FOREWORD


The Third Extraordinary Session convened at 6:00 p.m., on August 22, 1990, and adjourned sine die at 2:00 p.m., on August 31, 1990.

The Legislature was called together for the purpose of considering nine items: Salary increase for education employees, reform of state laws governing education, funding and funding methods for salary increases and education reform, public retirement systems, various supplemental appropriations, bonds to finance construction of prison and regional jail facilities, and transfer of the West Virginia Penitentiary Institutional Farm to the city of Moundsville and/or Marshall County.

The Legislature passed, and the Governor approved, ten bills: Four House bills and six Senate bills.

The Legislature adopted three House Concurrent Resolutions.

The House introduced and adopted two House Resolutions and the Senate introduced and adopted eight Senate Resolutions.

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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 Division of Purchasing, Department of Administration, State Capitol, Charleston, West Virginia 25305.

DONALD L. KOPP,
Clerk of the House and
Keeper of the Rolls.
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## ACTS AND RESOLUTIONS

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LEGISLATURE OF WEST VIRGINIA

ACTS

THIRD EXTRAORDINARY SESSION, 1990

CHAPTER 1
(Com. Sub. for S. B. 9—By Senators Burdette, Mr. President, and Harman,
By Request of the Executive)

[Passed August 28, 1990; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of all general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred ninety-one, to the following accounts: Senate, Account No. 1010; House of Delegates, Account No. 1020; Joint Expenses, Account No. 1030; Supreme Court—General Judicial, Account No. 1110; Governor's Office, Account No. 1200; Governor's Office—Custodial Fund, Account No. 1230; Auditor's Office—General Administration, Account No. 1500; Treasurer's Office, Account No. 1600; Attorney General, Account No. 2400; Secretary of State, Account No. 2500; Department of Agriculture, Account No. 5100; Department of Agriculture—Soil Conservation Committee, Account No. 5120; Department of Agriculture—Division of Rural Resources (Matching Fund), Account No. 5130; Department of Agriculture—Meat Inspection, Account No. 5140; Division of Finance, Account No. 2110; Division of Purchasing, Account No. 2120; Division of General Services, Account No. 2130; Department of Administration—Office of the Secretary, Account No. 5310; Public Defender Services, Account
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WHEREAS, the governor's executive message no. 3, dated August 25, 1990, advises that there now exists within the state fund, general revenue, an unappropriated balance of $52,901,603, which is immediately available for appropriation during the fiscal year 1990-91, and

WHEREAS, it therefore appears that sufficient funds are available for the appropriations hereby made in this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That account nos. 1010, 1020, 1030, 1110; 1200; 1230; 1500; 1600; 2400; 2500; 5100; 5120; 5130; 5140; 2110; 2120; 2130; 5310; 5900; 6015; 6180; 1210; 4020; 4500; 4625; 4650; 4720; 4750; 4760; 4775; 5200; 5321; 5640; 5650; 2860; 2870; 2890; 2950; 3330; 3360; 4405; 2785; 2795; 2800; 2855; 2910; 3500; 3510; 5332; 4000; 4040; 4050; 4060; 4190; 5343; 5980; 1300; 3650; 3680; 3770; 5354; 5700; 5800; 6170; 1700; 1800; 4900; 4950; 5365; 5376 and 5690, chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, be supplemented by adding the following sums to the designated line items:
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      11a Public Employees Insurance.. $ — $ 17,768

   2. *House of Delegates*
      
      Acct. No. 1020
      
      6a Public Employees Insurance.. $ — $ 14,704

   3. *Joint Expenses*
      
      (WV Code Chapter 4)
      
      Acct. No. 1030
      
      5a Public Employees Insurance.. $ — $ 57,217

   **JUDICIAL**

   4. *Supreme Court—General Judicial*
      
      Acct. No. 1110
      
      12a Public Employees Insurance.. $ — $ 603,532

   **EXECUTIVE**

   5. *Governor’s Office*
      
      (WV Code Chapter 5)
      
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      2a Public Employees Insurance.. $ — $ 27,717

   6. *Governor’s Office—Custodial Fund*
      
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4a Public Employees Insurance.. $ — $ 7,595

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9a Public Employees Insurance.. $ — $ 20,472

22—Division of Purchasing
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54—State FFA-FHA Camp and Conference Center
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55—State Board of Rehabilitation—
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<td>228</td>
<td>5a Public Employees Insurance.. $ — $55,657</td>
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63—Department of Education and the Arts—
Office of the Secretary
(WV Code Chapter 5F)
Acct. No. 5332
4a Public Employees Insurance.. $ — $ 1,785

DEPARTMENT OF HEALTH
AND HUMAN RESOURCES
64—Division of Health—
Central Office
(WV Code Chapter 16)
Acct. No. 4000
8a Public Employees Insurance.. $ — $ 245,759

65—Division of Veterans’ Affairs
(WV Code Chapter 9A)
Acct. No. 4040
4a Public Employees Insurance.. $ — $ 48,777

66—Division of Human Services
(WV Code Chapters 9, 48 and 49)
Acct. No. 4050
10a Public Employees Insurance.. $ — $ 457,028

67—Commission on Aging
(WV Code Chapter 29)
Acct. No. 4060
12a Public Employees Insurance.. $ — $ 5,546

68—Consolidated Medical Service Fund
Acct. No. 4190
20a Public Employees Insurance.. $ — $2,146,549
70—Department of Health and Human Resources—Office of the Secretary
(WV Code Chapter 5F)
Acct. No. 5343
1a Public Employees Insurance . . . $ — $ 1,930

71—Human Rights Commission
(WV Code Chapter 5)
Acct. No. 5980
4a Public Employees Insurance . . $ — $ 17,878

DEPARTMENT OF PUBLIC SAFETY
72—Office of Emergency Services and Advisory Council—Division of Emergency Services
(WV Code Chapter 15)
Acct. No. 1300
4a Public Employees Insurance . . $ — $ 7,617

73—Board of Probation and Parole
(WV Code Chapter 62)
Acct. No. 3650
6a Public Employees Insurance . . $ — $ 1,385

74—Division of Corrections—Central Office
(WV Code Chapters 25, 28, 29 and 62)
Acct. No. 3680
4a Public Employees Insurance . . $ — $ 9,902

75—Division of Corrections—Correctional Units
(WV Code Chapters 25, 28, 29 and 62)
Acct. No. 3770
6a Public Employees Insurance . . $ — $ 606,761
76—Department of Public Safety—
Office of the Secretary
(WV Code Chapter 5F)
Acct. No. 5354
1a Public Employees Insurance.. $ — $ 1,266

77—Division of Public Safety
(WV Code Chapter 15)
Account No. 5700
4a Public Employees Insurance.. $ — $ 711,669

78—Adjutant General—State Militia
(WV Code Chapter 15)
Acct. No. 5800
4a Public Employees Insurance.. $ — $ 78,555

79—Fire Commission
(WV Code Chapter 29)
Acct. No. 6170
4a Public Employees Insurance.. $ — $ 24,761

DEPARTMENT OF TAX AND REVENUE
80—Municipal Bond Commission
(WV Code Chapter 13)
Acct. No. 1700
4a Public Employees Insurance.. $ — $ 2,992

81—Tax Division
(WV Code Chapter 11)
Acct. No. 1800
7a Public Employees Insurance.. $ — $ 358,592

83—Office of Nonintoxicating
Beer Commissioner
(WV Code Chapter 11)
Acct. No. 4900
4a Public Employees Insurance.. $ — $ 11,546
Ch. 1]  

APPROPRIATIONS  

318  

84—Racing Commission  

(WV Code Chapter 19)  

320  

Acct. No. 4950  

321  

4a Public Employees Insurance .. $ — $ 27,920  

322  

85—Department of Tax and Revenue—Office of the Secretary  

324  

(WV Code Chapter 5F)  

325  

Acct. No. 5365  

326  

1a Public Employees Insurance .. $ — $ 2,532  

327  

DEPARTMENT OF TRANSPORTATION  

328  

86—Department of Transportation—Office of the Secretary  

330  

(WV Code Chapter 5F)  

331  

Acct. No. 5376  

332  

2a Public Employees Insurance .. $ — $ 1,899  

334  

87—Railroad Maintenance Authority  

335  

(WV Code Chapter 29)  

336  

4a Public Employees Insurance .. $ — $ 18,611  

337  

The purpose of this supplementary appropriation bill  

is to appropriate public money, as specified (general  

revenues) with insertion of such moneys into accounts in  

the budget bill and specified items thereof, together  

with all adjustments of increase required to provide  

funding for public employees health insurance. These  

funds shall be immediately transferred to the Public  

Employees Insurance Agency, Account No. 8265-05.  

344  

These public moneys, as newly provided for, shall be  

available for such use and expenditure immediately  

upon the effective date of the bill and in fiscal year 1990-  

91, supplementing the budget bill for such fiscal year  

earlier enacted.
AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue, amounts from items of the existing appropriations for joint expenses, account no. 1030, and the treasurer's office, account no. 1600, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the following items of the total appropriations of Account No. 1030 and Account No. 1600, chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, be supplemented, amended, reduced and caused to expire into the state fund, general revenue:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 LEGISLATIVE
4 3—Joint Expenses
5 (WV Code Chapter 4)
6 Acct. No. 1030
7 1 Joint Committee on
8 2 Government and Finance . . . . $ — $ 100,000

9 EXECUTIVE
10 10—Treasurer's Office
11 (WV Code Chapter 12)
12 Acct. No. 1600
13 2 Other Personal Services . . . . $ — $ 690,816
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue, from the designated accounts, the amounts as specified from account no. 1030 and from account no. 1600 to be thereafter immediately available upon passage of the bill for other and further appropriation in the current fiscal year 1990-91.

### CHAPTER 3

(Com. Sub. for S. B. 6—By Senators Burdette, Mr. President, and Harman, By Request of the Executive)

[Passed August 31, 1990; in effect from passage. Approved by the Governor.]

AN ACT making supplementary appropriation of public moneys, as specified, out of the treasury with insertion thereof into appropriation accounts, as specified, and with all necessary adjustments of increase or decrease of items and language of appropriation in the following accounts: Acct. No. 1240, Governor's Office-Civil Contingent Fund; Acct. No. 1255, Governor's Office-Educational Programs; Acct. No. 1800, Tax Division; Acct. No. 1900, Board of Investments; Acct. No. 2785, Board of Directors of the State College System Control Account; Acct. No. 2795, Board of Trustees of the University System of West Virginia Control Account; Acct. No. 2855, Board of Trustees of the University System of West Virginia University of West Virginia Health Sciences Account; Acct. No. 2860, State Department of Education; Acct. No. 2870, State Department of Education-School Lunch Program; Acct. No. 2890, State Board of Education-Vocational Division; Acct. No. 2950, State Department of Education-State Aid to Schools; Acct. No. 3330, West Virginia School for the Deaf and Blind; Acct. No. 4000, Division of Health-Central Office; Acct. No. 4190, Consolidated Medical Services Fund; Acct. No. 5332, Department of Education and the Arts-Office of the Secretary; Acct. No. 5700,
Division of Public Safety; transferring amounts between line items of the existing appropriation for the following accounts: Acct. No. 8215-18, Division of Health Laboratory Services; and Acct. No. 8216-18, Health Care Cost Review Authority-Planning; all supplementing and amending chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill.

Whereas, The governor's executive message no. 4, dated August 30, 1990, with revised revenue estimates attached, advises that there now exists within the state fund, general revenue, an unappropriated balance of $133,264,000 which is immediately available for appropriation during the fiscal year 1990-91; and

Whereas, It therefore appears that sufficient funds are available for the appropriations hereby made in this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, be supplemented by adding thereto the following new accounts, designated account no. 1255 and account no. 1900 and that account nos. 1240, 1800, 2785, 2795, 2855, 2860, 2870, 2890, 2950, 3330, 4000, 4190, 5332 and 5700, chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, be supplemented by adding amounts specified herein, and that amounts in line items of account nos. 8215-18 and 8216-18, chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill be transferred within said accounts; all amended by the items and language of appropriation as set forth herein, itemized with all other items and language of appropriation of such accounts, as set forth in the budget bill, to remain unchanged and unaffected, to read as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 Sec. 2. Appropriations of federal funds.
Ch. 3]  APPROPRIATIONS  19

EXECUTIVE

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

3 Civil Contingent
4 Fund

Any unexpended balances remaining in this appropriation at the close of the fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92.

8a—Governor’s Office
Educational Programs
Account No. 1255

1 Early Childhood Development
2 Center for Professional Development

Any unexpended balances remaining in this appropriation at the close of the fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92.

EXECUTIVE

11a—Board of Investments
(WV Code Chapter 12)
Account No. 1900

1 Unclassified
2 Total

DEPARTMENT OF EDUCATION

48—State Department of Education
(WV Code Chapters 18 and 18A)
Account No. 2860

1 Personal Services
2 Employee Benefits

Any unexpended balances remaining in this appropriation at the close of the fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92.
<table>
<thead>
<tr>
<th>Page</th>
<th>Description</th>
<th>Account No.</th>
<th>Total</th>
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<tr>
<td>38</td>
<td>Unclassified</td>
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<td>39</td>
<td>Education of Institutionalized Juveniles</td>
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<td>School Lunch Program</td>
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<td>Employee Benefits</td>
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<td>Vocational Division</td>
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<td>Employee Benefits</td>
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<td>54</td>
<td>Vocational Programs</td>
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<td>Professional Educators</td>
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<td>Service Personnel</td>
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<td>Fixed Charges</td>
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<td>62</td>
<td>Other Current Expenses</td>
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<td>63</td>
<td>Improve Instructions</td>
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<td>64</td>
<td>Programs</td>
<td>3330</td>
<td>$6,083,470</td>
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<td>65</td>
<td>Rural Counties</td>
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<td>$500,000</td>
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<td>53</td>
<td>West Virginia School for the Deaf and the Blind</td>
<td>3330</td>
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<tr>
<td>70</td>
<td>Unclassified</td>
<td>3330</td>
<td>$174,939</td>
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</table>
DEPARTMENT OF EDUCATION
AND THE ARTS

56—Board of Directors of the
State College System
Control Account
(WV Code Chapter 18B)
Account No. 2785

1 Unclassified ...................... $ — $1,665,000

From the Unclassified line in account no. 2785, the
board of directors of the state college system shall
expend moneys for salary increases for each full-time
faculty and full-time staff which, in combination with
the salary increases granted from funds appropriated
during the regular and second extraordinary sessions of
the Legislature, one thousand nine hundred ninety, are
at least one thousand dollars greater on an annual basis
than the salaries paid such full-time faculty and staff
during fiscal year one thousand nine hundred ninety. In
addition, each full-time faculty shall receive an increase
of one thousand dollars across-the-board effective the
first day of September, one thousand nine hundred
ninety.

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

1 Unclassified ...................... $ — $2,530,000

From the Unclassified line in account no. 2795, the
board of trustees of the university system of West
Virginia shall expend moneys for salary increases for
each full-time faculty and full-time staff which, in
combination with the salary increases granted from
funds appropriated during the regular and second
extraordinary sessions of the Legislature, one thousand
nine hundred ninety, are at least one thousand dollars
greater on an annual basis than the salaries paid such
full-time faculty and staff during fiscal year one thousand nine hundred ninety. In addition, each full-time faculty shall receive an increase of one thousand dollars across-the-board effective the first day of September, one thousand nine hundred ninety.

59—Board of Trustees of the University System of West Virginia University of West Virginia Health Sciences Account

(WV Code Chapter 18B)

Account No. 2855

1 Unclassified $1,135,000

From the Unclassified line in account no. 2855, the board of trustees of the university system of West Virginia shall expend moneys for salary increases for each full-time faculty and full-time staff which, in combination with the salary increases granted from funds appropriated during the regular and second extraordinary sessions of the Legislature, one thousand nine hundred ninety, are at least one thousand dollars greater on an annual basis than the salaries paid such full-time faculty and staff during fiscal year one thousand nine hundred ninety. In addition, each full-time faculty shall receive an increase of one thousand dollars across-the-board effective the first day of September, one thousand nine hundred ninety.

63—Department of Education and the Arts Office of the Secretary

(WV Code Chapter 5F)

Account No. 5332

1 Unclassified $750,000
3 Underwood-Smith Scholarship 200,000
4 Program-Student Awards 2,000,000
4a Accreditation, Certification
4b and Research
DEPARTMENT OF HEALTH
AND HUMAN RESOURCES

64—Division of Health
Central Office
(WV Code Chapter 16)
Account No. 4000

1 Personal Services ............... $ — $ 200,000
7 Employee Benefits ............... — 40,000

69—Consolidated Medical Services Fund
Account No. 4190

3 Institutional Facilities
4 Operations ..................... $ — $2,300,000
5 Employee Benefits .............. — 460,000
9 State Aid to Local Agencies . — 400,000
20a Preventative Re-vaccination . — 200,000

DEPARTMENT OF PUBLIC SAFETY

77—Division of Public Safety
(WV Code Chapter 15)
Account No. 5700

4 Unclassified ................... $420,266 $ —0—

The amount of $420,266 appropriated to the Unclassified line item by this supplemental appropriation bill represents federal funds received by the state for the West Virginia uniform crime reporting redesign program and the automation of criminal history records of the division of public safety subsequent to the passage of the budget bill for the fiscal year 1990-91. Said amount is appropriated pursuant to the provisions of article eleven, chapter four of the code.

DEPARTMENT OF TAX AND REVENUE

81—Tax Division
(WV Code Chapter 11)
Account No. 1800

4 Unclassified ................... $ — $ 850,000

Any unexpended balances remaining in this appropri-
appropriation at the close of the fiscal year 1990-91 is hereby reappropriated for expenditure during the fiscal year 1991-92.

The purpose of this supplementary appropriation bill is to appropriate public money, as specified, with insertion of such moneys into accounts in the budget bill and those newly created herein and specified items thereof, together with all adjustments of increase required. These public moneys, as newly provided for, shall be available for such use and expenditure upon passage of the bill and in fiscal year 1990-91, supplementing the budget bill for such fiscal year earlier enacted.

Sec. 5. Appropriations from other funds.—Notwithstanding the provisions of TITLE II—APPROPRIATIONS, Sec. 11 of this act, 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 fiscal year one thousand nine hundred ninety-one.

Amounts in excess of the amounts herein appropriated are not subject to spending as authorized by article two, chapter five-a of the code.

The following account nos. 8215-18 and 8216-18 are supplemented, amended and transferred to read as follows, with no new moneys being hereby appropriated:

145—Division of Health Laboratory Services

(WV Code Chapter 16)

Account No. 8215-18

TO BE PAID FROM SPECIAL REVENUE FUND

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<tr>
<th>Account</th>
<th>Description</th>
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<td>1</td>
<td>Personal Services</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>Current Expenses</td>
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<td>$1,288,605</td>
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### CHAPTER 4

**(Com. Sub. for S. B. 1—By Senators Burdette, Mr. President, and Harman, By Request of the Executive)**

[Passed August 30, 1990; in effect from passage. Approved by the Governor.]  

AN ACT to repeal sections six-a, six-b, six-c, twenty-two and twenty-eight, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal articles two-c and two-f of said chapter; to repeal article six-c, chapter forty-nine of said code; to amend chapter five by adding thereto two new articles, designated articles twenty-six and twenty-seven; to amend article one, chapter eighteen by adding thereto a new section, designated section four; to amend and reenact sections five, six and twenty-six, article two of said chapter; to amend and reenact section five, article two-e of said chapter; to amend and reenact section four, article four of said chapter; to amend and reenact sections one-a and forty, article five of said chapter; to further amend said chapter by adding thereto a new article, designated article five-a; to amend and reenact sections one and sixteen, article nine-d of said chapter; to further amend said chapter by adding thereto a new article, designated article thirty-two; to

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<td>Employee Benefits</td>
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**EDUCATION**

**146—Health Care Cost Review Authority Planning**

(WV Code Chapter 16)

Account No. 8216-18

TO BE PAID FROM SPECIAL REVENUE FUND
amend and reenact sections two, eight and nine, article two, chapter eighteen-a of said code; to further amend said article two by adding thereto a new section, designated section twelve; to amend and reenact sections one, two, three and eight, article three of said chapter; to further amend said article three by adding thereto four new sections, designated sections one-a, one-b, two-a and two-b; to further amend said chapter by adding thereto a new article, designated article three-a; to amend and reenact sections eight-b and eight-c, article four of said chapter; to further amend said article four by adding thereto a new section, designated section seven-a; to amend and reenact section four, article five of said chapter; to further amend said chapter by adding thereto a new article, designated article seven; and to amend chapter eighteen-b of said code by adding thereto two new articles, designated articles three-b and fifteen, all relating to the "Education Reform Act of 1990"; creating a governor's cabinet on children and youth to coordinate programs and services to children and families; providing severability clause; establishing educational goals for the year 2000; clarifying the powers and duties of the state board of education; requiring that the state board develop a three-year plan for the transition to developmentally based program for kindergarten through fourth grade; reorganizing and recodifying existing statutes; providing for implementation of a uniform regional computer information system for education data collection and reporting; requiring the state board of education to develop a plan providing for automatic cost of living adjustments; adding a code of conduct, focused curriculum, attention to the acquisition of student proficiencies to the performance-based accreditation system and the percentage of graduating students entering postsecondary education or training; adding education and training in evaluating personnel performance to the certification requirements of superintendents and principals; requiring a high school diploma, general educational development diploma and completion of an orientation course to county board member eligibility; adding boardsmanship and governance effectiveness training to county board
member eligibility requirements with penalties specified for noncompliance; requiring regulations relating to school entrance age to utilize flexibility; providing for local school involvement, including local school improvement councils with authority to adopt policies and request waivers in certain instances of policies, certain rules and interpretations, a schools of excellence award program, public school faculty senates and school curriculum teams; adding two members to the school building authority; requiring RESA's to prioritize their plan in accordance with school building authority criteria; providing a severability clause; providing for the general supervision of teacher education to be under the state board of education after consultation with the secretary of education and the arts; creating additional grounds for the suspension and dismissal of county board employees based on unsatisfactory performance and conviction of a felony; expanding prerequisites for administrative certificates for principals; establishing a uniform system for professional personnel performance evaluations; providing an alternative program and requirements for the education of teachers; codifying testing and degree standards for professional teaching and administrative certificates; creating certification for paraprofessionals; providing for the certification or permit of athletic and extracurricular coaches employed under a limited contract; creating a beginning teacher internship program; requiring teacher elected county staff development councils; creating a center for professional development assisted by an advisory council on professional development; specifying criteria which must be considered in judging the relative qualifications of professional personnel for promotion and filling of vacancies; providing for the calculation of seniority; providing for substitute teaching seniority; giving certification preference over permits in reductions in force; limiting voluntary transfers of professional personnel; allowing the county superintendent to fill vacancies prior to the next semester in certain instances; creating a time frame and criteria for posting of professional personnel positions; requiring county boards to adopt policies providing professional time or
extra duty compensation and adequate coverage; providing a severability clause; creating a West Virginia literacy council; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That sections six-a, six-b, six-c, twenty-two and twenty-eight, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that articles two-c and two-f of said chapter be repealed; that article six-c, chapter forty-nine of said code be repealed; that chapter five of said code be amended by adding thereto two new articles, designated articles twenty-six and twenty-seven; that article one, chapter eighteen of said code be amended by adding thereto a new section, designated section four; that sections five, six and twenty-six, article two of said chapter be amended and reenacted; that section five, article two-e of said chapter be amended and reenacted; that section four, article four of said chapter be amended and reenacted; that sections one-a and forty, article five of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article five-a; that sections one and sixteen, article nine-d of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article thirty-two; that sections two, eight and nine, article two, chapter eighteen-a of said code be amended and reenacted; that said article two be further amended by adding thereto a new section, designated section twelve; that sections one, two, three and eight, article three of said chapter be amended and reenacted; that said article three be further amended by adding thereto four new sections, designated sections one-a, one-b, two-a and two-b; that said chapter be further amended by adding thereto a new article, designated article three-a; that sections eight-b and eight-c, article four of said chapter be amended and reenacted; that said article four be further amended by adding thereto a new section, designated section seven-a; that section four, article five of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article seven; and that chapter eighteen-b of said code be amended by adding thereto two new articles, designated articles three-b and fifteen, 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.

