prescribed by law. Wherever elsewhere in this Constitution reference is made to the West Virginia board of education or superintendent of free schools, such reference shall henceforth be read, construed and understood to mean, respectively, such department or person specified by law as being responsible for the exercise and performance of the powers and duties previously vested in such board and superintendent. Until the effective date of such law, the supervision of the free schools shall continue to be vested in the West Virginia board of education, and the state superintendent of free schools shall continue to be the chief school officer of the state.
Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered “Amendment No. 1” and designated as the “Education Reorganization Amendment,” and the purpose of the proposed amendment is summarized as follows: “To amend the state Constitution so as to eliminate the office of the state superintendent of free schools as a constitutional office and the West Virginia board of education as a constitutional board, and to vest the responsibility for the exercise and performance of the powers and duties of the state superintendent and state board in such department of state government or person as shall be prescribed by law.”

SENATE JOINT RESOLUTION 11
(By Senators Tucker, Mr. President, and Harman)
[By Request of the Executive]
[Adopted April 6, 1989]

Proposing an amendment to the Constitution of the State of West Virginia, repealing section eight of article twelve and amending sections one, two, four and seventeen of article seven thereof, repealing an archaic provision in the Constitution; relating to the executive department of state government; eliminating the offices of secretary of state, treasurer and commissioner of agriculture as constitutional offices; providing that the powers and duties of such offices shall be exercised and performed by such departments or persons as shall be prescribed by law; limiting the number of terms of office for the auditor and attorney general; providing for vacancies in the executive department, accounting for moneys, and false reporting constituting perjury; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:
That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at a special election to be held on September ninth, one thousand nine hundred eighty-nine, for the purpose of presenting to the voters of the State the question of ratification or rejection of one or more constitutional amendments, which proposed amendment is that section eight, article twelve be repealed, and that sections one, two, four and seventeen of article seven be amended to read as follows:

ARTICLE VII. EXECUTIVE DEPARTMENT.

§1. Executive department.

The executive department shall consist of a governor, auditor and attorney general, who shall be, ex officio, reporter of the court of appeals. Their terms of office shall be four years and shall commence on the first Monday after the second Wednesday of January next after their election. They shall reside at the seat of government during their terms of office, keep there the public records, books and papers pertaining to their respective offices and shall perform such duties as may be prescribed by law.

The persons holding the offices of secretary of state, treasurer and commissioner of agriculture on the date of ratification of the amendment of this section shall continue in office and complete their terms of office, unless vacated by death, resignation or otherwise. Thereafter, the powers and duties previously vested in the secretary of state, treasurer and commissioner of agriculture shall be exercised and performed by such departments or persons in the respective departments of state government as shall be prescribed by law. Wherever elsewhere in this Constitution reference is made to the secretary of state, treasurer or commissioner of agriculture, such reference shall henceforth be read, construed and understood to mean such department or person.

§2. Election.

An election for governor, auditor and attorney general
§4. Eligibility.

None of the executive officers mentioned in this article shall hold any other office during the term of service.

A person who has been elected or who has served as auditor or attorney general during all or any part of two consecutive terms shall be ineligible for the same office during any part of the term immediately following the second of the two consecutive terms. The person holding the office of auditor or attorney general when this section is ratified shall not be prevented from holding the office during the term immediately following the term being served at the time of ratification.

A person who has been elected or who has served as governor during all or any part of two consecutive terms shall be ineligible for the office of governor during any part of the term immediately following the second of the two consecutive terms.

§17. Vacancies in other executive departments.

If the office of auditor or attorney general shall become vacant by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold the office until a successor shall be elected and qualified in such manner as may be prescribed by law. The subordinate officers of the executive department and the officers of all public institutions of the state shall keep an account of all moneys received or disbursed by them, respectively, from all sources and for every service performed, and make a semiannual report thereof to the governor under oath or affirmation; and any officer who shall willfully make a false report shall be deemed guilty of perjury.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, such proposed amendment is hereby num-
bered "Amendment No. 3" and designated as the "Better
Government Amendment," and the purpose of the
proposed amendment is summarized as follows: "To
amend the state Constitution so as to eliminate the
offices of secretary of state, treasurer and commissioner
of agriculture as constitutional offices; to vest the
responsibility for the exercise and performance of the
powers and duties of such offices in such departments
of state government and persons as shall be prescribed
by law; to limit the number of terms of office for the
auditor and attorney general; and to repeal an archaic
provision in the Constitution.

HOUSE RESOLUTION 12
(By Mr. Speaker, Mr. Chambers, and Delegate R. Burk)
[Adopted February 24, 1989]

Relating to empowering the House Committee on the Judiciary
to investigate allegations of impeachable offenses
against the State Treasurer.

WHEREAS, On the twenty-first day of February, one thousand
nine hundred eighty-nine, House Resolution 9 was presented
to the House of Delegates, alleging the loss of an estimated
Two Hundred Seventy-nine Million Dollars from the "Consol-
idated Investment Fund"; and

WHEREAS, The said resolution alleges that "[t]he losses
incurred by said fund appear to and may be the result of
incompetence, neglect of duty or maladministration by the
State Treasurer"; and

WHEREAS, On the day aforesaid the said resolution as
presented to the House of Delegates was referred to the House
Committee on the Judiciary; and

WHEREAS, The said resolution raises issues which may relate
to acts or omissions in the administration and conduct of the
office of the Treasurer of the State of West Virginia, by the
Treasurer, A. James Manchin, and calls for a determination
by the House of Delegates as to whether said acts or omissions
by the Treasurer may constitute offenses for which the
Treasurer should be impeached pursuant to section nine,
article IV of the Constitution of the State of West Virginia; and

WHEREAS, The matters raised by the said resolution are a proper subject of investigation by the House of Delegates; therefore, be it

Resolved by the House of Delegates:

That the House Committee on the Judiciary be, and it is by this resolution, empowered (1) To investigate, or cause to be investigated, any allegations or charges raised in the aforesaid resolution which may relate to maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor by the Treasurer of the State of West Virginia; (2) to hold a hearing or hearings thereon; (3) to make findings of fact based upon such investigations and hearings; (4) to report to the House of Delegates its findings of facts and any recommendations which the Committee on the Judiciary may deem proper; and (5) if the recommendation of the committee be to impeach the Treasurer, to present to the House of Delegates a proposed resolution of impeachment and proposed articles of impeachment; and, be it

Further Resolved, That in carrying out its duties pursuant to this resolution, the House Committee on the Judiciary is authorized:

(1) To examine witnesses, to send for persons and papers, documents and other physical evidence, to order the attendance of any witness, or the production of any paper, document and other physical evidence, and to exercise all other powers described under the provisions of section five, article one, chapter four of the Code of West Virginia;

(2) To issue summonses, subpoenas and subpoenas duces tecum and to enforce obedience to its summonses and subpoenas in accordance with the provisions of section five, article one, chapter four of the Code of West Virginia or by invoking the aid of the courts of this state;

(3) To administer oaths or affirmations in accordance with the provisions of section six, article one, chapter four of the Code of West Virginia; and

(5) To determine whether all or any portion of a meeting or
hearing should be held in an executive session, notwithstanding the provisions of Rule eighty-three of the Rules of the House of Delegates; and, be it

Further Resolved, That in carrying out his duties pursuant to this resolution, the Chairman of the Committee on the Judiciary is authorized:

(1) To establish or define rules of procedure for the conduct of meetings or hearings held pursuant to this resolution;

(2) To employ, with the prior approval of the Speaker of the House, a court reporter or stenographer and such other professional or clerical employees as may be reasonably required;

(3) To designate a subcommittee or subcommittees of the Committee on the Judiciary to assist the Chairman or the Committee in performing his or its duties pursuant to this resolution; and

(4) To determine the time and place of all meetings or hearings of the Committee and its designated subcommittees; and, be it

Further Resolved, That the Committee on the Judiciary, during its inquiry, may entertain such procedural and dispositive motions as may be made in the case of any other bill or resolution referred to that Committee, or, in making its recommendations, if any, pursuant to this resolution, may include any one or more of the following:

(1) A recommendation that the House of Delegates and its Committee on the Judiciary delay any further consideration of the charges raised in the aforesaid resolution until a time certain;

(2) A recommendation that the Treasurer of the State of West Virginia, A. James Manchin, not be impeached;

(3) A recommendation (A) That the Treasurer of the State of West Virginia, A. James Manchin, be impeached for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor, and that the said A. James Manchin be removed from office and be thereafter disqualified from holding any office of honor, trust or profit, under this State; and (B) that the House of
Delegates adopt a resolution of impeachment and formal articles of impeachment as prepared by the Committee on the Judiciary and deliver the same to the Senate in accordance with the procedures of the House of Delegates, for consideration by the Senate according to law; and

(4) A recommendation of proposed legislation to correct any perceived statutory deficiencies found by the Committee.

HOUSE RESOLUTION 19
(Originating in the House Committee on the Judiciary)
[Adopted March 29, 1989]

Relating to the impeachment of A. James Manchin, Treasurer of the State of West Virginia, for maladministration, incompetency, neglect of duty, and high crimes and misdemeanors in his office as Treasurer of the State of West Virginia.

Resolved, That A. James Manchin, Treasurer of the State of West Virginia, be impeached for maladministration, incompetency, neglect of duty, and high crimes and misdemeanors in his office as Treasurer of the State of West Virginia, and that said articles of impeachment, being seventeen in number, be and they are hereby adopted by the House of Delegates, and that the same shall be exhibited to the Senate in the following words and figures, to-wit:

ARTICLES exhibited by the House of Delegates of West Virginia in the name of themselves and all of the people of the State of West Virginia against A. James Manchin, who was at the general election held in November, 1984, duly elected to the office of Treasurer of the State of West Virginia, and on the 14th day of January, 1985, after having duly qualified as such Treasurer of the State of West Virginia by taking the required oath to support the Constitution of the United States and the Constitution of the State of West Virginia and to faithfully discharge the duties thereof to the best of his skill and judgment, entered upon the discharge of the duties thereof, and continued therein for a full term of four years; and, who was, at the general election held in November, 1988, again duly elected to said office of Treasurer of the State of West Virginia, and on January 16, 1989, after having again
duly qualified as such, by again taking the required oath to support the Constitution of the United States and the Constitution of this State and to faithfully discharge the duties of the office to the best of his skill and judgment, again entered upon the discharge of the duties thereof for a second term of four years, ending January 13, 1993, in maintenance and support of their impeachment against him, the said A. James Manchin, Treasurer of the State of West Virginia, for maladministration, incompetency, neglect of duty, and high crimes and misdemeanors.

Article I

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there, with regard to the discharge of the duties of his office, delegated major elements of supervision to his subordinates, and thereafter failed to exercise reasonable and proper supervisory oversight of said subordinates in regard to the proper discharge of their duties.

Article II

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, failed to use due diligence in protecting securities under his control from loss from any cause.

Article III

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high
office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following:

A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, made investments of funds of the Consolidated Fund (commonly called the Consolidated Investment Fund) with maturity dates beyond ten years, without the approval of a majority of the members of the West Virginia State Board of Investments, in violation of investment policy guidelines adopted by said Board on February 19, 1985.

Article IV

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following:

A. James Manchin and his employees under his direct control and supervision, on and after January 14, 1985, continued to maintain, within the Consolidated Fund (commonly called the Consolidated Investment Fund), a reserve for losses (commonly called a reserve account or "rainy day fund") without approval of the West Virginia State Board of Investments, in violation of legislative rules promulgated by the Board pursuant to statutory law.

Article V

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following:

A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees
under his direct control and supervision, entered into reverse repurchase agreements, through the Consolidated Fund (commonly called the Consolidated Investment Fund), in amounts exceeding the West Virginia State Board of Investments’ investment policy guidelines adopted by the Board on February 19, 1985, to-wit: The movement of the total dollar value of reverse repurchase agreements during April, 1987, was as follows:

<table>
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<th>Date</th>
<th>Amount</th>
<th>Percentage of Total Fund</th>
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<tr>
<td>April 27, 1987</td>
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</table>

**Article VI**

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, entered into futures or options contracts, through the Consolidated Fund (commonly called the Consolidated Investment Fund), in violation of the West Virginia State Board of Investments’ investment policy guidelines adopted by the said Board on December 29, 1986, such options being speculative in nature, to-wit:

The Investments Division of the State Treasurer’s office, using funds of the said Consolidated Fund, wrote two options in March, 1987. As the writer of the options, the said Investments Division received premiums paid by the buyers of the options.
The said Investments Division wrote a call option on March 4, 1987, on $15,000,000.00 of Federal National Mortgage Association (FNMA) notes due on March 10, 1992, and received a premium of $37,500.00. The said Investments Division purchased $67,000,000.00 of FNMA notes on March 10, 1987, maturing on March 10, 1992 ($15,000,000.00 of which was to cover the call option in the event it was exercised by the buyer). The call option expired on May 4, 1987, without being exercised, meaning the buyer did not buy the FNMA notes. Thereafter, the said Investments Division sold the $67,000,000.00 of FNMA notes on June 4, 1987, and incurred a loss in the said Consolidated Fund of $4,284,375.00 of which $956,250.00 of the loss resulted from the sale of the FNMA notes purchased to cover the call option. The net loss in the said Consolidated Fund was reduced by the premium received, $37,500.00, to $918,750.00 on these transactions.

The said Investments Division wrote a put option on March 12, 1987, for $200,000,000.00 of United States Treasury Notes due on November 15, 1996, and received a premium of $1,671,875.00. However, the put option was exercised by the buyer of the put on May 12, 1987, meaning the buyer of the put forced the said Investments Division to take possession of the $200,000,000.00 of United States Treasury Notes. In turn, the said Investments Division sold the investments on the same day and incurred a loss in the said Consolidated Fund of $15,421,875.00. The net loss in the said Consolidated Fund was reduced by the premium received, $1,671,875.00, to $13,750,000.00 on this transaction.

Article VII

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, failed to distribute earnings or allocate losses to the several participants in the
Consolidated Fund (commonly called the Consolidated Investment Fund) in an equitable manner, to-wit:

(1) Prior to May, 1987, the Treasurer's office made apportionments of purported earnings to the several participants in the said Consolidated Fund which were less than the actual amounts which were earned by the said Consolidated Fund.

(2) Beginning in May, 1987, the Treasurer's office made apportionments of purported earnings to the several participants in the said Consolidated Fund which were greater than the actual amounts which were earned by the said Consolidated Fund.

(3) Beginning in May, 1987, and for periods thereafter during which the said Consolidated Fund experienced actual losses in earnings income, or negative income, the Treasurer's office did not allocate losses among the several participants in the said Consolidated Fund, but instead made apportionments of purported earnings to the several participants in the said Consolidated Fund.

Article VIII

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, paid costs and expenses from the Investment Service Fees Account which were not incurred in the performance of the functions of the West Virginia State Board of Investments and were therefore not proper charges against, and were not payable on a pro rata basis from, the earnings of the various funds managed by the said Board, to-wit:

(1) The Treasurer's office did pay wages and salaries of some employees of the Treasurer's office from the Investment Service Fees Account, which such wages and salaries were not for personal services rendered by or on behalf of the West Virginia State Board of Investments.
The Treasurer's office did pay expenses of the Treasurer's office and the Treasurer, A. James Manchin, from the Investment Service Fees Account, which such expenses were not incurred by or on behalf of the West Virginia State Board of Investments.

Article IX

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or employees under his direct control and supervision, or both A. James Manchin and his employees under his direct control and supervision, made charges against purported earnings of the various funds managed by the West Virginia State Board of Investments and deposited the same into the Investment Service Fees Account when, in fact, such earnings did not exist or were overstated.

Article X

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: Notwithstanding that A. James Manchin, as Treasurer of the State of West Virginia, is, by statute, the Executive Secretary of the West Virginia State Board of Investments and the custodian of all funds, securities and assets held by the Board, and notwithstanding that the office of the Treasurer is, by statute, the staff agency for said Board, A. James Manchin and staff of the State Treasurer's office failed, with respect to investments made with funds of the Consolidated Fund (commonly called the Consolidated Investment Fund), to exercise that degree of judgment and care, under circumstances then prevailing, which men of experience, prudence, discretion and intelligence exercise in the management of their own affairs, not for
speculation but for investment considering the probable safety of their capital as well as the probable income to be derived.

**Article XI**

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin and his employees under his direct control and supervision violated, with respect to investments made with funds of the Consolidated Fund (commonly called the Consolidated Investment Fund), generally and specifically, general investment policies of the West Virginia State Board of Investments as to (1) purpose, (2) standard of care, (3) diversification, (4) permissible investments and (5) social responsibility.

**Article XII**

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: That the said A. James Manchin and his employees under his direct control and supervision generally and specifically violated, with respect to investments made with funds of the Consolidated Fund (commonly called the Consolidated Investment Fund), the general investment policies of the West Virginia State Board of Investments as to (1) preservation of capital, (2) stability, (3) liquidity and (4) turnover.

**Article XIII**

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in
the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: Notwithstanding that A. James Manchin, as State Treasurer, as a member of, and Executive Secretary of, the West Virginia State Board of Investments, and as chief executive officer of the staff agency for said Board, had a fiduciary duty to recognize investment losses as they occurred within the Consolidated Fund (commonly called the Consolidated Investment Fund) and to timely report such losses to said Board, A. James Manchin breached said duty by failing to recognize and report such losses after being informed by trusted employees of the Treasurer's office, Mary Jane Lopez and Jack Fuller, in November, 1987, that investment losses had occurred.

Article XIV

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there appointed an individual to manage a multi-billion dollar portfolio of investments, as well as other duties, without care or attention to such person's qualifications, to-wit: A. James Manchin appointed and retained a person to direct the management and investment of funds of the Consolidated Fund (commonly called the Consolidated Investment Fund), knowing that the said person had no formal education or training to qualify said person to direct the investment or trading in investments of funds within the said Consolidated Fund, and knowing that the said person had participated as an investments officer in the trading of investments which had resulted in losses within the said Consolidated Fund during the months of April, May and June, 1987.

Article XV

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in
the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: A. James Manchin or his senior staff, or both A. James Manchin and his senior staff, conspired to cover up losses which occurred in April, May and June, 1987, in the Consolidated Fund (commonly called the Consolidated Investment Fund) and to withhold information as to such losses from the various participants in the said Consolidated Fund and from the people of West Virginia.

Article XVI

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there did the following: Notwithstanding that A. James Manchin had the benefit of numerous warnings concerning bond market conditions during the second quarter of 1987 and the trading position of the Investments Division of the Treasurer's office with regard to the various portfolios of the Consolidated Fund (commonly called the Consolidated Investment Fund) under his control, and notwithstanding that A. James Manchin received direct reports of investment losses in the said Consolidated Fund, A. James Manchin failed, omitted or neglected to recognize and react to these warning signals and reports, to-wit: A. James Manchin failed, omitted or neglected to recognize and react to the following:

(1) Action taken by the Board of Directors of the West Virginia Housing Development Fund during April, May and June, 1987, to withdraw all of its funds from the said Consolidated Fund, because said bond market conditions and the type of investments held by the said Consolidated Fund had caused the investment portfolio of the West Virginia Housing Development Fund to be “under water” or worth less than par value.

(2) A letter from John L. O'Grady of Salomon Brothers dated April 3, 1987, directed to Arnold T. Margolin, Assistant Treasurer, with copies thereof directed to the members of the
West Virginia State Board of Investments, of which A. James Manchin was and is a member, wherein Salomon Brothers questioned the position of the said Consolidated Fund in the then-existing bond market and described the potential risks to which the said Consolidated Fund was exposed.

(3) A letter from Governor Arch A. Moore, Jr., a member of and Chairman of the West Virginia State Board of Investments, dated April 15, 1987, directed to A. James Manchin, who was and is State Treasurer and Executive Secretary of the West Virginia State Board of Investments, expressing great concern with the contents of the Salomon Brothers letter, a copy of which the Governor had received from said O'Grady, expressing concern with the volatility of interest rates existing at that time and the potential effect on the portfolio of the said Consolidated Fund, and expressing particular concern with Arnold T. Margolin's interpretation of investment guidelines of the West Virginia State Board of Investments.

(4) Meetings and conversations which took place in November, 1987, with Mary Jane Lopez and Jack Fuller, two valued and trusted employees of the Treasurer, wherein A. James Manchin was informed by the said Lopez and Fuller of losses on investments of funds of the said Consolidated Fund made by the said Investments Division.

Article XVII

That the said A. James Manchin, being Treasurer of the State of West Virginia, unmindful of the duties of his high office, and contrary to the oath taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Treasurer, while in the exercise of the functions of the office of Treasurer, in violation of his oath of office, then and there overdelegated the duties and responsibilities of the office of State Treasurer, to the detriment of the people of West Virginia, to-wit: Throughout his tenure as State Treasurer, A. James Manchin has:

(1) Delegated the substantive duties and responsibilities of the Investments Division of the Treasurer's office, first, to Arnold T. Margolin and, subsequently, to Mary Hudson, without requiring such persons to be accountable for their
activities or for their direction of the said Investments
Division.

(2) Attended primarily to self-created ceremonial functions,
not required by law to be performed, and not directly related
to the discharge of the duties of the office of Treasurer of the
State of West Virginia.

(3) Failed to obtain even a conversational understanding of
the functions of the said Investments Division.

(4) Failed to impose adequate controls upon employees of the
Treasurer's office to ensure the proper conduct of their
assigned or delegated duties and responsibilities.

(5) Failed to require that proper internal audits be per­
formed to supervise investment trading and other financial
transactions carried out within the office of the Treasurer.

(6) Failed to establish effective lines of communication
within the Treasurer's office necessary to keep himself
informed of the manner in which delegated duties and
responsibilities were being carried out, and, further, failed to
properly pursue issues or questions raised by communications
which did come to his attention.

(7) Allowed inadequate record keeping and improper
reporting procedures, as to the performance of the Consoli­
dated Fund (commonly called the Consolidated Investment
Fund), to be established and continued.