18. Education.
18A. School Personnel.
18B. Higher Education.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

Article 26. Governor's Cabinet on Children and Families.
27. Severability.

ARTICLE 26. GOVERNOR'S CABINET ON CHILDREN AND FAMILIES.

§5-26-1. Legislative findings, statement of purpose.
§5-26-2. Cabinet established.
§5-26-3. Duties and responsibilities of cabinet generally.
§5-26-4. Powers and authority of cabinet generally.
§5-26-5. Powers and duties relating to funding and budgetary needs for children and families.
§5-26-6. Children's fund created; purpose.
§5-26-7. Use of public school and higher education facilities and resources.
§5-26-8. Effective date and termination date.

§5-26-1. Legislative findings; statement of purpose.

(a) The Legislature finds that the early years of life are a critical developmental and educational stage in the total life cycle and declares that parents are the children's first teachers and have the primary responsibility for meeting the needs and addressing the development of their children. Therefore, social programs and services for children and families shall be built upon respect for the integrity of the family and the belief in the strength and the ability of families to thrive and the ability of parents to nurture and provide for their children. However, families can experience severe
crises which result in life-threatening situations to children or other family members or can have long-term negative impact on the child. The Legislature further finds that two of the crises which affect the ability of children to thrive and develop are teenage pregnancies and substance abuse. Successful intervention by a combined effort of government, the people of West Virginia and the Legislature can successfully reduce the number of pregnancies to unmarried, adolescent females and the instances of drug and alcohol abuse by children by the year 2000.

The state has an obligation to provide crisis intervention and stabilization, with the goal of providing for children's well-being in a permanent situation in the home environment or in the least restrictive setting as close to a home environment as possible.

The Legislature intends to accomplish its goals relating to children and families through a family-centered, comprehensive, community-based system for the provision of social services, programs and facilities for children and families overseen by the highest levels of state government, although this may require fundamental changes in the way state government responds to the needs of children and their families.

(b) The Legislature hereby declares that one purpose of this article and the policy of the state is to achieve the coordination of programs and services to children and families through a cabinet in the governor's office which is independent from any state agency and which shall act as an interagency cabinet created to nurture a flexible system for the comprehensive, unified, effective and efficient administration of programs and services to children and families which avoids fragmentation and duplication of programs and services and which facilitates and promotes cooperation among state agencies, as well as regional, local and private service agencies. It is the intent of the Legislature, through the governor's cabinet, to emphasize preventive services to children and families in order to avoid the human and financial costs to the state of individual and family instability and to benefit the state and society as a
whole. For maximum effectiveness, the Legislature intends to provide such services in a long-term manner with such intensity as the needs of the particular situation require.

(c) The Legislature intends that participation in the programs authorized or required in this article shall be voluntary on the part of any child or family for whom the program is available, and not otherwise required under state or federal laws or regulations, and all outreach shall emphasize the positive, voluntary nature of the programs. The service delivery system shall be driven by the needs and preferences of the child and family, shall reflect local community characteristics and resources, shall allow for local input, and shall focus on prevention, education and early intervention. The service providers shall convey an attitude of support, compassion, understanding, friendliness and patience.

The Legislature intends, by this article, to allow diversity and regional, cultural and ethnic sensitivity in the development of programs and services for children and families. To the greatest extent possible, families are to be involved in all aspects of planning and delivery of services to that family, and the community shall be involved in the service delivery system in that community. This is intended to foster strong family and community program ownership while maintaining clear parameters for program goals and purposes through the governor's cabinet on children and families.

§5-26-2. Cabinet established.

There is hereby created the governor's cabinet on children and families, hereinafter referred to as the "cabinet". In addition to such other administrative heads of government as the governor may appoint to the cabinet, the cabinet shall include the secretary of health and human resources; the secretary of commerce, labor and environmental resources or a designee; the secretary of administration or a designee; the state superintendent of schools; and the attorney general; one member of the senate, to be appointed by the governor, and one member of the house of delegates, to be
appointed by the governor, both of whom shall serve in an advisory capacity only.

The cabinet shall be chaired by the governor and shall convene at least monthly during the first year and thereafter shall meet at least quarterly. The cabinet shall establish bylaws which govern its decision making.

§5-26-3. Duties and responsibilities of cabinet generally.

In addition to all other duties and responsibilities assigned to the cabinet in this article and elsewhere by law, the cabinet shall have the power and the duty to:

1. Analyze ways to best utilize the information and evaluations obtained through previously existing or ongoing programs for children and families such as "Home-Oriented Preschool Education" (HOPE), which focuses on televised educational outreach to rural children; "Parent and Child Education" (PACE), which focuses on literacy; and "Parents as Teachers" (PAT), which focuses on parents working with the children and determine ways to implement or incorporate aspects of the programs that would be of benefit to families and children in this state;

2. Designate an individual who shall monitor and report on head-start, early intervention and other preschool programs throughout the state;

3. Provide for the holistic coordination of programs and services for all children and families in such areas as housing; health promotion and disease prevention; education, transportation, reading and literacy; food and nutrition; other necessities such as clothing and utilities; job training and employment; child care; child protection; early intervention and crisis intervention; assessment and diagnosis; home-based family development, preservation and reunification; financial planning; mental health and counseling; substance abuse prevention counseling and treatment; in order to increase the available drug and alcohol counseling, education and addiction awareness training; pregnancy prevention for adolescents with the goal being to reduce the number of adolescent pregnancies by fifty percent by the year
(4) Promote the delivery of early prenatal care services for all pregnant women through local health care providers;

(5) Assure the development of parenting education services and outreach efforts, child developmental stages, including the utilization of media and supportive activities for children and care givers with a focus on children three to five years old living in rural areas;

(6) Provide for the coordination of programs and services for comprehensive developmental screening and well-baby visits for all preschool children and parental involvement in all areas of a child’s education and development;

(7) Identify facilities and properties throughout the state that may be required or available for the effective and efficient provision of programs and services to children and families, with an emphasis on utilizing available state facilities, including public school facilities and facilities within the state system of higher education;

(8) Prepare a proposed budget for the operation of the cabinet to be recommended to the governor for inclusion in the executive budget to be submitted to the Legislature;

(9) Create an independent case management system for all children in the custody of the state, for families requiring services from multiple agencies, and for any other category of children or families as the cabinet may deem appropriate;

(10) Develop coordinated information systems and examples of forms, including eligibility forms, for use at the local, regional and state levels designed (i) to provide people with complete, easy-to-read information on programs and services available to children and families and (ii) to provide service providers with sufficient information while minimizing the amount of paperwork required of people seeking services or for program participation;
(11) Promote the work of the governor's cabinet on children and families in order to engender strong support from the community, the Legislature, and business leaders;

(12) Provide public information on services and programs available to children and families which shall include a staffed, statewide toll-free phone number whereby children and families can receive information on available services and programs and which may include television programs, public service announcements, and any other effective means of providing information on, communicating or promoting any service or program;

(13) Address specifically the provision of programs and services to children and families living in the rural areas of the state; and

(14) Report annually to the Legislature and to such other units as the cabinet may deem appropriate on issues relating to children and families.

§5-26-4. Powers and authority of cabinet generally.

In addition to all other powers granted to the cabinet in this article and elsewhere by law, the cabinet shall have the power and authority to:

(1) Negotiate written agreements and procedures between and among departments of state government which assure that children and families are provided with health care, social services, appropriate education and vocational training, and any other services to which they may be entitled under state and federal law;

(2) Provide or contract with any agencies or persons in this state and other states for any facilities, equipment or service necessary to achieve the purposes of this article; and hire such staff support sufficient to carry out the duties and responsibilities of the cabinet;

(3) Develop and implement rules, regulations, standards and policies governing the internal operation and administration of the cabinet;
(4) Delegate any of the cabinet’s powers, duties or functions as the cabinet may deem appropriate, expeditious and effective;

(5) Solicit and accept proposals in furtherance of any program or service required by this article, especially for the establishment of family resource networks at the regional or local level and for the implementation of pilot programs;

(6) Develop programmatic standards for early childhood programs, including recommendations regarding development activities required to be provided by licensed day care and child care facilities and programs;

(7) Review any rules and regulations, including licensure requirements, to the extent that they impact on or create barriers to the provision of programs and services to children and families;

(8) Develop and require the implementation of interdisciplinary and interagency standards for all children in the custody of the state, with the goal of providing for children’s well-being in the home environment or the least restrictive setting;

(9) Waive rules and regulations that impede coordinated service delivery;

(10) Solicit, accept and expend grants, gifts, bequests, donations and other funds made available to the cabinet: Provided, That all unrestricted grants, gifts, bequests and donations shall be deposited in the children’s fund created pursuant to section six of this article;

(11) Establish family resource networks and services in local communities by building on existing resources to coordinate services to families and children;

(12) Authorize family resource networks or otherwise develop service areas which will allow for the efficient delivery of programs and services on a local or regional basis so that programs and services are provided in or as close to the local community level as possible in accordance with guidelines to be established by the cabinet; and
§5-26-5. Powers and duties relating to funding and budgetary needs for children and families.

(a) The cabinet shall analyze the budgets of the departments of state government to the extent that they address or impact upon programs and services for children and families, review budgetary needs and revenue sources, and make recommendations regarding the governor's proposed budget and the redirection of resources. In making such recommendations, the cabinet shall educate themselves on the availability of and eligibility for federal, local and private funding, with the goal of maximizing federal, local and private revenues for use in areas directly benefitting children and families.

(b) Any legislative recommendation shall be accompanied by a proposal or plan for sufficient funding. In exploring all aspects of funding possibilities, the cabinet shall consider innovative, flexible funding such as interagency funding, joint funding pools, interagency reimbursement, and funding by the families serviced based on ability to pay.

(c) Notwithstanding the provisions of section nineteen, article two, chapter five-a of this code or any other provision of law to the contrary, the cabinet shall have the ability to transfer funds among, between and within departments in accordance with rules for such purpose adopted by the cabinet notwithstanding the provisions of chapter twenty-nine-a of this code.

(d) The cabinet shall develop fiscal incentives for the establishment of family resource networks and for programs resulting in substantial cost savings, such as programs which keep children at home and which thereby avoid unnecessary out-of-home care. Any savings resulting from the coordination of programs and services for children and families shall be reinvested for
§5-26-6. Children’s fund created; purpose.

(a) The cabinet shall establish a children’s fund for the sole purpose of awarding grants, loans and loan guaranties for children and families. All unrestricted federal funds and grants, gifts, bequests or donations, in addition to appropriations to the fund, shall be deposited in the state treasury in a special revenue account that is independent from any executive or other department of government, other than the office of the governor. Any moneys deposited in the children’s trust fund created pursuant to article six-c, chapter forty-nine of this code on the effective date of this section, and any interest accruing to such fund, shall be deposited in the children’s fund created pursuant to this section, and the children’s trust fund shall thereafter be discontinued.

(b) Each state taxpayer may voluntarily contribute a portion of the taxpayer’s state income tax refund to the children’s fund by so designating the contribution on the state personal income tax return form. The cabinet shall approve the wording of the designation on the income tax return form, which designation shall appear on tax forms as of the first day of January, one thousand nine hundred ninety-one. The tax commissioner shall determine by the first day of July of each year the total amount designated pursuant to this subsection and shall report that amount to the state treasurer, who shall credit that amount to the children’s fund.

(c) All interest accruing from investment of moneys in the children’s fund shall be credited to the fund, and the legislative auditor shall conduct an annual audit of the fund.

(d) Grants, loans and loan guaranties may be awarded from the children’s fund by the cabinet for any purpose required or authorized by this cabinet.

§5-26-7. Use of public school and higher education facilities and resources.

At every level of planning, service providers and
2 administrators shall plan to utilize available facilities
3 and resources under the control of the state and county
4 boards of education and governing boards of the state
5 institutions of higher education.

§5-26-8. Effective date and termination date.
1 This article shall be in effect from passage. The
2 cabinet shall terminate on the thirtieth day of June, one
3 thousand nine hundred ninety-three, unless extended by
4 legislation enacted before the termination date.

ARTICLE 27. SEVERABILITY.

§5-27-1. Severability.
1 Pursuant to section ten, article two, chapter two of
2 this code, if any provision of this chapter or the
3 application thereof to any person or circumstance is held
4 unconstitutional or invalid, such unconstitutionality or
5 invalidity shall not affect other provisions or applica-
6 tions of the chapter, and to this end the provisions of this
7 chapter are declared to be severable.

CHAPTER 18. EDUCATION.

Article
1. Definitions; Limitations of Chapter.
2. State Board of Education.
2E. High Quality Educational Programs.
4. County Superintendent of Schools.
5. County Board of Education.
5A. Local School Involvement.
9D. School Building Authority.
32. Severability.

ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER.

§18-1-4. Educational improvement plan; "Goals for the
1 Year 2000".
(a) The governor, the Legislature and the people of
2 West Virginia agree that the education of their children
3 is of utmost importance to the future well-being of the
4 state and that the purpose of enacting education laws
5 and providing funding to support a system of free
6 schools is to assure that all of our children have every
7 opportunity to secure an education which is thorough
8 and is provided in an efficient manner. The governor,
the Legislature and the people of West Virginia further agree that improvements are needed in the educational system of West Virginia if these objectives are to be met.

(b) Therefore, the governor, the Legislature and the people of West Virginia have established goals for themselves which are measurable and achievable over a ten-year period to be accomplished through the combined efforts of the government, the school system and the people through an increased focus on the needs of children. These goals are that by the year 2000:

1. All children entering the first grade will be ready for the first grade;
2. All students will have equal educational opportunity;
3. Student performance on national measures of student performance will equal or exceed national averages and the performance of students falling in the lowest quartile will improve by fifty percent;
4. Ninety percent of ninth graders will graduate from high school;
5. High school graduates will be fully prepared for college, other postsecondary education, or gainful employment. The number of high school graduates entering postsecondary education will increase by fifty percent; and
6. All working age adults will be functionally literate.

The intent of the governor and the Legislature is to pursue the accomplishment of these goals through strategies which focus on (i) early childhood development; (ii) improving the quality of teaching; (iii) technology and learning; (iv) helping at-risk students; (v) work force preparation; and (vi) restructuring and accountability in the educational system.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5. Powers and duties generally; public school entrance age; "public schools" not to include kindergartens.
§18-2-6. Classification and standardization of schools; standards for degrees and diploma.

§18-2-26. Establishment of multicounty regional educational service agencies; purposes; authority to implement regional services.


§18-2-5. Powers and duties generally; public school entrance age; “public schools” not to include kindergartens.

Subject to and in conformity with the constitution and laws of this state, the state board of education shall exercise general supervision of the public schools of the state, and shall make rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for carrying into effect the laws and policies of the state relating to education, including rules relating to standards for performance and measures of accountability, the physical welfare of pupils, the education of all children of school age, school attendance, evening and continuation or part-time day schools, school extension work, the classification of schools, the issuing of certificates upon credentials, the distribution and care of free textbooks by the county boards of education, the general powers and duties of county boards of education, and of teachers, principals, supervisors and superintendents, and such other matters pertaining to the public schools of the state as may seem to the state board to be necessary and expedient.

Notwithstanding any other provision of law which may be to the contrary, and notwithstanding the rule-making powers given to the state board of education by this section, a child shall not be permitted to enter the public schools of this state in any school year, beginning with the school year one thousand nine hundred eighty-three—eighty-four, unless such child be six years of age prior to the first day of September of such school year or is attending public school in accordance with article twenty of this chapter: Provided, That children who have successfully completed a kindergarten program in the school year one thousand nine hundred eighty-two—eighty-three, may enter the public schools notwithstand-
ing the provisions of this section. The term "public schools" as used in the preceding sentence shall not be deemed to include public kindergartens, but nothing herein shall prevent a county board from permitting a child enrolled in kindergarten from entering public schools for attendance in particular curriculum areas.

The state board shall develop a three-year plan to provide for the transition to developmental programming and instruction to be provided to the students in kindergarten through fourth grade and further shall, include the method of information dissemination in order to provide for parental preparation, and further shall, in conjunction with the professional development center, develop an ongoing program for training of principals and classroom teachers in methods of instruction to implement the developmental program. The existing developmental programs throughout the state shall be involved in this process and shall be provided an opportunity to assist in pilot programs to begin no later than the first day of September, one thousand nine hundred ninety-one. The plan shall be fully implemented by the first day of September, one thousand nine hundred ninety-three.

§18-2-6. Classification and standardization of schools; standards for degrees and diploma.

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-nine—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 func-
tions 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 instruc-
tional 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
commence implementation of a uniform integrated
regional computer information system as recommended
by the state board of education on or before the first day
of January, one thousand nine hundred ninety-one. Each
county board of education shall use the computer
information system for data collection and reporting to
the state department of education beginning no later
than the first day of July, one thousand nine hundred
ninety-three. County boards of education shall fully
participate in the implementation of the system.

(g) 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.

(h) A regional board shall be empowered to receive

After consultation with the governor's office of community and industrial development, the state board of education shall develop within equity guidelines a plan which provides for automatic cost of living adjustments to the salary schedules, as provided in chapter eighteen-a, whenever it is determined that the purchasing power of salaries of teachers and service personnel in areas of the state experiencing extraordinary growth and/or increases in the factors comprising the cost of living index is not equal to the purchasing power of teacher and service personnel salaries statewide, such plan to be submitted to the Legislature by the first day of the regular session one thousand nine hundred ninety-one.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. School accreditation; standards compliance board; approval status; intervention to correct impairments.

(a) The purpose of this section is to provide assurances that a thorough and efficient system of education is being provided for all West Virginia public school students on an equal educational opportunity basis and that the high quality standards are being met. A system for the review of school district educational plans, performance-based accreditation and periodic, random, unannounced on-site effectiveness reviews of district educational systems, including individual schools within the districts, shall provide assurances that the high quality standards, established pursuant to subsection (b) of this section, are being met. A performance-based accreditation system shall provide assurances that the high quality standards, established pursuant to subsection (c) of this section, are being met.

(b) On or before the first day of January, one thousand nine hundred ninety-one, the state board of education shall, in accordance with the provisions of article three-
b, chapter twenty-nine-a of this code, establish and adopt high quality educational standards in the areas of curriculum, finance, transportation, special education, facilities, administrative practices, training of school district board members and administrators, personnel qualifications, professional development and evaluation, student and school performance, a code of conduct for students and employees and other such areas as determined by the state board of education. The standards established in the area of curriculum shall assure that all graduates are prepared for the world of work or for continuing postsecondary education and training. Each school district shall submit an annual improvement plan designed around locally identified needs showing how the educational program of each school in the district will meet or exceed the high quality standards.

A performance-based accreditation system shall be the only statewide system used for accrediting or classifying the public schools in West Virginia. The state board shall establish a schedule and shall review each school within a district and each school district board of education for accreditation based on information submitted to the board under the performance-based accreditation system as set forth in subsection (c) of this section.

(c) On or before the first day of July, one thousand nine hundred ninety-one, the state board of education shall, in accordance with the provisions of article three-b, chapter twenty-nine-a of this code, establish by rule a system which measures the performance of each school based on the following measures of student and school performance: The acquisition of student proficiencies as indicated by student performance by grade level in the various subjects tested under the Statewide Testing of Educational Progress program and other appropriate measures; school attendance rates; the student dropout rate; the percent of students promoted to next grade and the number of waivers of the promotion standard granted; the graduation rate; the average class size; the pupil-teacher ratio; the number of exceptions to pupil-
teacher ratio requested by the county board and the
number of exceptions granted; the number of split-
grade classrooms; the percentage of graduating students
entering postsecondary education or training; the pupil-
administrator ratio; parent involvement; parent, teacher
and student satisfaction; and operating expenditures per
pupil.

The state board annually shall review the information
submitted for each school and shall issue to every school:
(1) Full accreditation status; or (2) probationary
accreditation status.

Full accreditation status shall be given to a school
when the school's performance on the above indicators
is at a level which would be expected when all of the
high quality educational standards are being met.
Probationary accreditation status shall be given to a
school when the measure of the school's performance is
below such level.

Whenever a school is given probationary accreditation
status, the district board shall implement an improve-
ment plan which is designed to increase the perform-
ance of the school to a full accreditation status level
within one year.

(d) Whenever the state board of education determines
that the quality of education in a school is seriously
impaired, the state superintendent, with approval of the
state board, shall appoint a team of three improvement
consultants to make recommendations within sixty days
of appointment for correction of the impairment. Upon
approval of the recommendations by the state board, the
recommendations shall be made to the district board of
education. If progress in correcting the impairment is
not made within six months of receipt of the recommend-
ations, the state superintendent shall provide consulta-
tion and assistance to the district board to (1) improve
personnel management, (2) establish more efficient
financial management practices, (3) improve instruc-
tional programs and policies or (4) make such other
improvements as may be necessary to correct the
impairment. If the impairment is not corrected within
one year of receipt of the recommendations, the district
shall be given probationary approval status or nonap-
proval status.

(e) Whenever a school is given probationary status or
is determined to be seriously impaired and fails to
improve its status within one year, any student attend-
ing such school may transfer once to the nearest fully
accredited school, subject to approval of the fully
accredited school and at the expense of the school from
which the student transferred.

(f) The state board of education shall issue one of the
following accreditation levels to each school district
board of education: (1) Full approval, (2) probationary
approval or (3) nonapproval.

Full approval shall be given to a district board whose
educational system meets or exceeds all of the high
quality standards adopted by the state board and whose
schools have all been given full accreditation status. Full
approval shall be for a period not to exceed four years.

Probationary approval shall be given to a district
board of education whose educational program has not
met the high quality standards, or which has one or
more schools in the district given probationary status.
Probationary approval is a warning that the district
board must make specified improvements. If the high
quality standards are not met during the succeeding
year, or the number of schools in the district given
probationary status is not reduced to a number that
would allow full accreditation to be granted in the
following year, the district board shall be automatically
given nonapproval. In addition, nonapproval shall be
given to a district board of education which fails to
submit an annual program plan or fails to demonstrate
a reasonable effort to meet the high quality standards.

(g) Whenever nonapproval status is given to a district,
the state board of education shall declare a state of
emergency in the district and may intervene in the
operation of the district to (1) limit the authority of the
district superintendent and district board of education
as to the expenditure of funds, the employment and
dismission of personnel, the establishment and operation
of the school calendar, the establishment of instructional
programs and policies, and such other areas as may be
designated by the state board by rule, (2) take such
direct action as may be necessary to correct the
impairment and (3) declare that the office of the district
superintendent is vacant.

(h) To assist the state board in determinations of the
accreditation status of schools and the approval status
of school districts under this section, the state board
shall from time to time appoint an educational stand-
ards compliance review team to make unannounced on-
site reviews of the educational programs in any school
or school district in the state to assess compliance of the
school or district with the high quality standards
adopted by the state board, including, but not limited
to, facilities, administrative procedures, transportation,
food services and the audit of all matters relating to
school finance, budgeting and administration.

The teams shall be composed of not more than ten
persons, not more than half of whom may be members
of or currently employed by the state board, who possess
the necessary knowledge, skills and experience to make
an accurate assessment of such educational programs.
The educational standards compliance team shall report
the findings of its on-site reviews to the state board of
education for inclusion in the determination of a school’s
or district’s accreditation or approval status as applicable. The state board of education shall encourage the
sharing of information to improve school effectiveness
among the districts.

The state board shall make accreditation information
available to the Legislature, the governor, the general
public and to any individuals who request such
information.

(i) The state board shall fully implement the accred-
itation system established under this article for all
schools on the first day of July, one thousand nine
hundred ninety-one, and may pilot test the system prior
to that date. The state board shall adopt rules in
according with the provisions of article three-b, chapter twenty-nine-a of this code necessary to implement the provisions of this article.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-4. Compensation generally; master's degree or equivalent required for new appointee.

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 accredited 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 accredited 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: And provided further, That after the first day of July, one thousand nine hundred ninety-four, no person may be issued a superintendent's certificate or have such certificate renewed unless the state board
determines that such person has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education and training in evaluation skills approved by the state board.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members.

§18-5-40. School entry age; operation of schools on semester basis.

§18-5-1a. Eligibility of members.

1 No person shall be eligible for membership on any county board of education who is not a citizen, resident in such county, or who accepts a position as teacher or service personnel in any school district, or who is an elected or an appointed member of any political party executive committee, or who becomes a candidate for any other office than to succeed oneself.

2 No member or member-elect of any board of education shall be eligible for nomination, election or appointment to any public office, other than to succeed oneself, or for election or appointment as a member of any political party executive committee, unless and until after that membership on the board, or his status as member-elect to the board, has been terminated at or before the time of his filing for such nomination for, or appointment to, such public office or committee.

3 Any person who is elected or appointed to a county board of education on or after the fifth day of May, one thousand nine hundred ninety-two, shall possess at least a high school diploma or a general educational development (GED) diploma: Provided, That this provision shall not apply to members or members-elect who have taken office prior to the fifth day of May, one thousand nine hundred ninety-two, and who serve continuously therefrom.

4 No person elected to a county board of education after the first day of July, one thousand nine hundred ninety, shall assume the duties of board member unless he or she has first attended and completed a course of orientation relating to boardsmanship and governance effectiveness which shall be given between the date of
election and the beginning of the member’s term of office. Members appointed to the board shall attend and complete the next such course offered following their appointment. Commencing on the effective date of this section, members shall annually receive seven clock hours of training in areas relating to boardsmanship and governance effectiveness. Such orientation and training shall be approved by the state board of education and conducted by the West Virginia school board association or other organization or organizations approved by the state board. Failure to attend and complete such an approved course of orientation and training relating to boardsmanship and governance effectiveness without good cause shall constitute neglect of duty.

§18-5-40. School entry age; operation of schools on semester basis.

(a) The state board shall establish guidelines prior to the first day of January, one thousand nine hundred eighty-nine, for the operation of public kindergarten and elementary schools on a semester basis within the applicable provisions of this article and chapter relating to the school term. Notwithstanding any other provision of this code to the contrary relating to compulsory school attendance, any child required or allowed by proximity to attend a school operated on a semester basis shall be deemed to have reached compulsory school age and shall enroll as follows: (1) For the fall semester, in such year when the sixth birthday is reached on or between the first day of July and the last day of December, and (2) for the spring semester, when the sixth birthday is reached on or between the first day of January and the last day of June of that year: Provided, That the state board shall establish guidelines for enrollment prior to a child’s reaching compulsory school age. Student progress within and between the various grade levels shall be determined on a semester by semester basis, and promotion or assignment to the middle or junior high school grade levels is conditioned upon completion of either of the last two semesters offered at the elementary school.
(b) By the school year one thousand nine hundred eighty-nine-ninety, the state board shall select at least four elementary schools with kindergarten programs which may be operated on a semester basis upon applications submitted, with preference being given in such selection to schools in different regional educational service agency areas to the extent reasonable and practical based on the applications. The operation of these schools on a semester basis shall be phased in by grade level beginning with kindergarten and progressing by one additional grade level in each successive school year until all of the grade levels offered at that school are operated on a semester basis.

Any regulations adopted under this section shall utilize the flexibility contained herein so as to provide the students of West Virginia a more successful educational experience.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-1. Intent and purpose of article.

§18-5A-2. Local school improvement councils; election.

§18-5A-3. Authority and procedures for local school improvement councils to request waivers of certain rules, policies and interpretations.

§18-5A-4. State board to establish criteria for selecting schools of excellence; annual school of excellence awards.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.


§18-5A-1. Intent and purpose of article.

The intent of this article is to facilitate and encourage the involvement of the school community in the operation of the local schools to improve educational quality. This article is intended to establish processes at each school which provide opportunities for involvement of the school community in the operation of the local schools and to support local initiatives to improve school performance. It is not the intent of this article to restrict the ability of the county board of education in its efforts to effect county-wide school improvements.

§18-5A-2. Local school improvement councils; election.

A local school improvement council shall be estab-
lished at every school consisting of the principal, who
shall serve as the ex officio chairman of the council and
be entitled to vote, three teachers elected by the faculty
senate of the school, two school service personnel elected
by the school service personnel employed at the school,
three parents or legal guardians of students enrolled at
the school elected by the school's parent teacher
organization, and two at-large members appointed by
the principal, one of whom resides in the school's
attendance area and one of whom represents business or
industry, both of whom are not eligible for membership
under any of the other elected classes of members:
Provided, That if the school houses students in grade
seven or higher, then the student body president or other
student, elected by the student body in grade seven or
higher, shall also be a member of the council.

The principal shall arrange for such elections to be
held prior to the tenth day of May of each school year
to elect a council to serve for the next ensuing school
year and shall give notice of the elections at least one
week prior to the elections being held. To the extent
practical, all elections shall be held within the same
week. Persons elected to the council shall serve until the
next election and may only be replaced upon death,
resignation, failure to appear at three consecutive
meetings of the council for which notice was given or,
a change in personal circumstances so that the person
is no longer representative of the class of members from
which appointed. In the case of replacement, an election
shall be held to elect another qualified person to serve
the unexpired term of the person being replaced.

Each member of the school improvement council must
be given written notice two employment days in advance
of any council meeting.

School improvement councils shall meet at least once
every nine weeks or equivalent grading period at the
call of the chair or by three fourths of its members. At
the first meeting of the council, the chair shall provide
each member with a copy of the current applicable
section of this code and any state board rule or
regulation promulgated pursuant to the operation of these councils, and the council shall elect from its membership two members to assist the chair in setting the agenda for each council meeting.

School improvement councils shall be considered for the receipt of school of excellence awards under section three of this article and competitive grant awards under section twenty-nine, article two of this chapter, and may receive and expend such grants for the purposes provided in such section.

In any and all matters which may fall within the scope of both the school improvement councils and the school curriculum teams authorized in section five of this article, the school curriculum teams shall be deemed to have jurisdiction.

A school improvement council shall receive cooperation from the school in implementing policies and programs it may adopt to:

(1) Encourage the involvement of parents in their child's educational process and in the school;

(2) Encourage businesses to provide time for their employees who are parents to meet with teachers concerning their child's education;

(3) Encourage advice and suggestions from the business community;

(4) Encourage school volunteer programs and mentorship programs; and

(5) Foster utilization of the school facilities and grounds for public community activities.

§18-5A-3. Authority and procedures for local school improvement councils to request waivers of certain rules, policies and interpretations.

The intent of this section is to establish a mechanism which allows local school level initiatives to be designed and implemented to meet local school needs and circumstances. In accordance with this intent, a local school improvement council established under the
provisions of this article may propose alternatives to the operation of the public school which alternatives will meet or exceed the high quality standards established by the state board and will increase administrative efficiency, enhance the delivery of instructional programs, promote community involvement in the local school system or improve the educational performance of the school generally. The proposal of the council shall set forth the objective or objectives to be accomplished under the proposal, how the accomplishment of such objective or objectives will meet or exceed the standards established by the state board, the indicators upon which the meeting of such standards should be judged and a projection of any funds to be saved by the proposal and how such funds will be reallocated within the school. The alternatives proposed by the council may include matters which require the waiver of policies or rules promulgated by the state or county board of education, state superintendent interpretations and interpretations of the county or state boards of education: Provided, That such request for waiver be submitted to the appropriate board adopting said rule or policy and that board may approve the waiver: Provided, however, That the state superintendent need only be notified that the local council intends to waive the interpretation: Provided further, That notwithstanding any other provisions of the law to the contrary, council is not prohibited from permitting off-site classrooms to be developed in conjunction with local businesses if those sites have met the requirements established by the local board of education and if sites are located off campus. For an alternative to be proposed, at least two-thirds of the members must vote in favor thereof: And provided further, That if the alternative to be proposed relates to a waiver of policies or rules, promulgated by the state or county board of education, state superintendent interpretations and interpretations of the county or state boards of education affecting employees, then prior to the proposal of the alternative, a majority of the local affected employee group involved must agree.

A council may also submit a written statement, with supporting reasons, to the legislative oversight commis-
48 sion on education accountability recommending a
49 waiver of a statute or legislative rule, which the
50 commission shall review and determine whether a
51 recommendation should be made to the Legislature to
52 waive such statute or rule.

53 When a council decides to propose an alternative, it
54 shall forward a copy of the proposal to the state board
55 of education and the affected local board of education.
56 The state board shall acknowledge receipt of the
57 proposed alternative, promptly review the proposed
58 alternative in consultation with the county board or
59 their agents and, in its discretion, approve implemen-
60 tation of the alternative or reply to the council within
61 a reasonable time as to its reasons for not approving the
62 proposed alternative. If the state board approves a
63 proposed alternative, the state board shall provide
64 appropriate notice to the local school improvement
65 council and the county board of education and shall
66 establish a process for evaluation of the operation of the
67 alternative. Approval for the operation of the alternative
68 may be continued or revoked at any time based on the
69 results and findings of the evaluation.

70 The state board shall submit a report to the legislative
71 oversight commission on education accountability and
72 the governor on the first day of July of each year
73 summarizing the proposed alternatives received, ap-
74 proved or rejected, continued or revoked during the
75 preceding school year and the results and findings of the
76 evaluations. The report shall specifically identify all
77 policy, rule, and interpretation waiver requests received
78 during the preceding year and the disposition of each.

§18-5A-4. State board to establish criteria for selecting
schools of excellence; annual school of excel-
ence awards.

1 The state board of education shall promulgate rules,
2 in accordance with the provisions of article three-b,
3 chapter twenty-nine-a of this code, outlining criteria for
4 the identification of schools of excellence. Such criteria
5 shall include, but not be limited to, improvement in
6 student achievement in comparison to state and national
norms, improvement in reducing drop-out rates, improvement in standardized test scores, implementation of advanced or innovative programs, improvement in parent and community involvement, improvement in parent, teacher and student satisfaction, improvement in student attendance and other factors which promote excellence in education. Such rules shall be promulgated by the first day of January, one thousand nine hundred ninety-one. Such rules may not prohibit any school from applying for consideration as a school of excellence.

Each year, the state board shall select one high school, one middle or junior high school, and one elementary school within each regional educational service agency district, and one vocational school selected on a statewide basis to be awarded school of excellence status.

The rules promulgated by the state board shall outline appropriate methods of recognizing and honoring the students, teachers and other employees and parents or members of the school community who have contributed to excellence in education at the school.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

(a) There is established at every public school in this state a faculty senate which shall be comprised of all permanent, full-time professional educators employed at the school who shall all be voting members. Professional educators as used in this section means professional educators as defined in chapter eighteen-a of this code. A quorum of more than one-half of the voting members of the faculty shall be present at any meeting of the faculty senate at which official business is conducted. Prior to the beginning of the instructional term each year, but within the employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice chair and secretary and discuss matters relevant to the beginning of the school year. The vice chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be held on a regular basis as determined by a schedule approved by the faculty senate and amended from time to time if needed.
Emergency meetings may be held at the call of the chair or a majority of the voting members by petition submitted to the chair and vice chair. An agenda of matters to be considered at a scheduled meeting of the faculty senate shall be available to the members at least two employment days prior to the meeting, and in the case of emergency meetings, as soon as possible prior to the meeting. The chair of the faculty senate may appoint such committees as may be desirable to study and submit recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon by the full body.

(b) In addition to any other powers and duties conferred by law, or authorized by policies adopted by the state or county board of education or by-laws which may be adopted by the faculty senate not inconsistent with law, the powers and duties listed in this subsection are specifically reserved for the faculty senate. The intent of these provisions is neither to restrict nor to require the activities of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate shall organize its activities as it deems most effective and efficient based on school size, departmental structure and other relevant factors.

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From such funds, each classroom teacher and librarian shall be allotted fifty dollars for expenditure during the instructional year for academic materials, supplies or equipment which in the judgment of the teacher or librarian will assist him or her in providing instruction in his or her assigned academic subjects, or shall be returned to the faculty senate. The remainder of funds shall be expended for academic materials, supplies or equipment in accordance with a budget approved by the faculty senate. Notwithstanding any other provisions of the law to the contrary, funds not expended in one school year shall be available for expenditure in the next school year: Provided, That the amount of county funds already budgeted for the fiscal year one thousand nine hundred
sixty—ninety-one, shall not be reduced for such materials, supplies and equipment. Accounts shall be maintained of the allocations and expenditures of such funds for the purpose of financial audit. Academic materials, supplies or equipment shall be interpreted broadly, but shall not include materials, supplies or equipment which will be used in or connected with interscholastic athletic events.

(2) A faculty senate may establish a process for faculty members to interview new prospective professional educators and paraprofessional employees at the school and submit recommendations regarding employment to the principal, who may also make independent recommendations, for submission to the county superintendent: Provided, That such process must permit the timely employment of persons to perform necessary duties.

(3) A faculty senate may nominate teachers for recognition as outstanding teachers under state and local teacher recognition programs and other personnel at the school, including parents, for recognition under other appropriate recognition programs and may establish such programs for operation at the school.

(4) A faculty senate may submit recommendations to the principal regarding the assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

(5) A faculty senate may submit recommendations to the principal regarding establishment of the master curriculum schedule for the next ensuing school year.

(6) A faculty senate may establish a process for the review and comment on sabbatical leave requests submitted by employees at the school pursuant to section eleven, article two of this chapter.

(7) Each faculty senate shall elect three faculty representatives to the local school improvement council established pursuant to section two of this article.

(8) Each faculty senate may nominate a member for election to the county staff development council pursuant to section eight, article three, chapter eighteen-a of this code.
(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors for beginning teachers under beginning teacher internship programs at the school.

(10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available to the faculty senate: Provided, That the faculty senate shall select a member who shall have the duty of maintaining a record of all funds received and expended by the faculty senate, which record shall be kept in the school office and shall be subject to normal auditing procedures.

(11) On or after the first day of January, one thousand nine hundred ninety-two, any faculty senate may review the evaluation procedure as conducted in their school to ascertain whether such evaluations were conducted in accordance with the written system required pursuant to section twelve, article two of chapter eighteen-a of this code and the general intent of this Legislature regarding meaningful performance evaluations of school personnel. If a majority of members of the faculty senate determine that such evaluations were not so conducted, they shall submit a report in writing to the state board of education: Provided, That nothing herein shall create any new right of access to or review of any individual's evaluations.

(12) Each faculty senate shall be provided by its local board of education, at least a two-hour per month block of noninstructional time within the school day: Provided, That any such designated day shall constitute a full instructional day. This time may be utilized and determined at the local school level and shall include, but not be limited to, faculty senate meetings.


There shall be established at each elementary school in the state a school curriculum team composed of the school principal, the counselor designated to serve that school and three teachers from the kindergarten through fourth grade faculty chosen by that faculty.
The school curriculum team shall establish the programs and methods for implementing a curriculum based on state-approved learning outcomes for kindergarten through fourth grade based on the needs of the individual school with a focus on the basic skills of reading, composition and mathematics. The curriculum thus established shall be submitted to the county board of education for approval or for return to the school for reconsideration.

The school curriculum team may apply through the school's local school improvement council for a waiver from the textbook adoption process established in article two-a, of this chapter if, in the judgment of the team, materials necessary for the implementation of such curriculum are not available through the normal adoption process.

The school team may apply for a grant from the state board of education for the development or implementation, or both, of remedial and accelerated programs to meet the needs of the students at the individual school.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-1. School building authority; powers.

§18-9D-16. Facilities plans generally; need-based eligibility.

§18-9D-1. School building authority; powers.

The school building authority shall consist of ten 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 six 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, one of whom shall be representative of the interests of the construction trades.

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. 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.

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.

§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) Multi-county and regional planning to achieve the
most effective and efficient instructional delivery
system;

(5) Curriculum 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. In prioritizing the projects, each regional educational service agency shall make determinations in accordance with objective criteria to be formulated by the school building authority prior to the first day of January, one thousand nine hundred ninety-one.

(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.

ARTICLE 32. SEVERABILITY.

§18-32-1. Severability.

Pursuant to section ten, article two, chapter two of this code, 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 applica-
tions of the chapter, and to this end the provisions of this chapter are declared to be severable.

CHAPTER 18A. SCHOOL PERSONNEL.

Article
3. Training, Certification, Licensing, Professional Development.
3A. Center for Professional Development.
4. Salaries, Wages, and Other Benefits.
5. Authority; Rights; Responsibility.
7. Severability.

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-2-8. Suspension and dismissal of school personnel by board; appeal.
§18A-2-12. Performance evaluations of school personnel; professional personnel evaluation process.

§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, one of which shall be for completion of a beginning teacher internship pursuant to the provisions of section two-b, article three of this chapter, if applicable; 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 the first day of April 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, 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 pre-
ferred list, in order, shall have been offered the
opportunity for reemployment in a position for which
they are qualified: And provided further, That he has not
accepted a teaching position elsewhere. Such reemploy-
ment 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
§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

1 Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge. A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to section twelve of this article. The charges shall be stated in writing served upon the employee within two days of presentation of said charges to the board. The employee so affected shall be given an opportunity, within five days of receiving such written notice, to request, in writing, a level four hearing and appeals pursuant to provisions of article twenty-nine, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, except that dismissal for the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grievable dismissal. An employee charged with the commission of a felony may be reassigned to duties which do not involve direct interaction with pupils pending final disposition of the charges.


1 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.

8 Beginning on the first day of July, one thousand nine hundred ninety-four, the prerequisites for issuance of an
administrative certificate for principals shall include
that the person has successfully completed at least six
credit hours of approved course work in public school
management techniques at an accredited institution of
higher education and has successfully completed
education and training in evaluation skills through the
center for professional development, or equivalent
education and training in evaluation skills approved by
the state board.

Under the supervision of the superintendent and in
accordance with the rules and regulations of the county
board of education, the principal shall assume adminis-
trative 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.

§18A-2-12. Performance evaluations of school personnel; professional personnel evaluation process.

(a) The state board of education shall adopt a written
system for the evaluation of the employment performance of personnel, which system shall be applied uniformly by county boards of education in the evaluation of the employment performance of personnel employed by the board.

(b) The system adopted by the state board of education for evaluating the employment performance of professional personnel shall be in accordance with the provisions of this section. Professional personnel means professional personnel as defined in section one, article one of this chapter. In developing the professional personnel performance evaluation system, and amendments thereto, the state board shall consult with the professional development project of the center for professional development created in section three, article three-a of this chapter. The center shall actively participate with the state board in developing written standards for evaluation which clearly specify satisfactory performance and the criteria to be used to determine whether the performance of each professional personnel meets such standards.

The performance evaluation system shall contain, but shall not be limited to the following information:

(1) The professional personnel positions to be evaluated, whether they be teachers, substitute teachers, administrators, principals, or others;

(2) The frequency and duration of the evaluations, which shall be on a regular basis and of such frequency and duration as to insure the collection of a sufficient amount of data from which reliable conclusions and findings may be drawn;

(3) The purposes of the evaluation, which shall serve as a basis for the improvement of the performance of the personnel in their assigned duties, serve as an indicator of satisfactory performance for individual professional personnel and serve as documentation for a dismissal on the grounds of unsatisfactory performance, and serve as a basis for programs to increase the professional growth and development of professional personnel;
(4) The standards for satisfactory performance for professional personnel and the criteria to be used to determine whether the performance of each professional meets such standards and other criteria for evaluation for each professional position evaluated; and

(5) Provisions for a written improvement plan, which shall be specific as to what improvements, if any, are needed in the performance of the professional and shall clearly set forth recommendations for improvements, including recommendations for additional education and training during the professional's recertification process.

A professional whose performance is deemed to be unsatisfactory shall be given notice of deficiencies. A remediation plan to correct deficiencies shall be developed by the employing county board of education and the professional. The professional shall be given a reasonable period of time for remediation of the deficiencies and shall receive a statement of the resources and assistance available for the purposes of correcting the deficiencies.