(8) Brought an absence of care and attention to the duties
and responsibilities of his office, and failed to have a concern
for the discharge of his duties that would reasonably be
expected of a person holding the office of State Treasurer or
a similar executive office.

Wherefore, the said A. James Manchin, Treasurer of the
State of West Virginia, failed to discharge the duties of his
office, and was and is guilty of maladministration, incompet­
ency, neglect of duty, and high crimes and misdemeanors.

And the House of Delegates of West Virginia, saving to
themselves the liberty and rights of exhibiting at any time
hereafter any further articles against the said A. James
Manchin, Treasurer of the State of West Virginia, as
aforesaid, and also of replying to his answers which he may
make unto the articles herein preferred against him, and of offering proof to any and all of the articles herein contained, and every part thereof, and to all and every other article, accusation or impeachment, which shall be exhibited by the said House of Delegates as the case may require, do demand that the said A. James Manchin, Treasurer as aforesaid, may be put to answer the maladministration, incompetency, neglect of duty, and high crimes and misdemeanors, herein charged against him, and that such proceedings, examinations, trials and judgments, may be thereupon had, given and taken, as may be agreeable to the Constitution and laws of the State of West Virginia, and as justice may require.

We, Robert C. Chambers, Speaker of the House of Delegates of West Virginia, and Donald L. Kopp, Clerk thereof, do certify that the above and foregoing Articles of Impeachment preferred by said House of Delegates against A. James Manchin, Treasurer of the State of West Virginia, were adopted by the House of Delegates on the 29th day of March, 1989.

In Testimony Whereof, we have signed our names hereunto this the 29th day of March, 1989.

ROBERT C. CHAMBERS
Speaker of the House of Delegates

DONALD L. KOPP
Clerk of the House of Delegates

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HOUSE RESOLUTION 20
(Originating in the House Committee on the Judiciary)

[Adopted March 29, 1989]

Recommending the public reprimand and censure of Glen B. Gainer, Jr., Auditor of the State of West Virginia.

WHEREAS, On the twenty-first day of February, one thousand nine hundred eighty-nine, House Resolution 9 was presented to the House of Delegates, alleging the loss of an estimated two hundred seventy-nine million dollars from the "Consolidated Investment Fund"; and
WHEREAS, The said resolution alleges that “[t]he losses incurred by said Fund appear to and may be the result of incompetence, neglect of duty or maladministration by the State Treasurer”; and

WHEREAS, On the day aforesaid the said resolution as presented to the House of Delegates was referred to the Committee on the Judiciary; and

WHEREAS, On the twenty-fourth day of February, one thousand nine hundred eighty-nine, House Resolution 12 was adopted by the House of Delegates empowering the Committee on the Judiciary to, among other things, “report to the House of Delegates its findings of facts and any recommendations which the Committee on the Judiciary may deem proper” respecting the matters raised in the said House Resolution 9; and

WHEREAS, During the course of its proceedings pursuant to said House Resolution 12, the Committee on the Judiciary heard testimony and reviewed documentary evidence concerning the official conduct of members of the West Virginia State Board of Investments, including the official conduct of the Auditor, Glen B. Gainer, Jr., who is a member of said Board, the said Auditor having served in such capacity since January fourteenth, one thousand nine hundred eighty-five, and continues to so serve; and

WHEREAS, The Committee on the Judiciary has concluded its proceedings with respect to the said House Resolution 12 and, in addition to other recommendations otherwise dealt with, submits the findings and recommendation set forth herein; and

WHEREAS, As a result of the aforementioned proceedings, the Committee has determined that the said Auditor, Glen B. Gainer, Jr., has: (1) Overdelegated certain of his substantive duties and responsibilities of the office of the Auditor to some members of his staff without establishing effective methods of communication and without requiring such persons to be accountable to and report important activities and information to him; (2) neglected to keep himself adequately informed, as a member of the West Virginia State Board of Investments,
as to the status of the funds within the Consolidated Fund (commonly called the Consolidated Investment Fund); and (3) otherwise failed to effectively participate, in an active manner, as a member of the West Virginia State Board of Investments; and

WHEREAS, The Committee on the Judiciary is of the opinion that the said Glen B. Gainer, Jr., Auditor of the State of West Virginia, should be publicly reprimanded and censured for and because of his aforementioned conduct; therefore, be it

Resolved by the House of Delegates:

That Glen B. Gainer, Jr., Auditor of the State of West Virginia, be and he is hereby publicly reprimanded and censured for and because of this aforementioned conduct; and, be it

Further Resolved, That the Clerk of the House of Delegates be and he is hereby directed to forward a copy of this resolution to the said Glen B. Gainer, Jr., Auditor of the State of West Virginia.

HOUSE RESOLUTION 21
(By Mr. Speaker, Mr. Chambers, and Delegate Hatcher)

[Adopted April 7, 1989]

Providing for the appointment of a committee of five on the part of the House of Delegates to go before the Senate to impeach A. James Manchin, Treasurer of the State of West Virginia, for maladministration, incompetence, neglect of duty, and high crimes and misdemeanors, and, as managers on the part of the House of Delegates, to deliver to the Senate articles of impeachment, and to conduct the impeachment against A. James Manchin.

Resolved, That a committee of five members of the House of Delegates be appointed by the Speaker, and that such committee be and it is hereby directed to go before the Senate, and deliver to the Clerk of the Senate a message whereby the said committee, in the name of the House of Delegates and the people of the State of West Virginia, impeaches A. James Manchin, Treasurer of the State of West Virginia, for
maladministration, incompetence, neglect of duty, and high crimes and misdemeanors in his office, and acquaint the Senate that the House of Delegates will exhibit particular articles of impeachment against him, the said A. James Manchin, Treasurer of the State of West Virginia, as aforesaid, and make good the same, and that said committee demand that the Senate cause to be served upon the said A. James Manchin a true copy of the articles of impeachment and take order for the appearance of the said A. James Manchin to answer to said impeachment; and, be it

Further Resolved, That said committee of five members of the House of Delegates be and it is hereby directed to act as managers on the part of the House of Delegates to carry and deliver to the Clerk of the Senate the said articles of impeachment; and, be it

Further Resolved, That said committee of five, as managers, be and it is hereby directed to conduct the impeachment against the said A. James Manchin, Treasurer of this State, before the Senate, in accordance with procedural rules adopted by the Senate, with all necessary assistance as may be required and provided by employees of the House or Senate and by such professional, clerical and stenographic assistants as may be engaged by the House or Senate for such purposes.

SENATE RESOLUTION 26
(Originating in the Senate Committee on Rules)
[Adopted April 3, 1989]

Amending Rules of the Senate, relating to "Bill Reading Docket."

Resolved by the Senate:

That the Standing Rules of the Senate be amended by adding thereto a new rule, designated Senate Rule No. 21a, to read as follows:

21a. Upon motion of any member, on any legislative day or the day preceding, the Senate may, by a vote of two thirds of those present, establish a period of time known as "Bill Reading Docket".
Such motion shall state each bill to be read, the time and order for such Bill Reading Docket to commence and to conclude, and may provide for the adjournment or recess of the Senate for not more than one legislative day, during which reading of the docket no motion, except a motion to postpone the reading of the bills, by two-thirds vote of those elected, shall be heard. A quorum shall not be required during the Reading of the Docket. Any and all members requesting that a bill be read shall be present at all times in the Chamber during its reading.

All bills read on the Bill Reading Docket shall be considered as having been read fully and distinctly.

SENATE RESOLUTION 35
(By Senator Brackenrich)
[Adopted April 6, 1989]

Directing the West Virginia Department of Natural Resources to make an in-depth study of mandatory hunter safety programs in West Virginia and other states.

WHEREAS, Hunting is a popular sport enjoyed by thousands in West Virginia, and over the past five years we have averaged sixty-five hunter-related accidents and seven fatalities per year; and

WHEREAS, Thirty-nine states, four of which border West Virginia, and six Canadian provinces currently have mandatory hunter education programs; and

WHEREAS, It is in the public interest to address the issue of hunter safety and to develop programs to minimize the danger while enhancing the enjoyment of hunting; therefore, be it

Resolved by the Senate:

That the West Virginia Department of Natural Resources make an in-depth study of the mandatory hunter safety programs in West Virginia and other states, said report to include the following: Statistics on the effect of mandatory hunter safety programs on hunting accidents; how long other states have required completion of a hunter safety program as a requisite to obtaining a hunting license; and a list of states which have reciprocal agreements with West Virginia
RESOLUTIONS

regarding hunting licensing and hunter education programs; and, be it

Further Resolved, That a report on the findings of said study be made to the West Virginia Legislature no later than January 15, 1991; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Director, Department of Natural Resources, Charleston, West Virginia.

SENATE RESOLUTION 37
(By Senators Tucker, Mr. President, Holliday, Boettner, M. Manchin, Holmes, Pritt, and Brackenrich.)

[Adopted April 7, 1989]

Encouraging the speedy development of the Elk River and its proximity into a national recreational area by the federal and state governments and the citizens of West Virginia.

WHEREAS, By far the greatest recreational opportunity in West Virginia is the development of the Elk River and its tributaries as a first-class national recreational area under the Department of the Interior; and

WHEREAS, The counties most affected are Clay, Pocahontas, Nicholas, Randolph, Webster, Braxton and Kanawha; and

WHEREAS, The Elk River, which is the longest river within the bounds of the state of West Virginia with crystal clear water, has excellent fishing, scenic splendor, in close proximity to modern highways; and

WHEREAS, The development would require additional and improved access highways; and

WHEREAS, By necessity a main headquarters and modern lodge would have to be built; and

WHEREAS, Hunting, boating, hiking, picnicking, camping and other recreation such as golfing, tennis, canoeing, aerial trams, horse riding trails, public swimming areas, and scenic railroads would find an ideal location; and

WHEREAS, New and permanent employment with such a
national recreation area and through necessary supporting businesses, motels, restaurants, gasoline stations, sporting goods stores and general retail stores would increase at a rapid rate and remain at a high and stable level; and

WHEREAS, Such development would be an important step in solving the economic problems of central West Virginia and the economic impact would, in fact, be statewide in significance; and

WHEREAS, We see scenic overlooks, preserving swinging bridges, historical plays centered about Confederate and Union battles and legends of Indians who lived in the nearby mountains continuing; and

WHEREAS, We are urging immediate steps be taken to begin work on the project; and

WHEREAS, We must be ready for the increased number of people who will be seeking recreation; the increase in per capita income; the increase in per capita leisure time; and the increase in per capita travel; and

WHEREAS, West Virginia contains a charm and alluring atmosphere that is yet to be discovered by millions of people throughout the nation and our state's hospitality is genuine to homefolks and visitors from afar; therefore, be it

Resolved by the Senate:

That the Senate go on record strongly urging and encouraging the development of the Elk River and its proximity into a national recreational area as soon as possible; and, be it

Further Resolved, That a copy of this resolution be transmitted to the following persons: President George Bush; the National Park Services of the United States; the Interior Department; United States Senators Robert C. Bryd and John D. Rockefeller IV, United States Congressmen Robert Wise, Alan Mollohan, Harley O. Staggers, Jr. and Nick Jo Rahall; and Governor Gaston Caperton, and further released to any organizations and individuals the Senate may deem appropriate.
AN ACT to amend and reenact section six, article one-a, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article one-a by adding thereto a new section, designated section seven; and to amend and reenact chapter six-b of said code, all relating generally to ethical standards of governmental officials and employees and disclosure of financial interests of such persons; requiring financial disclosure by candidates for public office; the duties and authority of the secretary of state with respect thereto; providing a short title with respect to said chapter six-b; definition of certain terms with respect thereto; providing for certain legislative findings and purposes; clarifying that the remedies provided in said chapter six-b are in addition to other applicable remedies in said code; providing for the severability of the provisions of said chapter; creating within state government a West Virginia ethics commission and providing for its membership; providing for the appointment of such members and their respective
terms of office; requiring that such persons take an oath of office; providing for their compensation and reimbursement of expenses; establishing certain rules with respect to the meetings of the commission; providing rules with respect to voting procedures of the commission and a quorum thereof; describing the powers, duties and authority of the commission and providing for its facilities and staff; requiring the commission to promulgate legislative rules and regulations to carry out the purposes of said chapter six-b and the time within which such rules and regulations are to be promulgated; authorizing the commission to issue advisory opinions and the effect thereof with respect to persons acting pursuant thereto; the powers of the commission with respect to the hearing of complaints brought against public officials and employees; authorizing the commission to employ hearing examiners, issuing subpoenas and subpoenas duces tecum; the authority of the commission to impose certain administrative sanctions for violations of said chapter; conciliation agreements; providing for procedures with respect to the filing of complaints against persons subject to said chapter and the conducting of hearings with respect thereto; providing for confidentiality requirements as to commission members and staff; providing for confidentiality of certain proceedings of the commission; penalties; requiring a record of hearings conducted by the commission; penalties; permitting commission members to recuse themselves in certain instances; authority to recommend prosecution; authority to commence civil proceedings; judicial review; civil actions against complainants; effective dates; statute of limitations; providing ethical standards for elected and appointed officials, as well as certain public employees; prohibiting the use of public office for private gain; exceptions; limitation on gifts; exceptions; limiting the right of certain elected and appointed officials or employees to contract with certain governmental agencies and providing for certain exceptions with respect thereto; prohibiting the disclosure of confidential information; limiting the rights of certain public officials and employees to represent certain
persons before any agency by whom such officials and employees are or were employed; exemption; prohibiting certain public officials and employees from seeking employment with persons whom they regulate; exemptions; clarifying when members of the Legislature are required to vote upon disclosure of an interest in a matter before the Legislature; limiting the rights of certain public officials and employees in licensing or rate-making proceedings in certain cases; requiring the filing of financial disclosure statements by certain public officials, public employees and candidates, the contents thereof and the time when such statements are to be filed; providing for the appointment of special prosecutors in certain cases; providing for penalties for violations of said chapter; providing for termination of commission; providing for registration and reporting requirements for lobbyists; defining certain terms relating to lobbyists and lobbying activities; prescribing the information required of lobbyists upon registration; providing for an information booklet identifying registered lobbyists; establishing reporting requirements for lobbyists; providing for registration and reporting by grass roots lobbying campaigns; making it a violation of law to pay a person to lobby who is not registered; describing the duties of lobbyists and defining certain acts which are violations; limiting lobbying within the legislative chambers; defining certain crimes and establishing the penalties therefor; and authorizing municipalities to enact ordinances regulating lobbyists.

Be it enacted by the Legislature of West Virginia:

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

Chapter
3. Elections.
6B. Public Officers and Employees; Ethics; Conflicts of Interest; Financial Disclosure.
CHAPTER 3. ELECTIONS.

ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.

§3-1A-6. Election rules; powers and duties of secretary of state; exercise of powers by appointees.

§3-1A-7. Candidate's financial disclosure statement.

§3-1A-6. Election rules; powers and duties of secretary of state; exercise of powers by appointees.

The secretary of state shall be the chief election official of the state. He shall have authority, after consultation with the state election commission, of which he is a member, to make, amend and rescind such rules, regulations and orders as may be necessary to carry out the policy of the Legislature, as contained in this chapter. In order to avoid conflicting provisions between regulations promulgated by the secretary of state and the state commission on ethics, the rules and regulations promulgated under this section shall be legislative rules and shall be promulgated pursuant to the provisions of chapter twenty-nine-a of the code of West Virginia. All regulations adopted prior to the first day of January, one thousand nine hundred eighty-nine, shall be submitted on or before the first day of August, one thousand nine hundred eighty-nine, to the Legislature for review by the legislative rule-making review committee and approval by the Legislature.

It shall be the duty of all election officials, county commissions, clerks of county commissions, clerks of circuit courts, boards of ballot commissioners, election commissioners and poll clerks to abide by such rules, regulations and orders, which shall include:

(a) Uniform rules of procedure for registrars and other registration officials in the performance of their duties, as to time and manner of performance;

(b) Uniform rules for the purging of registration records;

(c) Uniform rules for challenging registrants; and

(d) Any other rules, regulations or directions neces-
sary to standardize and make effective the administra-

tion of the provisions of this chapter.

The secretary of state also shall have authority to
require collection and report of statistical information
and to require other reports by county commissions,
clerks of county commissions and clerks of circuit
courts.

It shall be his further duty to advise with election
officials; to furnish to the election officials a sufficient
number of indexed copies of the current election laws
of West Virginia and the administrative orders and
rules and regulations issued or promulgated thereunder;
to investigate the administration of election laws, frauds
and irregularities in any registration or election; to
report violations of election laws to the appropriate
prosecuting officials; and to prepare an annual report.

The secretary of state shall also have the power to
administer oaths and affirmations, issue subpoenas for
the attendance of witnesses, issue subpoena duces tecum
to compel the production of books, papers, records,
registration records and other evidence, and fix the time
and place for hearing any matters relating to the
administration and enforcement of this chapter, or the
rules, regulations and directions promulgated or issued
hereunder by the secretary of state as the chief election
official of the state. In case of disobedience to a subpoena
or subpoena duces tecum, he may invoke the aid of any
circuit court in requiring the attendance, evidence and
testimony of witnesses and the production of papers,
books, records, registration records and other evidence.

All powers and duties vested in the secretary of state
under this article may be exercised by appointees of the
secretary of state at his discretion, but the secretary of
state shall be responsible for their acts.

§3-1A-7. Candidate's financial disclosure statement.

Candidates for election to any state, county or
municipal office, county school board, district school
board, or to the position of county or district school
board superintendent, shall file a financial disclosure
statement with the ethics commission as may be
required under subsection (a), section six, article two,
chapter six-b of this code.

CHAPTER 6B.
PUBLIC OFFICERS AND EMPLOYEES;
ETHICS; CONFLICTS OF INTEREST;
FINANCIAL DISCLOSURE.

Article
1. Short Title; Legislative Findings, Purposes and Intent; Construction and Application of Chapter; Severability.
2. West Virginia Ethics Commission; Powers and Duties; Disclosure of Financial Interest by Public Officials and Employees; Appearances Before Public Agencies.
3. Lobbyists.

ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.

§6B-1-1. Short title.

§6B-1-2. Legislative findings, purpose, declaration and intent.

§6B-1-3. Definitions.

§6B-1-4. Remedies and penalties in addition to other applicable remedies and penalties.

§6B-1-5. Severability.

§6B-1-1. Short title.

1 This chapter shall be known as the “West Virginia Governmental Ethics Act.”

§6B-1-2. Legislative findings, purpose, declaration and intent.

1 (a) The Legislature hereby finds that the holding of a public office or public employment is a public trust.
2 Independence and impartiality of public officials and public employees are essential for the maintenance of the confidence of our citizens in the operation of a democratic government. The decisions and actions of public officials and public employees must be made free from undue influence, favoritism or threat, at every level of government. Public officials and public employees who exercise the powers of their office or employment for personal gain beyond the lawful emoluments of their position or who seek to benefit narrow economic or political interests at the expense of
the public at large undermine public confidence in the integrity of a democratic government.

(b) It is the purpose of this chapter to maintain confidence in the integrity and impartiality of the governmental process in the state of West Virginia and its political subdivisions and to aid public officials and public employees in the exercise of their official duties and employment; to define and establish minimum ethical standards for elected and appointed public officials and public employees; to eliminate actual conflicts of interest; to provide a means to define ethical standards; to provide a means of investigating and resolving ethical violations; and to provide administrative and criminal penalties for specific ethical violations herein found to be unlawful.

(c) The Legislature finds that the state government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

(d) It is declared that high moral and ethical standards among public officials and public employees are essential to the conduct of free government; that the Legislature believes that a code of ethics for the guidance of public officials and public employees will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of this state in their public officials and public employees.

(e) It is the intent of the Legislature that in its operations the West Virginia ethics commission created
under this chapter shall protect to the fullest extent possible the rights of individuals affected.

§6B-1-3. Definitions.

As used in this chapter, unless the context in which used clearly requires otherwise:

(a) "Compensation" means money, thing of value or financial benefit. The term "compensation" does not include reimbursement for actual reasonable and necessary expenses incurred in the performance of one's official duties.

(b) "Employee" means any person in the service of another under any contract of hire, whether express or implied, oral or written, where the employer or an agent of the employer or a public official has the right or power to control and direct such person in the material details of how work is to be performed and who is not responsible for the making of policy nor for recommending official action.

(c) "Ethics commission", "commission on ethics" or "commission" means the West Virginia ethics commission.

(d) "Immediate family", with respect to an individual, means a spouse residing in the individual's household and any dependent child or children and dependent parent or parents.

(e) "Ministerial functions" means actions or functions performed by an individual under a given state of facts in a prescribed manner in accordance with a mandate of legal authority, without regard to, or without the exercise of, such individual's own judgment as to the propriety of the action being taken.

(f) "Person" means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club or other organization or group of persons, irrespective of the denomination given such organization or group.

(g) "Political contribution" means and has the same definition as is given that term under the provisions of article eight, chapter three of this code.
(h) "Public employee" means any full-time or part-time employee of any governmental body or any political subdivision thereof, including county school boards.

(i) "Public official" means any person who is elected or appointed and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to (i) contracting for, or procurement of, goods or services, (ii) administering or monitoring grants or subsidies, (iii) planning or zoning, (iv) inspecting, licensing, regulating or auditing any person, or (v) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person.

(j) "Respondent" means a person who is the subject of an investigation by the commission or against whom a complaint has been filed with the commission.