No person may evaluate professional personnel for the purposes of this section unless such person has an administrative certificate issued by the state superintendent and has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education training approved by the state board, which will enable the person to make fair, professional, and credible evaluations of the personnel whom the person is responsible for evaluating. After the first day of July, one thousand nine hundred ninety-four, no person may be issued an administrative certificate or have an administrative certificate renewed unless the state board determines that such person has successfully completed education and training in evaluation skills through the center for professional development, or equivalent education and training approved by the state board.

Any professional personnel whose performance eval-
uation includes a written improvement plan shall be given an opportunity to improve his or her performance through the implementation of the plan. If the next performance evaluation shows that the professional is now performing satisfactorily, no further action shall be taken concerning the original performance evaluation. If such evaluation shows that the professional is still not performing satisfactorily, the evaluator shall either make additional recommendations for improvement or may recommend the dismissal of such professional in accordance with the provisions of section eight of this article.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

§18A-3-1a. Alternative programs for the education of teachers.

§18A-3-1b. Recommendation for certification of alternative program teachers.

§18A-3-2. Teacher certification; required; expiration; qualifications; certification of aliens.

§18A-3-2a. Authority of state superintendent to issue certificates; kinds of certificates.

§18A-3-2b. Beginning teacher internships.

§18A-3-3. Renewal of certificates; permanent certification.

§18A-3-8. County professional staff development councils.

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

1 (a) The education of professional educators in the state shall be under the general direction and control of the state board of education after consultation with the secretary of education and the arts, who shall represent the board of directors of the state college system and the board of trustees of the university of West Virginia system. The education of professional educators in the state includes all programs leading to certification to teach or serve in the public schools including (1) those programs in all institutions of higher education, including student teaching in the public schools, (2) beginning teacher internship programs, (3) the granting of West Virginia certification to persons who received
their preparation to teach outside the boundaries of this state, (4) any alternative preparation programs in this state leading to certification, including programs established pursuant to the provisions of section one-a of this article and programs which are in effect on the effective date of this section, and (5) any continuing professional education, professional development and in-service training programs for professional educators employed in the public schools in the state.

The state board of education, after consultation with the secretary of education and the arts, who shall represent the board of directors of the state college system and the board of trustees of the university of West Virginia system, shall adopt standards for the education of professional educators in the state and for the awarding of certificates valid in the public schools of this state.

The standards approved by the board for teacher preparation 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 certification, 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 the adequacy of the 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.
(c) The state superintendent of schools may issue certificates to graduates of teacher education programs and alternative teacher education programs approved by the state board of education and in accordance with rules adopted by the state board after consultation with the secretary of education and the arts, who shall represent the board of directors of the state college system and the board of trustees of the university of West Virginia system. A certificate to teach shall not be granted to any person who is not a citizen of the United States, is not of good moral character and physically, mentally and emotionally qualified to perform the duties of a teacher and who has not attained the age of eighteen years on or before the first day of October of the year in which his certificate is issued; except, that an exchange teacher from a foreign country, or an alien person who meets the requirements to teach may be granted a permit to teach within the public schools of the state.

(d) In consultation with the secretary of education and the arts, who shall represent the board of directors of the state college system and the board of trustees of the university of West Virginia system, institutions of higher education approved for teacher preparation may cooperate with each other, with the center for professional development 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, beginning teacher internship programs, instruction in methodology and seminar programs for college students, teachers with provisional certification, professional support team members and supervising teachers.

Such institutions of higher education, the center and county boards of education may by mutual agreement budget and expend funds for the operation of such centers through payments to the appropriate fiscal office of the participating institutions, the center and the county boards.
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.

§18A-3-1a. Alternative programs for the education of teachers.

(a) By the first day of July, one thousand nine hundred ninety-one, the state board of education, after consultation with the secretary of education and the arts, shall adopt rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the approval and operation of teacher education programs which are an alternative to the regular college or university programs for the education of teachers. To participate in an approved alternative teacher education program, the candidate must hold an alternative program teacher certificate issued by the superintendent and endorsed for the instructional field in which the candidate seeks certification. An alternative program teacher certificate is a temporary certificate issued for one year to a candidate who does not meet the standard educational requirements for certification. To be eligible for such a certificate, an applicant shall:

(1) Possess at least a bachelor's degree from an accredited institution of higher education in a discipline taught in the public schools, except that the rules established by the board may exempt candidates in selected vocational and technical areas who have at least ten years experience in the subject field from this requirement;

(2) Pass an appropriate state board approved basic skills and subject matter test or complete three years of
successful experience within the last seven years in the area for which licensure is being sought;

(3) Be a citizen of the United States, be of good moral character and physically, mentally and emotionally qualified to perform the duties of a teacher, and have attained the age of eighteen years on or before the first day of October of the year in which the alternative program teacher certificate is issued; and

(4) Have been offered employment in a school included in an alternative teacher education plan approved by the board to offer an alternative teacher education program.

Persons who pass the appropriate test as set forth in subdivision (2) above shall be granted a formal document which will enable them to seek employment as an alternative program teacher in a public school approved to offer an alternative teacher education program.

(b) The rules adopted by the board shall include provisions for the approval of alternative teacher education programs which may be offered by schools, school districts, consortia of schools or regional educational service agency and for the setting of tuition charges to offset the program costs. An approved alternative teacher education program shall be in effect for a school, school district, consortium of schools or regional educational service agency before an alternative program teacher may be employed in that school, school district, consortium of schools or regional educational service agency. Approximately two hundred hours of formal instruction shall be provided in all of the three following phases combined. An approved alternative program shall provide essential knowledge and skills to alternative program teachers through the following phases of training:

(1) A full-time seminar/practicum of no less than twenty and no more than thirty days duration which is accomplished before the alternative program teacher has full responsibility for a classroom. The seminar/practicum shall provide formal instruction in the essential areas for professional study which shall
emphasize the topics of student assessment, development and learning, curriculum, classroom management, and the use of educational computers and other technology and shall introduce basic teaching skills through supervised teaching experiences with students. The seminar and practicum components shall be integrated and shall include an orientation to the policies, organization and curriculum of the employing district;

(2) A period of intensive on-the-job supervision beginning the first day on which the alternative program teacher assumes full responsibility for a classroom and continuing for a period of at least ten weeks. During this time, the alternative program teacher shall be visited and critiqued no less than one time per week by members of a professional support team and shall be observed and formally evaluated at the end of five weeks and at the end of ten weeks by the appropriately certified members of the team. During the same period, formal instruction shall be continued in the essential areas for professional study which shall emphasize the topics of teaching skills, student assessment, development and learning, curriculum, classroom management, and the use of educational computers and other technology. At the end of the ten-week period, the alternative program teacher shall receive a formal written progress report from the chairperson of the support team; and

(3) An additional period of continued supervision and evaluation of no less than twenty weeks duration. During this period, the alternative program teacher shall be visited and critiqued at least twice per month and shall be observed formally and evaluated at least twice. No more than two months shall pass without a formal evaluation. Formal instruction shall continue in the essential areas for professional study. Opportunities shall be provided for the alternative program teacher to observe the teaching of experienced colleagues.

(c) Training and supervision of alternative program teachers shall be provided by a professional support team comprised of a school principal, an experienced classroom teacher, a college or university education
faculty member and a curriculum supervisor. Districts or schools which do not employ curriculum supervisors or have been unable to establish a relationship with a college or university shall provide for comparable expertise on the team. The school principal shall serve as chairperson of the team.

(d) The training efforts of the districts shall be coordinated by the center for professional development and the center shall provide an orientation and training program for professional support team members.

(e) A school, school district, consortium of schools or regional educational service agency seeking to employ an alternative program teacher must submit a plan to the state board of education and receive approval in accordance with the same procedures used for approval of collegiate preparation programs. Each plan shall describe how the proposed training program will accomplish the key elements of an alternative program for the education of teachers as set forth in this section. Each school, school district, consortium of schools or regional educational service agency shall show evidence in its plan of having sought joint sponsorship of their training program with institutions of higher education.

§18A-3-1b. Recommendation for certification of alternative program teachers.

At the conclusion of an alternative teacher education program, the principal, chairperson of the professional support team, shall prepare a comprehensive evaluation report on the alternative program teacher’s performance. This report shall be submitted directly to the state superintendent of schools and shall contain a recommendation as to whether or not a professional certificate should be issued to the alternative program teacher. The report shall be made on standard forms developed by the state superintendent.

The comprehensive evaluation report shall include one of the following recommendations:

(1) Approved: Recommends issuance of a professional certificate;
(2) Insufficient: Recommends that a professional certificate not be issued but that the candidate be allowed to seek reentry on one or more occasions in the future into an approved alternative teacher education program; or

(3) Disapproved: Recommends that a professional certificate not be issued and that the candidate not be allowed to enter into another approved alternative teacher education program in this state, but shall not be prohibited from pursuing teacher certification through other approved programs for the education of teachers in this state.

The chairperson of the professional support team shall provide the alternative program teacher with a copy of the alternative program teacher's written evaluation report and certification recommendation before submitting it to the state superintendent. If the alternative program teacher disagrees with the chairperson's recommendation, the alternative program teacher may, within fifteen days of receipt, request an appeal in accordance with the certification appeals process established by the state board of education.

§18A-3-2. Teacher certification; required; expiration; qualifications; certification of aliens.

Any professional educator, as defined in article one of this chapter, who is employed within the public school system of the state shall hold a valid teaching certificate licensing him or her to teach in the specializations and grade levels as shown on the certificate for the period of his or her employment. If a teacher is employed in good faith on the anticipation that he or she is eligible for a certificate and it is later determined that the teacher was not eligible, the state superintendent of schools may authorize payment by the county board of education to the teacher for a time not exceeding three school months or the date of notification of his or her ineligibility, whichever shall occur first. All certificates shall expire on the thirtieth day of June of the last year of their validity irrespective of the date of issuance.
§18A-3-2a. Authority of state superintendent to issue certificates; kinds of certificates.

1 In accordance with state board of education rules for the education of professional educators adopted after consultation with the secretary of education and the arts, the state superintendent of schools may issue certificates valid in the public schools of the state: Provided, That a certificate shall not be issued to any person who is not a citizen of the United States, is not of good moral character and physically, mentally and emotionally qualified to perform the duties for which the certification would be granted and who has not attained the age of eighteen years on or before the first day of October of the year in which the certificate is issued: Provided, however, That an exchange teacher from a foreign country, or an alien person who meets the requirements to teach may be granted a permit to teach within the public schools of the state.

Certificates authorized to be issued include:

(1) Professional teaching certificates.—A professional teaching certificate for teaching in the public schools may be issued to a person who:

   (i) Has at least a bachelor's degree from an accredited institution of higher education in this state, has completed a program for the education of teachers which meets the requirements approved by the state board of education, or has met equivalent standards at institutions in other states, and has passed appropriate state board approved basic skills and subject matter tests or has completed three years of successful experience within the last seven years in the area for which licensure is being sought; or

   (ii) Has at least a bachelor's degree in a discipline taught in the public schools from an accredited institution of higher education, has passed appropriate state board approved basic skills and subject matter tests or has completed three years of successful experience within the last seven years in the area for which licensure is being sought, has completed an alternative program for teacher education approved by the state board and is recommended for a certificate by the
40 chairperson of the professional support team of the
41 persons alternative program or the state superintendent
42 based on documentation submitted.

The certificate shall be endorsed to indicate the grade
43 level or levels, or areas of specialization in which the
44 person is certified to teach or to serve in the public
45 schools. The initial professional certificate shall be
46 issued provisionally for a period of three years from the
47 date of issuance and may be converted to a professional
48 certificate valid for five years subject to successful
49 completion of a beginning teacher internship, if applic-
50 cable, or renewed subject to rules adopted by the state
51 board.

(2) *Professional administrative certificate.*—A profes-
52 sional administrative certificate, endorsed for serving in
53 the public schools, may be issued to a person who has
54 completed requirements all to be approved by the state
55 board as follows: for a master’s degree in an institution
56 of higher education accredited to offer a master’s
57 degree, has successfully completed education and
58 training in evaluation skills through the center for
59 professional development, or equivalent education and
60 training in evaluation skills, and three years of manage-
61 ment level experience. Beginning the first day of
62 September, one thousand nine hundred seventy, the
63 initial professional administrative certificate shall be
64 issued provisionally for a period of three years. This
65 certificate may be converted to a professional adminis-
66 trative certificate valid for five years or renewed,
67 subject to the regulations of the state board.

(3) *Paraprofessional certificate.*—A paraprofessional
69 certificate may be issued to a person who has completed
70 thirty-six semester hours of postsecondary education or
71 its equivalent in subjects directly related to performance
72 of the job, all approved by the state board, and can
73 demonstrate the proficiencies to perform duties as
74 required of a paraprofessional as defined in section
75 eight, article four of this chapter.

(4) *Other certificates; permits.*—Other certificates and
77 permits may be issued, subject to the approval of the
state board, to persons who do not qualify for the professional or paraprofessional certificate. Such certificates or permits shall not be given permanent status and persons holding such shall meet renewal requirements provided by law and by regulation, unless the state board declares certain of these certificates to be the equivalent of the professional certificate.

Within the category of other certificates and permits, the state superintendent may issue certificates for persons to serve in the public schools as athletic coaches or other extracurricular activities coaches whose duties may include the supervision of students, subject to the following limitations: (i) Such person shall be employed under a contract with the county board of education which specifies the duties to be performed, which specifies a rate of pay equivalent to the rate of pay for professional educators in the district who accept similar duties as extra duty assignments and which provides for liability insurance associated with the activity: Provided, That such persons shall not be considered employees of the board for salary and benefit purposes other than as specified in the contract; (ii) a currently employed certified professional educator has not applied for the position; and (iii) such person completes an orientation program designed and approved in accordance with state board rules which shall be adopted no later than the first day of January, one thousand ninety-one.

§18A-3-2b. Beginning teacher internships.

(a) Every person to whom a professional teaching certificate is awarded after the first day of January, one thousand nine hundred ninety-two, shall successfully complete a beginning teacher internship program under the provisions of this section, except such persons who were awarded a professional teaching certificate on the basis of at least five years teaching experience in another state.

The beginning teacher internship program is a school based program intended to provide appropriate staff development activities and supervision to beginning
teachers to assure their competency for licensure to teach in the public schools of this state. The beginning teacher internship program shall consist of the following components:

(1) A professional support team comprised of the school principal, who shall be the chair of the professional support team, a member of the county professional staff development council and an experienced classroom teacher at the school who teaches the same or similar subject and grade level as the beginning teacher and who shall serve as a mentor for the beginning teacher;

(2) An orientation program to be conducted prior to the beginning of the instructional term, but within the employment term, supervised by the mentor teacher;

(3) The scheduling of joint planning periods for the mentor and beginning teacher throughout the school year;

(4) Mentor observation of the classroom teaching skills of the beginning teacher for at least one hour per week during the first half of the school year and which may be reduced at the discretion of the mentor to one hour every two weeks during the second half of the school year;

(5) Weekly meetings between the mentor and the beginning teacher at which the mentor and the beginning teacher discuss the performance of the beginning teacher and any needed improvements, which meetings may be reduced at the discretion of the mentor to biweekly meetings during the second half of the school year;

(6) Monthly meetings of the professional support team to discuss the performance of the beginning teacher which meetings may include all mentor members of all professional support teams at the school if helpful in the judgment of the participants;

(7) In-service professional development programs provided through the professional development project of the center for professional development for beginning
teachers and for mentors both of which will be held in
the first half of the school year;

(8) The provision of necessary release time from
regular duties for the mentor teacher, as agreed to by
the principal and the mentor teacher, and a stipend of
at least six hundred dollars for the mentor teacher for
duties as a mentor teacher; and

(9) A final evaluation of the performance of the
beginning teacher completed by the principal on a form
developed by the state board of education.

(b) The final evaluation form shall be submitted by the
principal to the county school superintendent and shall
include one of the following recommendations:

(1) Full professional status: A recommendation of full
professional status indicates that the beginning teacher
has successfully completed the internship program and
in the judgment of the principal has demonstrated
competence as a professional educator;

(2) Continuing internship status: A recommendation of
continuing internship status indicates that in the
judgment of the principal the beginning teacher
requires further supervision and further employment in
the district should be conditioned upon successful
completion of an additional year under a beginning
teacher internship program; or

(3) Discontinue employment: A recommendation to
discontinue employment indicates that in the judgment
of the principal the beginning teacher has completed
two years of employment under supervision in a
beginning teacher internship program, has not demon-
strated competence as a professional educator and will
not benefit from further supervised employment in the
district.

§18A-3-3. Renewal of certificates; permanent
certification.

Until the person qualifies for a permanent certificate,
holder: (1) Files application on a prescribed form with the state department of education; (2) presents an official transcript of six semester hours of approved credit, as may be prescribed by the state board: Provided, That such renewal is completed after the beginning of the period of validity of the certificate to be renewed and within the five-year period immediately preceding the date of application for renewal; (3) successfully completes a beginning teacher internship program, if applicable; and (4) submits a recommendation based on successful teaching experience from the county superintendent of schools of the county in which the holder last taught or resides.

The holder of a professional certificate, valid for five years, shall have the certificate made permanent upon meeting either of the following requirements: (1) Completion of the second renewal, in accordance with the provisions set forth in (2) above; (2) after five years of service in the public schools, presentation of a transcript showing the completion of requirements for a master's degree from an institution of higher education accredited to offer the master's degree and in a program relevant to the public school program or completes the fifth year of training leading to a bachelor's degree in library science from a school fully approved by the American library association. In either event the person must file application on a prescribed form with the state department of education and must submit a recommendation from the county superintendent of schools of the county in which the person last taught or resides.

All certificates and permits, other than the professional certificate, shall be renewed in accordance with state board regulations.

If the applicant seeking renewal has cause to believe that the county superintendent refuses to give a recommendation without just cause, the applicant shall have the right, in such case, to appeal to the state superintendent of schools whose responsibility it shall be to investigate the matter and issue a certificate if, in the
opinion of the state superintendent, the county superintendent's recommendation was withheld arbitrarily.

A person who has reached the age of sixty and holds a renewable certificate, as provided in this section, need not present renewal credit but shall meet all other renewal requirements.

§18A-3-8. County professional staff development councils.

The Legislature finds the professional expertise and insight of the classroom teacher to be an invaluable ingredient in the development and delivery of staff development programs which meet the needs of classroom teachers.

Therefore, a professional staff development council comprised of proportional representation from the major school levels and from vocational, special education and other specialties in proportion to their employment numbers in said county shall be established in each school district in the state in accordance with rules adopted by the state board of education. Nominations of instructional personnel to serve on the county staff development council may be submitted by the faculty senates of the district to the county superintendent who shall prepare and distribute ballots and tabulate the votes of the counties instructional personnel voting on the persons nominated. Each county staff development council shall consist of between nine and fifteen members at the discretion of the county superintendent based on the size of the county. Such councils shall have final authority to propose staff development programs for their peers based upon rules established by statute and the council on professional education.

The county superintendent or a designee shall enjoy an advisory, nonvoting role on said council. The county board shall make available an amount equal to one tenth of one percent of the amounts provided in accordance with section four, article nine-a, chapter eighteen of this code and credit such funds to an account to be used by the council to fulfill its objectives. The local board will have final approval of all proposed disbursements.

The professional staff development project of the
center for professional development shall assist in the
development and delivery of staff development pro-
grams by the county staff development councils and
shall coordinate staff development efforts statewide.

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-1. Center for professional development created; intent; advisory
council.
§18A-3A-2. Professional development project.
§18A-3A-3. Professional personnel evaluation project.
§18A-3A-4. Project for instructional renewal through science and technology
(Project FIRST).

§18A-3A-1. Center for professional development created; intent; advisory
council.

(a) Teaching is a profession that directly correlates to
the social and economic well-being of a society and its
citizens. Superior teaching is essential to a well
educated and productive populace. The intent of this
article is to recognize the value of professional involve-
ment by experienced educators in building and main-
taining a superior teaching force and to establish
avenues for applying such involvement.

In furtherance of this intent, the center for profes-
sional development is established. The general mission
of the center is to study matters relating to the quality
of teaching and management in the schools of West
Virginia and to promote the implementation of pro-
grams and practices to assure the highest quality in
such teaching and management. The center shall also
perform such duties as are assigned to it by law.

The center shall consist of nine persons as members:
The secretary of education and the arts, ex officio; the
state superintendent of schools, ex officio; one member
of the state board of education, elected by the state
board; two experienced educators, of whom one shall be
a working classroom teacher, appointed by the governor
by and with the advice and consent of the senate; and
four citizens of the state who are knowledgeable in
matters relevant to the issues addressed by the center
appointed by the governor by and with the advice and
consent of the senate. No two appointees shall be
residents within the same region. The state superintendent
of schools shall convene the first meeting of the
center to elect a chair, vice chair and secretary.

The election and appointment of members shall be
made as soon as possible after the effective date of this
section. Of the initial appointed members, three shall be
appointed for two-year terms and four shall be ap-
pointed for four-year terms. All successive appointments
shall be for four-year terms.

The center for professional development shall meet at
least quarterly, and the appointed 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 center may employ and fix the compensation of
an executive director and such other persons as may be
necessary to carry out the mission and duties of the
center. When practical, personnel employed by state
higher education agencies and state, regional and county
public education agencies shall be made available to the
center to assist in the operation of projects of limited
duration.

The center shall contract with existing agencies or
agencies created after the effective date of this section
or others to provide training programs in the most
efficient manner. Existing programs currently based in
agencies of the state shall be continued in the agency
of their origin unless the center establishes a compelling
need to transfer or cancel the existing program. The
center shall recommend to the governor the transfer of
funds to the providing agency, if needed, to provide
programs approved by the center.

(b) To assist the center for professional development
in the performance of its duties related to teacher
education and professional development, there is created
an advisory council on professional development which
shall consist of eleven persons as follows: An employee of the center who shall chair the advisory council; two shall be professors, or associate or assistant professors, of teacher education, one from a public institution and one from a private institution of higher education in this state offering programs leading to certification to teach in the public schools of this state; two county school superintendents, one of whom shall be from a district with a student enrollment above the statewide average and one of whom shall be from a district with a student enrollment below such average; two school principals, one of whom shall be from a school including elementary grade levels and one of whom shall be from a school including secondary grade levels; and four professional instructional personnel, two of whom shall be from a school including elementary grade levels and two of whom shall be from a school including secondary grade levels. To the extent possible, the principals and instructional personnel shall be appointed from the members of county staff development councils. Except for the employee of the center, the members shall be appointed jointly by the secretary of education and the arts and the state superintendent for two-year terms which overlap so that one member from each of the classes shall be appointed in each successive year, except that two members from the professional instructional personnel class shall be appointed in each successive year. No two members of the council shall be from the same college or university or school district. Members of the council shall be granted release time from their employment for attending meetings of the council.

§18A-3A-2. Professional development project.

(a) Through this project the center shall:

(1) Identify the knowledge, skills, attitudes and other such pertinent complements deemed essential for an individual to demonstrate appropriate performance as a professional personnel in the public schools of West Virginia. The center shall review the report of the governor's committee on the preparation of teachers established in section six of this article, shall participate in the work of, and may contract with, the National
Board for Professional Teaching Standards, Inc., to develop processes, procedures and assessment measures for the certification of teachers, and shall consult regularly with active members of the teaching profession in the public schools and higher education teacher preparation programs. The center may make recommendations to the state board of education and the higher education governing boards regarding the adoption of such work for application in the continuing professional development of public school professional educators;

(2) Serve in a coordinating capacity to assure that the knowledge, skills, attitude and other pertinent complements of appropriate professional performance which evolve over time in the public school environment are appropriately reflected in the programs approved for the education of professional personnel;

(3) Provide for the routine updating of professional skills of professional educators through in-service and other programs; and

(4) Provide consultation and assistance to county staff development councils established under the provisions of section eight, article three of this chapter in designing and delivering staff development programs to meet the staff development needs of the professional educators of their county.


Through this project the center shall develop training in the area of developmental instruction with an emphasis in grades kindergarten through grade four.

§18A-3A-3. Professional personnel evaluation project.

Through this project, the center shall:

(1) Establish programs that provide education and training in evaluation skills to administrative personnel who will evaluate the employment performance of professional personnel pursuant to the provisions of section twelve, article two of this chapter; and

(2) Establish programs that provide instruction to
classroom teachers who will serve as beginning teacher mentors in accordance with the provisions of section two-b, article three of this chapter.

§18A-3A-4. Project for instructional renewal through science and technology (Project FIRST).

Through this project, the center shall:

1. (1) Determine the most effective and efficient ways to integrate the capabilities of the state for producing, delivering and receiving electronic instruction and establish a comprehensive long-range plan to further the cooperation and coordination of the various agencies of the state, the county boards of education and the regional educational service agencies involved in distance learning technology; and

2. (2) Encourage the use of technology for educational purposes that will enhance teaching and learning, promote equality in educational offerings, facilitate the delivery of instruction to nontraditional student populations and increase educational system management capabilities, including assisting in the provision of training programs for teachers involved in technology assisted instruction programs.

In accomplishing this project, the center shall cooperate with and receive cooperation from other agencies of the state and its political subdivisions which have control over technologies appropriate for application in the project or which have a need for the services available as a result of the project.

A goal of the project is to create a statewide technology network linking universities and colleges, schools, libraries and, eventually, homes with software, data bases and video learning capabilities.


There is established a West Virginia advanced placement center to provide statewide coordination for the continued growth and development of the advanced placement programs in West Virginia high schools. The center will assist the West Virginia department of
education, county boards of education, institutions of higher education, the College Board, Inc., and the West Virginia advanced placement advisory council in all matters relative to the advanced placement in this state.

The specific functions of the center include:

(1) Coordinating advanced placement teacher training institutes;
(2) Establishing a cadre of instructors for the advanced placement teacher training institutes;
(3) Providing follow-up teacher training for advanced placement teachers;
(4) Identifying and obtaining external sources of funding;
(5) Networking advanced placement teachers through an advanced placement newsletter;
(6) Serving as a liaison for the College Board and the West Virginia department of education, county boards of education, institutions of higher education, the West Virginia advanced placement advisory council, the Legislature and the governor;
(7) Conducting research and evaluating the state's advanced placement program;
(8) Assisting county boards of education and local schools in establishing, evaluating and maintaining advanced placement programs;
(9) Serving as a clearinghouse for advanced placement materials and correspondence; and
(10) Certify individual courses that meet the established standards of advanced placement programs.


The task force on the preparation of teachers appointed by the governor and existing on the effective date of this section shall undertake a comprehensive review of programs to prepare teachers for employment in West Virginia, shall identify ways to improve teacher preparation programs and shall report to the governor
and the Legislature on such matters no later than the fifteenth day of December, one thousand nine hundred ninety. The report should address:

1. Upgrading teacher education programs to make the academic area of study more rigorous and more effective;
2. Streamlining and simplifying certification standards and processes;
3. Establishing a delivery system in higher education for the in-field masters program;
4. An examination of the range of nontraditional approaches to augment the teaching force including, but not limited to, alternative programs leading to certification and national teacher's exam testing;
5. A survey of the demand for teachers over the next ten years which identifies possible areas of teacher shortage and over supply;
6. Upgrading teacher education programs to make the pedagogical area of study reflective of new developments in the classroom such as distance learning, computer assisted instruction and early childhood developmental programs;
7. Continuing education and evaluation of the teaching force; and
8. Recommendations relating to the governance of teacher preparation including, but not limited to, assessment, accountability, funding and mechanisms to assure appropriate program review and modifications in response to the changing demands of the teaching work force.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.
§18A-4-8b. Seniority rights for school service personnel.
§18A-4-8c. Seniority rights for personnel employed by multi-county vocational centers.

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.
A county board of education shall make decisions affecting the hiring of new classroom teachers or professional personnel other than classroom teachers on the basis of the applicant with the highest qualifications. In judging qualifications, consideration shall be given to each of the following: Appropriate certification and/or licensure; amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the subject area and/or grade level; the amount of course work and/or degree level in the relevant field and degree level generally; academic achievement; relevant specialized training; past performance evaluations conducted pursuant to section twelve, article two of this chapter; and other measures or indicators upon which the relative qualifications of the applicant may fairly be judged. If one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, the county board of education shall make decisions affecting the filling of such positions on the basis of the following: Appropriate certification and/or licensure; amount of experience relevant to the position; the existence of teaching experience in the subject area; degree level in the relevant field; specialized training directly related to the performance of the job; meeting satisfactory standards in evaluations over the previous two years; and seniority. If the applicant with the most seniority is not selected for the position, upon the request of the applicant a written statement of reasons shall be given to the applicant with suggestions for improving the applicant's qualifications.

The seniority of classroom teachers as defined in section one, article one of this chapter with the exception of guidance counselors shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified and/or licensed.

Upon completion of one hundred thirty-three days of
employment in any one school year, substitute teachers shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: Provided, That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that that employee is employed in another professional area. For the purposes of accruing seniority under this paragraph, employment as principal, supervisor or central office administrator, as defined in section one, article one of this chapter, shall be considered one area of employment.

Employment for a full employment term shall equal one year of seniority, but no employee may accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. A random selection system established by the employees and approved by the board shall be used to determine the priority if two or more employees accumulate identical seniority.

Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two, article two of this chapter: Provided, That all persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release: Provided, however, That an employee subject to release shall be employed in any other professional position where such employee is
certified and was previously employed or to any lateral area for which such employee is certified and/or licensed, if such employee’s seniority is greater than the seniority of any other employee in that area of certification and/or licensure.

After the fifth day prior to the beginning of the instructional term, or after the first day of the second half of the instructional term, no person employed and assigned to a professional position may transfer to another professional position in the county during that half of the instructional term: Provided, That such person may apply for any posted, vacant positions with the successful applicant assuming the position at the beginning of the next half of the instructional term: Provided, however, That professional personnel who have been on an approved leave of absence may fill these vacancies prior to the next semester. The superintendent may fill a position before the next instructional term when it is determined to be in the best interest of the students.

All professional personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification and/or licensure, such employee shall be recalled on the basis of seniority if no regular, full-time professional personnel, or those returning from leaves of absence with greater seniority, are qualified, apply for and accept such position. Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause such employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee, and it shall be the duty of each professional personnel to notify the board of continued
availability annually of any change in address or of any
change in certification and/or licensure.

Boards shall be required to post and date notices of
all openings in established, existing or newly created
positions in conspicuous working places for all profes-
sional personnel to observe for at least five working
days. The notice shall be posted within twenty working
days of such position openings and shall include the job
description. Any special criteria or skills that are
required by the position shall be specifically stated in
the job description and directly related to the perform-
ance of the job. No vacancy shall be filled until after the
five-day minimum posting period. For the purposes of
this article, a position is deemed vacant when the
instructional position could be filled by a certified, full-
time professional personnel: Provided, That nothing
provided herein shall prevent the county board of
education from eliminating a position due to lack of
need.

Notwithstanding any other provision of the code to the
contrary, where the total number of classroom teaching
positions in an elementary school does not increase from
one school year to the next, but there exists in that
school a need to realign the number of teachers in one
or more grade levels, kindergarten through six, teachers
at the school may be reassigned to grade levels for which
they are certified without that position being posted:
Provided, That the employee and the county board of
education mutually agree to the reassignment.

When the total number of classroom teaching posi-
tions in an elementary school needs to be reduced, such
reduction shall be made on the basis of seniority with
the least senior classroom teacher being recommended
for transfer: Provided, That a specified grade level
needs to be reduced and the least senior employee in the
school is not in that grade level, the least senior
classroom teacher in the grade level that needs to be
reduced shall be reassigned to the position made vacant
by the transfer of the least senior classroom teacher in
the school without that position being posted: Provided,
however, That the employee is certified and/or licensed and agrees to the reassignment.

§18A-4-8b. Seniority rights for school service personnel.

A county board of education shall make decisions affecting promotion and filling of any service personnel positions of employment or jobs occurring throughout the school year that are to be performed by service personnel as provided in section eight, article four of this chapter, on the basis of seniority, qualifications and evaluation of past service.

Qualifications shall mean that the applicant holds a classification title in his category of employment as provided in this section and must be given first opportunity for promotion and filling vacancies. Other employees then must be considered and shall qualify by meeting the definition of the job title as defined in section eight, article four of this chapter, that relates to the promotion or vacancy. If the employee so requests, the board must show valid cause why an employee with the most seniority is not promoted or employed in the position for which he applies. Applicants shall be considered in the following order:

(1) Regularly employed service personnel;
(2) Service personnel whose employment has been discontinued in accordance with this section;
(3) Professional personnel who held temporary service personnel jobs or positions prior to the ninth day of June, one thousand nine hundred eighty-two, and who apply only for such temporary jobs or positions;
(4) Substitute service personnel; and
(5) New service personnel.

The county board of education may not prohibit a service employee from retaining or continuing his employment in any positions or jobs held prior to the effective date of this section and thereafter.

A promotion shall be defined as any change in his employment that the employee deems to improve his working circumstance within his classification category.
of employment and shall include a transfer to another
classification category or place of employment if the
position is not filled by an employee who holds a title
within that classification category of employment. Each
class title listed in section eight, article four of this
chapter shall be considered a separate classification
category of employment for service personnel, except for
those class titles having Roman numeral designations,
which shall be considered a single classification of
employment. The cafeteria manager class title shall be
included in the same classification category as cooks.
The executive secretary class title shall be included in
the same classification category as secretaries.

For purposes of determining seniority under this
section an employee's seniority begins on the date that
he enters into his assigned duties.

Notwithstanding any other provisions of this chapter
to the contrary, decisions affecting such personnel with
respect to extra-duty assignments shall be made in the
following manner: An employee with the greatest length
of service time in a particular category of employment
shall be given priority in accepting such assignments,
followed by other fellow employees on a rotating basis
according to the length of their service time until all
such employees have had an opportunity to perform
similar assignments. The cycle then shall be repeated:
Provided, That an alternative procedure for making
extra-duty assignments within a particular classification
category of employment may be utilized if the
alternative procedure is approved both by the county
board of education and by an affirmative vote of two
thirds of the employees within that classification
category of employment. For the purpose of this section,
extra-duty assignments are defined as irregular jobs
that occur periodically or occasionally such as, but not
limited to, field trips, athletic events, proms, banquets
and band festival trips.

Boards shall be required to post and date notices of
all job vacancies of established existing or newly created
positions in conspicuous working places for all school
service employees to observe for at least five working
days. The notice of such job vacancies shall include the
job description, the period of employment, the amount
of pay and any benefits and other information that is
helpful to the employees to understand the particulars
of the job. After the five day minimum posting period
all vacancies shall be filled within twenty working days
from the posting date notice of any job vacancies of
established existing or newly created positions.

All decisions by county boards of education concerning reduction in work force of service personnel shall be
made on the basis of seniority, as hereinafter provided.

The seniority of any such service personnel shall be
determined on the basis of the length of time the
employee has been employed by the county board of
education within a particular job classification. For the
purpose of establishing seniority for a preferred recall
list as hereinafter provided, when an employee has been
employed in one or more classifications, the seniority
accrued in each previous classification shall be retained
by the employee.

Should a county board of education be required to
reduce the number of employees within a particular job
classification, the employee with the least amount of
seniority within that classification or grades of classifi-
cation shall be properly released and employed in a
different grade of that classification if there is a job
vacancy: Provided, That if there is no job vacancy for
employment within such classification or grades of
classification, he shall be employed in any other job
classification which he previously held with the county
board if there is a vacancy and shall retain any seniority
accrued in such job classification or grade of
classification.

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 county board.

All employees whose seniority with the county board
is insufficient to allow their retention by the county
board during a reduction in work force shall be placed
upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

Employees placed upon the preferred list shall be recalled to any position openings by the county board within the classification(s), where they had previously been employed, or to any lateral position for which the employee is qualified or to a lateral area for which an employee has certification and/or licensure.

Employees on the preferred recall list shall not forfeit their right to recall by the county board if compelling reasons require an employee to refuse an offer of reemployment by the county board.

The county board shall be required to notify all employees 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 such employee to notify the county board of any change in the address of such employee.

No position openings may be filled by the county board, 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.

Any board failing to comply with the provisions of this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and his reasonable attorney fee, as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactively to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

§18A-4-8c. Seniority rights for personnel employed by multi-county vocational centers.
Professional and service personnel employed by a multi-county vocational center shall establish seniority on the basis of the length of time the employee has been employed by the multi-county vocational center, except that any professional or service personnel whose employment with the multi-county vocational center was immediately preceded by employment with one of the county boards participating in the operation of the center or whose employment contract was with one of the county boards participating in the operation of the center (1) shall retain any seniority accrued during employment by said county board; (2) shall accrue seniority as a regular employee with said county board during employment with the center; (3) shall attain continuing contract status with both the county and the center if the sum of the years employed by the county and the center equals the statutory number required for continuing contract status; and (4) shall retain and continue to accrue county and center seniority in the event of reemployment by said participating county as a result of direct transfer from the center or recall from the preferred list.

Reductions in work force in the center or employment by the center or county board shall be made in accordance with the provisions of sections seven-a and eight-b of this article: Provided, That only years of employment within the multi-county vocational center shall be considered for purposes of reduction in force within the center.

The seniority conferred herein shall apply retroactively to all affected professional and service personnel, but the rights incidental thereto shall commence as of the effective date of this section.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.


A county board of education may approve the attendance of any or all teachers at educational conventions, conferences, or other professional meetings of teachers on school days when in the judgment of the superintendent it is necessary or desirable. Attendance at such
6 meetings may be substituted for an equal amount of
teaching or employment and teachers attending shall
not suffer loss of pay. Further, the board is authorized
to pay all or any part of expenses of any personnel whom
it may designate to represent the board at any such
professional or educational meetings or in visitation to
another school system.

13 Every county board of education shall adopt a policy
14 under which professional educators serving as mentor
15 teachers, serving on state and county professional staff
development councils, serving on school curriculum
teams, and serving on professional support teams will
be granted professional time if required for perform-
ance of their duties during the instructional day or extra
duty compensation if required at other times and for
reimbursement for necessary expenses actually incurred
in attending meetings of the bodies upon which they
serve upon. Such policy shall provide for the coverage
of the professional personnel's regular duties during
such release times through the use of paraprofessional
aides, substitutes and other methods if necessary to
avoid the interruption of instruction.

ARTICLE 7. SEVERABILITY.
§18A-7-1. Severability.

1 Pursuant to section ten, article two, chapter two of
2 this code, if any provision of this chapter or the
3 application thereof to any person or circumstance is held
4 unconstitutional or invalid, such unconstitutionality or
5 invalidity shall not affect other provisions or applica-
6 tions of the chapter, and to this end the provisions of this
7 chapter are declared to be severable.

CHAPTER 18B. HIGHER EDUCATION.

Article
3B. West Virginia Literacy Project.
15. Severability.

ARTICLE 3B. WEST VIRGINIA LITERACY PROJECT.

§18B-3B-1. Purpose and intent of article.
§18B-3B-2. West Virginia literacy council established.
§18B-3B-1. Purpose and intent of article.

The enactment of this article is based on the finding that many efforts are currently under way in West Virginia to assist citizens in upgrading their literacy skills. These efforts are due to both public sector programs and private sector voluntary initiatives. The enactment of this section recognizes that these efforts are having a positive impact in addressing literacy needs and that the many persons who have contributed their own time to these efforts deserve the sincere gratitude of the people of West Virginia for their service in this cause.

The governor and the Legislature recognize that the future strength and vitality of the state depend upon the ability of its citizens to undertake and accomplish the challenges presented in a competitive society and that accomplishing these challenges requires an ever-changing base of knowledge and skills. The governor and the Legislature have, therefore, established a goal for West Virginia that, by the year 2000, all working-age adults will be functionally literate. Reaching this goal will require a determined effort, one which combines the successes already in place with a new focus on the objectives of the future.

The intent of this article is to facilitate the beginning of this effort.

§18B-3B-2. West Virginia literacy council established.

As soon as practical after the effective date of this section, the governor shall appoint a literacy council consisting of nine members who shall be individuals broadly representative of citizens and organizations within the state having an interest in adult literacy education. Of the nine members, four shall be state employees and shall be representative of state adult basic education programs, the state library system, state employment training programs and the state job training council, one being appointed to represent each area. Of the five remaining members, the appointments shall include active members of adult literacy organizations who are of various occupations in business, industry, labor, homemaker or others.
The literacy council shall be under the jurisdiction of the department of education and the arts pursuant to the provisions of article one, chapter five-f of this code, and shall be subject to the supervision of the secretary of the department of education and the arts. Members of the council shall be reimbursed for reasonable and necessary expenses actually incurred in conducting the business of the council.

The literacy council shall survey existing efforts to address the literacy needs of the citizens of the state and make recommendations to the governor and the Legislature on or before the first day of January, one thousand nine hundred ninety-one, as to how the state could best serve to facilitate, encourage, coordinate and augment these efforts.

ARTICLE 15. SEVERABILITY.