(k) "Thing of value", "other thing of value", or "anything of value" means and includes (i) money, bank bills or notes, United States treasury notes, and other bills, bonds or notes issued by lawful authority and intended to pass and circulate as money; (ii) goods and chattels; (iii) promissory notes, bills of exchange, orders, drafts, warrants, checks, bonds given for the payment of money or the forbearance of money due or owing; (iv) receipts given for the payment of money or other property; (v) any right or chose in action; (vi) chattels real or personal or things which savor of realty and are, at the time taken, a part of a freehold, whether they are of the substance or produce thereof or affixed thereto, although there may be no interval between the severing and the taking away thereof; (vii) any interest in realty, including, but not limited to, fee simple estates, life estates, estates for a term or period of time, joint tenancies, cotenancies, tenancies in common, partial interests, present or future interests, contingent or vested interests, beneficial interests, leasehold interests, or any other interest or interests in realty of whatsoever nature; (viii) any promise of employment, present or
future; (ix) donation or gift; (x) rendering of services or the payment thereof; (xi) any advance or pledge; (xii) a promise of present or future interest in any business or contract or other agreement; or (xiii) every other thing or item, whether tangible or intangible, having economic worth. "Thing of value", "other thing of value" or "anything of value" shall not include anything which is de minimis in nature nor a lawful political contribution reported as required by law.

§6B-1-4. Remedies and penalties in addition to other applicable remedies and penalties.

The provisions of this chapter shall be in addition to any other applicable provisions of this code and shall not be deemed to be in derogation of or as a substitution for any other provisions of this code, including, but not limited to, article five-a, chapter sixty-one of this code and the remedies and penalties provided in this chapter shall be in addition to any other remedies or penalties which may be applicable to any circumstances relevant to both.

§6B-1-5. Severability.

The provisions of subsection (cc), section ten, article two, chapter two of this code shall apply to the provisions of this chapter to the same extent as if the same were set forth in extenso herein.

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES.

§6B-2-1. West Virginia ethics commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.

§6B-2-2. Same—General powers and duties.

§6B-2-3. Advisory opinions.

§6B-2-4. Complaints; dismissals; hearings; disposition; judicial review.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

§6B-2-6. Financial disclosure statement; filing requirements.

§6B-2-7. Financial disclosure statement; contents.

§6B-2-8. Exceptions to financial disclosure requirements and conflicts of interest provisions.
§6B-2-1. West Virginia ethics commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.

(a) There is hereby created the West Virginia ethics commission, consisting of twelve members, no more than seven of whom shall be members of the same political party. The members of the commission shall be appointed by the governor with the advice and consent of the Senate. Within thirty days of the effective date of this section, the governor shall make the initial appointments to the commission. No person may be appointed to the commission or continue to serve as a member of the commission, who holds elected or appointed office under the government of the United States, the state of West Virginia or any of its political subdivisions, or who is a candidate for any of such offices, or who is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the commission. A member may contribute to a political campaign, but no member shall hold any political party office, or participate in a campaign relating to a referendum or other ballot issue.

(b) At least two members of the commission shall have served as a member of the West Virginia Legislature; at least two members of the commission shall have been employed in a full-time elected or appointed office in state government; at least one member shall have served as an elected official in a county or municipal government or on a county school board; at least one member shall have been employed full time as a county or municipal officer or employee; and at least two members shall have served part time as a member or director of a state, county or municipal board, commission or public service district and at least four members shall be selected from the public at large. No more than four members of the commission shall reside in the same congressional district.
(c) Of the initial appointments made to the commission, two shall be for a term ending one year after the effective date of this section, two for a term ending two years after the effective date of this section, two for a term ending three years after the effective date of this section, three for a term ending four years after the effective date of this section, and three shall be for terms ending five years after the effective date of this section. Thereafter, terms of office shall be for five years, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member shall hold office from the date of his or her appointment until the end of the term for which he or she was appointed or until his or her successor qualifies for office. When a vacancy occurs as a result of death, resignation, or removal in the membership of this commission, it shall be filled by appointment within thirty days of the vacancy for the unexpired portion of the term in the same manner as original appointments. No member shall serve more than two consecutive full or partial terms, and no person may be reappointed to the commission until at least two years have elapsed after the completion of a second successive term.

(d) Each member of the commission shall take and subscribe to the oath or affirmation required pursuant to Section 5, Article IV of the Constitution of West Virginia. A member may be removed by the governor for substantial neglect of duty, gross misconduct in office or violation of this chapter, after written notice and opportunity for reply.

(e) The commission shall meet within thirty days of the initial appointments to the commission at a time and place to be determined by the governor, who shall designate a member to preside at that meeting until a chairman is elected. At its first meeting, the commission shall elect a chairman and such other officers as are necessary. The commission shall within ninety days after its first meeting adopt rules for its procedures.

(f) Seven members of the commission shall constitute a quorum, except that when the commission is sitting as a hearing board pursuant to section four of this
article, then five members shall constitute a quorum. Except as may be otherwise provided in this article, a majority of the total membership shall be necessary to act at all times.

(g) Members of the commission shall receive one hundred dollars for each day actually devoted to the business of the commission and, in addition thereto, shall be reimbursed for expenses actually and necessarily incurred in the performance of their official duties as such members.

(h) The commission shall appoint an executive director to assist the commission in carrying out its functions in accordance with commission rules and regulations and with applicable law. Said executive director shall be paid such salary as may be fixed by the commission or as otherwise provided by law. The commission shall appoint and discharge counsel and employees and shall fix the compensation of employees and prescribe their duties. Counsel to the commission shall advise the commission on all legal matters and on the instruction of the commission may commence such civil actions as may be appropriate: Provided, That no counsel shall both advise the commission and act in a representative capacity in any proceeding.

(i) The commission may delegate authority to the chairman or executive director to act in the name of the commission between meetings of the commission, except that the commission shall not delegate the power to hold hearings and determine violations to the chairman or executive director.

(j) The chairman shall have the authority to designate subcommittees of three persons, no more than two of whom may be members of the same political party. Said subcommittees shall be investigative panels which shall have the powers and duties set forth hereinafter in this article.

(k) The principal office of the commission shall be in the seat of government but it or its designated subcommittees may meet and exercise its power at any other place in the state. Meetings of the commission shall be
public unless such meetings or hearings are required to be private in conformity with the provisions of this chapter relating to confidentiality, except that the commission shall exclude the public from attendance at discussions of commission personnel, planned or ongoing litigation and planned or ongoing investigations.

(l) Meetings of the commission shall be upon the call of the chairman and shall be conducted by the personal attendance of the commission members and no meeting shall be conducted by telephonic or other electronic conferencing, nor shall any member be allowed to vote by proxy: Provided, That telephone conferencing and voting may be held for the purpose of approving or rejecting any proposed advisory opinions prepared by the commission, or for voting on issues involving the administrative functions of the commission. Meetings held by telephone conferencing shall require notice to members in the same manner as meetings to be personally attended, shall be electronically recorded, and the recordings shall be made a permanent part of the commission records. Members shall not be compensated for meetings other than those personally attended.

§6B-2-2. Same—General powers and duties.

(a) The commission shall promulgate rules and regulations to carry out the purposes of this article within six months of the effective date of this section. Such rules and regulations shall be legislative rules subject to legislative rule-making review and subject to the provisions of the administrative procedures act.

(b) The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the commission's duties or exercise of its powers, including its duties and powers of investigation.

(c) The commission shall, in addition to its other duties:
(1) Prescribe forms for reports, statements, notices, and other documents required by law;

(2) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this act; and

(3) Provide assistance to agencies, officials and employees in administering the provisions of this act.

(d) The commission may:

(1) Prepare reports and studies to advance the purpose of the law;

(2) Contract for any services which cannot satisfactorily be performed by its employees;

(3) Request the attorney general to provide legal advice without charge to the commission, and the attorney general shall comply with the request;

(4) Employ additional legal counsel; and

(5) Request appropriate agencies of state government to provide such professional assistance as it may require in the discharge of its duties: Provided, That any agency providing such assistance other than the attorney general shall be reimbursed by the West Virginia ethics commission the cost of such assistance.

§6B-2-3. Advisory opinions.

A person subject to the provisions of this chapter may make application in writing to the ethics commission for an advisory opinion on whether an action or proposed action violates the provisions of this chapter, and would thereby expose the person to sanctions by the commission or criminal prosecution. The commission shall respond within thirty days from the receipt of the request by issuing an advisory opinion on the matter raised in the request. All advisory opinions shall be published and indexed in the code of state rules by the secretary of state: Provided, That before an advisory opinion is made public, any material which may identify the person who is the subject of the opinion, shall to the
fullest extent possible, be deleted and the identity of the person shall not be revealed. A person subject to the provisions of this chapter may rely upon the published guidelines or an advisory opinion of the commission, and any person acting in good faith reliance on any such guideline or opinion shall be immune from the sanctions of this chapter, and shall have an absolute defense to any criminal prosecution for actions taken in good faith reliance upon any such opinion or guideline.

§6B-2-4. Complaints; dismissals; hearings; disposition; judicial review.

(a) Upon the filing by any person with the commission of a complaint which is duly verified by oath or affirmation, the executive director of the commission or his or her designee shall, within three working days, acknowledge the receipt of the complaint by first class mail, unless the complainant or his or her representative personally filed the complaint with the commission and was given a receipt or other acknowledgement evidencing the filing. Within fourteen days after the receipt of a complaint, an investigative panel shall be appointed to investigate the substance of the allegations in the complaint and to determine whether there is probable cause to believe that a violation of this chapter has occurred. The method of selecting and rotating appointments of members to investigative panels shall be established by legislative rule of the commission.

(b) In the absence of a filed complaint, if the commission otherwise receives or discovers information which may merit an inquiry as to whether a violation of this chapter has occurred, the commission may, by the affirmative vote of seven of its members, appoint an investigative panel on its own initiative to investigate such matters and to determine whether there is probable cause to believe that a violation of this chapter has occurred.

(c) In the case of a filed complaint, the first inquiry of the investigative panel shall be a question as to whether or not the allegations of the complaint, if taken as true, would constitute a violation of law upon which
the commission could properly act under the provisions of this chapter. If the complaint is determined by a majority vote of the investigative panel to be insufficient in this regard, the investigative panel shall dismiss the complaint. A dismissal under this subsection shall not preclude the commission from initiating an investigation on its own initiative under the provisions of subsection (b) of this section.

(d) After the commission receives a complaint found by the investigative panel to be sufficient, or makes a decision to investigate possible violations on its own initiative, the executive director shall give notice of a pending investigation by the investigative panel to the complainant and respondent. The notice of investigation shall be mailed to the parties, and, in the case of the respondent, shall be mailed as certified mail, return receipt requested, marked "Addressee only, personal and confidential". The notice shall describe the conduct of the respondent which is the basis for an alleged violation of law, and if a complaint has been filed, a copy of the complaint shall be appended to the notice mailed to the respondent. Each notice of investigation shall inform the respondent that the purpose of the investigation is to determine whether probable cause exists to believe that a violation of law has occurred which may subject the respondent to administrative sanctions by the commission, criminal prosecution by the state, or civil liability. The notice shall further inform the respondent that he or she has a right to appear before the investigative panel, and that he or she may respond in writing to the commission within thirty days after the receipt of the notice, but that no fact or allegation shall be taken as admitted by a failure or refusal to timely respond.

(e) Within the forty-five day period following the mailing of a notice of investigation, the investigative panel shall proceed to consider (1) the allegations raised in the complaint or by the commission's inquiry, (2) any timely received written response of the respondent, and (3) any other competent evidence gathered by or submitted to the commission which has a proper bearing
on the issue of probable cause. A respondent shall be afforded the opportunity to appear before the investigatory panel and make an oral response to the complaint. The commission shall, in promulgating legislative rules pursuant to the provisions of subsection (a), section two of this article, prescribe the manner in which a respondent may present his oral response to the investigatory panel. The commission may request a respondent to disclose specific amounts received from a source, and other detailed information not otherwise required to be set forth in a statement or report filed under the provisions of this chapter, if the information sought is deemed to be probative as to the issues raised by a complaint or an investigation initiated by the commission. Any information thus received shall be confidential. If the person so requested fails or refuses to furnish the information to the commission, the commission may exercise its subpoena power as provided for elsewhere in this chapter, and any subpoena issued thereunder shall have the same force and effect as a subpoena issued by a circuit court of this state, and enforcement of any such subpoena may be had upon application to a circuit court of the county in which the investigatory panel is conducting an investigation, through the issuance of a rule or an attachment against the respondent as in cases of contempt.

(f) (1) Members of the commission and its staff shall not disclose any information relating to a complaint, including the identity of the complainant or respondent, except that the commission may release any information at any time if the release has been agreed to in writing by the respondent, and the identity of the complainant shall be released to the respondent immediately upon request. No present or former member of the commission or present or former employee of the commission may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties.

(2) If, in a specific case, the commission finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending
or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commission may order that all or a portion of the information communicated to the commission to cause an investigation and all allegations of ethical misconduct or criminal acts contained in a complaint shall be confidential, and the person providing such information or filing a complaint shall be bound to confidentiality until further order of the commission.

(g) If a majority of the members of the investigative panel fails to find probable cause, the proceedings shall be dismissed by the commission in an order signed by the majority members of the panel, and copies of the order of dismissal shall be sent to the complainant and the respondent forthwith. If the investigative panel decides by a majority vote that there is probable cause to believe that a violation under this chapter has occurred, the majority members of the investigatory panel shall sign an order directing the commission staff to prepare a statement of charges, to assign the matter for hearing to the commission or a hearing examiner as the commission may subsequently direct, and to schedule a hearing to determine the truth or falsity of the charges, such hearing to be held within ninety days after the date of the order.

(h) At least eighty days prior to the date of the hearing, the respondent shall be served by certified mail, return receipt requested, with the statement of charges and a notice of hearing setting forth the date, time and place for the hearing. The scheduled hearing may be continued only upon a showing of good cause by the respondent or under such other circumstances as the commission shall, by legislative rule, direct.

(i) The commission members who have not served as members of an investigatory panel in a particular case may sit as a hearing board to adjudicate the case or may permit an assigned hearing examiner employed by the commission to preside at the taking of evidence. The commission shall, by legislative rule, establish the general qualifications for hearing examiners. Such legislative rule shall also contain provisions which seek
to ensure that the functions of a hearing examiner will be conducted in an impartial manner, and shall describe the circumstances and procedures for disqualification of hearing examiners.

(j) A member of the commission or a hearing examiner presiding at a hearing may:

(1) Administer oaths and affirmations, compel the attendance of witnesses and the production of documents, examine witnesses and parties, and otherwise take testimony and establish a record;

(2) Rule on offers of proof and receive relevant evidence;

(3) Take depositions or have depositions taken when the ends of justice may be served;

(4) Regulate the course of the hearing;

(5) Hold conferences for the settlement or simplification of issues by consent of the parties;

(6) Dispose of procedural requests or similar matters;

(7) Accept stipulated agreements;

(8) Take other action authorized by the ethics commission consistent with the provisions of this chapter.

(k) With respect to allegations of a violation under this chapter, the complainant has the burden of proof. The West Virginia rules of evidence as used to govern proceedings in the courts of this state, shall be given like effect in hearings held before the commission or a hearing examiner. The commission shall, by legislative rule, regulate the conduct of hearings so as to provide full procedural due process to a respondent. Hearings before a hearing examiner shall be recorded electronically. When requested by either of the parties, the presiding officer shall make a transcript, verified by oath or affirmation, of each hearing held and so recorded. In the discretion of the commission, a record of the proceedings may be made by a certified court reporter. Unless otherwise ordered by the commission, the cost of preparing a transcript shall be paid by the
party requesting the transcript. Upon a showing of indigency, the commission may provide a transcript without charge. Within fifteen days following the hearing, either party may submit to the hearing examiner that party's proposed findings of fact. The hearing examiner shall thereafter prepare his or her own proposed findings of fact, and make copies of the findings available to the parties. The hearing examiner shall then submit the entire record to the commission for final decision.

(I) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, and the proposed findings of fact of the hearing examiner and the parties, constitute the exclusive record for decision by the commission, unless by leave of the commission a party is permitted to submit additional documentary evidence or take and file depositions or otherwise exercise discovery.

(m) The commission shall set a time and place for the hearing of arguments by the complainant and respondent, or their respective representatives, and shall notify the parties thereof, and briefs may be filed by the parties in accordance with procedural rules promulgated by the commission. The final decision of the commission shall be made in writing within forty-five days of the receipt of the entire record of a hearing held before a hearing examiner or, in the case of an evidentiary hearing held by the board in lieu of a hearing examiner, within twenty-one days following the close of the evidence.

(n) A decision to impose sanctions must be approved by at least six members of the commission.

(o) Members of the commission shall recuse themselves from a particular case upon their own motion with the approval of the commission or for good cause shown upon motion of a party. The remaining members of the commission shall, by majority vote, select a temporary member of the commission to replace a recused member.
A complainant may be assisted by a member of the commission staff assigned by the commission after a determination of probable cause.

No member of the commission staff may participate in the commission deliberations or communicate with commission members concerning the merits of a complaint after being assigned to prosecute a complaint.

If the commission finds by evidence beyond a reasonable doubt that the facts alleged in the complaint are true and constitute a material violation of this article, it may impose one or more of the following sanctions:

1. Public reprimand;
2. Cease and desist orders;
3. Orders of restitution for money, things of value, or services taken or received in violation of this chapter; or
4. Fines not to exceed one thousand dollars per violation.

In addition to imposing such sanctions, the commission may recommend to the appropriate governmental body that a respondent be terminated from employment or removed from office.

The commission may institute civil proceedings in the circuit court of the county wherein a violation occurred for the enforcement of sanctions.

At any stage of the proceedings under this section, the commission may enter into a conciliation agreement with a respondent if such agreement is deemed by a majority of the members of the commission to be in the best interest of the state and the respondent.

Decisions of the commission involving the issuance of sanctions may be appealed to the circuit court of Kanawha County, West Virginia, or to the circuit court of the county where the violation is alleged to have occurred, only by the respondent, and only upon the grounds set forth in section four, article five, chapter twenty-nine-a of this code.
(u) In the event the commission finds in favor of the person complained against, the commission shall order reimbursement of all actual costs incurred, including, but not limited to, attorney fees to be paid to the person complained against by the complainant, if the commission finds that the complaint was brought or made in bad faith. In addition, the aggrieved party shall have a cause of action and be entitled to compensatory damages, punitive damages, costs and attorney fees for a complaint made or brought in bad faith.

(v) If at any stage in the proceedings under this section, it appears to an investigative panel, a hearing examiner or the commission that a criminal violation may have been committed by a respondent, such situation shall be brought before the full commission for its consideration. If, by a vote of two-thirds of the full commission, it is determined that probable cause exists to believe a criminal violation has occurred, it may recommend to the appropriate county prosecuting attorney having jurisdiction over the case that a criminal investigation be commenced. Deliberations of the commission with regard to a recommendation for criminal investigation by a prosecuting attorney shall be private and confidential. Notwithstanding any other provision of this article, once a referral for criminal investigation is made under the provisions of this subsection, the ethics proceedings shall be held in abeyance until such referral proceedings are concluded. If the commission determines that a criminal violation has not occurred, the commission shall remand the matter to the investigating panel, the hearing examiner or the commission itself as a hearing board, as the case may be, for further proceedings under this article.

(w) The provisions of this section shall apply to violations of this chapter occurring after the thirtieth day of September, one thousand nine hundred eighty-nine, and within one year before the filing of a complaint under subsection (a) of this section or the appointment of an investigative panel by the commission under subsection (b) of this section.
§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) Persons subject to section—The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency, including county school boards.

(b) Use of public office for private gain—(1) A public official or public employee may not intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. The performance of usual and customary constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) The Legislature, in enacting this subsection (b), relating to the use of public office or public employment for private gain, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Such persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by such persons may have its own inherent prestige, it would be unfair to such individuals and against the best interests of the citizens of this state to deny such persons the right to hold public office or be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of such public officials and
public employees, identifying them generally by the office or employment held, and offering persons who fit within such categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Such exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (1) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (2) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (3) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(c) Gifts—(1) An official or employee of the state may not solicit any gift. No official or employee may knowingly accept any gift, directly or indirectly, from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency;

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent
judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel, and lodging of the official or employee for a meeting at which the official or employee participates in a panel or speaking engagement at the meeting;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The acceptance of an honorarium by an elected public official is prohibited. The commission shall, by legislative rule, establish guidelines for the acceptance of reasonable honorariums by all other public officials and public employees other than elected public officials.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The governor or his designee, may, in the name of the state of West Virginia, accept and receive gifts from any public or private source. Any such gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the Department of Culture and History.

(6) The commission by regulation may define further exemptions from this section as necessary or appropriate.
(d) Interests in public contracts—(1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract with the governmental body over which he or she has direct authority or with which he or she is employed: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having an interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is the contractor on the public contract involved. A limited interest for the purposes of this section is an interest not exceeding ten percent of the partnership or the outstanding shares of a corporation or thirty thousand dollars, whichever is the lesser, or an interest as a creditor not exceeding ten percent of the total indebtedness of a business or thirty thousand dollars, whichever is the lesser.

(3) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the ethics commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) Confidential information—No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by
him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) Prohibited representation—No present or former elected or appointed public official or public employee shall during or after his or her public employment or service represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other specific matter which arose during his or her period of public service or employment and in which he or she personally participated in a decision-making, advisory or staff support capacity.

(g) Limitation on practice before a board, agency, commission or department—(1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of six months after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate regulations, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;

(B) To support or oppose a proposed regulation;

(C) To support or contest the issuance or denial of a license or permit;

(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, "represent" includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: Provided, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being
retained by or employed to represent, assist, or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within six months after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at anytime in a representative capacity before the Legislature, a county commission, city or town council or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state, or of county or municipal governments including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection (g) may apply to the ethics commission for an exemption from the six months prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The ethics commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) Seeking employment with regulated person prohibited—(1) No full-time public official or full-time public employee who exercises policymaking, nonministerial or regulatory authority may seek employment with, or
allow himself or herself to be employed by, any person
who is or may be regulated by the governmental body
which he or she serves while he or she is employed or
serves in the governmental agency. The term “employ-
ment” within the meaning of this section includes
professional services and other services rendered by the
public official or public employee whether rendered as
an employee or as an independent contractor.

(2) No person regulated by a governmental agency
shall offer employment to a full-time public official or
full-time public employee of the regulating governmen-
tal agency during the period of time the public official
or employee works or serves in such agency.