Pursuant to section ten, article two, chapter two of this code, 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.
to amend and reenact section two-n, article thirteen of said chapter; to amend and reenact sections nine, sixteen and thirty, article fifteen of said chapter; to further amend said article by adding thereto two new sections, designated sections eight-c and eight-d; to amend and reenact sections eight and seventy-four, article twenty-one of said chapter; to amend and reenact section nineteen, article twenty-four of said chapter; to amend and reenact sections eight and seventy-four, article twenty-one of said chapter; to further amend said chapter by adding thereto a new article, designated article twelve-b; to amend and reenact sections one, two, three, four, nine, ten, twelve and thirteen, article one, chapter twelve of said code; to amend and reenact sections one, two, three, four, five, six and seven, article one-a of said chapter; to amend and reenact sections two, three, four and five, article two of said chapter; to amend and reenact sections one and eleven, article one of said chapter twelve; to amend and reenact section thirteen, article four of said chapter; to amend and reenact sections two, four and six, article five of said chapter twelve; to amend and reenact sections four, five and six, article six of said chapter; to further amend said article six by adding thereto two new sections, designated sections one-a and nine-d; to amend and reenact sections fourteen, seventeen and eighteen, article one, chapter thirteen of said code; to amend and reenact sections one, four, five-a, eight, nine, thirteen-b and fifteen, article nine-a, chapter eighteen of said code; to further amend said article nine-a by adding thereto a new section, designated section eight-a; to amend and reenact sections two, four, five, six, eight and nine, article twenty-two-d of said chapter eighteen; to amend and reenact section five, article thirty, chapter eighteen of said code; to amend and reenact sections one, two, five, five-a, five-b, five-d, eight, eight-a and nine, article four, chapter eighteen-a of said code; and to amend article two, chapter twenty-four of said code by adding thereto two new sections, designated sections one-g and eleven-b, all relating to the education enhancement act of 1990; providing adequate funding, adequate teacher pay scales, and independent professional management of public funds in order to enhance the future of public education in this state;
removing board of investments from department of tax and revenue; setting forth legislative findings; adding an additional citizen member to the property evaluation training and procedures commission; transferring authority to promulgate legislative rules for sale of microfilm, photographs and maps; requiring county assessors to develop, maintain and sell tax maps in accordance with legislative rules promulgated by the commission; deleting the requirement that assessors approve certain contracts; providing that increases and valuation may be estimated and uniformly distributed over a three-year period; continuing the two percent valuation until repayment of loan; removing residency requirement for assessors; requiring money disbursed from the county revolving valuation fund to be disbursed in the same manner as other funds provided to the assessor; requiring the cost of appraising industrial and natural resources property to be borne by the state; requiring the tax commissioner and all assessors to send to each person owning or controlling property appraised by them a pamphlet explaining the reappraisal process and its equalization goal; providing for regular and special levy rate reductions generally; requiring local levying bodies with certain increases in special levy revenues to hold public hearing; providing a minimum severance tax to be imposed at a rate of fifty cents per ton of coal produced by the taxpayer for sale, profit or commercial use; permitting a credit for minimum severance paid against the severance tax on coal imposed in article thirteen-a, chapter eleven of the code not to exceed the liability for severance tax on coal for the year, exclusive of the additional tax on coal imposed by section six of said article thirteen-a and determined after application of certain credits to which the taxpayer is entitled; providing short title, definitions, accounting periods and methods; requiring minimum severance tax returns to be made on a separate consolidated composite or unitary basis identical to the separate consolidated composite or unitary basis on which severance tax returns are filed; providing for an annual return and periodic installment payments of estimated tax, time and place for payment, extensions of time for filing
return and paying tax, signing of returns and documents; allowing tax commissioner to require taxpayer compliance bond or to require first purchaser to withhold tax of delinquent taxpayer; providing for the retention of records; making minimum severance tax subject to all the provisions of “West Virginia Tax Procedures and Administration Act” and the “West Virginia Tax Crimes and Penalties Act”; and further providing for severability, effective date and the filing of combined returns and reports for article twelve-b and thirteen-a taxes under said chapter eleven; increasing business and occupation tax rates for the privileges set forth in section two-n, article thirteen, chapter eleven of the code; requiring business and occupation tax to be based on the alternative methods, with liability for tax being the greater of the two; providing immediate pass-through to purchasers of increase in tax; specifying effective date of such changes in the business and occupation tax; eliminating exemption from sales tax for sales of tangible personal property to be consumed in the construction of real property that is or will be used by governmental entity for a governmental or proprietary purpose; providing transition rules continuing said exemption for certain written contractual obligations entered into on or before the fifteenth day of September, one thousand nine hundred ninety; prohibiting contractors and agents from asserting sales tax exemptions to which the persons for whom they perform services are entitled; requiring, in certain instances, accelerated payment of consumers sales tax collected from consumers and personal income tax withheld from employees during the month of June each year; removing the credit for severance tax against the personal income tax and against the corporation net income tax, and specifying effective date of such removal; permitting loans from the consolidated pension fund to the state for educational improvements and providing the terms and conditions for repayment of such loans; creating a special education enhancement fund in the state treasury; dedicating certain revenues from consumers sales and service tax to repayment of said loans; clarifying and expanding the duties of the West Virginia state board of investments;
setting forth legislative findings; designating state
depositories; reciting legislative findings; providing for
maintenance of deposits by the board of investments;
designating depositories for interest earnings; providing
for records of depository bonds by the board of invest­
ments; allowing the board to transfer funds by check or
bank wire; requiring board of investments to keep
records for each depository used; making funds availa­
table to the board of investments; providing for board
payments for banking services; providing for board
management of the linked deposit program; defining
terms; reciting legislative findings; limiting linked
deposits; providing for loan applications to the board of
investments; providing for acceptance or rejection of
loan package; providing for certification of compliance
by the board; providing for liability of the board;
providing for payment and deposit of taxes and other
amounts due the state or any political subdivision;
providing for deposits with the board; providing for
deposit of money by the board; specifying duty of
depositories; providing for deposits in corresponding
banks of state depositories; providing for appropriations,
expenditures and deductions; prescribing manner of
payment from treasury; setting forth accounts, reports
and general provisions; providing for bank
reconciliations by the board; designating the board as the
custodian of securities; requiring board to keep records
of securities received; specifying when notes deemed
securities; reciting legislative findings relating to board
of investments; specifying composition of board
members; expanding powers of the board; setting forth
fees for services and special revenue account; authoriz­
ing bond issues for original indebtedness; making bonds
payable at office of the board; providing for bonds to be
registered at offices of the board; allowing exchange of
bonds at offices of the board; causing the student loan
assistance program to be administered by the board
instead of the state treasurer; defining terms; providing
for board investment and linked deposits; providing
applications to the board; providing for board accept­
ance or rejection of loan packages; providing for board
certification of compliance; providing that board not
liable; providing for board participation in higher education tuition trust; specifying composition of board of directors; amending the public school support plan; deleting expired language; deleting a scheduled increase in the professional instructional personnel ratio, freezing the growth of administrative and pay grade "H" personnel and requiring the governor to submit a recommendation to the Legislature for establishing responsible administrative support; changing the mandate for reductions in professional education to be conducted in a certain order to a statement of intent; changing the foundation allowance for administrative cost to a per person basis and providing for a separate foundation allowance for regional educational service agency; deleting a scheduled increase in the current expense multiplier, basing the distribution of funds for substitutes or current expense on the number of employees, limiting growth in the county allowance to four percent per year and providing for a separate allocation to be distributed to schools for expenditure by faculty senates; requiring a one-time appropriation for certain counties; changing the computation of funds accrued from decreases in adjusted enrollment to a yearly basis and changing the allocation of such funds; requiring requests for supplemental appropriations related to increased net enrollment; enacting salary increases for professional educators and service personnel and providing appropriate definitions; providing a definition of salary equity among the counties; removing the growth caps on supplemental salaries for professional educators and service personnel; providing for payment of minimum salary equity adjustments within the minimum salary schedules; providing a definition and salary classification for paraprofessionals; providing that extra duty assignments must be outside the normal working day for additional compensation; providing that employee pay shall be accompanied by an accounting of withholdings and the dollar value of benefits provided by the state; and providing rate incentives for utility investment in qualified clean coal and clean air technology facilities, and continuing prudence reviews by the public service commission.
Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, three, four, five, seven, eight, ten and twelve, article one-c, chapter eleven be amended and reenacted; that section two-a, article three of said chapter be amended and reenacted; that sections six-e and six-f, article eight of said chapter be amended and reenacted; that said article eight be further amended by adding thereto a new section, designated section six-g; that section two-n, article thirteen of said chapter be amended and reenacted; that sections nine, sixteen and thirty, 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-c and eight-d; that sections eight and seventy-four, article twenty-one of said chapter eleven be amended and reenacted; that section nine-a, article twenty-four of said chapter be amended and reenacted; that said chapter be amended by adding thereto a new article, designated article twelve-b; that sections one, two, three, four, nine, ten, twelve and thirteen, article one, chapter twelve of said code be amended and reenacted; that sections one, two, three, four, five, article two of said chapter be amended and reenacted; that sections one and eleven, article three of said chapter be amended and reenacted; that section thirteen, article four of said chapter be amended and reenacted; that sections two, four and six, article five of said chapter be amended and reenacted; that sections four, five and six, article six of said chapter be amended and reenacted; that article six of said chapter be further amended by adding thereto two new sections, designated sections one-a and nine-d; that sections fourteen, seventeen and eighteen, article one, chapter thirteen of said code be amended and reenacted; that sections one, four, five-a, eight, nine, thirteen-b and fifteen, article nine-a, chapter eighteen of said code be amended and reenacted; that said article nine-a be further amended by adding thereto a new section, designated section eight-a; that sections two, four, five, six, eight and nine, article twenty-two-d of said chapter be amended and reenacted; that section five, article thirty of said chapter eighteen be amended and reenacted; that sections one,
two, five, five-a, five-b, five-d, eight, eight-a and nine, article four, chapter eighteen-a of said code be amended and reenacted; and that article two, chapter twenty-four be amended by adding thereto two new sections, designated sections one-g and eleven-b, all to read as follows:

Chapter

5F. Reorganization of the Executive Branch of State Government.

11. Taxation.
18. Education.
18A. School Personnel.

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

ARTICLE 2. TRANSFERS OF AGENCIES AND BOARDS.

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

(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 health and board of health provided
for in article one, chapter sixteen of this code;
(4) Health care planning council provided for in
article two-d, chapter sixteen of this code;
(5) Office of emergency medical services and advisory
council thereto provided for in article four-c, chapter
sixteen of this code;
(6) Continuum of care board for the elderly, disabled
and terminally ill provided for in article five-d, chapter
sixteen of this code;
(7) Hospital finance authority provided for in article
twenty-nine-a, chapter sixteen of this code;
(8) Health care cost review authority provided for in
article twenty-nine-b, chapter sixteen of this code;
(9) Structural barriers compliance board provided for
in article ten-f, chapter eighteen of this code;
(10) Department of employment security, state advi-
sory council thereto and board of review provided for
in chapter twenty-one-a of this code;
(11) Office of workers' compensation commissioner,
advisory board thereto and workers' compensation
appeal board provided for in chapter twenty-three of
this code;
(12) Commission on aging provided for in article
fourteen, chapter twenty-nine of this code;
(13) Commission on mental retardation and advisory
committee thereto provided for in article fifteen,
chapter twenty-nine of this code;
(14) Women's commission provided for in article twenty, chapter twenty-nine of this code; and

(15) 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. Adjutant general's department provided for in article one-a, chapter fifteen of this code;
2. Armory board provided for in article six, chapter fifteen of this code;
3. Military awards board provided for in article one-g, chapter fifteen of this code;
4. Department of public safety and commission on drunk driving prevention provided for in article two, chapter fifteen of this code;
5. Office of emergency services and emergency services advisory council provided for in article five, chapter fifteen of this code;
6. Sheriffs' bureau provided for in article eight, chapter fifteen of this code;
7. Department of corrections provided for in chapter twenty-five of this code;
8. Fire commission and state fire administrator provided for in article three, chapter twenty-nine of this code;
9. Regional jail and prison authority provided for in article twenty, chapter thirty-one of this code;
10. Board of probation and parole provided for in article twelve, chapter sixty-two of this code; and
11. Department of veterans' affairs and veterans'
(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) Municipal bond commission provided for in article three, chapter thirteen of this code;

(5) Racing commission provided for in article twenty-three, chapter nineteen of this code;

(6) Lottery commission and position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;

(7) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;

(8) Office of alcohol beverage control commissioner provided for in article two, chapter sixty of this code; and

(9) 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
304 general or other law, in any rule or regulation, or in any
305 ordinance, resolution or order, reference is made to any
306 department transferred to and incorporated in a
307 department created in section two, article one of this
308 chapter, such reference shall henceforth be read,
309 construed and understood to mean a division of the
310 appropriate department so created, and any such
311 reference elsewhere to a division of a department so
312 transferred and incorporated shall henceforth be read,
313 construed and understood to mean a section of the
314 appropriate division of the department so created.

(k) The crime victims compensation fund provided for
316 in article two-a, chapter fourteen of this code, including
317 all of the allied, advisory, affiliated or related entities
318 and funds associated therewith, is hereby transferred to
319 and incorporated in and shall be administered as a part
320 of the court of claims.

CHAPTER 11. TAXATION.

Article
1C. Fair and Equitable Property Valuation.
3. Assessments Generally.
8. Levies.
12B. Minimum Severance Tax on Coal.
15. Consumers Sales Tax.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-1. Legislative findings.
§11-1C-3. Property valuation training and procedures commission generally; appointment; term of office; meetings; compensation.
§11-1C-4. Commission powers and duties; rulemaking.
§11-1C-5. Tax commissioner powers and duties.
§11-1C-7. Duties of county assessors; property to be appraised at fair market value; exceptions; initial equalization; valuation plan.
§11-1C-8. Additional funding for assessors' offices; maintenance funding.
§11-1C-10. Valuation of industrial property and natural resources property by tax commissioner; penalties; methods; values sent to assessors.
§11-1C-12. Board of equalization and review; assessments; board of public works.

§11-1C-1. Legislative findings.

1 (a) The Legislature hereby finds and declares that all
2 property in this state should be fairly and equitably
3 valued wherever it is situated so that all citizens will
be treated fairly and no individual species or class of property will be overvalued or undervalued in relation to all other similar property within each county and throughout the state.

(b) The Legislature by this article seeks to create a method to establish and maintain fair and equitable values for all property. The Legislature does not intend by this article to implement the reappraisal as conducted under articles one-a and one-b of this chapter nor does it intend to affect tax revenue in any manner.

(c) The Legislature finds that requiring the valuation of property to occur in three-year cycles with an annual adjustment of assessments as to those properties for which a change in value is discovered shall not violate the equal and uniform provision of section one, article ten of the West Virginia Constitution, the Legislature further finding that such three-year cycle and annual adjustment are an integral and indispensable part of a systematic review of all properties in order to achieve equality of assessed valuation within and among the counties of this state. Notwithstanding such finding, the Legislature intends to permit the assessors and the board of public works to place proportionately uniform percentage changes in values on the books during the two tax years preceding the tax year beginning on the first day of July, one thousand nine hundred ninety-three, in accordance with the provisions of section seven of this article.

(d) The Legislature deems that the goal of this article is that by the end of the three-year cycle contemplated by this article, and thereafter from year to year, all property shall be annually assessed at sixty percent of its then current fair market value except for the values derived for farms and managed timberland properties, which are to be valued as prescribed by this article one-c and article four of this chapter.

§11-1C-3. Property valuation training and procedures commission generally; appointment; term of office; meetings; compensation.

(a) There is hereby created, under the department of
tax and revenue, a property valuation training and
procedures commission which consists of the state tax
commissioner, or a designee, who shall serve as chair­
person of the commission, three county assessors, five
citizens of the state, one of which shall be a certified
appraiser, and two county commissioners. The assessors,
five citizen members and two county commissioners
shall be appointed by the governor with the advice and
consent of the Senate. For each assessor to be appointed,
the West Virginia assessors association shall nominate
three assessors, no more than two of whom shall belong
to the same political party, and shall submit such list
of nominees to the governor. For each of the two county
commissioners to be appointed, the county commissioner’s association of West Virginia shall nominate three
commissioners, no more than two of whom shall belong
to the same political party, and shall submit such list
of nominees to the governor. Except for the tax
commissioner, there may not be more than one member
from any one county. No more than seven members of
the commission shall belong to the same political party:
Provided, That any member of the commission who is
a direct party to any dispute before the board shall
excuse himself or herself from any consideration or vote
regarding the dispute. By the first day of November, one
thousand nine hundred ninety, the governor shall
appoint the fifth citizen member, who shall serve a two­
year term.

(b) All members, except the tax commissioner, shall
serve for four-year terms: Provided, That of the
members initially appointed, two assessors, one county
commission member and two citizens shall serve two­
year terms, and one assessor, one county commissioner
member and three citizen members shall serve four­
year terms. Any assessor member and county commis­sioner member ceases to be a member immediately upon
leaving the office of assessor or county commissioner.
Members shall remain members of the commission until
their successors have been appointed. In case of a
vacancy occurring prior to the end of the term of a
member, a replacement shall be appointed within thirty
days in the same manner as the member was appointed
and shall serve until the end of the term of the member
so replaced.

(c) The tax commissioner shall call the first meeting
of the commission within thirty days of the appointment
of the assessor, county commissioner and citizen
members. Subsequently, meetings shall be at the call of
the chairperson or at the written request of any four
members, except that the commission shall meet at least
twice annually. Assessor members, county commissioner
members and the tax commissioner shall serve without
compensation, and citizen members shall receive fifty
dollars per day for each day of actual service rendered.
All members shall be reimbursed for all reasonable and
necessary expenses actually incurred in the perform-
ance of their duties as members of the commission.

(d) The commission shall be funded by an appropri-
ation by the Legislature through a separate line item
appropriated to the state tax commissioner.

§11-1C-4. Commission powers and duties; rulemaking.

(a) On or before the first day of October, one thousand
nine hundred ninety, and thereafter as necessary the
property valuation training and procedures commission
shall perform the following duties:

(1) Devise training and certification criteria for
county assessors and their employees and members of
county commissions, which shall include a definition of
"appropriate staff member" as the term is used in
section six of this article relating to required training,
which definition shall include deputy assessors as
provided for in section three, article two of this chapter;

(2) Establish uniform, statewide procedures and
methodologies for the mapping, visitation, identification
and collection of information on the different species of
property, which procedures and methodologies shall
include reasonable requirements for visitation of
property, including a requirement that a good faith
effort be made to contact any owner of owner-occupied
19 residential property: Provided, That the commission is
20 not authorized to establish the methods to value real and
21 personal property, but shall have the authority to
22 approve such methods;
23
24 (3) Develop an outline of items to be included in the
25 county property valuation plan required in section seven
26 of this article, which shall include information to assist
27 the property valuation training and procedures commis-
28 sion in its determination of the distribution of state
29 funds provided pursuant to section eight of this article.
30
31 (b) On or before the first day of July, one thousand
32 nine hundred ninety-one, the commission shall establish
33 objective criteria for the evaluation of the performance
34 of the duties of county assessors and the tax
35 commissioner.
36
37 (c) In the event the tax commissioner and a county
38 assessor cannot agree on the content of the plan required
39 under section seven of this article, the commission shall
40 examine the plan and the objections of the tax commis-
41 sioner and shall resolve the dispute on or before the first
42 day of the fiscal year following the fiscal year in which
43 the plan was submitted to the commission for resolution.
44
45 (d) The commission shall have the power to make such
46 rules as it deems necessary to carry out the provisions
47 of this section, which rules shall include procedures for
48 the maintenance, use, sale and reproduction of micro-
49 film, photography and tax maps. Any rules adopted by
50 the commission prior to the first day of October, one
51 thousand nine hundred ninety, under subsection (a) of
52 this section are exempt from the provisions of article
53 three of chapter twenty-nine-a of this code: Provided,
54 That the commission shall file a copy of any rule so
55 exempted from the provisions of chapter twenty-nine-a
56 of this code with the legislative rule-making review
57 committee created pursuant to section eleven, article
58 three of said chapter prior to the thirtieth day of
59 November, one thousand nine hundred ninety.
60
61 (e) The commission shall have the authority to make
62 and enter into all contracts and agreements necessary
58 or incidental to the performance of its duties and the
59 execution of its powers under this article.
60
61 (f) In order to fund the costs of the requirements of
62 this article, the valuation commission shall have the
63 authority, on a one-time basis, to borrow five million
64 dollars and to distribute such funds according to need
65 and the valuation plan submitted by the counties. Upon
66 request of the valuation commission, the state board of
67 investments shall loan, under commercially reasonable
68 terms to be determined by the parties, up to five million
69 dollars to the valuation commission, on a one-time basis,
70 from one of the various funds administered by the state
71 board of investments.
72
73 (g) The commission shall be required, in the event that
74 the tax commissioner has failed to do so, to appoint one
75 or more special assessors if it is the determination of the
76 commission that an assessor has substantially failed to
77 perform the duties required by sections seven and eight
78 of this article. A writ of mandamus shall be the proper
79 remedy if the commission fails to perform any of its
80 duties required by law.

§11-1C-5. Tax commissioner powers and duties.
1 (a) In addition to the powers and duties of the tax
2 commissioner in other provisions of this article and this
3 code, the tax commissioner shall have the power and
4 duty to:
5
6 (1) Perform such duties and exercise such powers as
7 may be necessary to accomplish the purposes of this
8 article;
9
10 (2) Determine the methods of valuation for both real
11 and personal property in accordance with the following:
12
13 (A) As to personal property, the tax commissioner
14 shall provide a method to appraise each major specie of
15 personal property in the state so that all such items of
16 personal property are valued in the same manner no
17 matter where situated in the state, shall transmit these
18 methods to each county assessor who shall use these
19 methods to value the various species of personal
20 property. The tax commissioner shall periodically
conduct such studies as are necessary to determine that such methods are being followed. Such method shall be in accordance with the provisions of article five of this chapter: Provided, That notwithstanding any other provision of this code to the contrary, the several county assessors shall appraise motor vehicles as follows: The state tax commissioner shall annually compile a schedule of automobile values based upon the lowest values shown in a nationally accepted used car guide, which said schedule shall be furnished to each assessor and shall be used by the several county assessors to determine the assessed value for all motor vehicles in an amount equal to sixty percent of said lowest values.

(B) As to managed timberland as defined in section two of this article, the tax commissioner shall provide a method to appraise such property in the state so that all such property is valued in the same manner no matter where it is situated in the state, which shall be a valuation based on its use and productive potential as managed timberland, which may be accorded special valuation as forestlands as authorized by section fifty-three, article six of the Constitution of West Virginia: Provided, That timberland that does not qualify for identification as managed timberland shall be valued at market value: Provided, however, That the tax commissioner may not implement any rules or regulations in title one hundred ten, which relate to valuation or classification of timberland: Provided further, That on or before the first day of October, one thousand nine hundred ninety, the tax commissioner shall, in accordance with chapter twenty-nine-a of this code, promulgate new rules relating to the valuation and classification of timberland.

(C) As to farmland used, occupied and cultivated by an owner or bona fide tenant, the tax commissioner shall provide a method to appraise such property in the state so that all such property is valued in the same manner no matter where it is situated in the state, which valuation 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, in accordance with section one, article three of this chapter and as authorized by subsection B, section one-b, article X of the Constitution of West Virginia.

(D) As to public utility property, the tax commissioner shall prescribe appropriate methods for the appraisal of the various types of property subject to taxation as public utilities and the types of property which are to be included in the operating property of a public utility and thereby not subject to taxation by the county assessor. Only parcels or other property, or portions thereof, which are an integral part of the public utility's function as a utility shall be included as operating property and assessed by the board of public works under provisions of article six of this chapter;

(3) Evaluate the performance of each assessor based upon the criteria established by the commission and each county's approved plan and take appropriate measures to require any assessor who does not meet these criteria or adequately carry out the provisions of the plan to correct any deficiencies. Such evaluation shall include the periodic review of the progress of each assessor in conducting the appraisals required in sections seven and nine of this article and in following the approved valuation plan. If the tax commissioner determines that an assessor has substantially failed to perform the duties required by said sections, the tax commissioner shall take all necessary steps, including the appointment of one or more special assessors in accordance with the provisions of section one, article three of this chapter, or utilize such other authority as the commissioner has over county assessors pursuant to other provisions of this code as may be necessary to complete the tasks and duties imposed by this article: Provided, That a writ of mandamus shall be the appropriate remedy if the tax commissioner fails to perform his or her statutory duty provided for in section five, article one of this chapter.

(4) Submit to the Legislature, on or before the fifteenth day of February of each year, a preliminary statewide aggregate tax revenue projection and other
information which shall assist the Legislature in its
deliberations regarding county board of education levy
rates pursuant to section six-f, article eight of this
chapter, which information shall include any amount of
reduction required by said section six-f;

(5) Maintain the valuations each year by making or
causing to be made such surveys, examinations, audits
and investigations of the value of the several classes of
property in each county which should be listed and
taxed under the several classifications; and

(6) Establish by uniform rules a procedure for the sale
of computer generated material and appraisal manuals.
Any funds received as a result of the sale of such
reproductions shall be deposited to the appropriate
account from which the payment for reproduction is
made.

(b) The tax commissioner may adopt any regulation
adopted prior to the first day of January, one thousand
nine hundred ninety, pursuant to article one-a of this
chapter, which adoption shall not constitute an imple-
m entation of the statewide mass reappraisal of property.
Such adoption, including context modifications made
necessary by the enactment of this article, shall occur
on or before the first day of July, one thousand nine
hundred ninety-one, through inclusion in the plan
required by section ten of this article or inclusion in the
minute record of the valuation commission. Upon the
adoption of any such regulations, any modification or
repeal of such regulation shall be in accordance with the
provisions of article three, chapter twenty-nine-a of this
code.

§11-1C-7. Duties of county assessors; property to be
appraised at fair market value; exceptions;
initial equalization; valuation plan.

(a) Except for property appraised by the state tax
commissioner under section ten of this article and
property appraised and assessed under article six of this
chapter, all assessors shall, within three years of the
approval of the county valuation plan required pursuant
to this section, appraise all real and personal property
in their jurisdiction at fair market value except for special valuation provided for farmland and managed timberland. They shall utilize the procedures and methodologies established by the property valuation training and procedures commission and the valuation system established by the tax commissioner.

(b) In determining the fair market value of the property in their jurisdictions, assessors may use as an aid to valuation any information available on the character and values of such property including, but not limited to, the updated information found on any statewide electronic data processing system network established pursuant to section twenty-one, article one-a of this chapter. Valuations shall not be based exclusively on such statewide electronic data processing system network, and usage of the information on such files as an aid to proper valuation shall not constitute an implementation of the statewide mass reappraisal of property.

(c) Before beginning the valuation process, each assessor shall develop a county valuation plan for using information currently available, for checking its accuracy and for correcting any errors found. The plan must be submitted to the tax commissioner on or before the first day of December, one thousand nine hundred ninety, for review and approval, and such plan must be revised as necessary and resubmitted every three years thereafter. Whenever a plan is submitted to the tax commissioner, a copy shall also be submitted to the county commission of that county and the property valuation training and procedures commission, and that county commission and the property valuation training and procedures commission may forward comments to the tax commissioner. The tax commissioner shall respond to any plan submitted or resubmitted within sixty days of its receipt. The valuation process shall not begin nor shall funds provided in section eight of this article be available until the plan has received approval by the tax commissioner: Provided, That any initial plan that has not received approval by the commissioner prior to the first day of May, one thousand nine hundred
ninety-one, shall be submitted on or by such date to the valuation commission for resolution prior to the first day of July, one thousand nine hundred ninety-one, by which date all counties shall have an approved valuation plan in effect.

(d) Upon approval of the valuation plan, the assessor shall immediately begin implementation of the valuation process. Any change in value discovered subsequent to the certification of values by the assessor to the county commission, acting as the board of equalization and review, in any given year shall be placed upon the property books for the next certification of values: Provided, That notwithstanding any other provision of this code to the contrary, the property valuation training and procedures commission may authorize the tax commissioner to approve a valuation plan and the board of public works to submit such a plan which would permit the placement of proportionately uniform percentage changes in values on the books that estimate the percentage difference between the current assessed value and sixty percent of the fair market value for classes or identified sub-classes of property and distribute the change between the two tax years preceding the tax year beginning on the first day of July, one thousand nine hundred ninety-three. This procedure may be used in lieu of placing individual values on the books at sixty percent of value as discovered, or may be in addition to such valuation. If such procedure is adopted by a county, then property whose reevaluation is the responsibility of the board of public works and the state tax commissioner shall have its values estimated and placed on the books in like manner. Such estimates shall be based on the best information obtained by the assessor, the board of public works and the tax commissioner, and the changes shall move those values substantially towards sixty percent of fair market value, such sixty percent to be reached on or before the first day of July, one thousand nine hundred ninety-three.

(e) The county assessor shall establish and maintain as official records of the county tax maps of the entire county drawn to scale or aerial maps, which maps shall
indicate all property and lot lines, set forth dimensions or areas, indicate whether the land is improved, and identify the respective parcels or lots by a system of numbers or symbols and numbers, whereby the ownership of such parcels and lots can be ascertained by reference to the appropriate records: Provided, That all such records shall be established and maintained and the sale or reproduction of microfilm, photography and maps shall be in accordance with legislative rules promulgated by the commission.

(f) Willing and knowing refusal of the assessor or the county commission to comply with and effect the provisions of this article, or to correct any deficiencies as may be ordered by the tax commissioner with the concurrence of the valuation commission under any authority granted pursuant to this article or other provisions of this code, shall constitute grounds for removal from office. Such removal may be appealed to the circuit court.

§11-1C-8. Additional funding for assessors' offices; maintenance funding.

(a) In order to finance the extra costs associated with the valuation and training mandated by this article, there is hereby created a revolving valuation fund in each county which shall be used exclusively to fund the assessor's office. The valuation and training programs, for the fiscal year commencing on the first day of July, one thousand nine hundred ninety, shall be funded through the valuation commission and distributed in accordance with need on a county by county basis and the county's approved plan. The necessary funds shall be transferred to each county's valuation fund following approval of the plans submitted by the respective assessors. The said funds shall be transferred by the valuation commission on condition that no persons shall be hired hereunder without the approval of the valuation commission, such hirings shall be without regard to political favor or affiliation, and such persons hired hereunder shall be subject to the provisions of the ethics act in chapter six-b of this code, including, but not limited to, the conflict of interest provisions thereunder.
Notwithstanding any other provisions of this code to the contrary, assessors may employ citizens of any West Virginia county for the purpose of performing, assessing and appraising duties under this chapter upon approval of such employment by the valuation commission.

During the fiscal year commencing the first day of July, one thousand nine hundred ninety-four, and thereafter as necessary, any county receiving moneys provided by the valuation commission under this section shall use the county’s valuation fund first to repay the valuation commission the money so received plus accrued interest: Provided, That the fund should not drop below one percent of the total municipal, county commission and county school board revenues generated by application of the respective regular levy rates.

(b) To finance the ongoing extra costs associated with the valuation and training mandated by this article, beginning with the fiscal year commencing on the first day of July, one thousand nine hundred ninety-one, and for a period of at least three consecutive years, an amount equal to two percent of the previous year’s projected tax collections from the regular levy set by, or for, the county commission, the county school board and any municipality in the county shall be prorated as to each levying body, set aside and placed in the valuation fund. Such two percent payment shall continue in any county where funds borrowed from the state pursuant to subsection (a) of this section have not been fully repaid until such moneys, together with accrued interest thereon, has been fully repaid or until the first day of July, one thousand nine hundred ninety-four, whichever comes last. Each year thereafter, the valuation fund shall be continued at an annual amount of one percent of the previous year’s projected tax collections from such regular levies: Provided, That county commissions and municipalities may present written evidence, prior to the thirty-first day of March each year, acceptable to the valuation commission showing that a lesser amount would be adequate to fund the extra costs associated with the valuation mandated by section seven of this article: Provided, however, That
the valuation commission shall meet prior to the fifteenth day of April to consider and decide upon all written evidence so submitted: Provided further, That the county commissions, in addition, shall fund the county assessor's office at least the level of funding provided during the fiscal year in which this section was initially enacted.

These additional funds are intended to enable assessors to maintain current valuations and to perform the periodic reevaluation required under section nine of this article. Beginning with the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-six, any unexpended balance in the valuation fund at the end of the fiscal year shall expire back proportionately into the respective accounts of the levying bodies.

(c) Any funds provided by the valuation commission shall be distributed among the counties by the property valuation training and procedures commission based upon workload, need and other relevant factors as shown by the valuation plans developed under section seven of this article.

(d) Moneys due the valuation fund shall be deposited by the sheriff of the county on a monthly basis for the benefit of the assessor and shall be available to and may be spent by the assessor without prior approval of the county commission, which shall not exercise any control over the fund. Clerical functions related to the fund shall be performed in the same manner as done with other normal funding provided to the assessor.

§11-1C-10. Valuation of industrial property and natural resources property by tax commissioner; penalties; methods; values sent to assessors.

(a) As used in this section:

(1) "Industrial property" means real and personal property integrated as a functioning unit intended for the assembling, processing and manufacturing of finished or partially finished products.

(2) "Natural resources property" means coal, oil, natural gas, limestone, fireclay, dolomite, sandstone,
(b) All owners of industrial property and natural resources property each year shall make a return to the state tax commissioner and, if requested in writing by the assessor of the county where situated, to such county assessor at a time and in the form specified by the commissioner of all industrial or natural resources property owned by them. The commissioner may require any information to be filed which would be useful in valuing the property covered in the return. Any penalties provided for in this chapter or elsewhere in this code relating to failure to list any property or to file any return or report may be applied to any owner of property required to make a return pursuant to this section.

(c) The state tax commissioner shall value all industrial property in the state at its fair market value within three years of the approval date of the plan for industrial property required in subsection (e) of this section. The commissioner shall thereafter maintain accurate values for all such property. The tax commissioner shall forward each industrial property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate for each tax year. The commissioner shall supply support data that the assessor might need to evaluate the appraisal.

(d) Within three years of the approval date of the plan required for natural resources property required pursuant to subsection (e) of this section, the state tax commissioner shall determine the fair market value as defined in section one, article three of this chapter of all natural resources property in the state. The commissioner shall thereafter maintain accurate values for all such property.
(1) In order to qualify for identification as managed timberland for property tax purposes the owner must annually certify, in writing to the division of forestry, that the property meets the definition of managed timberland as set forth in this article and contracts to manage property according to a plan that will maintain the property as managed timberland. In addition, each owner's certification must state that forest management practices will be conducted in accordance with approved practices from the publication "Best Management Practices for Forestry". Property certified as managed timberland shall be valued according to its use and productive potential. The tax commissioner shall promulgate rules and regulations for certification as managed timberland.

(2) In the case of all other natural resources property, the commissioner shall develop an inventory on a county by county basis of all such property and may use any resources, including, but not limited to, geological survey information; exploratory, drilling, mining and other information supplied by natural resources property owners; and maps and other information on file with the state department of energy. Any information supplied by natural resources owners or any proprietary or otherwise privileged information supplied by the state department of energy shall be kept confidential unless needed to defend an appraisal challenged by a natural resources owner. Formulas for natural resources valuation may contain differing variables based upon known geological or other common factors. The tax commissioner shall forward each natural resources property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate, for each tax year. The commissioner shall supply support data that the assessor might need to explain or defend the appraisal. The commissioner shall directly defend any challenged appraisal when the assessed value of the property in question exceeds two million dollars or an owner challenging an appraisal holds or controls...
property situated in the same county with an assessed value exceeding two million dollars. At least every five years, the commissioner shall review current technology for the recovery of natural resources property to determine if valuation methodologies need to be adjusted to reflect changes in value which result from development of new recovery technologies.

(e) The tax commissioner shall develop a plan for the valuation of industrial property and a plan for the valuation of natural resources property. The plans shall include expected costs and reimbursements, and shall be submitted to the property valuation training and procedures commission on or before the first day of January, one thousand nine hundred ninety-one, for its approval on or before the first day of July of such year. Such plan shall be revised, resubmitted to the commission and approved every three years thereafter.

(f) To perform the valuation duties under this section, the state tax commissioner shall have the authority to contract with a competent property appraisal firm or firms to assist with or to conduct the valuation process as to any discernible species of property statewide if the contract and the entity performing such contract is specifically included in a plan required by subsection (e) of this section or otherwise approved by the commission. If the tax commissioner desires to contract for valuation services only in one county or a group of counties, the contract must be approved by the commission.

(g) The county assessor may accept the appraisal provided, pursuant to this section, by the state tax commissioner: Provided, That if the county assessor fails to accept the appraisal provided by the state tax commissioner, the county assessor shall show just cause to the valuation commission for the failure to accept such appraisal and shall further provide to the valuation commission a plan by which a different appraisal will be conducted.

(h) The costs of appraising the industrial and natural resources property within each county, and any costs of defending same shall be paid by the state: Provided,
That the office of the state attorney general shall provide legal representation on behalf of the tax commissioner or assessor, at no cost, in the event the industrial and natural resources appraisal is challenged in court.

(i) For purposes of revaluing managed timberland as defined in section two of this article, any increase or decrease in valuation by the commissioner shall not become effective prior to the first day of July, one thousand nine hundred ninety-one. The property owner may request a hearing by the director of the division of forestry, who may thereafter rescind the disqualification or allow the property owner a reasonable period of time in which to qualify the property. A property owner may appeal a disqualification to the circuit court of the county in which the property is located.

§11-1C-12. Board of equalization and review; assessments; board of public works.

(a) As valuations of property in a county are completed to the extent that a total valuation of property can be determined, such valuation shall be delivered by the assessor to the county commission, and the county commission, sitting as a board of equalization and review, shall use such appraised valuations as a basis for determining the true and actual value for assessment purposes of the several classes of property.

(b) For the tax year subsequent to the end of the initial valuation period in each county, and for each year thereafter, each county shall implement a uniform assessment that is equal to sixty percent of the most current appraised value for all real and personal property situated within the county. Such implementation shall be in accordance with provisions to be included in the plan required by section seven of this article.

(c) Until such time as the uniform sixty percent assessment required in subsection (b) is effected, the total assessed valuation in each of the four classes of property shall not be less than sixty percent nor more
than one hundred percent of the appraised valuation of each said class of property.

(d) The board of public works, in performing the duties required in article six of this chapter relating to the assessment of public service businesses, shall submit on or before the first day of January, one thousand nine hundred ninety-one, a plan to the property valuation training and procedures commission for implementing on or before the first day of July, one thousand nine hundred ninety-four, and for each year thereafter, a uniform assessment that is equal to sixty percent of the most current valuation for all property valued by the board of public works. Such plan shall be approved on or before the first day of July, one thousand nine hundred ninety-one.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-2a. Notice of increased assessment required; exceptions to notice; notice of special valuation.

(a) If the assessor determines the assessed valuation of any item of real property is more than ten percent greater than the valuation assessed for that item in the last tax year and the increase be entered in the property books as provided in section nineteen of this article, the assessor shall give notice of the increase to the person assessed or the person controlling the property as provided in section two of this article. The notice must be given at least fifteen days prior to the first meeting in February at which the county commission meets as the board of equalization and review for that tax year and advise the person assessed or the person controlling the property of his right to appear and seek an adjustment in the assessment. The notice shall be made by first class United States postage mailed to the address of the person assessed or the person controlling the property for payment of tax on the item in the previous year, unless there was a general increase of the entire valuation in any one or more districts in which case the notice shall be by publication thereof by a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and
the area for the publication is the county. The requirement of notice under this section is satisfied and waived if personal notice of the increase is shown by:

1. The taxpayer having signed the assessment form after it had been completed showing the increase;
2. Notice was given as provided in section three-a of this article; or
3. The person so assessed executing acknowledgment of the notice of the increase.

(b) During the initial reappraisal of all property under section seven, article one-c of this chapter, the tax commissioner and each county assessor shall send every person owning or controlling property appraised by the tax commissioner or the county assessor, as the case may be, a pamphlet which explains the reappraisal process and its equalization goal in a detailed yet informal manner. The property valuation training and procedures commission, created under section three, article one-c of this chapter, shall design the pamphlet for use in all counties while allowing individual county information to be included if it determines that the information would improve understanding of the process.

ARTICLE 8. LEVIES.

§11-8-6e. Effect on regular levy rate when appraisal results in tax increase; public hearings.

§11-8-6f. Effect on regular school board levy rate when appraisal results in tax increase.

§11-8-6g. Effect on special levy rates when appraisal results in tax revenue increase; public hearings.

§11-8-6e. Effect on regular levy rate when appraisal results in tax increase; public hearings.

(a) Notwithstanding any other provision of law, where any annual appraisal, triennial appraisal or general valuation of property would produce an assessment that would cause an increase of one percent or more in the total projected property tax revenues that would be realized were the then current regular levy rates by the county commission and the municipalities to be imposed, the rate of levy shall be reduced proportionately as between the county commission and the municipalities
and for all classes of property for the forthcoming tax year so as to cause such rate of levy to produce no more than one hundred one percent of the previous year's projected property tax revenues from extending the county commission and municipality levy rates, unless there has been compliance with subsection (c) of this section.

An additional appraisal or valuation due to new construction or improvements to existing real property, including beginning recovery of natural resources, and newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of such improvements be included in calculating the new tax levy for purposes of this section. Special levies shall not be included in the reduced levy calculation set forth in subsection (b) of this section.

(b) The reduced rates of levy shall be calculated in the following manner:

(1) The total assessed value of each class of property as it is defined by section five, article eight of this chapter for the assessment period just concluded shall be reduced by deducting the total assessed value of newly created properties not assessed in the previous year's tax book for each class of property;

(2) The resulting net assessed value of Class I property shall be multiplied by .01; the value of Class II by .02; and the values of Class III and IV, each by .04;

(3) Total the current year's property tax revenue resulting from regular levies for each county commission and municipality and multiply the resulting sum by one hundred one percent: Provided, That the one hundred one percent figure shall be increased by the amount the county's or municipality's increased levy provided for in subsection (b), section eight, article one-c of this chapter.

(4) Divide the total regular levy tax revenues, thus increased in subdivision (3), above, by the total weighted net assessed value as calculated in paragraph two of this
section and multiply the resulting product by one hundred; the resulting number is the Class I regular levy rate, stated as cents-per-one hundred dollars of assessed value;

(5) The Class II rate is two times the Class I rate; Classes III and IV, four times the Class I rate as calculated in the preceding subdivision.

(c) The governing body of a county or municipality may, after conducting a public hearing, which may be held at the same time and place as the annual budget hearing, increase the rate above the reduced rate required in this section if any such increase is deemed to be necessary by such governing body: Provided, That in no event shall the governing body of a county or municipality increase the rate above the reduced rate required by subsection (b) of this section for any single year in a manner which would cause total property tax revenues accruing to the governing body of the county or municipality, excepting additional revenue attributable to assessed valuations of newly created properties not assessed in the previous year's tax book for each class of property, to exceed by more than ten percent those property tax revenues received by the governing body of the county or municipality for the next preceding year: Provided, however, That this provision shall not restrict the ability of a county or municipality to enact excess levies as authorized under existing statutory or constitutional provisions.

Notice of the public hearing and the meeting in which the levy rate shall be on the agenda shall be given at least seven days before the date for each public hearing by the publication of a notice in at least one newspaper of general circulation in such county or municipality: Provided, That a Class IV town or village as defined in section two, article one, chapter eight of this code, in lieu of the publication notice required by this subsection, may post no less than four notices of each public hearing, which posted notices shall contain the information required by the publication notice and which shall be in available, visible locations including the town hall. The notice shall be at least the size of one-eighth page
of a standard size newspaper or one-fourth page of a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than twenty-four point. The publication notice shall be placed outside that portion, if any, of the newspaper reserved for legal notices and classified advertisements and shall also be published as a Class II-O legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county. The notice shall be in the following form and contain the following information, in addition to such other information as the local governing body may elect to include:

NOTICE OF PROPOSED TAX INCREASE

The (name of the county or municipality) proposes to increase property tax levies.

1. Appraisal/Assessment Increase: Total assessed value of property, excluding additional assessments due to new or improved property, exceeds last year's total assessed value of property by ____ percent.

2. Lowered Rate Necessary to Offset Increased Assessment: The tax rate which would levy the same amount of property tax as last year, when multiplied by the new total assessed value of property with the exclusions mentioned above, would be $____ per $100 of assessed value for Class I property, $____ per $100 of assessed value for Class II property, $____ per $100 of assessed value for Class III and $____ per $100 of assessed value for Class IV property. These rates will be known as the "lowered tax rates".

3. Effective Rate Increase: The (name of the county or municipality) proposes to adopt a tax rate of $____ per $100 of assessed value for Class I property, $____ per $100 of assessed value for Class II property, $____ per $100 of assessed value for Class III property and $____ per $100 of assessed value for Class IV property. The difference between the lowered tax rates and the proposed rates would be $____ per $100, or ____ percent for Class I; $____ per $100, or ____ percent for Class II; $____ per $100, or ____ percent for Class
III and $\ldots\$ per $100, or \ldots\%\text{ percent for Class IV.}

These differences will be known as the "effective tax rate increases".

Individual property taxes may, however, increase at a percentage greater than or less than the above percentage.

4. Revenue produced last year: $\ldots$

5. Revenue projected under the effective rate increases: $\ldots$

6. Revenue projected from new property or improvements: $\ldots$

7. General areas in which new revenue is to be allocated: A public hearing on the increases will be held on (date and time) at (meeting place). A decision regarding the rate increase will be made on (date and time) at (meeting place).

(d) All hearings are open to the public. The governing body shall permit persons desiring to be heard an opportunity to present oral testimony within such reasonable time limits as are determined by the governing body.

(e) This section shall be effective as to any regular levy rate imposed by the county commission or a municipality for taxes due and payable on or after the first day of July, one thousand nine hundred ninety-one. If any provision of this section is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or its application and to this end the provisions of this section are declared to be severable.

§11-8-6f. Effect on regular school board levy rate when appraisal results in tax increase.

(a) Notwithstanding any other provision of law, where any annual appraisal, triennial appraisal or general valuation of property would produce a statewide aggregate assessment that would cause an increase of one percent or more in the total property tax revenues that would be realized were the then current regular
levy rates of the county boards of education to be imposed, the rate of levy for county boards of education shall be reduced uniformly statewide and proportionately for all classes of property for the forthcoming tax year so as to cause such rate of levy to produce no more than one hundred one percent of the previous year's projected statewide aggregate property tax revenues from extending the county board of education levy rate, unless subsection (b) of this section is complied with. The reduced rates of levy shall be calculated in the following manner: (1) The total assessed value of each class of property as it is defined by section five, article eight of this chapter for the assessment period just concluded shall be reduced by deducting the total assessed value of newly created properties not assessed in the previous year's tax book for each class of property; (2) the resulting net assessed value of Class I property shall be multiplied by .01; the value of Class II by .02; and the values of Class III and IV, each by .04; (3) total the current year's property tax revenue resulting from regular levies for the boards of education throughout this state and multiply the resulting sum by one hundred one percent: Provided, That the one hundred one percent figure shall be increased by the amount the boards of educations' increased levy provided for in subsection (b), section eight, article one-c of this chapter; (4) divide the total regular levy tax revenues, thus increased in subdivision (3), above, by the total weighted net assessed value as calculated in paragraph two of this subsection and multiply the resulting product by one hundred; the resulting number is the Class I regular levy rate, stated as cents-per-one hundred dollars of assessed value; and (5) the Class II rate is two times the Class I rate; Classes III and IV, four times the Class I rate as calculated in the preceding subdivision.

An additional appraisal or valuation due to new construction or improvements, including beginning recovery of natural resources, to existing real property or newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of such improvements be included in calculating the new
tax levy for purposes of this section. Special levies shall not be included in any calculations under this section.

(b) After conducting a public hearing, the Legislature may, by act, increase the rate above the reduced rate required in subsection (a) of this section if any such increase is deemed to be necessary.

(c) This section shall be effective as to any regular levy rate imposed for the county boards of education for taxes due and payable on or after the first day of July, one thousand nine hundred ninety-one. If any provision of this section is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or its application and to this end the provisions of this section are declared to be severable.

§11-8-6g. Effect on special levy rates when appraisal results in tax revenue increase; public hearings.

(a) As to any special levy in effect on the first day of March, one thousand nine hundred ninety, and notwithstanding any other provision of law, where any annual appraisal, triennial appraisal or general valuation of property would produce an assessment that would cause an increase of four percent or more in the total projected property tax revenues that would be realized were the special levy rates then in effect by the county commission, the municipalities or the county board of education to be imposed, the local levying body shall comply with subsection (b) of this section.

An additional appraisal or valuation due to new construction or improvements to existing real property, including beginning recovery of natural resources, and newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of such improvements be included in calculating the new tax levy for purposes of this section.