(3) A full-time public official or full-time public
employee who would be adversely affected by the
provisions of this subsection may apply to the ethics
commission for an exemption from the prohibition
against seeking employment with a person who is or
may be regulated, when the person’s education and
experience is such that the prohibition would, for all
practical purposes, deprive the person of the ability to
earn a livelihood in this state outside of the governmen-
tal agency. The ethics commission shall by legislative
rule establish general guidelines or standards for
granting an exemption, but shall decide upon each
application on a case-by-case basis.

(i) Members of the Legislature required to vote—
Members of the Legislature who have asked to be
excused from voting or who have made inquiry as to
whether they should be excused from voting on a
particular matter and who are required by the presid-
ing officer of the House of Delegates or Senate of West
Virginia to vote under the rules of the particular house
shall not be guilty of any violation of ethics under the
provisions of this section for a vote so cast.

(j) Limitations on participation in licensing and rate-
making proceedings—No public official or employee may
participate within the scope of his duties as a public
official or employee, except through ministerial func-
tions as defined in section three, article one of this
chapter, in any license or rate-making proceeding that
directly affects the license or rates of any person,
partnership, trust, business trust, corporation, or
association in which the public official or employee or
his immediate family owns or controls more than ten
percent. No public official or public employee may
participate within the scope of his duties as a public
official or public employee, except through ministerial
functions as defined in section three, article one of this
chapter, in any license or rate-making proceeding that
directly affects the license or rates of any person to
whom the public official or public employee or his
immediate family, or a partnership, trust, business
trust, corporation, or association of which he or his
immediate family owns or controls more than ten
percent, has sold goods or services totaling more than
one thousand dollars during the preceding year, unless
the public official or public employee has filed a written
statement acknowledging such sale with the public
agency and the statement is entered in any public record
of the agency's proceedings. This subsection shall not be
construed to require the disclosure of clients of attorneys
or of patients or clients of persons licensed pursuant to
articles three, eight, fourteen, fourteen-a, fifteen,
sixteen, twenty, twenty-one or thirty-one, chapter thirty
of this code.

§6B-2-6. Financial disclosure statement; filing
requirements.

(a) The requirements for filing a financial disclosure
statement shall become initially effective on the first day
of February, one thousand nine hundred ninety, for all
persons holding public office or employment on that
date and who are otherwise required to file such
statement under the provisions of this section. The
initial financial disclosure statement shall cover the
period from the first day of July, one thousand nine
hundred eighty-nine, for the period ending the thirty-
first day of January, one thousand nine hundred ninety.
Thereafter, the financial disclosure statement shall be
filed on the first day of February of each calendar year
to cover the period of the preceding calendar year,
The following persons must file the financial disclosure statement required by this section with the ethics commission:

(1) All elected officials in this state, including, but not limited to, all persons elected statewide, all county elected officials, municipal elected officials in municipalities which have, by ordinance, opted to be covered by the disclosure provisions of this section, all members of the several county or district boards of education and all county or district school board superintendents;

(2) All members of state boards, commissions and agencies appointed by the governor; and

(3) Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

A person who is required to file a financial disclosure statement under this section by virtue of becoming an elected or appointed public official whose office is described in subdivisions (1), (2) or (3) of this subsection, and who assumes the office less than ten days before a filing date established herein or who assumes the office after the filing date, shall file a financial disclosure statement for the previous twelve months no later than thirty days after the date on which the person assumes the duties of the office, unless the person has filed a financial disclosure statement with the commission during the twelve month period before he or she assumed office.

(b) A candidate for public office shall file a financial disclosure statement for the previous twelve months with the state ethics commission no later than ten days after he or she files a certificate of candidacy, but in all circumstances, not later than ten days prior to the election, unless he or she has filed a financial disclosure statement with the state ethics commission during the previous twelve months.
The ethics commission shall file a duplicate copy of the financial disclosure statement required in this section in the following offices within ten days of the receipt of the candidate's statement of disclosure:

(1) Municipal candidates in municipalities which have opted, by ordinance, to be covered by the disclosure provisions of this section, in the office of the clerk of the municipality in which the candidate is seeking office;

(2) Legislative candidates in single county districts and candidates for a county office or county school board in the office of the clerk of the county commission of the county in which the candidate is seeking office;

(3) Legislative candidates from multicounty districts and congressional candidates in the office of the clerk of the county commission of the county of the candidate's residence.

After a ninety day period following any election, the clerks who receive the financial disclosure statements of candidates, may destroy or dispose of those statements filed by candidates who were unsuccessful in the election.

(c) No candidate for public office may maintain his or her place on a ballot and no public official may take the oath of office or enter or continue upon his or her duties or receive compensation from public funds, unless he or she has filed a financial disclosure statement with the state ethics commission as required by the provisions of this section.

(d) The state ethics commission may, upon request of any person required to file a financial disclosure statement, and for good cause shown, extend the deadline for filing such statement for a reasonable period of time: Provided, That no extension of time shall be granted to a candidate who has not filed a financial disclosure statement for the preceding filing period.

(e) No person shall fail to file a statement required by this section.

(f) No person shall knowingly file a materially false statement that is required to be filed under this section.
§6B-2-7. **Financial disclosure statement; contents.**

1 The financial disclosure statement required under this article shall contain the following information:

(1) The name, residential and business addresses of the person filing the statement and all names under which the person does business.

(2) The name and address of each employer of the person.

(3) The identification, by category, of every source of income over five thousand dollars received during the preceding calendar year, in his or her own name or by any other person for his or her use or benefit, by the person filing the statement, and a brief description of the nature of the services for which the income was received. This subdivision does not require a person filing the statement who derives income from a business, profession or occupation to disclose the individual sources and items of income that constitute the gross income of that business, profession or occupation.

(4) If the person profited or benefited in the year prior to the date of filing from a contract for the sale of goods or services to a state, county, municipal or other local governmental agency either directly or through a partnership, corporation or association in which such person owned or controlled more than ten percent, the person shall describe the nature of the goods or services and identify the governmental agencies which purchased the goods or services.

(5) Each interest group or category listed below doing business in this state with which the person filing the statement did business or furnished services and from which the person received more than twenty percent of the person's gross income during the preceding calendar year. The groups or categories are electric utilities, gas utilities, telephone utilities, water utilities, cable television companies, interstate transportation companies, intrastate transportation companies, oil or gas retail companies, banks, savings and loan associations, loan or
finance companies, manufacturing companies, surface mining companies, deep mining companies, mining equipment companies, chemical companies, insurance companies, retail companies, beer, wine or liquor companies or distributors, recreation related companies, timbering companies, hospitals or other health care providers, trade associations, professional associations, associations of public employees or public officials, counties, cities or towns, labor organizations, waste disposal companies, wholesale companies, groups or associations seeking to legalize gambling, advertising companies, media companies, race tracks and promotional companies.

(6) The names of all persons, excluding that person’s immediate family, parents, or grandparents residing or transacting business in the state to whom the person filing the statement owes, on the date of execution of this statement in the aggregate in his or her own name or in the name of any other person more than twenty-five thousand dollars: Provided, That nothing herein shall require the disclosure of a mortgage on the person’s primary and secondary residences or of automobile loans on automobiles maintained for the use of the person’s immediate family nor shall this section require the disclosure of debts which result from the ordinary conduct of such person’s business, profession, or occupation.

(7) The names of all persons except immediate family members, parents and grandparents residing or transacting business in the state (other than a demand or savings account in a bank, savings and loan association, credit union or building and loan association or other similar depository) who owes on the date of execution of this statement, more, in the aggregate, than twenty-five thousand dollars to the person filing the statement, either in his or her own name or to any other person for his or her use or benefit. This subdivision does not require the disclosure of debts owed to the person filing the statement which debts result from the ordinary conduct of such person’s business, profession or occupation.
The source of each gift having a value of over five hundred dollars received from a person having an interest in a governmental activity by the person filing the statement when such gift is given to the person filing the statement in his or her name or by any other person for his or her use or benefit during the preceding calendar year, except gifts received by will or by virtue of the laws of descent and distribution, or received from one's spouse, child, grandchild, parents or grandparents, or received by way of distribution from an inter vivos or testamentary trust established by the spouse or child, grandchild, or by an ancestor of the person filing the statement. As used in this subdivision any series or plurality of gifts which exceeds in the aggregate the sum of five hundred dollars from the same source or donor, either directly or indirectly, and in the same calendar year, shall be regarded as a single gift in excess of that aggregate amount.

§6B-2-8. Exceptions to financial disclosure requirements and conflicts of interest provisions.

(a) Any person regulated by the provisions of this article need not report the holdings of or the source of income from any of the holdings of:

(1) any qualified blind trust; or

(2) a trust—

(A) which was not created directly by such individual, his spouse, or any dependent child, and

(B) the holdings or sources of income of which such individual, or a member of his or her immediate family have no knowledge.

Failure to report the holdings of or the source of income of any trust referred to herein in good faith reliance upon this section shall not constitute a violation of sections six or seven of this article.

(b) The provisions of subsection (d), section five of this article shall not apply to holdings which are assets within the trusts referred to in subsection (a) of this section.
(c) For purposes of this section, the term "qualified blind trust" includes a trust in which a regulated person or immediate family has a beneficial interest in the principal or income, and which meets the following requirements:

(1) The trustee of the trust is a financial institution, an attorney, a certified public accountant, a broker, or an investment adviser, who (in the case of a financial institution or investment company, any officer or employee involved in the management or control of the trust)—

(A) is independent of and unassociated with any interested party so that the trustee cannot be controlled or influenced in the administration of the trust by any interested party;

(B) is not or has not been an employee of any interested party, or any organization affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party; and

(C) is not a relative of any interested party.

(2) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the ethics commission;

(3) The trust instrument which establishes the trust provides that—

(A) except to the extent provided in paragraph (F) of this subdivision the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(B) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

(C) the trustee shall promptly notify the regulated person and the ethics commission when the holdings of any particular asset transferred to the trust by any interested party are disposed of;
(D) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

(E) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law, but such report shall not identify any asset or holding;

(F) except for communications which solely consist of requests for distribution of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (i) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (ii) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (iii) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and

(G) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

(4) The proposed trust instrument and the proposed

(a) If the ethics commission finds as the result of an investigation of a complaint that a pattern of ethics violations or criminal violations under this chapter or under article five-a, chapter sixty-one of this code, exists in a state, county or covered municipal government, county school board or one of their respective departments, agencies, boards or commissions, and also finds that the prosecuting attorney of the county in which the violation occurred is, for some reason, unable or unwilling to take appropriate action, the chairman of the ethics commission may, upon a two-thirds vote of the members of the ethics commission, petition the appropriate circuit court for the appointment of a special prosecutor for the purpose of conducting an investigation to determine whether a violation of the criminal law of this state has occurred.

(b) A special prosecutor shall have the same authority as a county prosecutor to investigate and prosecute persons subject to this act for criminal violations committed in connection with their public office or employment which constitute felonies.

(c) The ethics committee shall be authorized to employ and assign the necessary professional and clerical staff to assist any such special prosecutor in the performance of his or her duties and to pay and to set the compensation to be paid to a special prosecutor in an amount not to exceed seventy-five dollars per hour up to a maximum of fifty thousand dollars per annum.

(d) The special prosecutor shall be empowered to make a presentment to any regularly or specially impaneled grand jury in the appointing circuit court. The special prosecutor shall be empowered to prosecute any person indicted by such grand jury.

§6B-2-10. Violations and penalties.

(a) If any person violates the provisions of subsections
(e), (f), or (g), section five of this article, or violates the provisions of subdivision (1), subsection (f), section four of this article, such person, upon conviction thereof, shall be guilty of a misdemeanor and shall be punished by confinement in the county jail for a period not to exceed six months or shall be fined not more than one thousand dollars, or both such confinement and fine. If any person violating the provisions of subdivision (1), subsection (f), section four of this article shall be a member of the commission or an employee thereof, he or she shall, upon conviction, be subject to immediate removal or discharge.

(b) If any person violates the provisions of subsection (f), section six of this article by willfully and knowingly filing a false financial statement, such person shall, upon conviction thereof, be deemed guilty of false swearing and shall be punished as provided in section three, article five, chapter sixty-one of this code.

(c) If any person knowingly fails or refuses to file a financial statement required by section six of this article, such person, upon conviction thereof, shall be guilty of a misdemeanor and shall be fined not less than one hundred dollars nor more than one thousand dollars.

(d) If any complainant violates the provisions of subdivision (2), subsection (f), section four, article two of this chapter by knowingly and willfully disclosing any information made confidential by an order of the commission, he or she shall be subject to administrative sanction by the commission as provided for in subsection (r), section four of this article.

§6B-2-11. Termination of commission.

The West Virginia ethics commission shall be terminated by the provisions of article ten, chapter four of this code on the first day of July, one thousand nine hundred ninety-two, unless sooner terminated or unless continued or reestablished pursuant to that article.

ARTICLE 3. LOBBYISTS.

§6B-3-1. Definitions.
§6B-3-2. Registration of lobbyists.
§6B-3-3. Photograph and information-booklet-publication.
§6B-3-4. Reporting by lobbyists.
§6B-3-5. Grass roots lobbying campaigns.
§6B-3-6. Employment of unregistered persons.
§6B-3-7. Duties of lobbyists.
§6B-3-8. Limitation on persons lobbying in legislative chambers.
§6B-3-9. Penalties.
§6B-3-10. Provisions may be adopted by local governments.

§6B-3-1. Definitions.

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

1. “Compensation” means money or any other thing of value received or to be received by a lobbyist from an employer for services rendered.

2. “Employer” or “lobbyist’s employer” means any person who employs or retains a lobbyist.

3. “Expenditure” means payment, distribution, loan, advance deposit, reimbursement, or gift of money, real or personal property or any other thing of value; or a contract, promise, or agreement, whether or not legally enforceable.

4. “Government officer or employee” means a member of the Legislature, a legislative employee, the governor and other members of the board of public works, heads of executive departments, and any other public officer or public employee under the legislative or executive branch of state government who is empowered or authorized to make policy and perform non-ministerial functions. In the case of elected offices included herein, the term “government officer or employee” shall include candidates who have been elected but who have not yet assumed office.

5. “Legislation” means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the Legislature, and includes any other matters that may be the subject of action by either house or any committee of the Legislature and all bills or resolutions that, having passed both houses, are pending approval or veto by the governor.
(6) "Lobbying" or "lobbying activity" means the act of communicating with a government officer or employee to promote, advocate or oppose or otherwise attempt to influence:

   (i) The passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this state; or

   (ii) The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee, or other delegated legislative or quasi-legislative action to be taken or withheld by any executive department.

(7)(A) "Lobbyist" means a person who, through communication with a government officer or employee, promotes, advocates or opposes or otherwise attempts to influence:

   (i) The passage or defeat or the executive approval or veto of any legislation which may be considered by the Legislature of this state; or

   (ii) The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee, or other delegated legislative or quasi-legislative action to be taken or withheld by any executive department.

(B) The term "lobbyist" shall not include the following persons, who shall be exempt from the registration and reporting requirements set forth in this article, unless such persons engage in activities which would otherwise subject them to the registration and reporting requirements:

   (i) Persons who limit their lobbying activities to appearing before public sessions of committees of the Legislature, or public hearings of state agencies, are exempt.

   (ii) Persons who engage in news or feature reporting activities and editorial comment as working members of the press, radio, or television, and persons who publish or disseminate such news, features or editorial comment through a newspaper, book, regularly published periodical, radio station, or television station, are exempt.
(iii) Persons who lobby without compensation or other consideration for acting as lobbyists, when such persons make no expenditure for or on behalf of any government officer or employee in connection with such lobbying, are exempt. The exemption contained in this subparagraph (iii) is intended to permit and encourage citizens of this state to exercise their constitutional rights to assemble in a peaceable manner, consult for the common good, instruct their representatives, and apply for a redress of grievances. Accordingly, such persons may lobby without incurring any registration or reporting obligation under this article. Any person exempt under this subparagraph (iii) may at his or her option register and report under this article.

(iv) Persons who lobby on behalf of a nonprofit organization with regard to legislation, without compensation, and who restrict their lobbying activities to no more than twenty days or parts thereof during any regular session of the Legislature, are exempt. The commission may promulgate a legislative rule to require registration and reporting by persons who would otherwise be exempt under this subparagraph, if it determines that such rule is necessary to prevent frustration of the purposes of this article. Any person exempt under this subparagraph may at his or her option register and report under this article.

(v) The governor, members of the governor's staff, members of the board of public works, officers and employees of the executive branch who communicate with a member of the Legislature on the request of that member, or who communicate with the Legislature, through the proper official channels, requests for legislative action or appropriations which are deemed necessary for the efficient conduct of the public business or which are made in the proper performance of their official duties, are exempt.

(vi) Members of the Legislature are exempt.

(vii) Persons employed by the Legislature for the purpose of aiding in the preparation or enactment of
legislation or the performance of legislative duties are exempt.

(viii) Persons rendering professional services in drafting proposed legislation or in advising or rendering opinions to clients as to the construction and effect of proposed or pending legislation, are exempt.

(8) "Person" means any individual, partnership, trust, estate, business trust, association, or corporation; any department, commission, board, publicly supported college or university, division, institution, bureau, or any other instrumentality of the state; or any county, municipal corporation, school district, or any other political subdivision of the state.

§6B-3-2. Registration of lobbyists.

(a) Before engaging in any lobbying activity, or within thirty days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register with the ethics commission by filing a lobbyist registration statement, signed under oath or affirmation. The registration statement shall contain such information and be in such form as the ethics commission may prescribe by legislative rule, including, but not limited to, the following information:

(1) The registrant's name, business address, telephone numbers and any temporary residential and business addresses and telephone numbers used or to be used by the registrant while lobbying during a legislative session;

(2) The name, address and occupation or business of the registrant's employer;

(3) A statement as to whether the registrant is employed or retained by his or her employer solely as a lobbyist or is a regular employee performing services for the employer which include, but are not limited to, lobbying;

(4) A statement as to whether the registrant is employed or retained by his or her employer under any agreement, arrangement or understanding according to
which the registrant's compensation, or any portion thereof, is or will be contingent upon the success of his or her lobbying activity;

(5) The general subject or subjects, if known, on which the registrant will lobby or employ some other person to lobby in a manner which requires registration under this article;

(6) An appended written authorization from each of the lobbyist's employers confirming the lobbyist's employment and the subjects on which the employer is to be represented.

(b) A registrant who lobbies with regard to matters before the Legislature must file duplicate copies of the lobbyist's registration statement required by subsections (a) or (d) of this section with the Clerk of the Senate and the Clerk of the House of Delegates contemporaneously with the filing with the ethics commission before engaging in any lobbying activity.

(c) Any lobbyist who receives or is to receive compensation from more than one person for services as a lobbyist shall file a separate notice of representation with respect to each person compensating him or her for services performed as a lobbyist. When a lobbyist whose fee for lobbying with respect to the same subject is to be paid or contributed by more than one person, then such lobbyist may file a single statement, in which he shall detail the name, business address and occupation of each person so paying or contributing.

(d) Whenever a change, modification, or termination of the lobbyist's employment occurs, the lobbyist shall, within one week of such change, modification or termination, furnish full information regarding the same by filing with the commission an amended registration statement.

(e) Each lobbyist who has registered shall file a new registration statement, revised as appropriate, on the second Monday in January of each odd-numbered year, and failure to do so shall terminate his registration.

Until such registration is renewed, the person may not
§6B-3-3. Photograph and information-booklet-publication.

Each lobbyist shall, at the time he or she registers, submit to the commission a recent photograph of the lobbyist of a size and format as determined by rule of the commission, together with the name of the lobbyist's employer, a brief biographical description, and any other information the lobbyist may wish to submit, not to exceed fifty words in length. Such photograph and information shall be published at least annually in a booklet form by the commission for distribution to government officers or employees, lobbyists, and to the public. The method of distribution shall be in the discretion of the commission, which shall not be required to compile and maintain a distribution list of all persons who may be entitled to receive such booklet. Each lobbyist, upon registering, shall pay a fee of twenty dollars to the commission to help defray the costs of preparing such booklet.

§6B-3-4. Reporting by lobbyists.

(a) A lobbyist shall file with the commission reports of his lobbying activities, signed under oath or affirmation by the lobbyist. Lobbyists who are required under this article to file copies of their registration statements with the clerks of the respective houses of the Legislature shall also contemporaneously file copies of all reports required under this section with the clerks. The reports shall be made in the form and manner prescribed by legislative rule of the commission. Such reports shall be filed as follows:

(1) On or before the second Monday in January of each year, a lobbyist shall file an annual report of all lobbying activities which he or she engaged in during the preceding calendar year; and

(2) If a lobbyist engages in lobbying with respect to legislation, then:

(A) Between the fortieth and forty-fifth days of any
regular session of the Legislature in which any such lobbying occurred, the lobbyist shall file a report describing all of his or her lobbying activities which occurred since the beginning of the calendar year; and

(B) Within twenty-one days after the adjournment sine die of any regular or extraordinary session of the Legislature in which any such lobbying occurred, the lobbyist shall file a report describing all of his or her lobbying activities which occurred since the beginning of the calendar year or since the filing of the last report required by this section, whichever is later.

(b) (1) Except as otherwise provided in this section, each report filed by a lobbyist shall show the total amount of all expenditures for lobbying made or incurred by such lobbyist, or on behalf of such lobbyist by the lobbyist's employer, during the period covered by the report. The report shall also show subtotals segregated according to financial category, including meals and beverages; living accommodations; advertising; travel; contributions; gifts to government officers or employees or to members of the immediate family of such persons; and other expenses or services.

(2) Lobbyists are not required to report the following:

(A) Unreimbursed personal living and travel expenses not incurred directly for lobbying;

(B) Any expenses incurred for his or her own living accommodations;

(C) Any expenses incurred for his or her own travel to and from public meetings or hearings of the legislative and executive branches;

(D) Any expenses incurred for telephone, and any office expenses, including rent and salaries and wages paid for staff and secretarial assistance; and

(E) Separate expenditures to or on behalf of a government officer or employee in an amount of less than five dollars.

(c) If a lobbyist is employed by more than one employer, the report shall show the proportionate
amount of such expenditures in each category incurred on behalf of each of his employers.

(d) The report shall describe the subject matter of the lobbying activities in which the lobbyist has been engaged during the reporting period.

(e) If, during the period covered by the report, the lobbyist made expenditures, other than for travel, food, lodging and entertainment governed by subsection (f) of this section, which expenditures total more than five hundred dollars to or on behalf of any particular government officer or employee, the lobbyist shall report the name of the government officer or employee to whom or on whose behalf the expenditures were made, the total amount of the expenditures, and the subject matter of the lobbying activity, if any. Under this subsection (e), no portion of the amount of an expenditure for a dinner, party, or other function sponsored by a lobbyist or a lobbyist’s employer need be attributed to or counted toward the reporting amount of five hundred dollars for a particular government officer or employee who attends such function if the sponsor has invited to the function all the members of (1) the Legislature, (2) either house of the Legislature, (3) a standing or select committee of either house, or (4) a joint committee of the two houses of the Legislature. However, the amount spent for such function shall be added to other expenditures for the purpose of determining the total amount of expenditures reported under subsection (b) of this section.

(f) If, during the period covered by the report, the lobbyist made expenditures for travel, food, lodging, and scheduled entertainment totaling more than five hundred dollars for or on behalf of a particular government officer or employee in return for the participation of the government officer or employee in a panel or speaking engagement at the meeting, the lobbyist shall report the name of the government officer or employee to whom or on whose behalf the expenditures were made and the total amount of the expenditures.
(g) Such other information relevant to lobbying activities as the commission shall by legislative rule prescribe. Information supporting such activities as are required to be reported is subject to audit by the commission.

§6B-3-5. Grass roots lobbying campaigns.

(1) Any person who has made expenditures, not required to be reported under other sections of this chapter, exceeding five hundred dollars in the aggregate within any three-month period or exceeding two hundred dollars in the aggregate within any one-month period in presenting a program addressed to the public, a substantial portion of which is intended, designed or calculated primarily to influence legislation, shall be required to register and report, as provided in subsection (2) of this section, as a sponsor of a grass roots lobbying campaign.

(2) Within thirty days after becoming a sponsor of a grass roots lobbying campaign, the sponsor shall register by filing with the ethics commission a registration statement, in such detail as the commission shall prescribe, showing:

(a) The sponsor’s name, address and business or occupation, and, if the sponsor is not an individual, the names, addresses, and titles of the controlling persons responsible for managing the sponsor’s affairs;

(b) The names, addresses and business or occupation of all persons organizing and managing the campaign, or hired to assist the campaign, including any public relations or advertising firms participating in the campaign, and the terms of compensation for all such persons;

(c) The names and addresses of each person contributing twenty-five dollars or more to the campaign and the aggregate amount contributed;

(d) The purpose of the campaign, including the specific legislation, rules, rates, standards or proposals that are the subject matter of the campaign;
(e) The totals of all expenditures made or incurred to date on behalf of the campaign, which totals shall be segregated according to financial category, including, but not limited to, the following: Advertising, segregated by media, and, in the case of large expenditures (as provided by legislative rule of the commission), by outlet; contributions; entertainment, including meals and beverages; office expenses, including rent and the salaries and wages paid for staff and secretarial assistance, or the proportionate amount thereof paid or incurred for lobbying campaign activities; consultants; and printing and mailing expenses.

(3) Every sponsor who has registered under this section shall file reports with the commission, which reports shall be filed for the same time periods required for the filing of lobbyists' reports under the provisions of section four of this article.

(4) When the campaign has been terminated, the sponsor shall file a notice of termination with the final monthly report, which notice shall state the totals of all contributions and expenditures made on behalf of the campaign, in the same manner as provided for in the registration statement.


 It shall be a violation of this chapter for any person to employ for pay or any consideration, or pay or agree to pay any consideration to, a person to lobby who is not registered under this chapter except upon condition that such person register as a lobbyist as provided by this chapter, and such person does in fact so register as soon as practicable.

§6B–3-7. Duties of lobbyists.

 A person required to register as a lobbyist under this chapter shall also have the following obligations, the violation of which shall constitute cause for revocation of his registration, and may subject such person, and such person's employer, if such employer aids, abets, ratifies, or confirms any such act, to other civil liabilities, as provided by this chapter.
(1) Such persons shall obtain and preserve all accounts, bills, receipts, books, papers and documents necessary to substantiate the financial reports required to be made under this article for a period of at least five years from the date of the filing of the statement containing such items, which accounts, bills, receipts, books, papers, and documents shall be made available for inspection by the commission at any time: Provided, That if a lobbyist is required under the terms of his employment contract to turn any records over to his employer, responsibility for the preservation of such records under this subsection shall rest with such employer.

(2) In addition, a person required to register as a lobbyist shall not:

(A) Engage in any activity as a lobbyist before registering as such;

(B) Knowingly deceive or attempt to deceive any government officer or employee as to any fact pertaining to a matter which is the subject of lobbying activity;

(C) Cause or influence the introduction of any legislation for the purpose of thereafter being employed to secure its defeat;

(D) Exercise any undue influence, extortion, or unlawful retaliation upon any government officer or employee by reason of such government officer or employee’s position with respect to, or his vote upon, any matter which is the subject of lobbying activity;

(E) Exercise undue influence upon any legislator or other privately employed government officer or employee through communications with such person’s employer;

(F) Give a gift to any government officer or employee in excess of or in violation of any limitations on gifts set forth in subsection (c), section five, article two of this chapter, or give any gift, whether lawful or unlawful, to a government officer or employee without such government officer or employee’s knowledge and consent.
§6B-3-8. Limitation on persons lobbying in legislative chambers.

Former legislators and other persons having the privilege of the floor are prohibited from lobbying upon the floor of either house of the Legislature or the foyer thereof while such house is in session.

§6B-3-9. Penalties.

(a) A person who is required under the provisions of this article to file a statement or report is guilty of false swearing when such person willfully and knowingly, under oath or affirmation, files a false statement or report concerning a matter or thing material. Any person who violates the provisions of this subsection (a) shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or fined and confined in accordance with the provisions of section three, article five, chapter sixty-one of this code.

(b) A person who is subject to the registration and reporting requirements of this article and who fails or refuses to register or who fails or refuses to file a required statement or report or who otherwise violates the provisions of this article may be the subject of a complaint filed with the ethics commission and may be proceeded against in the same manner and to the same ends as a public officer or public employee under the provisions of this chapter.

(c) A person who willfully and knowingly files a false report under the provisions of this article is liable in a civil action to any government officer or employee who sustains damage as a result of the filing or publication of the report.

§6B-3-10. Provisions may be adopted by local governments.

An incorporated municipality may enact lobbyist regulation provisions substantially similar to the provisions of this article which may be modified to the extent necessary to make the provisions relevant to that jurisdiction and which may be further modified to the extent deemed necessary and appropriate by and for that jurisdiction.
CHAPTER 2

(Com. Sub. for S. B. 1—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed January 31, 1989; in effect March 1, 1989. Approved by the Governor.]

AN ACT to repeal sections two-a, two-b, two-c, two-g, two-h, two-i, two-j, two-k and two-l, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections three-a and eleven, article fifteen of said chapter; to amend and reenact sections one, two, two-d, two-e and two-m, article thirteen, chapter eleven of said code; to further amend said article thirteen by adding thereto a new section, designated section two-n; to amend and reenact section three, article thirteen-a of said chapter; to amend and reenact sections two, three and nine, article fifteen of said chapter; to further amend said article fifteen by adding thereto two new sections, designated sections eight-a and thirty-three; to amend and reenact section two, article fifteen-a of said chapter; to further amend said article fifteen-a by adding thereto a new section, designated section twenty-nine; and to amend and reenact sections six and seventeen, article twenty-three of said chapter, all relating to the Fiscal Responsibility Act of 1989; amending and reenacting existing provisions of the business and occupation tax, the severance tax, the consumers sales and service tax, the use tax and the business franchise tax; eliminating the expiration of the temporary one cent increase in the consumers sales and service tax and the use tax, making the increase in these taxes permanent, preserving the dedication of certain additional revenues therefrom for repayment of pneumoconiosis fund debt; defining terms used in the business and occupation tax; imposing the business and occupation tax, beginning the first day of March, one thousand nine hundred eighty-nine, upon the service of gas storage and prescribing the rate thereof and due dates of installment payments; setting forth an alternative method of calculating the business and occupation tax due from electric power and light
companies and from generators of electric power; imposing such tax based on the number of kilowatt hours of electric power generated or sold within this state; specifying different rates of tax and exempting from tax kilowatt hours of electric power sold for certain purposes; requiring tax to be computed based on current law and under the alternative method, with liability for tax being the greater of the two; increasing the severance tax rates effective the first day of March, one thousand nine hundred eighty-nine; eliminating the exemption from the consumers sales and service tax and use tax for sales of property or services to persons in the business of contracting when such property or services are directly used in the activities of contracting; eliminating references to contracting in the definition of "directly used and consumed" for purposes of the consumers sales and service tax and the use tax; providing that property installed, fixed or incorporated into realty by a contractor is not subject to the consumers sales and service tax exemption for resale; removing the sales tax exemption for food intended for human consumption; providing an exemption mandated under Title forty-two, United States Code section one thousand seven hundred eighty-six; providing transition rules; making the effective date for all such changes to the consumers sales and service and use tax laws the first day of March, one thousand nine hundred eighty-nine; eliminating the credit against the business franchise tax for the amount of tax that would be attributable to the portion of the business franchise tax base giving rise to a severance tax liability for taxable years ending after the twenty-eighth day of February, one thousand nine hundred eighty-nine, prorating the credit as to months before the first day of March, one thousand nine hundred eighty-nine; increasing the rate of the business franchise tax for taxable years beginning on or after specified date; permitting proration of tax when taxable year is less than twelve months; providing for a minimum tax; clarifying that charitable organizations and churches may continue to be exempt from sales and use tax on purchases of food for meals for which no charge is made; and providing that certain
sales to persons engaged in contracting or subcontracting pursuant to a written contract with this state, a political subdivision thereof or a public corporation are exempt from the sales and use tax in certain instances.

Be it enacted by the Legislature of West Virginia:

That sections two-a, two-b, two-c, two-g, two-h, two-i, two-j, two-k and two-l, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three-a and eleven, article fifteen of said chapter eleven be repealed; that sections one, two, two-d, two-e and two-m, article thirteen, chapter eleven of said code be amended and reenacted; that said article thirteen be further amended by adding thereto a new section, designated section two-n; that section three, article thirteen-a of said chapter be amended and reenacted; that sections two, three and nine, article fifteen of said chapter be amended and reenacted; that said article fifteen be further amended by adding thereto two new sections, designated sections eight-a and thirty-three; that section two, article fifteen-a of said chapter be amended and reenacted; that said article fifteen-a be further amended by adding thereto a new section, designated section twenty-nine; and that sections six and seventeen, article twenty-three of said chapter be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

Article
13A. Severance Taxes.
15. Consumers Sales Tax.
15A. Use Tax.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-1. Definitions.
§11-13-2. Imposition of privilege tax.
§11-13-2d. Public service or utility business.
§11-13-2e. Business of gas storage; effective date.
§11-13-2m. Business of generating or producing electric power; exception: rates.
§11-13-2n. Business of generating or producing or selling electric power; exemptions; rates.
§11-13-1. Definitions.

(a) General.—When used in this article, or in the administration of this article, the terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used or by specific definition.

(b) Terms defined.

(1) “Person” or the term “company,” herein used interchangeably, includes any individual, firm, copartnership, joint adventure, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(2) “Sale,” “sales” or “selling” includes any transfer of or title to property or electricity, whether for money or in exchange for other property.

(3) “Taxpayer” means any person liable for any tax hereunder.

(4) “Gross income” means the gross receipts of the taxpayer, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, and all receipts by reason of the investment of the capital of the business engaged in, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of his business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses what-
(5) "Gross proceeds of sales" means the value, whether in money or other property, actually proceeding from the sale of tangible property without any deduction on account of the cost of property sold or expenses of any kind.

(6) "Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. "Business" shall include the rendering of gas storage service by any person for the gain or economic benefit of any person, including, but not limited to, the storage operator, whether or not incident to any other business activity.

(7) "Gas" means either natural gas unmixed, or any mixture of natural and artificial gas or any other gas.

(8) "Storage reservoir" means that portion of any subterranean sand or rock stratum or strata into which gas is or may be injected for the purpose of storage.

(9) "Gas storage service" means the injection of gas into a storage reservoir, the storage of gas for any period of time in a storage reservoir, or the withdrawal of gas from a storage reservoir. Such gas may be owned by the storage operator or any other person.

(10) "Gas storage operator" means any person who operates a storage reservoir or provides a storage service as defined herein, either as owner or lessee.

(11) "Month" or "tax month" means the calendar month.

(12) "Dekatherm" means the thermal energy unit equal to one million British thermal units (BTU's) or the equivalent of one thousand cubic feet of gas having a heating content of one thousand BTU's per cubic foot.

(13) "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. "Taxable year" means, in case of a return made for a fractional part of a year under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.
§11-13-2. Imposition of privilege tax.

(a) Periods before July 1, 1987.—For taxable years or months thereof ending prior to the first day of July, one thousand nine hundred eighty-seven, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in sections two-a to two-m, both inclusive, of this article and the application of the surtax rate against gross income as set forth in section two-k: Provided,

That on the first day of July, one thousand nine hundred eighty-five, the taxes imposed by this section, at the rates set forth in sections two-b through two-m, both inclusive, of this article, and in effect on the first day of January, one thousand nine hundred eighty-five, exclusive of any surtaxes, shall be reduced by five percent for taxable months beginning on and after said first day of July: Provided, however, That on and after the first day of July, one thousand nine hundred eighty-five, the rate of tax under section two-b of this article shall not be less than eight tenths of one percent: Provided further, That there shall be no such reduction of the rates set forth in section two-a or two-l of this article.

(b) Periods after June 30, 1987.—For taxable years or months beginning after the thirtieth day of June, one thousand nine hundred eighty-seven, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against values or gross income as set forth in sections two-d and two-m of this article: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the rates applicable to the privileges exercised in sections two-d and two-m of this article shall be restored and returned to those which were in effect as to such privileges on the first day of January, one thousand nine hundred eighty-five: Provided, however, That for taxable months or taxable years beginning after the twenty-eighth day of Febru-
ary, one thousand nine hundred eighty-nine, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against the measure of the tax as set forth in sections two-d, two-e, two-m and two-n of this article.

(c) If any person liable for any tax under section two-m shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed in such section, except in those instances in which another measure of the tax is expressly provided. The tax commissioner shall prescribe equitable and uniform rules for ascertaining such value.

(d) In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

§11-13-2d. Public service or utility business.

(a) Upon any person engaging or continuing within this state in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, the tax imposed by section two of this article shall be equal to the gross income of the business derived from such activity or activities multiplied by the respective rates as follows:
(1) Street and interurban and electric railways, one and four-tenths percent;

(2) Water companies, four and four-tenths percent, except as to income received by municipally owned water plants;

(3) Electric light and power companies, four percent on sales and demand charges for domestic purposes and commercial lighting and four percent on sales and demand charges for all other purposes, and except as to income received by municipally owned plants producing or purchasing electricity and distributing same: Provided, That electric light and power companies which engage in the supplying of public service but which do not generate or produce in this state the electric power they supply shall be taxed on the gross income derived from sales of power which they do not generate in this state at the rate of three percent on sales and demand charges for domestic purposes and commercial lighting and three percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants: Provided, however, That the sale of electric power under this section shall be taxed at the rate of two percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage of such plant location exceeds two hundred thousand kilowatts per hour in a year: Provided further, That the sale of electric power under this section shall be exempt from the tax imposed by this section and section two of this article if it is separately metered and consumed in an electrolytic process for the manufacture of chlorine in this state, or is separately metered and consumed in the manufacture of ferroalloy in this state, and the rate reduction herein provided to the taxpayer shall be passed on to the manufacturer of the chlorine or ferroalloy. As used in this section, the term “ferroalloy” means any of various alloys of iron and one or more other elements used as a raw material in the production
of steel: *And provided further*, That the term does not include the final production of steel;

(4) Natural gas companies, four and twenty-nine hundredths percent on the gross income: *Provided*, That the sale of natural gas under this section shall be exempt from the tax imposed by this section and section two of this article to the extent that the natural gas is separately metered and is gas from which the purchaser derives hydrogen and carbon monoxide for use in the manufacture of chemicals in this state, and the full economic benefit of the exception herein provided to the taxpayer shall be passed on to such purchaser of the natural gas: *Provided, however*, That there shall be no exemption for the sale of any natural gas from which the purchaser derives carbon monoxide or hydrogen for the purpose of resale;

(5) Toll bridge companies, four and twenty-nine hundredths percent; and

(6) Upon all other public service or utility business, two and eighty-six hundredths percent.

(b) The measure of this tax shall not include gross income derived from commerce between this state and other states of the United States or between this state and foreign countries. The measure of the tax under this section shall include only gross income received from the supplying of public service. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon such other activity by the appropriate section or sections of this article.

(c) Beginning the first day of March, one thousand nine hundred eighty-nine, electric light and power companies shall determine their liability for payment of tax under this section and sections two-m and two-n of this article. If for taxable months beginning on or after the first day of March, one thousand nine hundred eighty-nine, liability for tax under section two-n of this article is equal to or greater than the sum of the power company’s liability for payment of tax under paragraph (3), subsection (a) of this section and section two-m of this article, then the company shall pay the tax due
under section two-n of this article and not the tax due under paragraph (3), subsection (a) of this section and section two-m of this article. If tax liability under section two-n is less, then tax shall be paid under paragraph (3), subsection (a) of this section and section two-m of this article and the tax due under section two-n shall not be paid. The provisions of paragraph (3), subsection (a) of this section shall expire and become null and void for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-eight.

§11-13-2e. Business of gas storage; effective date.

(a) Rate of tax.—Upon every person engaging or continuing within this state in any gas storage business utilizing one or more gas storage reservoirs located within this state, the tax imposed by section two of this article shall be equal to five cents multiplied by the sum of (1) the number of dekatherms of gas injected into such a gas storage reservoir during a tax month and (2) the number of dekatherms of gas withdrawn from such a gas storage reservoir during a tax month, whether or not such gas is owned by, or is injected or withdrawn for, the storage operator or any other person. Fractional parts of dekatherms shall be included in the measure of tax as provided in regulations promulgated by the tax commissioner.

(b) Effective date.—The measure of tax under this section shall include gas injected into, or withdrawn from, a gas storage reservoir after the twenty-eighth day of February, one thousand nine hundred eighty-nine.

(c) Administration; installment payments.—The tax due under this section shall be administered, collected and enforced as provided in this article and articles nine and ten of this chapter. The tax due under this section shall be remitted in periodic installments as provided in section four of this article, except that such periodic installment payments shall be remitted on or before the twentieth day of the month following the month or quarter in which the tax accrues.
§11-13-2m. Business of generating or producing electric power; exception; rates.

(a) Upon every person engaging or continuing within this state in the business of generating or producing electric power for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, when the sale thereof is not subject to tax under section two-d of this article, the amount of the tax to be equal to the value of the electric power, as shown by the gross proceeds derived from the sale thereof by the generator or producer of the same multiplied by a rate of four percent, except that the rate shall be two percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year.

(b) The measure of this tax shall be the value of all electric power generated or produced in this state for sale, profit or commercial use, regardless of the place of sale or the fact that transmission may be to points outside this state: *(Provided, That the gross income received by municipally owned plants generating or producing electricity shall not be subject to tax under this article.)*

(c) Beginning the first day of March, one thousand nine hundred eighty-nine, every person taxable under this section shall determine their liability for payment of tax under this section and under paragraph (3), subsection (a), section two-d of this article and section two-n of this article. If for taxable months beginning on or after the first day of March, one thousand nine hundred eighty-nine, such person’s liability for payment of tax under this section and paragraph (3), subsection (a), section two-d of this article is less than the amount of such person’s liability for payment of tax under section two-n of this article, then such person shall pay the tax due under section two-n and not the sum of the amount of tax due under this section and under...
paragraph (3), subsection (a), section two-d of this article. If the tax due under section two-n of this article is less, then the amount of tax due under this section and paragraph (3), subsection (a), section two-d of this article shall be paid. The provisions of this section shall expire and become null and void for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-eight.

§11-13-2n. Business of generating or producing or selling electric power; exemptions; rates.

(a) Rate of tax.—Upon every person engaging or continuing within this state in the business of generating or producing electricity for sale, profit or commercial use, either directly or indirectly through the activity of others, in whole or in part, or in the business of selling electricity to consumers, or in both businesses, the tax imposed by section two of this article shall be equal to:

(1) Two tenths of one cent times the kilowatt hours of net generation available for sale that was generated or produced in this state by the taxpayer during the taxable year, except that this rate shall be five hundredths of one cent times the kilowatt hours of net generation available for sale that was generated or produced in this state by the taxpayer and sold to a plant location of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year: Provided, That in order to encourage the development of industry to improve the environment of this state, the tax imposed by this section on any person generating or producing electric power and an alternative form of energy at a facility located within this state substantially from gob or other mine refuse shall be equal to five hundredths of one cent times the kilowatt hours of net generation or production available for sale. The measure of tax under this paragraph shall be equal to the total kilowatt hours of net generation available for sale that was generated or produced in this state by the taxpayer after the twenty-eighth day of February, one
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thousand nine hundred eighty-nine, regardless of the
place of sale or use, or the fact that transmission may
be made to points outside this state.

(2) Fifteen hundredths of one cent times the kilowatt
hours of electricity sold to consumers in this state that
were not generated or produced in this state by the
taxpayer, except that the rate shall be five hundredths
of one cent times the kilowatt hours of electricity not
generated or produced in this state by the taxpayer
which is sold to a plant location in this state of a
customer engaged in manufacturing activity if the
contract demand at such plant location exceeds two
hundred thousand kilowatts per hour per year or if the
usage at such plant location exceeds two hundred
thousand kilowatts per hour in a year. The measure of
tax under this paragraph shall be equal to the total
kilowatt hours of electricity sold to consumers in this
state after the twenty-eighth day of February, one
thousand nine hundred eighty-nine, that were not
generated or produced in this state by the taxpayer, to
be determined by subtracting from the total kilowatt
hours of electricity sold to consumers in the state the net
kilowatt hours of electricity generated or produced in
the state by the taxpayer during the taxable year.

(b) Exemptions.—The provisions of this section shall
not apply to:

(1) Kilowatt hours of electricity generated and sold, or
purchased and resold, by a municipally owned plant.

(2) Kilowatt hours of electric power that are separat-
eately metered and consumed in an electrolytic process
for the manufacture of chlorine.

(3) Kilowatt hours of electric power that are separat-
eately metered and consumed in the manufacture of
ferroalloy. As used in this paragraph, the term “ferroal-
loy” means any of the various alloys of iron and one or
more other elements used as a raw material in the
production of steel but shall not include electric power
used in the production of steel.

(4) The full economic benefits provided to the tax-
payer by paragraphs (2) and (3) of this subsection shall be passed on to the manufacturer of the chlorine or ferroalloy.

(c) Credit.—Any person taxable under paragraph (2), subsection (a) of this section shall be allowed a credit against the amount of tax due under that paragraph for any electric power generation taxes paid by the taxpayer with respect to such electric power to the state in which such power was generated or produced. The amount of credit allowed shall not exceed the tax liability arising under paragraph (2), subsection (a) of this section with respect to the sale of such power.

(d) Transition rule.—Beginning the first day of March, one thousand nine hundred eighty-nine, electric light and power companies shall determine their liability for payment of tax under this section and sections two-d and two-m of this article. If for taxable months beginning on or after the first day of March, one thousand nine hundred eighty-nine, liability for tax under section two-n of this article is equal to or greater than the sum of the power company's liability for payment of tax under paragraph (3), subsection (a), section two-d and section two-m of this article, then the company shall pay the tax due under section two-n of this article and not the tax due under paragraph (3), subsection (a) of section two-d and section two-m of this article. If tax liability under section two-n is less, then tax shall be paid under paragraph (3), subsection (a), section two-d and section two-m of this article and the tax due under section two-n shall not be paid. The provisions of this subsection (d) shall expire and become null and void for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-eight.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3. Imposition of privilege tax; phase-in of modified rates and effective dates therefor.

(a) Upon every person exercising the privilege of engaging or continuing within this state in severing,
extracting, reducing to possession and producing for
sale, profit or commercial use any natural resource
product or products, there is hereby imposed a tax in
the amount to be determined by the application of rates
against the gross value of the articles produced, as
shown by the gross proceeds derived from the sale
thereof by the producer, except as otherwise provided,
multiplied by the rates, in the classifications and
according to the effective dates in subsection (b) of this
section.

(b) Tax rates; classifications; effective dates.—Begin-
ning on and after the first day of July, one thousand nine
hundred eighty-seven, and for each date, as specified
below, the rates of tax on each respective classification
and for each respective year are as follows:

(1) On coal, and including the thirty-five one hun-
dredths (.35) of one percent additional severance tax on
such coal for the benefit of counties and municipalities,
as provided in section six of this article, on
July 1, 1987—three and eighty-five one hundredths
(3.85) percent;
July 1, 1988—three and eighty-eight one hundredths
(3.88) percent; and
March 1, 1989—and thereafter — five (5.0) percent.
(2) On limestone or sandstone quarried or mined, on
July 1, 1987—two and two-tenths (2.2) percent;
July 1, 1988—two and fifty-six one hundredths (2.56)
percent;
July 1, 1989—two and ninety-two one hundredths
(2.92) percent;
July 1, 1990—three and twenty-eight one hundredths
(3.28) percent;
July 1, 1991—three and sixty-four one hundredths
(3.64) percent;
July 1, 1992—four (4.0) percent;
July 1, 1993—four and fifty one hundredths (4.5)
percent; and
July 1, 1994—and thereafter—five (5.0) percent.

(3) On oil, on
July 1, 1987—four and thirty-four one hundredths
(4.34) percent;
July 1, 1988—four and two hundred seventy-two one
thousandths (4.272) percent; and
March 1, 1989—and thereafter—five (5.0) percent.

(4)(a) On natural gas, on
July 1, 1987—six and five-tenths (6.5) percent;
July 1, 1988—six (6.0) percent;
July 1, 1989—five and five-tenths (5.5) percent; and
July 1, 1990—and thereafter—five (5.0) percent.

(4)(b) On natural gas produced from new wells drilled
and placed in service on and after July 1, 1987, on
July 1, 1987—four (4.0) percent; and
March 1, 1989—and thereafter—five (5.0) percent.

(5) On sand, gravel or other mineral product not
quarried or mined, on
July 1, 1987—four and thirty-four one hundredths
(4.34) percent;
July 1, 1988—four and two hundred seventy-two one
thousandths (4.272) percent; and
March 1, 1989—and thereafter—five (5.0) percent.

(6) On timber, on
July 1, 1987—two and five-tenths (2.5) percent; and
March 1, 1989—and thereafter—three and twenty-two
hundredths (3.22) percent.

(7) On other natural resources, on
July 1, 1987—two and eighty-six one hundredths (2.86)
percent;
(c) Tax in addition to other taxes.—The taxes imposed by this article shall apply to all persons severing or processing (or both severing and processing) natural resources in this state and shall be in addition to all other taxes imposed by law.

(d) Statement of purpose; relationship to existing contracts.—It is the intent of the Legislature in enacting this article to continue the imposition of the tax upon exercising the privilege of engaging in or continuing within this state the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use, natural resource products, which was imposed by section two-a, article thirteen of this chapter prior to the first day of July, one thousand nine hundred eighty-seven, by such act. The provisions of any contract entered into prior to the effective date of this act and relating to the allocation, reimbursement, payment or assessment of the tax imposed by section two-a, article thirteen of this chapter, formerly, shall apply with full force and effect to the tax imposed by this article; it being the intent of the Legislature that, for purposes of any such contractual provision, the tax imposed by this article shall be considered the same as the tax imposed by section two-a, article thirteen of this chapter prior to the first day of July, one thousand nine hundred eighty-seven.
ARTICLE 15. CONSUMERS SALES TAX.

§11-15-3. Amount of tax; allocation of tax and transfers.
§11-15-33. Effective date.


1 For purposes of this article:

2 (a) "Persons" shall mean any individual, partnership, association, corporation, municipal corporation, guardian, trustee, committee, executor or administrator.

3 (b) "Tax commissioner" shall mean the state tax commissioner.

4 (c) "Gross proceeds" shall mean the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses shall not be deducted, but any credit or refund made for goods returned may be deducted.

5 (d) "Sale," "sales" or "selling" shall include any transfer of the possession or ownership of tangible personal property for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his agent for consumption or use or any other purpose.

6 (e) "Vendor" shall mean any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property.

7 (f) "Ultimate consumer" or "consumer" shall mean a person who uses or consumes services or personal property.

8 (g) "Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of
services when those service activities compete with or may compete with the activities of other persons.

(h) “Tax” shall include all taxes, interest and penalties levied hereunder.

(i) “Service” or “selected service” shall include all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but shall not include contracting, personal services or the services rendered by an employee to his employer or any service rendered for resale.

(j) “Purchaser” shall mean a person who purchases tangible personal property or a service taxed by this article.

(k) “Personal service” shall include those:

(1) Compensated by the payment of wages in the ordinary course of employment; and

(2) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoeshining, manicuring and similar services.

(l) “Taxpayer” shall mean any person liable for the tax imposed by this article.

(m) “Drugs” shall include all sales of drugs or appliances to a purchaser, upon prescription of a physician or dentist and any other professional person licensed to prescribe.

(n) (1) “Directly used or consumed” in the activities of manufacturing, transportation, transmission, communication or the production of natural resources shall mean used or consumed in those activities or operations which constitute an integral and essential part of such activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to such activities.

(2) Uses of property or consumption of services which
constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources shall include only:

(A) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources;

(B) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(C) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(D) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(E) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(F) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(G) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(H) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(I) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;
(J) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(K) Maintenance or repair of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(L) Storage, removal or transportation of economic waste resulting from the activities of manufacturing, transportation, communication, transmission or the production of natural resources;

(M) Pollution control or environmental quality or protection activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources; or

(N) Otherwise be used as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources.

(3) Uses of property or services which would not constitute direct use or consumption in the activities of manufacturing, transportation, communication, transmission or the production of natural resources shall include, but not be limited to:

(A) Heating and illumination of office buildings;

(B) Janitorial or general cleaning activities;

(C) Personal comfort of personnel;

(D) Production planning, scheduling of work, or inventory control;

(E) Marketing, general management, supervision, finance, training, accounting and administration; or
(F) An activity or function incidental or convenient to
transportation, communication, transmission, manufac-
turing production or production of natural resources,
rather than an integral and essential part of such
activities.

(o) "Contracting" shall mean the furnishing of work,
or both materials and work, in fulfillment of a contract
for the construction, alteration, repair, decoration or
improvement of a new or existing building or structure,
or any part thereof, or for removal or demolition of a
building or structure, or any part thereof, or for the
alteration, improvement or development of real prop-
erty. For purposes of this definition, the term "struc-
ture" shall include, but not be limited to, everything
built up or composed of parts joined together in some
definite manner and attached to real property, or which
adds utility to a particular parcel of property and is
intended to remain there for an indefinite period of
time.

(p) "Manufacturing" shall mean a systematic opera-
tion or integrated series of systematic operations
engaged in as a business or segment of a business which
transforms or converts tangible personal property by
physical, chemical or other means into a different form,
composition or character from that in which it originally
existed.

(q) "Transportation" shall mean the act or process of
conveying, as a commercial enterprise, passengers or
goods from one place or geographical location to another
place or geographical location.

(r) "Transmission" shall mean the act or process of
causing liquid, natural gas or electricity to pass or be
conveyed from one place or geographical location to
another place or geographical location through a
pipeline or other medium for commercial purposes.

(s) "Communication" shall mean all telephone, radio,
light, light wave, radio telephone, telegraph and other
communication or means of communication, whether
used for voice communication, computer data transmis-
sion or other encoded symbolic information transfers
and shall include commercial broadcast radio, commercial broadcast television and cable television.

(t) "Production of natural resources" shall mean the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith.

§11-15-3. Amount of tax; allocation of tax and transfers.

(a) For the privilege of selling tangible personal property and of dispensing certain selected services defined in sections two and eight of this article, the vendor shall collect from the purchaser the tax as provided under this article, and shall pay the amount of tax to the tax commissioner in accordance with the provisions of this article.

(b) Beginning on the first day of March, one thousand nine hundred eighty-nine, the general consumers sales and service tax imposed by this article shall be at the rate of six cents on the dollar of sales or services, excluding gasoline and special fuel sales, which remain taxable at the rate of five cents on the dollar of sales.

(c) There shall be no tax on sales where the monetary consideration is five cents or less. The amount of the tax shall be computed as follows:

(1) On each sale, where the monetary consideration is from six cents to sixteen cents, both inclusive, one cent.

(2) On each sale, where the monetary consideration is from seventeen cents to thirty-three cents, both inclusive, two cents.

(3) On each sale, where the monetary consideration is from thirty-four cents to fifty cents, both inclusive, three cents.

(4) On each sale, where the monetary consideration is from fifty-one cents to sixty-seven cents, both inclusive, four cents.
(5) On each sale, where the monetary consideration is from sixty-eight cents to eighty-four cents, both inclusive, five cents.

(6) On each sale, where the monetary consideration is from eighty-five cents to one dollar, both inclusive, six cents.

(7) If the sale price is in excess of one dollar, six cents on each whole dollar of sale price, and upon any fractional part of a dollar in excess of whole dollars as follows: One cent on the fractional part of the dollar if less than seventeen cents; two cents on the fractional part of the dollar if in excess of sixteen cents but less than thirty-four cents; three cents on the fractional part of the dollar if in excess of thirty-three cents but less than fifty-one cents; four cents on the fractional part of the dollar if in excess of fifty cents but less than sixty-eight cents; five cents on the fractional part of the dollar if in excess of sixty-seven cents but less than eighty-five cents; and six cents on the fractional part of the dollar if in excess of eighty-four cents. For example, the tax on sales from one dollar and one cent to one dollar and sixteen cents, both inclusive, seven cents; on sales from one dollar and seventeen cents to one dollar and thirty-three cents, both inclusive, eight cents; on sales from one dollar and thirty-four cents to one dollar and fifty cents, both inclusive, nine cents; on sales from one dollar and fifty-one cents to one dollar and sixty-seven cents, both inclusive, ten cents; on sales from one dollar and sixty-eight cents to one dollar and eighty-four cents, both inclusive, eleven cents and on sales from one dollar and eighty-five cents to two dollars, both inclusive, twelve cents.

(d) Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of computation of the tax even though such sales are aggregated in the billing or payment therefor. Notwithstanding any other provision, coin-operated amusement and vending machine sales shall be aggregated for the purpose of computation of this tax.

(e) Of the taxes collected under the provisions of this
article, one sixth of such taxes collected for the period
subsequent to the thirty-first day of May, one thousand
nine hundred eighty-eight, prior to the first day of July,
one thousand nine hundred eighty-nine, and not attrib-
tutable to or resulting from the repeal of section eleven
of this article or attributable to tax on purchases of
gasoline and special fuel, shall be reasonably allocated,
with allowance for refunds and net of reasonable costs
of administration, to and deposited by the tax commis-
sioner in the special account created in the treasury by
section eight-a, article four-b, chapter twenty-three of
this code, not to exceed the amount sufficient for making
timely repayment of the principal and interest under the
first payment due, by the thirtieth day of June, one
thousand nine hundred eighty-nine, in repayment for
the moneys previously transferred from such pneumo-
coniosis fund.
(a) The provisions of this article shall not apply to
contacting services. However, purchases by a contrac-
tor of tangible personal property or taxable services for
use or consumption in the providing of a contracting
service shall be taxable beginning the first day of
March, one thousand nine hundred eighty-nine, except
as otherwise provided in this article.
(b) Transition rules.—The exemption from payment
of tax on purchases of tangible personal property or
taxable services directly used or consumed in the
activity of contracting, as defined in section two of this
article, which expires as of the first day of March, one
thousand nine hundred eighty-nine, shall nevertheless
remain in effect with respect to:
(1) Tangible personal property or taxable services
purchased by a contractor on or after said first day of
March in fulfillment of a written contract for contract-
ing, as defined in section two of this article, that was
executed and legally binding on the parties thereto on
or before the fifteenth day of February, one thousand
nine hundred eighty-nine; or in fulfillment of a written
contract entered into after the said fifteenth day of
February pursuant to a written bid for contracting that
was made on or before the said fifteenth day of
February that was binding on the contractor, but only
to the extent that the bid is subsequently incorporated
into a written contract; or

(2) Tangible personal property or taxable services
purchased by a contractor on or after the said first day
of March pursuant to a written contract executed on or
before the fifteenth day of February, one thousand nine
hundred eighty-nine, to purchase in specified quantities
identified tangible personal property or specified
taxable services.

(3) Tangible personal property or taxable services
purchased by a contractor for consumption or use in
fulfillment of a written contract entered into before the
first day of September, one thousand nine hundred
eighty-nine, when such contract is for the construction
of a new improvement to real property the construction
or operation of which was approved by a federal or state
regulatory body prior to the first day of February, one
thousand nine hundred eighty-nine.

(c) Renewals and extensions.—A renewal of any
contract shall constitute a new contract for purposes of
this section, and the date of entry into a contract
renewal by the parties, the date or dates of tender of
consideration and the time of performance of any
contractual obligations under a renewed contract shall
be treated as the dates for determining application of
this section to the renewed contract. Extensions of time
granted or agreed upon by the parties to a contract for
performance of the contract or for tender of consider-
ation under the contract shall not be treated as contract
renewals. Contracts to which such extensions apply shall
be treated under these transition rules as if the original
contractual provisions for performance and tender of
consideration remain in effect.

(d) Definitions.—For purposes of this section:

(1) The term “contract” or “contracts” means written
agreements reciting or setting forth a fixed price
consideration or a consideration based upon cost plus a
stated percentage or a stated monetary increment. This term shall not mean or include ongoing sales contracts, contracts whereby any element of the consideration or the property or services sold or to be rendered in performance of the contract are undefined, or determined, as to either nature or quantity, subsequent to the making of the contract, or any open-ended contract.

(2) The term "contract renewal" or "renewal" means a covenant or agreement entered into or assumed by parties which have a current contractual relation or which have had a past contractual relation, whereby the parties agree to incur obligations beyond those which they were, or would have been, required, at the minimum, to carry out under their current or past contractual relation.


(a) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;

(b) Sales of textbooks required to be used in any of the schools of this state;

(c) Sales of property or services to the state, its institutions or subdivisions, and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

(d) Sales of motor vehicles which are titled by the department of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of the code;

(e) Sales of property or services to churches and bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption herein granted shall apply only to services, equipment, supplies, food for meals and materials directly used or consumed by these organizations, and shall not apply to purchases of gasoline or special fuel;

(f) Sales of property or services to corporations or organizations qualified under section 501(c)(3) of the
Internal Revenue Code of 1986, as amended, or under section 501(c)(4) of the Internal Revenue Code of 1986, as amended, who make casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character: Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials directly used or consumed in the activities for which such organizations qualify as tax exempt organizations under the Internal Revenue Code by these organizations and shall not apply to purchases of gasoline or special fuel;

(g) Sales of property or services to persons engaged in this state in the business of manufacturing, transportation, transmission, communication or in the production of natural resources: Provided, That the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the businesses or organizations named above, and shall not apply to purchases of gasoline or special fuel: Provided, however, That on and after the first day of July, one thousand nine hundred eighty-seven, the exemption provided in this subsection shall apply only to services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication or the production of natural resources in the businesses or organizations named above and shall not apply to purchases of gasoline or special fuel;

(h) An isolated transaction in which any tangible personal property is sold, transferred, offered for sale or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by such owner or on his account by such representative;

(i) Sales of tangible personal property and services rendered for use or consumption in connection with the business of dispensing a service subject to tax under this article and sales of tangible personal property and services rendered for use or consumption in connection
with the commercial production of an agricultural
product the ultimate sale of which will be subject to the
tax imposed by this article or which would have been
subject to tax under this article: Provided, That sales of
tangible personal property and services to be used or
consumed in the construction of or permanent improve-
ment to real property and sales of gasoline and special
fuel shall not be exempt;

(j) Sales of tangible personal property to a person for
the purpose of resale in the form of tangible personal
property: Provided, That sales of gasoline and special
fuel by distributors and importers shall be taxable
except when the sale is to another distributor for resale:
Provided, however, That sales of building materials or
building supplies or other property to any person
engaging in the activity of contracting, as defined in this
article, which is to be installed in, affixed to or
incorporated by such person or his agent into any real
property, building or structure shall not be exempt
under this subsection, except that sales of tangible
personal property to a person engaging in the activity
of contracting pursuant to a written contract with this
state, or with a political subdivision thereof, or with a
public corporation created by the Legislature or by
another government entity pursuant to an act of the
Legislature, for a building or structure (or improvement
thereof) or other improvement to real property that is
or will be owned and used by the governmental entity
for a governmental or proprietary purpose, who incor-
porates such property in such building, structure or
improvement shall, with respect to such tangible
personal property, nevertheless be deemed to be the
vendor of such property to the governmental entity and
any person seeking to qualify for and assert this
exception must do so pursuant to such legislative rules
and regulations as the tax commissioner may promul-
gate and upon such forms as the tax commissioner may
prescribe. A subcontractor who, pursuant to a written
subcontract with a prime contractor who qualifies for
this exception, provides equipment, or materials, and
labor to such a prime contractor shall be treated in the
same manner as the prime contractor is treated with
respect to the prime contract under this exception and the legislative rules and regulations promulgated by the tax commissioner;

(k) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel shall be taxable;

(l) Sales and services, fire fighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the state of West Virginia: Provided, That sales of gasoline and special fuel shall be taxable;

(m) Sales of newspapers when delivered to consumers by route carriers;

(n) Sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes;

(o) Sales of radio and television broadcasting time, preprinted advertising circulars and newspaper and outdoor advertising space for the advertisement of goods or services;

(p) Sales and services performed by day-care centers;

(q) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by corporations or organizations qualified under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or under section 501(c)(4) of the Internal Revenue Code of 1986, as amended;

(r) Sales of property or services to a school which has approval from the West Virginia board of regents to award degrees, which has its principal campus in this state, and which is exempt from federal and state income taxes under section 501(c)(3) of the Internal Revenue Code of 1986, as amended: Provided, That sales of gasoline and special fuel shall be taxable;

(s) Sales of mobile homes to be utilized by purchasers
as their principal year-round residence and dwelling: Provided, That these mobile homes shall be subject to tax at the three percent rate;

(t) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state lottery commission, under the provisions of article twenty-two, chapter twenty-nine of this code;

(u) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days. This exemption shall apply to leases executed on or after the first day of July, one thousand nine hundred eighty-seven, and to payments under long-term leases executed before such date, for months thereof beginning on or after such date;

(v) Notwithstanding the provisions of subsection (g) of this section or any provisions of this article to the contrary, sales of property and services to persons subject to tax under article thirteen, thirteen-a or thirteen-b of this chapter: Provided, That the exemption herein granted shall apply both to property or services directly or not directly used or consumed in the conduct of privileges which are subject to tax under such articles but shall not apply to purchases of gasoline or special fuel;

(w) Sales of propane to consumers for poultry house heating purposes, with any seller to such consumer who may have prior paid such tax in his price, to not pass on the same to the consumer, but to make application and receive refund of such tax from the tax commissioner, pursuant to rules and regulations which shall be promulgated by the tax commissioner; and notwithstanding the provisions of section eighteen of this article or any other provisions of such article to the contrary;

(x) Any sales of tangible personal property or services purchased after the thirtieth day of September, one thousand nine hundred eighty-seven, and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 United States Code, §2011, et seq., as amended, or with drafts issued through the West
Virginia special supplemental food program for women, infants and children codified in 42 United States Code, §1786;

(y) Sales of tickets for activities sponsored by elementary and secondary schools located within this state; and

(z) Sales of electronic data processing services and related software: Provided, That for the purposes of this subsection (z) "electronic data processing services" means (1) the processing of another's data, including all processes incident to processing of data such as key-punching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing, and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and (2) providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment.

§11-15-33. Effective date.

The provisions of this article as amended or added by this act shall take effect on the first day of March, one thousand nine hundred eighty-nine, and apply to all taxable years ending after that date: Provided, That if an effective date is expressly provided in such provision, that specific effective date shall control in lieu of this general effective date provision.

ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax; six percent tax rate beginning March one, one thousand nine hundred eighty-nine; inclusion of services as taxable on and after the first day of July, one thousand nine hundred eighty-seven; transition rules; allocation of tax and transfers.

§11-15A-29. Effective date.

§11-15A-2. Imposition of tax; six percent tax rate beginning March one, one thousand nine hundred eighty-nine; inclusion of services as taxable on and after the first day of July, one thousand nine hundred eighty-seven; transition rules; allocation of tax and transfers.
§11-15A-29. Effective date.

§11-15A-2. Imposition of tax; six percent tax rate beginning March one, one thousand nine hundred eighty-nine; inclusion of services as taxable on and after the first day of July, one thousand nine hundred eighty-seven; transition rules; allocation of tax and transfers.

(a) An excise tax is hereby levied and imposed on the use in this state of tangible personal property or taxable services, to be collected and paid as hereinafter provided, at the rate of six percent of the purchase price of such property or taxable services, beginning on the first day of March, one thousand nine hundred eighty-nine, except that sales of gasoline and special fuel shall remain taxable at five percent. "Taxable services," for the purposes of this article, means services of the nature that are subject to the tax imposed by article fifteen of this chapter. In this article, wherever the words "tangible personal property" or "property" appear, the same shall include the words "or taxable services," where the context so requires.

(b) Such tax is hereby imposed upon every person using tangible personal property or taxable services within this state. That person's liability is not extinguished until such tax has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in business in this state, or by a foreign retailer who is authorized by the tax commissioner to collect the tax imposed by this article, relieves the purchaser from further liability for the tax to which the receipt refers.

(c) Purchases of tangible personal property or taxable services made for the government of the United States or any of its agencies by ultimate consumers shall be subject to the tax imposed by this section. Industrial materials and equipment owned by the federal government within the state of West Virginia of a character not ordinarily readily obtainable within the state shall not be subject to use tax when sold, if such industrial materials and equipment would not be subject to use
(f) Of the taxes collected under the provisions of this article, one sixth of such taxes collected for the period subsequent to the thirty-first day of May, one thousand nine hundred eighty-eight, and prior to the first day of July, one thousand nine hundred eighty-nine, and not attributable to or resulting from the repeal of section eleven, article fifteen of this chapter or attributable to tax on gasoline and special fuel, shall be reasonably allocated, with allowances for refunds and net of reasonable costs of administration, to, and deposited by the tax commissioner in the special account created in the treasury by section eight-a, article four-b, chapter twenty-three of this code, not to exceed the amount sufficient for making timely repayment of the principal and interest under the first payment due, by the thirtieth day of June, one thousand nine hundred eighty-nine, in repayment for the moneys previously transferred from such pneumoconiosis fund.

§11-15A-29. Effective date.

The provisions of this article as amended or added by this act shall take effect on the first day of March, one thousand nine hundred eighty-nine, and apply to all taxable years ending after that date: Provided, That if an effective date is expressly provided in such provision, that specific effective date shall control in lieu of this general effective date provision.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-6. Imposition of tax; change in rate of tax.

§11-23-17. Credits against tax; expiration of credits.

§11-23-6. Imposition of tax; change in rate of tax.

(a) General.—An annual business franchise tax is hereby imposed on the privilege of doing business in this state and in respect of the benefits and protections conferred. Such tax shall be collected from every domestic corporation, every corporation having its commercial domicile in this state, every foreign or domestic corporation owning or leasing real or tangible personal property located in this state or doing business in this state and from every partnership owning or leasing real or tangible personal property located in this
(a) A credit shall be allowed against the tax imposed by this article equal to the amount of franchise tax liability due under this article, for the taxable year (determined before application of other allowable credits) multiplied by a fraction, the numerator of which
is the gross income of the business subject to tax under article thirteen-a of this chapter and the denominator of which is the total amount of gross receipts derived from or attributable to all of taxpayer's activity in West Virginia.

(b) For taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-eight, a credit shall be allowed against the tax imposed by this article equal to the amount of franchise tax liability due under this article, for the taxable year (determined before application of other allowable credits) multiplied by a fraction, the numerator of which is the gross income of the business subject to tax under article thirteen of this chapter and the denominator of which is the total amount of gross receipts derived from or attributable to all of taxpayer's activity in West Virginia: Provided, That such credit shall be prorated and only that amount attributable to months of the taxable year beginning after June thirtieth, one thousand nine hundred eighty-eight, shall be allowed as a credit.

(c) A parent taxpayer who files a separate return under this article shall be allowed a credit against such taxpayer's liability for the tax under this article for the amount of net taxes that would have been paid without regard to the adjustment required by subparagraph (D), paragraph (2), subsection (b), section three of this article for the taxable year by a subsidiary corporation or partnership: Provided, That the amount of credit allowed shall not exceed the amount of tax that would have been paid, without regard to such adjustment, under this article by the subsidiary or partnership, multiplied by the percentage of the parent's ownership of the subsidiary corporation or partnership. In the case of corporations, this percentage shall be equal to the percentage of stock of all classes owned by the parent. In no case shall any credit allowable by this section, which is not used on an annual return, be carried forward or back, but instead the same shall be forfeited.

(d) A credit shall be allowed against the tax imposed by this article for the taxable year equal to the amount
of liability of the taxpayer for the taxable year for the
full amount of any tax imposed pursuant to article eight
of this chapter on the capital of the business, as
determined under sections fourteen and fourteen-a,
article three of this chapter.

(e) Expiration of credits.—The credits authorized in
subsection (a) of this section shall expire and not be
authorized or allowed for any taxable month beginning
on or after the first day of March, one thousand nine
hundred eighty-nine. For taxable years beginning
before said first day of March and ending after such
date, the annual credit heretofore allowed by subsection
(a) of this section shall be prorated by the number of
months in the taxable year and only that portion of the
credit attributable to months ending prior to said first
day of March shall be allowable under this section.

CHAPTER 3

(Com. Sub. for S. B. 2—By Senators Tucker, Mr. President, and Harman,
By Request of the Executive)

[Passed February 1, 1989; in effect from passage. Approved by the Governor.]
authority, duties and status of administrators, agencies and boards; providing for code references elsewhere; relating to the powers and authority of the secretary of each such department; providing rule-making authority; making special provisions for federal law or regulation, federal-state programs or federally delegated programs; specifying the appointment, term, qualifications, oath, bond and compensation of administrators of all transferred and incorporated agencies and boards; authorizing dual office-holding; providing for the transfer of records, property and personnel; providing for a report to the Legislature concerning further reorganization of the executive branch of state government; providing operative date for implementation; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

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

Article
1. General provisions.
2. Transfer of Agencies and Boards.
3. Future Reorganizations; Severability.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-1. Legislative findings and declarations.
§5F-1-2. Executive departments created; offices of secretary created; funds.
§5F-1-3. Oath; bond; compensation.
§5F-1-4. Definitions.

§5F-1-1. Legislative findings and declarations.

(a) The Legislature hereby finds and declares that state government must be made more responsive to the citizens of the state; that the various agencies and boards responsible for the execution of the laws of this state must be improved; that more effective management of the executive branch of state government must be achieved; that the efficiency of the operations of the agencies and boards of state government must be
increased; and that in view of the financial crisis facing
the state of West Virginia, it is essential to compel a
curtailment and reduction of governmental expenses
and hold them within reasonable bounds consistent with
the economical and efficient administration of govern-
mental services and to ensure the strictest economy in
the matter of governmental expenditures to the end that
agencies and boards of government may not be com-
pelled to abdicate their responsibilities or cease to
function but that in carrying out their responsibilities
they shall not place upon the public any expense which
is not necessary. The Legislature further hereby finds
and declares that in order to achieve these purposes, it
is essential to reorganize the executive branch of state
government so as to:

(1) Promote the execution of the laws, the more
effective management of the executive branch and of its
agencies, boards and functions, and the expeditious
administration of the public business;

(2) Reduce expenditures and promote economy to the
fullest extent consistent with the efficient operation of
state government;

(3) Increase the efficiency of the operations of state
government to the fullest extent practicable;

(4) Group, coordinate and consolidate agencies and
functions of state government, as nearly as may be,
according to purposes;

(5) Consolidate or combine those agencies having
similar or complementary functions under a single head,
and, after observing and analyzing the operation of such
consolidated or combined agencies for a period of time,
abolish by legislative act, where legislative action is
required, such agencies or functions thereof as are
determined not to be necessary or desirable for the
efficient conduct of the state government;

(6) Eliminate duplication of effort;

(7) Provide for appropriate legislative oversight as
mandated in the constitution of this state; and
(8) Provide for a spirit of cooperation and unity between the executive and legislative branches in addressing and developing solutions to the problems facing the state.

(b) This chapter is enacted in view and because of the findings and declarations set forth in subsection (a) of this section and shall be construed in the light thereof.

§5F-1-2. Executive departments created; offices of secretary created; funds.

(a) There are hereby created, within the executive branch of the state government, the following departments:

(1) Department of administration;
(2) Department of commerce, labor and environmental resources;
(3) Department of education and the arts;
(4) Department of health and human resources;
(5) Department of public safety;
(6) Department of tax and revenue; and
(7) Department of transportation.

(b) Each department shall be headed by a secretary who shall be appointed by the governor by and with the advice and consent of the Senate and who shall serve at the will and pleasure of the governor.

§5F-1-3. Oath; bond; compensation.

(a) Each person appointed to serve as a secretary shall take the oath or affirmation prescribed by section five, article four of the constitution, and such oath shall be certified by the person who administers the same and filed in the office of the secretary of state.

(b) Each person so appointed shall give bond in the penalty of twenty-five thousand dollars conditioned for the faithful performance of the duties of the office, which bond shall be approved by the attorney general as to form and by the governor as to sufficiency. The
surety of such bond may be a bonding or surety company, in which case the premium shall be paid out of the appropriation made for the administration of the department.

(c) Each secretary shall receive an annual salary as shall be fixed from time to time by the governor within the limit of funds appropriated to the department and available for such purpose.

(d) The salary and expenses necessary for each secretary and all expenditures for personal services for the office of secretary shall be paid from and within existing appropriations made to the agencies and boards transferred to the department headed by that secretary, and revised expenditure schedules shall be submitted to the commissioner of finance and administration and the legislative auditor stating the amount and source of funds to be expended: Provided, That for fiscal years beginning the first day of July, one thousand nine hundred eighty-nine, such amounts shall follow the procedures described in chapter five-a of this code.

§5F-1-4. Definitions.

(a) As used in this chapter, unless the context clearly requires a different meaning:

(1) “Administrator” means any person who fills a statutorily created position within or related to an agency or board (other than a board member) and who is designated by statute as commissioner, deputy commissioner, assistant commissioner, director, chancellor, chief, executive director, executive secretary, superintendent, deputy superintendent, or other administrative title, however designated;

(2) “Agency” means any department, division, fund, office, position, system, survey or other entity of state government, however designated, transferred to and incorporated in one of the departments created in section two of this article;

(3) “Board” means any board, commission, authority, council, or other body, however designated, consisting of two or more members, transferred to and incorporated
in one of the departments created in section two of this article;

(4) “Code” means the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereafter amended; and

(5) “Secretary” means the administrative head of one of the departments created in section two of this article.

(b) Although each term defined in subsection (a) of this section is in the singular, the plural of any term shall have the same meaning.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

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

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

§5F-2-3. Administrators; appointment; oath; bond; compensation.

§5F-2-4. Transfer of records, property and personnel.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of administration:

(1) Building commission provided for in article six, chapter five of this code;

(2) Records management and preservation advisory committee provided for in article eight, chapter five of this code;

(3) Public employees retirement system and board of trustees provided for in article ten, chapter five of this code;

(4) Public employees insurance agency and public employees advisory board provided for in article sixteen, chapter five of this code;

(5) Department of finance and administration and council of finance and administration provided for in article one, chapter five-a of this code;
(6) Employee suggestion award board provided for in article one-a, chapter five-a of this code;

(7) Governor's mansion advisory committee provided for in article four-a, chapter five-a of this code;

(8) Advisory commission to the information system services division in the department of finance and administration provided for in article seven, chapter five-a of this code;

(9) Teachers retirement system and teachers' retirement board provided for in article seven-a, chapter eighteen of this code;

(10) Commission on uniform state laws provided for in article one-a, chapter twenty-nine of this code;

(11) Department of personnel of the civil service system and the civil service commission provided for in article six, chapter twenty-nine of this code;

(12) Education and state employees grievance board provided for in article twenty-nine, chapter eighteen and article six-a, chapter twenty-nine of this code;

(13) Board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;

(14) Boundary commission provided for in article twenty-three, chapter twenty-nine of this code;

(15) Public legal services council provided for in article twenty-one, chapter twenty-nine of this code;

(16) Division of personnel which may be hereafter created by the Legislature; and

(17) The West Virginia ethics commission which may be hereafter created by the Legislature.

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of commerce, labor and environmental resources:
(1) Forest management review commission provided for in article twenty-four, chapter five of this code;

(2) Department of commerce provided for in article one, chapter five-b of this code;

(3) Office of community and industrial development provided for in article two, chapter five-b of this code;

(4) Enterprise zone authority provided for in article two-b, chapter five-b of this code;

(5) Office of federal procurement assistance provided for in article two-c, chapter five-b of this code;

(6) Export development authority provided for in article three, chapter five-b of this code;

(7) Labor-management council provided for in article four, chapter five-b of this code;

(8) Industry and jobs development corporation provided for in article one, chapter five-c of this code;

(9) Public energy authority and board provided for in chapter five-d of this code;

(10) Air pollution control commission provided for in article twenty, chapter sixteen of this code;

(11) Resource recovery—solid waste disposal authority provided for in article twenty-six, chapter sixteen of this code;

(12) Division of forestry and forestry commission provided for in article one-a, chapter nineteen of this code;

(13) Department of natural resources and natural resources commission provided for in article one, chapter twenty of this code;

(14) Water resources board provided for in article five, chapter twenty of this code;

(15) Water development authority and board provided for in article five-c, chapter twenty of this code;

(16) Department of labor provided for in article one, chapter twenty-one of this code;
(17) Labor-management relations board provided for in article one-b, chapter twenty-one of this code;

(18) Public employees occupational safety and health advisory board provided for in article three-a, chapter twenty-one of this code;

(19) Minimum wage rate board provided for in article five-a, chapter twenty-one of this code;

(20) Board of manufactured housing construction and safety provided for in article nine, chapter twenty-one of this code;

(21) Department of energy provided for in article one, chapter twenty-two of this code;

(22) Reclamation board of review provided for in article four, chapter twenty-two of this code;

(23) Board of appeals provided for in article five, chapter twenty-two of this code;

(24) Board of coal mine health and safety and coal mine safety and technical review committee provided for in article six, chapter twenty-two of this code;

(25) Shallow gas well review board provided for in article seven, chapter twenty-two of this code;

(26) Oil and gas conservation commission provided for in article eight, chapter twenty-two of this code;

(27) Board of miner training, education and certification provided for in article nine, chapter twenty-two of this code;

(28) Mine inspectors' examining board provided for in article eleven, chapter twenty-two of this code;

(29) Oil and gas inspectors' examining board provided for in article thirteen, chapter twenty-two of this code;

(30) Geological and economic survey provided for in article two, chapter twenty-nine of this code;

(31) Blennerhassett historical park commission provided for in article eight, chapter twenty-nine of this code;
(32) Tourist train and transportation board provided for in article twenty-four, chapter twenty-nine of this code;

(33) Economic development authority provided for in article fifteen, chapter thirty-one of this code;

(34) Board of members of the forest industries industrial foundation provided for in article sixteen, chapter thirty-one of this code;

(35) Department of banking provided for in article two, chapter thirty-one-a of this code;

(36) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

(37) Consumer affairs advisory council provided for in article seven, chapter forty-six-a of this code; and

(38) Lending and credit rate board provided for in chapter forty-seven-a of this code.

(c) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of education and the arts:

(1) Library commission provided for in article one, chapter ten of this code;

(2) Educational broadcasting authority provided for in article five, chapter ten of this code;

(3) Board of regents provided for in article twenty-six, chapter eighteen of this code; and

(4) Department of culture and history, archives and history commission and commission on the arts provided for in article one, chapter twenty-nine of this code.

(d) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be
administered as a part of the department of health and human resources:

(1) Human rights commission provided for in article eleven, chapter five of this code;

(2) Department of human services provided for in article two, chapter nine of this code;

(3) Department of veterans’ affairs and veterans’ council provided for in article one, chapter nine-a of this code;

(4) Department of health and board of health provided for in article one, chapter sixteen of this code;

(5) Health care planning council provided for in article two-d, chapter sixteen of this code;

(6) Office of emergency medical services and advisory council thereto provided for in article four-c, chapter sixteen of this code;

(7) Continuum of care board for the elderly, disabled and terminally ill provided for in article five-d, chapter sixteen of this code;

(8) Hospital finance authority provided for in article twenty-nine-a, chapter sixteen of this code;

(9) Health care cost review authority provided for in article twenty-nine-b, chapter sixteen of this code;

(10) Structural barriers compliance board provided for in article ten-f, chapter eighteen of this code;

(11) Department of employment security, state advisory council thereto and board of review provided for in chapter twenty-one-a of this code;

(12) Office of workers’ compensation commissioner, advisory board thereto and workers’ compensation appeal board provided for in chapter twenty-three of this code;

(13) Commission on aging provided for in article fourteen, chapter twenty-nine of this code;

(14) Commission on mental retardation and advisory
committee thereto provided for in article fifteen, chapter twenty-nine of this code;

(15) Women's commission provided for in article twenty, chapter twenty-nine of this code; and

(16) Commission on children and youth provided for in article six-c, chapter forty-nine of this code.

(e) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of public safety:

(1) Crime victims compensation fund provided for in article two-a, chapter fourteen of this code;

(2) Adjutant general's department provided for in article one-a, chapter fifteen of this code;

(3) Armory board provided for in article six, chapter fifteen of this code;

(4) Military awards board provided for in article one-g, chapter fifteen of this code;

(5) Department of public safety and commission on drunk driving prevention provided for in article two, chapter fifteen of this code;

(6) Office of emergency services and emergency services advisory council provided for in article five, chapter fifteen of this code;

(7) Sheriffs' bureau provided for in article eight, chapter fifteen of this code;

(8) Department of corrections provided for in chapter twenty-five of this code;

(9) Fire commission and state fire administrator provided for in article three, chapter twenty-nine of this code;

(10) Regional jail and prison authority provided for in article twenty, chapter thirty-one of this code; and
(11) Board of probation and parole provided for in article twelve, chapter sixty-two of this code.

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of tax and revenue:

(1) Tax department provided for in article one, chapter eleven of this code;

(2) Appraisal control and review commission provided for in article one-a, chapter eleven of this code;

(3) Office of nonintoxicating beer commissioner provided for in article sixteen, chapter eleven of this code;

(4) Board of investments provided for in article six, chapter twelve of this code;

(5) Municipal bond commission provided for in article three, chapter thirteen of this code;

(6) Racing commission provided for in article twenty-three, chapter nineteen of this code;

(7) Lottery commission and position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;

(8) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;

(9) Office of alcohol beverage control commissioner provided for in article two, chapter sixty of this code; and

(10) Division of professional and occupational licenses which may be hereafter created by the Legislature.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of transportation:
(1) Road commission provided for in article two, chapter seventeen of this code;

(2) Department of highways provided for in article two-a, chapter seventeen of this code;

(3) Turnpike commission provided for in article sixteen-a, chapter seventeen of this code;

(4) Department of motor vehicles provided for in article two, chapter seventeen-a of this code;

(5) Driver's licensing advisory board provided for in article two, chapter seventeen-b of this code;

(6) Motorcycle safety standards and specifications board provided for in article fifteen, chapter seventeen-c of this code;

(7) Aeronautics commission provided for in article two-a, chapter twenty-nine of this code;

(8) Railroad maintenance authority provided for in article eighteen, chapter twenty-nine of this code; and

(9) Port authority which may be hereafter created by the Legislature.

(h) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency shall not be affected by the enactment of this chapter.

(i) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of such boards shall not be affected by the enactment of this chapter, and all boards which are appellate bodies or were otherwise established to be independent decision-makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.
(j) Wherever elsewhere in this code, in any act, in general or other law, in any rule or regulation, or in any ordinance, resolution or order, reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, such reference shall henceforth be read, construed and understood to mean a division of the appropriate department so created, and any such reference elsewhere to a division of a department so transferred and incorporated shall henceforth be read, construed and understood to mean a section of the appropriate division of the department so created.

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

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

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

(2) Cause the various agencies and boards to be operated effectively, efficiently and economically, and develop goals, objectives, policies and plans that are necessary or desirable for the effective, efficient and economical operation of the department;

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

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

(5) Reorganize internal functions or operations;

(6) Formulate comprehensive budgets for consideration by the governor, and transfer within the depart-
ment funds appropriated to the various agencies of the
department which are not expended due to cost savings
resulting from the implementation of the provisions of
this chapter: Provided, That no more than twenty-five
percent of the funds appropriated to any one agency or
board may be transferred to other agencies or boards
within the department: Provided, however, That no
funds may be transferred from a special revenue
account, dedicated account, capital expenditure account
or any other account or funds specifically exempted by
the Legislature from transfer, except that the use of
appropriations from the state road fund transferred to
the office of the secretary of the department of trans-
portation is not a use other than the purpose for which
such funds were dedicated and is permitted: Provided
further, That if the Legislature by subsequent enactment
consolidates agencies, boards or functions, the secretary
may transfer the funds formerly appropriated to such
agency, board or function in order to implement such
consolidation. The authority to transfer funds under this
section shall expire on the thirtieth day of June, one
thousand nine hundred eighty-nine;

(7) Enter into contracts or agreements requiring the
expenditure of public funds, and authorize the expend-
iture or obligating of public funds as authorized by
law: Provided, That the powers granted to the secretary
to enter into contracts or agreements and to make
expenditures or obligations of public funds under this
provision shall not exceed or be interpreted as authority
to exceed the powers heretofore granted by the Legis-
lature to the various commissioners, directors or board
members of the various departments, agencies or boards
that comprise and are incorporated into each secretary's
department under this chapter;

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

(9) Conduct internal audits;

(10) Supervise internal management;

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

(12) Grant or withhold written consent to the proposal
of any rule, as defined in section two, article one,
chapter twenty-nine-a of this code, by any administra-
tor, agency or board within the department, without
which written consent no proposal of a rule shall have
any force or effect;

(13) Delegate to administrators such duties of the
secretary as the secretary may deem appropriate from
time to time to facilitate execution of the powers,
duties delegated to the secretary; and

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

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

(1) The elimination, reduction and restrictions in the
use of the state's vehicle or other transportation fleet;

(2) The elimination, reduction and restrictions in the
preparation of state government publications, including
annual reports, informational materials, and promo-
tional materials;
(3) The termination or renegotiation of terms contained in lease agreements between the state and private sector for offices, equipment and services;

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

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

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

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

(d) The layoff and recall rights of employees within the classified service of the state as provided in subsections five and six, section ten, article six, chapter twenty-nine of this code shall be limited to the organizational unit within the agency or board and within the promotional series of the agency or board in which the employee was employed prior to the agency or board's transfer or incorporation into the department. The duration of recall rights provided in this subsection shall be limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state as provided in sections ten and ten-a, article six, chapter twenty-nine of this code or the right of classified employees of the board of regents to the procedures and protections set forth in article twenty-six-b, chapter eighteen of this code.
§5F-2-3. Administrators; appointment; oath; bond; compensation.

(a) Notwithstanding any other provision of this code (including subsections (h) and (i), section one of this article) to the contrary, each administrator required by other provisions of this code to be appointed by the governor shall:

(1) Continue to be appointed by the governor by and with the advice and consent of the Senate and each such administrator shall serve at the will and pleasure of the governor, and the governor may appoint a person to fill more than one such position of administrator and may appoint a secretary to fill one or more positions of such administrator, but each person appointed as such an administrator must possess whatever qualifications are elsewhere specified in this code as being required for appointment to such position;

(2) Take the oath of office or affirmation prescribed by section five, article four of the constitution, and such oath shall be certified by the person who administers the same and filed in the office of the secretary of state;

(3) Give bond in the penalty of fifteen thousand dollars conditioned for the faithful performance of the duties of the office, which bond shall be approved by the attorney general as to form and by the secretary as to sufficiency. The surety of such bond may be a bonding or surety company, in which case the premium shall be paid out of the appropriation made for the administration of the department; and

(4) Receive an annual salary as shall be fixed from time to time by the governor and secretary within the limit of funds appropriated to the department and available for such purpose.

(b) Each administrator required by other provisions of this code to be appointed in any manner other than by the governor shall continue to be appointed, shall take such oath of office, give such bond and receive such salary as shall be so specified by such other provisions of this code.
§5F-2-4. Transfer of records, property and personnel.

1 All records, assets and property, of whatever kind or character, owned by or utilized in the administration of the agencies and boards and all of the personnel utilized in the administration of such agencies and boards, including the administrators, are hereby transferred to the respective department to and in which such agencies and boards are transferred and incorporated.

ARTICLE 3. FUTURE REORGANIZATION; SEVERABILITY.

§5F-3-1. Recommendations for further reorganization.

The governor shall submit to the Legislature on or before the first day of January, one thousand nine hundred ninety-one, a report setting forth the reorganization implemented by executive action pursuant to this chapter and resulting cost savings as determined by the governor, any recommendations for further reorganization requiring legislative action and drafts of recommended legislation to implement the reorganization requiring legislative action.

§5F-3-2. Operative dates.

The provisions of this chapter shall become operative as to any department created in section two, article one of this chapter upon the appointment of the secretary of such department.

§5F-3-3. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the chapter, and to this end the provisions of this chapter are declared to be severable.
AN ACT to repeal section seven-a, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three and fifteen, article fourteen of said chapter eleven; to further amend said article fourteen by adding thereto a new section, designated section five-a; to amend and reenact sections five and seven of said article fourteen-a; and to further amend said article fourteen-a by adding thereto two new sections, designated sections three-a and twenty-eight, all relating generally to gasoline and motor fuel excise taxes; increasing the rate of tax to fifteen and one-half cents per gallon of gasoline or special fuel beginning the first day of April, one thousand nine hundred eighty-nine; exempting from gasoline and special fuel excise tax and from consumers sales tax bulk sales of gasoline or special fuel to interstate motor carriers provided the motor carrier road tax and the use tax are paid on such gallons used in this state; providing administrative procedures for this exemption and its effective date; repealing the motor carrier road tax surtax as of the first day of April, one thousand nine hundred eighty-nine; establishing primary liability for payment of registration fees and motor carrier road tax when motor carrier is leased or rented; requiring annual reports from motor carriers operating solely in this state in lieu of quarterly reports; providing for issuance of temporary trip permits and issuance of annual transporters permits, and setting fees therefor; imposing criminal penalties; authorizing exchange of motor carrier information between certain agencies when purpose of exchange is to administer a combined trip permit program; authorizing issuance of combined trip permits and specifying fee therefor; dedicating the sum of twenty-five million dollars to bridge replacement or
repair; authorizing the use of the proceeds to be used to match federal amounts available for expenditure on the Appalachian Highway System, providing that amounts remaining after funding the foregoing priorities shall be used for the maintenance, construction, repair and reconstruction of state highways; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That section seven-a, article fourteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three and fifteen, article fourteen of said chapter eleven be amended and reenacted; that said article fourteen be further amended by adding thereto a new section, designated section five-a; that sections five and seven of said article fourteen-a be amended and reenacted; and that said article fourteen-a be further amended by adding thereto two new sections, designated sections three-a and twenty-eight, all to read as follows:

Article
14A. Motor Carrier Road Tax.

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-3. Imposition of tax.

§11-14-5a. Exemption for bulk sales to interstate motor carriers.

§11-14-15. Disposition of tax collected.

§11-14-3. Imposition of tax.

1 There is hereby levied an excise tax of ten and one-half cents per gallon on all gasoline or special fuel, which tax shall be computed in accordance with the appropriate measure of tax as hereinafter prescribed in this article: Provided, That beginning the first day of April, one thousand nine hundred eighty-nine, the tax levied by this article shall be fifteen and one-half cents per gallon.

§11-14-5a. Exemption for bulk sales to interstate motor carriers.

1 (a) In general.—There shall be exempt from the taxes imposed by this article and by article fifteen of this code
all gallons of gasoline or special fuel sold by a distributor to an interstate motor carrier having fuel storage tanks in this state which are used solely for the purpose of fueling motor carriers owned, leased or operated by the motor carrier, when the purchase is delivered in bulk quantities of one thousand gallons or more into such fuel storage tanks and is purchased for the motor carrier's exclusive use: Provided, That this exemption shall not relieve the person owning or operating a motor carrier from payment of any taxes imposed by article fourteen-a or fifteen-a of this chapter on gasoline or special fuel used or consumed in this state by the motor carrier.

(b) Surety bond; release of surety; new bond.—The commissioner may in his discretion require an interstate motor carrier having fuel storage tanks in this state to file a continuous surety bond in an amount to be fixed by the commissioner, except that the amount thereof shall not be less than one thousand dollars. Upon completion of the filing of such surety bond an annual notice of renewal, only, shall be required thereafter. The surety must be authorized to engage in business within this state. This bond shall be conditioned upon the motor carrier's faithful compliance with the provisions of this article and articles fourteen-a and fifteen-a of this chapter with respect to such gasoline or special fuel, including the filing of the returns and payment of all tax due with respect to such gasoline or special fuel. Such bond shall be approved by the commissioner as to sufficiency and by the attorney general as to form, and shall indemnify the state against any loss arising from the failure of the taxpayer for whatever reason to pay any tax imposed by article fourteen-a or fifteen-a of this chapter on gasoline or special fuel purchased as provided in this section which was used or consumed in operation of the motor carrier in this state: Provided, That a noninterest bearing cash deposit may be accepted by the commissioner in lieu of such bond. The cash deposit shall be in an amount to be fixed by the commissioner, except the amount thereof may not be less than one thousand dollars.
(c) Revocation of suspension of exemption.

(1) The tax commissioner may revoke or suspend application of this exemption to a motor carrier if:

(A) The motor carrier filed a false or fraudulent return for the tax imposed by article fourteen-a or fifteen-a of this chapter on gasoline or special fuel it used or consumed in this state.

(B) The motor carrier willfully refused or willfully neglected to file a tax return or willfully failed to report information required by the tax commissioner, concerning gasoline or special fuel which it used or consumed in this state, on or before the date specified for filing the return or report.

(C) The motor carrier willfully refused or willfully neglected to pay any tax, additions to tax, penalties or interest, or any part thereof, with respect to gasoline or special fuel used or consumed in this state when they became due and payable under this chapter, determined with regard to any authorized extension of time for payment.

(2) Before cancelling or suspending this exemption, the tax commissioner shall give written notice to the motor carrier of his intent to suspend or cancel this exemption, the reason for the suspension or cancellation, the effective date of the suspension or cancellation, and the date, time and place where the taxpayer may appear at an informal hearing and show cause why this exemption should not be suspended or canceled. This written notice shall be served on the taxpayer in the same manner as a notice of assessment is served under article ten of this chapter, not less than twenty days prior to the date of such informal hearing. The taxpayer may appeal suspension or cancellation of its exemption under this section in the same manner as a notice of assessment is appealed under article ten of this chapter: Provided, That the filing of a petition for appeal shall not stay the effective date of the suspension or cancellation. A stay may be granted only after a hearing is held on a motion to stay filed by the motor carrier, upon finding that state revenues will not be jeopardized by
the granting of the stay. The tax commissioner may, in
his discretion and upon such terms as he may specify,
agree to stay the effective date of the suspension or
cancellation until another date certain.

(3) The tax commissioner shall promptly give notice
to distributors in this state of the name and mailing
address of every motor carrier whose exemption under
this section is suspended or cancelled. The effective date
of such suspension or cancellation shall be included, and
if this exemption is suspended, the date the suspension
expires shall also be provided. The affected motor
carrier shall promptly give similar written notice to all
distributors from whom he purchases gasoline or special
fuel exempt from tax as provided in subsection (a) of
this section.

(4) A motor carrier whose exemption under this
section is cancelled may, after the cancellation has been
in effect for twelve months, petition the tax commis-
sioner for reinstatement of exemption under this section.
The tax commissioner may, in his discretion, and upon
such terms as he may require reinstate this exemption,
but only if he reasonably believes that the motor carrier
will fully and timely comply with this article and the
provisions of articles fourteen-a and fifteen-a of this
chapter. Upon reinstatement, the motor carrier shall
provide his distributor with a true copy of the tax
commissioner's order reinstating the exemption.

d) Effective date.—The provisions of this section
shall apply to gasoline or special fuel delivered after the
thirty-first day of March, one thousand nine hundred
eighty-nine.

§11-14-15. Disposition of tax collected.

All tax collected under the provisions of this article
shall be paid into the state treasury and shall be used
only for the purpose of construction, reconstruction,
maintenance and repair of highways, matching of
federal moneys available for highway purposes and
payment of the interest and sinking fund obligations on
state bonds issued for highway purposes: Provided, that
for fiscal year one thousand nine hundred eighty-nine-
ninety, twenty-five million dollars shall be used only for bridge repair and replacement and all amounts remaining shall next be used for payment of the interest and sinking fund obligations on state bonds issued for highway purposes: Provided, however, that any amounts remaining after funding these priorities shall next be used in matching any federal amounts available for expenditure on the Appalachian highway system in this State: Provided further, that any amounts remaining after funding these priorities shall be used for the maintenance, reconstruction and construction of state highways.

Unless necessary for such bond requirements, five fourteenth of the tax collected under the provisions of this article shall be used for feeder and state local service highway purposes.

ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-3a. Leased motor carriers.

(a) Motor carriers leased for less than thirty days.—A lessor of motor carriers who is regularly engaged in the business of leasing or renting motor carriers with or without drivers to licensees or other lessees for a period of less than thirty days is primarily liable for payment of the taxes and fees imposed by this article.

(b) Motor carriers leased for thirty days or more.—A licensee or other lessee who leases or rents a motor carrier with or without drivers for a period of thirty days or more is primarily liable for payment of the taxes and fees imposed by this article.

(c) The provision of subsections (a) and (b) of this section shall govern the primary liability of lessors and licensees or other lessees of motor carriers. If a lessor or licensee or other lessee primarily liable fails, in whole or in part, to discharge his liability, such failing party and other party to the transaction, whether denominated
as a lessor, licensee or other lessee, shall be jointly and
severally responsible and liable for compliance with the
provisions of this article and for payment of any tax or
fees due under this article: Provided, That the aggregate
of taxes and fees collected by the commissioner shall not
exceed the total amount or amounts of taxes and fees
due under this article on account of the transactions in
question plus such interest, additions to tax, other
penalties and costs, if any, that may be imposed:
Provided, however, That no person, other than the person
primarily responsible for the taxes and fees under this
article, may be assessed penalties or additions to tax
resulting from the failure of the party primarily liable
for such taxes and fees to pay: Provided further, That
once such other party to the transaction who is not
primarily liable for the taxes under this article but who
is made jointly and severally liable under this subsection
for such taxes is assessed for those taxes and fees and
fails to discharge such assessment within the time
prescribed therefor, or within thirty days after receiv-
ing such assessment if no time is so prescribed, nothing
herein shall prohibit the commissioner from imposing
additions to tax or penalties upon that person for failing
to pay the assessment issued in his name.

§11-14A-5. Reports of carriers; joint reports; records;
examination of records; subpoenas and witnesses.

(a) Every taxpayer subject to the tax imposed by this
article, except as provided in subsections (b) and (c) of
this section, shall on or before the twenty-fifth day of
January, April, July and October of every calendar year
make to the commissioner such reports of its operations
during the quarter ending the last day of the preceding
month as the commissioner may require and such other
reports from time to time as the commissioner may
deem necessary. For good cause shown, the commis-
sioner may extend the time for filing said reports for
a period not exceeding thirty days.

(b) Every motor carrier which operates exclusively in
this state during a fiscal year that begins on the first
day of July of one calendar year and ends on the
thirtieth day of June of the next succeeding calendar
year and during such fiscal year consumes in its operation only gasoline or special fuel upon which the tax imposed by article fourteen of this chapter has been paid shall, in lieu of filing the quarterly reports required by subsection (a), file an annual report for such fiscal year on or before the last day of July each calendar year. For good cause shown, the commissioner may extend the time for filing such report for a period of thirty days.

(c) Two or more taxpayers regularly engaged in the transportation of passengers on through buses on through tickets in pool operation may, at their option and upon proper notice to the commissioner, make joint reports of their entire operations in this state in lieu of the separate reports required by subsection (a) of this section. The taxes imposed by this article shall be calculated on the basis of such joint reports as though such taxpayers were a single taxpayer; and the taxpayers making such reports shall be jointly and severally liable for the taxes shown thereon to be due. Such joint reports shall show the total number of highway miles traveled in this state and the total number of gallons of gasoline or special fuel purchased in this state by the reporting taxpayers. Credits to which the taxpayers making a joint return are entitled shall not be allowed as credits to any other taxpayer; but taxpayers filing joint reports shall permit all taxpayers engaged in this state in pool operations with them to join in filing joint reports.

(d) A taxpayer shall keep such records necessary to verify the highway miles traveled within and without the state of West Virginia, the number of gallons of gasoline and special fuel used and purchased within and without West Virginia and any other records which the commissioner by regulation may prescribe.

(e) In addition to the tax commissioner's powers set forth in sections five-a and five-b, article ten of this chapter, the commissioner may inspect or examine the records, books, papers, storage tanks, meters and any equipment records or records of highway miles traveled within and without West Virginia and the records of any
other person to verify the truth and accuracy of any
statement or report to ascertain whether the tax
imposed by this article has been properly paid.

(f) In addition to the tax commissioner's powers set
forth in sections five-a and five-b, article ten of this
chapter, and as a further means of obtaining the
records, books and papers of a taxpayer or any other
person and ascertaining the amount of taxes and reports
due under this article, the commissioner shall have the
power to examine witnesses under oath; and if any
witness shall fail or refuse at the request of the
commissioner to grant access to the books, records and
papers, the commissioner shall certify the facts and
names to the circuit court of the county having jurisdic-
tion of the party and such court shall thereupon issue
a subpoena duces tecum to such party to appear before
the commissioner, at a place designated within the
jurisdiction of such court, on a day fixed.

§11-14A-7. Identification markers; fees; criminal penalty.

(a) Registration of motor carriers.—No person may
operate, or cause to be operated, in this state any motor
carrier subject to this article without first securing from
the commissioner an identification marker for each such
motor carrier, except as provided in subsection (b) or (c)
of this section. Each identification marker for a
particular motor carrier shall bear a number. This
identification marker shall be displayed on the driver's
side of the motor carrier as required by the commis-
sioner. The commissioner, after issuance of any identi-
fication marker to a motor carrier, shall cause an
internal cross-check to be made in his office as to any
state tax which he administers, to aid in determination
of any noncompliance in respect to failure to file returns
or payment of tax liabilities. The identification markers
herein provided for shall be valid for the period of one
year, ending June thirtieth of each year. A fee of five
dollars shall be paid to the commissioner for issuing
each identification marker which is reasonably related
to the commissioner's costs of issuing such identification.
All tax or reports due under this article shall be paid
or reports filed before the issuance of a new identifica-
tion marker. Failure by a taxpayer to file the returns or pay the taxes imposed by this article shall give cause to the commissioner to revoke or refuse to renew the identification marker previously issued.

(b) Trip permit.—A motor carrier that does not have a motor carrier identification marker issued under subsection (a) of this section may obtain a trip permit which authorizes the motor carrier specified therein to be operated in this state without an identification marker for a period of not more than ten consecutive days beginning and ending on the dates specified on the face of the permit. The fee for this permit shall be twenty-four dollars.

(1) Fees for trip permits shall be in lieu of the tax otherwise due under this article on account of the vehicles specified in the permit operating in this state during the period of the permit, and no reports of mileage shall be required with respect to that vehicle.

(2) A trip permit shall be issued if, in the course of the motor carrier's operations, it operates on the public roads or highways in this state no more than three times in any one fiscal year of this state, and a motor carrier may obtain no more than three such trip permits in any fiscal year of this state.

(3) A trip permit shall be carried in the cab of the motor vehicle for which it was issued at all times while it is in this state.

(4) A trip permit may be obtained from the commissioner or from wire services authorized by the commissioner to issue such permits. The cost of the telegram or similar transmissions shall be the responsibility of the motor carrier requesting the trip permit.

(c) Transportation permit.—The commissioner is hereby authorized to grant, in his discretion, a special permit to a new motor vehicle dealer for use on new motor vehicles driven under their own power from the factory or distributing place of a manufacturer, or other dealer, to a place of business of the new vehicle dealer, or from the place of business of a new vehicle dealer to
a place of business of another dealer, or when delivered
from the place of business of the new vehicle dealer to
the place of business of a purchaser to whom title passes
on delivery. A transporter's permit must be carried in
the cab of the motor vehicle being transported. A person
to whom a transporter's permit is issued shall file the
reports required by section five of this article and pay
any tax due. The fee for such transporter's permit shall
be fifteen dollars and a transporter's permit is valid for
the fiscal year for which it is issued unless surrendered
or revoked by the tax commissioner.

(d) Criminal penalty.—Any person, whether such
person be the owner, licensee or lessee, or the employee,
servant or agent thereof, who operates or causes to be
operated in this state, a motor carrier in violation of this
section, is guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than fifty nor more than
five hundred dollars; and each day such violation
continues or reoccurs shall constitute a separate offense.

(e) Notwithstanding the provisions of section five-d,
article ten of this chapter, the commissioner shall
deliver to or receive from the commissioner of the
department of motor vehicles and the commissioner of
the public service commission, the information con-
tained in the application filed by a motor carrier for a
trip permit under this section, when the information is
used to administer a combined trip permit registration
program for motor carriers operating in this state,
which program may be administered by one agency or
any combination of the three agencies, as embodied in
a written agreement executed by the head of each
agency participating in the program. Such agencies
have authority to enter into such an agreement notwith-
standing any provision of this code to the contrary; and
the fee for such combined trip permit shall be twenty-
four dollars, which shall be in lieu of the fee set forth
in subsection (b) of this section.


The provisions of this act shall take effect on the first
day of April, one thousand nine hundred eighty-nine.
DISPOSITION OF BILLS ENACTED
The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 1989

HOUSE BILLS

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**Blennerhassett Historical Park**
*Commerce, Division of*
*Blennerhassett Island Development*

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**State employees**

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