(b) Any local levying body projected to realize such increase greater than four percent shall conduct a
public hearing no later than the twentieth day of March, which hearing may be held at the same time and place as the annual budget hearing. Notice of the public hearing and the meeting in which the levy rate shall be on the agenda shall be given at least seven days before the date for each public hearing by the publication of a notice in at least one newspaper of general circulation in such county or municipality: Provided, That a Class IV town or village as defined in section two, article one, chapter eight of this code, in lieu of the publication notice required by this subsection, may post no less than four notices of each public hearing, which posted notices shall contain the information required by the publication notice and which shall be in available, visible locations including the town hall. The notice shall be at least the size of one-eighth page of a standard size newspaper or one-fourth page of a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than twenty-four point. The publication notice shall be placed outside that portion, if any, of the newspaper reserved for legal notices and classified advertisements and shall also be published as a Class II-O legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county. The notice shall be in the following form and contain the following information, in addition to such other information as the local governing body may elect to include:

HEARING REGARDING SPECIAL LEVY RATES

The (name of the local levying body) hereby gives notice that the special levy rate imposed by the (local levying body) causes an increase in property tax revenues due to increased valuations.

1. Appraisal/Assessment Increase: Total assessed value of property, excluding additional assessments due to new or improved property, exceeds last year's total assessed value of property by _____ percent.

2. Current Year's Revenue Produced Under Special Levy:

3. Projected Revenue Under Special Levy for Next Tax Year:
4. Revenue Projected from New Property or Improvements: $___

5. General areas in which new revenue is to be allocated:

A public hearing on the issue of special levy rates will be held on (date and time) at (meeting place). A decision regarding the special levy rate will be made on (date and time) at (meeting place).

(c) All hearings are open to the public, and the local levying body shall permit persons desiring to be heard an opportunity to present oral testimony within such reasonable time limits as are determined by the governing body. A decision regarding the special levy rate shall be made within ten days of the hearing.

(d) As to any special levy in effect on the first day of March, one thousand nine hundred ninety, a local levying body may reduce the rate of the special levy for all classes of property for the forthcoming tax year so as to cause such rate of special levy to produce no more than one hundred four percent of the previous year's projected property tax revenues from extending such special levy rates or such lesser reduction the local levying body considers adequate: Provided, That no levying body shall reduce any special levy if such levy rate has been covenanted or otherwise dedicated and is necessary to the payment of bonds or other obligations existing as of the effective date of this section: Provided, however, That nothing contained in this subsection shall be construed to limit the reduction of the levy rate when the terms of the special levy permit a lower reduction: Provided further, That this provision shall not restrict the ability of a local levying body to enact excess levies as authorized under existing statutory or constitutional provisions.

(e) If any provision of this section is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or its application and to this end
the provisions of this section are declared to be severable.

ARTICLE 12B. MINIMUM SEVERANCE TAX ON COAL.

§11-12B-1. Short title; arrangement and classification.
§11-12B-2. Definitions.
§11-12B-3. Imposition of tax, credit.
§11-12B-5. Annual return.
§11-12B-6. Periodic installment payments of estimated tax.
§11-12B-7. Time and place for paying tax shown on returns.
§11-12B-8. Extension of time for filing return.
§11-12B-9. Extension of time for paying tax.
§11-12B-10. Place for filing returns or other documents.
§11-12B-11. Signing of returns and other documents.
§11-12B-12. Bond of taxpayer may be required.
§11-12B-13. Collection of tax; tax commissioner may require first purchaser to withhold tax of delinquent taxpayer.
§11-12B-15. General procedure and administration.
§11-12B-16. Criminal penalties.
§11-12B-17. Severability.
§11-12B-18. Effective date; and compliance.

§11-12B-1. Short title; arrangement and classification.

This article may be cited as the "Minimum Severance Tax Act." No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter of headings relating to any part, section, subsection or paragraph of this article.

§11-12B-2. 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) "Coal" means and includes any material composed
predominantly of hydrocarbons and carbon in a solid state and includes, but is not limited to, all materials commonly known as coal, bituminous coal, anthracite coal, lignite, brown coal, peat or jet.

(2) "Delegate" in the phrase "or his delegate," when used in reference to the tax commissioner, means any officer or employee of the tax division duly authorized by the tax commissioner directly, or indirectly by one or more delegations of authority, to perform the function mentioned or described in this article or regulations promulgated thereunder.

(3) "Economic interest" for the purpose of this article is synonymous with the economic interest ownership required by section 611 of the Internal Revenue Code in effect on the thirty-first day of December, one thousand nine hundred eighty-five, entitling the taxpayer to a depletion deduction for income tax purposes: Provided, That a person who only receives an arm's length royalty shall not be considered as having an economic interest.

(4) "Extraction of coal from the ground" includes extraction by mine owners or operators of coal from the waste or residue of prior mining.

(5) "Fiduciary" means and includes, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(6) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which coal is severed, extracted, reduced to possession in this state, or is produced or prepared in this state, for sale, profit or commercial use. "Partner" includes a member of such a syndicate, group, pool, joint venture or organization.

(7) "Person" or "company" are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, 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 declared by the context.

(8) "Production" for purposes of this article means and includes the initial severance and extraction of coal in place, from a seam within this state, or from the waste or residue of prior mining located within this state.

(9) "Related parties" means two or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests. Control exists if a contract or lease, either written or oral, is entered into whereby one party mines or processes coal owned or held by another party and the owner or lessor participates in the severing, processing or marketing of the coal or receives any value other than an arm’s length passive royalty interest.

(10) "Sale" includes any transfer of the ownership or title to property, whether for money or in exchange for other property or services, or any combination thereof.

(11) "Severing" or "severed" means the physical removal of coal from the earth or waters of this state by any means.

(12) "Tax commissioner" means the tax commissioner of the state of West Virginia, or his delegate.

(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.

(14) "Taxpayer" means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in the business of producing, severing or extracting coal in this state for sale, profit or commercial use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of producing, severing or extracting coal but do not obtain title to or have an
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87 economic interest therein, the party who owns the coal
88 or has an economic interest therein is the taxpayer.
89 (15) “This code” means the code of West Virginia, one
90 thousand nine hundred thirty-one, as amended.
91 (16) “This state” means the state of West Virginia.
92 (17) “Ton” means two thousand pounds.

§11-12B-3. Imposition of tax, credit.

1 (a) Imposition of tax.—Upon every person exercising
2 the privilege of engaging within this state in severing,
3 extracting, reducing to possession or producing coal for
4 sale, profit or commercial use there is hereby imposed
5 an annual minimum severance tax equal to fifty cents
6 per ton of coal produced by the taxpayer for sale, profit
7 or commercial use during the taxable year.

8 (b) Credit against article thirteen-a tax.—A person
9 who pays the minimum severance tax imposed by this
10 article shall be allowed a credit against the severance
11 tax imposed on coal by section three, article thirteen-a
12 of this chapter, but not including the additional
13 severance tax on coal imposed by section six of said
14 article thirteen-a, equal to the liability of the taxpayer
15 for the taxable year for payment of the minimum
16 severance tax on coal imposed by this article: Provided,
17 That the amount of credit allowed by this section shall
18 not exceed the severance tax liability of the taxpayer for
19 the taxable year determined under paragraph one,
20 subsection (b), section three of said article thirteen-a
21 exclusive of the additional tax on coal imposed by
22 section six of said article thirteen-a after application of
23 all credits to which the taxpayer may be entitled except
24 any credit for installment payments of estimated tax
25 paid pursuant to section six of this article during the
26 tax year and any credit for overpayment of article
27 thirteen-a tax.

§11-12B-4. Accounting periods and methods of
accounting.

1 (a) General rule.—For purposes of the tax imposed by
2 this article, a taxpayer's taxable year shall be the same
3 as the taxpayer's taxable year for federal income tax
4 purposes.
(b) Change of taxable year.—If a taxpayer's taxable year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

(c) Methods of accounting.

(1) Same as federal.—A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used unless the tax commissioner, in writing, consents to or requires use of another method.

(2) Change of accounting methods.—If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

§11-12B-5. Annual return.

(a) On or before the expiration of one month after the end of the taxable year, every taxpayer subject to the tax imposed by this article shall make and file an annual return for the entire taxable year showing such information as the tax commissioner may require and computing the amount of taxes due under this article for the taxable year.

(b) Any taxpayer may elect to file as part of a consolidated, composite or unitary group for purposes of the tax imposed by article thirteen-a of this chapter and if such election is made, the taxpayer shall file a consolidated, composite or unitary return under this article encompassing the same consolidated, composite or unitary group unless the tax commissioner shall specifically require or approve a filing on some other basis.
§11-12B-6. Periodic installment payments of estimated tax.

(a) General rule.—The annual tax levied under this article shall be due and payable in periodic installments as follows:

(1) Tax of more than $1,000 per month.—For taxpayers whose estimated tax liability under this article exceeds one thousand dollars per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued: Provided, That the installment payment otherwise due under this subdivision on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June each year.

(A) Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of tax due to the office of the tax commissioner: Provided, That the installment payment otherwise due under this paragraph on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June.

(2) Tax of $1,000 per month or less.—For taxpayers whose estimated tax liability under this article is one thousand dollars per month or less, the tax shall be due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued:

(A) Each such taxpayer shall, on or before the last day of the fourth, seventh and tenth months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of tax due to the office of the tax commissioner.
(b) Exception.—Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in subsection (a) of this section.

§11-12B-7. Time and place for paying tax shown on returns.

(a) General rule.—The person required to make the annual return required by this article shall, without assessment or notice and demand from the tax commissioner, pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) Date fixed for payment of tax.—The date fixed for payment of the taxes imposed by this article shall be deemed to be a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§11-12B-8. Extension of time for filing return.

The tax commissioner may, upon written request received on or prior to the due date of the annual return, or any periodic estimate, grant a reasonable extension of time for filing any return or other document required by this article upon such terms as he may by regulation prescribe, or by contract require, if good cause satisfactory to the tax commissioner is provided by the taxpayer.

§11-12B-9. Extension of time for paying tax.

(a) Amount determined on return.—The tax commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or any periodic installment payment), for a reasonable period not to exceed six months from the date fixed for payment thereof.

(b) Amount determined as deficiency.—Under regulations prescribed by the tax commissioner, he may extend the time for the payment of the amount deter-
mined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the date fixed for payment of the deficiency. In exceptional cases, further period of time not to exceed twelve months may be granted. An extension under this subsection (b) may be granted only where it is shown to the satisfaction of the tax commissioner that payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer.

(c) No extension for certain deficiencies.—No extension shall be granted under this section for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

§11-12B-10. Place for filing returns or other documents.

Tax returns, statements, or other documents, or copies thereof, required by this article or by regulations shall be filed with the tax commissioner by delivery, in person or by mail, to his office in Charleston, West Virginia: Provided, That the tax commissioner may, by regulation, prescribe the place for filing such returns, statements, or other documents, or copies thereof.

§11-12B-11. Signing of returns and other documents.

(a) General.—Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax commissioner.

(b) Signing of corporation returns.—The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual’s name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

(c) Signing of partnership returns.—The return of a partnership shall be signed by any one of the partners. The fact that a partner’s name is signed on the return
shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

(d) Signature presumed authentic.—The fact that an individual's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him.

(e) Verification of returns.—Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§11-12B-12. Bond of taxpayer may be required.

(a) Whenever it is deemed necessary to ensure compliance with this article, the tax commissioner may require any taxpayer to post a cash or corporate surety bond.

(b) The amount of the bond shall be fixed by the tax commissioner but, except as provided in subsection (c) of this section, shall not be greater than three times the average quarterly liability of taxpayers filing returns for quarterly periods, five times the average monthly liability of taxpayers required to file returns for monthly periods, or two times the average periodic liability of taxpayers permitted or required to file returns for other than monthly or quarterly periods.

(c) Notwithstanding the provisions of subsection (b) of this section, no bond required under this section shall be less than five hundred dollars.

(d) The amount of the bond may be increased or decreased by the tax commissioner at any time subject to the limitations provided in this section. The tax commissioner may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of a taxpayer's business until the bond is posted and any delinquent tax, including applicable interest and additions to tax has
been paid. Such action may be brought in the circuit court of Kanawha County or in the circuit court of any county having jurisdiction over the taxpayer.

§11-12B-13. Collection of tax; tax commissioner may require first purchaser to withhold tax of delinquent taxpayer.

Whenever the tax commissioner determines that a taxpayer is delinquent in payment of the tax imposed by this article and that collection of the tax imposed by this article will be facilitated or expedited, the tax commissioner may require the first person who purchases the coal which is the measure of tax under this article from the taxpayer to withhold the tax due under this article from the purchase price as agent for the state and remit it to the tax commissioner as provided in sections seven and eight of this article.


(a) Every taxpayer liable for reporting or paying tax under this article shall keep such records, receipts, invoices and other pertinent papers in such form as the tax commissioner may require.

(b) Every taxpayer shall keep such records for not less than three years after the annual return is filed under this article, unless the tax commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement for extension of time.

§11-12B-15. General procedure and administration.

Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter, shall apply to the tax imposed by this article with like effect if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-12B-16. Criminal penalties.

Each and every provision of the “West Virginia Tax
§11-12B-17. Severability.

If any provision of this article 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 said article, 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.

§11-12B-18. Effective date; compliance.

(a) Effective date.—The tax imposed by this article shall take effect on the first day of October, one thousand nine hundred ninety, and apply to coal sold or delivered for sale, profit or commercial use on or after that date.

(b) Compliance.—To facilitate ease of administration and ease of compliance by taxpayers, the tax commissioner may require persons subject to the tax imposed by this article and persons subject to the tax imposed by article thirteen-a of this chapter to file combined returns or declarations of estimated tax for both taxes and to make combined payments of such taxes.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§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) Twenty-six 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 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 during the taxable year, regardless of the place of sale or use, or the fact that transmission may be made to points outside this state.

(2) Nineteen 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 during the taxable year, 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.

The West Virginia public service commission shall, upon application of a public utility, allow an immediate pass-through to the utility's customers in this state in the form of a rate surcharge the increase enacted by the Legislature during its third extraordinary session, one thousand nine hundred ninety, in the tax imposed by this article upon electricity generated or produced in this state and sold to consumers in this state and upon electricity not generated or produced in this state that is sold to consumers in this state.

(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 separately metered and consumed in an electrolytic process for the manufacture of chlorine.

(3) Kilowatt hours of electric power that are separately metered and consumed in the manufacture of ferroalloy. As used in this paragraph, the term "ferroalloy" 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 taxpayer 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.
91 (d) Transition rule.—Beginning the first day of
92 March, one thousand nine hundred eighty-nine, electric
93 light and power companies shall determine their
94 liability for payment of tax under this section and
95 sections two-d and two-m of this article. If for taxable
96 months beginning on or after the first day of March, one
97 thousand nine hundred eighty-nine, liability for tax
98 under section two-n of this article is equal to or greater
99 than the sum of the power company's liability for
100 payment of tax under paragraph (3), subsection (a),
101 section two-d and section two-m of this article, then the
102 company shall pay the tax due under section two-n of
103 this article and not the tax due under paragraph (3),
104 subsection (a) of section two-d and section two-m of this
105 article. If tax liability under section two-n is less, then
106 tax shall be paid under paragraph (3), subsection (a),
107 section two-d and section two-m of this article and the
108 tax due under section two-n shall not be paid. The
109 provisions of this subsection (d) shall expire and become
110 null and void for taxable years beginning on or after the
111 first day of January, one thousand nine hundred ninety-
112 eight.

(e) Effective date.—The amendments to this section
113 made in the year one thousand nine hundred ninety shall
114 take effect on the first day of October, one thousand nine
115 hundred ninety: Provided, That as to calendar months
116 ending before such date, the tax rates specified in this
117 section, as then in effect shall be fully and completely
118 preserved.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-8c. Transition rules for elimination of exemption for materials and
supplies incorporated in real property owned by governmental
entities.

§11-15-8d. Limitations on right to assert exemptions.


§11-15-8c. Transition rules for elimination of exemption
for materials and supplies incorporated in real property owned by governmental
entities.

1 (a) General rule.—The expired provisions in subsection
(j), section nine of this article, which previously exempted sales of tangible personal property to persons engaging in the activity of contracting, pursuant to a written contract with the United States, this state, or with a political subdivision thereof, or with a public corporation created by the Legislature or by another governmental entity pursuant to an act of the Legislature, for a building or structure, or improvement thereto, or other improvement to real property that is or will be owned and used by the governmental entity for a governmental or proprietary purpose, shall continue in force for:

(1) Tangible personal property purchased by a contractor on or after the first day of October, one thousand nine hundred ninety, in fulfillment of a written contract for contracting, 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 September, one thousand nine hundred ninety; or in fulfillment of a written contract entered into after said fifteenth day of September pursuant to a written bid for contracting that was made on or before said fifteenth day of September that was binding on the contractor, but only to the extent that the bid is subsequently incorporated into a written contract; and

(2) Tangible personal property purchased by a contractor on or after the first day of October, one thousand nine hundred ninety, for consumption or use in fulfillment of a written contract for the construction or operation of which was approved by a federal or state regulatory body prior to the fifteenth day of September, one thousand nine hundred ninety, or pursuant to a federal grant awarded prior to said fifteenth day of September.

(b) 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 consideration 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. For purposes of this section, the terms “contract” or “contracts”, and “contract renewal” or “renewal” shall have the same meaning as defined in subsection (d), section eight-a of this article.

§11-15-8d. Limitations on right to assert exemptions.

Persons who perform “contracting” as defined in section two of this article, or persons acting in an agency capacity, may not assert any exemption to which the purchaser of such contracting services or the principal is entitled. Any statutory exemption to which a taxpayer may be entitled shall be invalid unless the tangible personal property or taxable service is actually purchased by such taxpayer and is directly invoiced to and paid by such taxpayer: Provided, That this section shall not apply to purchases by an employee for his or her employer; purchases by a partner for his or her partnership; or purchases by a duly authorized officer of a corporation, or unincorporated organization, for his or her corporation or unincorporated organization, so long as the purchase is invoiced to and paid by such employer, partnership, corporation or unincorporated organization.

Transition rule.—This section shall not apply to purchases of tangible personal property or taxable services in fulfillment of a purchasing agent or procurement agent contract executed and legally binding on the

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 and the arts; board of trustees of the university system of West Virginia, or the board of directors for colleges located in this state;

(c) Sales of property or services to the state, its institutions or subdivisions, governmental units, institutions or subdivisions of other states: Provided, That the law of such other state provides the same exemption to governmental units or subdivisions of this state 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 division 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;

(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; or

(5) A youth organization, such as the Girl Scouts of the United States of America, the Boy Scouts of America, or the YMCA Indian Guide/Princess Program, and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members.

(6) 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, per-
formance 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;

(7) 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 as 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 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 improvement 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 the United States, this state, or with a political subdivision thereof, or with a public corporation created by the Legislature or by another governmental entity pursuant to an act of the Legislature, for a building or structure, or improvement thereto, 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 incorporates 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 promulgate 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: Provided further, that the exemption for government contractors in the preceding proviso shall expire on the first day of October, one thousand nine hundred ninety, subject to the transition rules set forth in section eight-c of this article;

(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 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 board of trustees of the university
system of West Virginia or the board of directors of the
state college system 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;

(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;

(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,
domestic violence shelter or emergency children and
youth shelter if such shelter is owned, managed,
developed or operated by an organization qualified
under section 501(c)(3) or (c)(4) of the Internal Revenue
Code of 1986, as amended;

(cc) Dispensing of services performed by one corpora-
tion for another corporation when both corporations are
members of the same controlled group. Control means
ownership, directly or indirectly, of stock possessing
fifty percent or more of the total combined voting power
of all classes of the stock of a corporation entitled to vote
or ownership, directly or indirectly, of stock possessing
fifty percent or more of the value of the corporation;

(dd) Food for the following shall be exempt:

(1) Food purchased or sold by public or private
schools, school sponsored student organizations, or
school sponsored parent-teacher associations to students
enrolled in such school or to employees of such school
during normal school hours; but not those sales of food
made to the general public;

(2) Food purchased or sold by a public or private
college or university or by a student organization
officially recognized by such college or university to
students enrolled at such college or university when
such sales are made on a contract basis so that a fixed
price is paid for consumption of food products for a
specific period of time without respect to the amount of
348 food product actually consumed by the particular
349 individual contracting for the sale and no money is paid
350 at the time the food product is served or consumed;
351  (3) Food purchased or sold by a charitable or private
352 nonprofit organization, a nonprofit organization or a
353 governmental agency under a program to provide food
354 to low-income persons at or below cost;
355  (4) Food sold in an occasional sale by a charitable or
356 nonprofit organization including volunteer fire depart-
357 ments and rescue squads, if the purpose of the sale is
358 to obtain revenue for the functions and activities of the
359 organization and the revenue so obtained is actually
360 expended for that purpose;
361  (5) Food sold by any religious organization at a social
362 or other gathering conducted by it or under its auspices,
363 if the purpose in selling the food is to obtain revenue
364 for the functions and activities of the organization and
365 the revenue obtained from selling the food is actually
366 used in carrying on such functions and activities: 
367 Provided, That purchases made by such organizations
368 shall not be exempt as a purchase for resale;
369  (ee) Sales of food by little leagues, midget football
370 leagues, youth football or soccer leagues and similar
371 types of organizations, including scouting groups and
372 church youth groups, if the purpose in selling the food
373 is to obtain revenue for the functions and activities of
374 the organization and the revenues obtained from selling
375 the food is actually used in supporting or carrying on
376 functions and activities of the groups: Provided, That
377 such purchases made by such organizations shall not be
378 exempt as a purchase for resale;
379  (ff) Charges for room and meals by fraternities and
380 sororities to their members: Provided, That such
381 purchases made by a fraternity or sorority shall not be
382 exempt as a purchase for resale;
383  (gg) Sales of or charges for the transportation of
384 passengers in interstate commerce;
385  (hh) Sales of tangible personal property or services to
386 any person which this state is prohibited from taxing
under the laws of the United States or under the
constitution of this state;

(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;

(jj) Charges for the services of opening and closing a
burial lot;

(kk) Sales of livestock, poultry or other farm products
in their original state by the producer thereof (or a
member of the producer's immediate family) who is not
otherwise engaged in making retail sales of tangible
personal property; and sales of livestock sold at public
sales sponsored by breeder's or registry associations or
livestock auction markets: Provided, That the exemp-
tions allowed by this subsection shall apply to sales
made on or after the first day of July, one thousand nine
hundred ninety, and may be claimed without presenting
or obtaining exemption certificates: Provided, however,
That the farmer shall maintain adequate records;

(ll) Sales of motion picture films to motion picture
exhibitors for exhibition if the sale of tickets or the
charge for admission to the exhibition of the film is
subject to the tax imposed by this article and sales of
coin-operated video arcade machines, or video arcade
games, to a person engaged in the business of providing
such machines to the public for a charge upon which the
tax imposed by this article is remitted to the tax
commissioner: Provided, That the exemption provided in
this subsection shall apply to sales made on or after the
first day of July, one thousand nine hundred ninety, and
may be claimed by presenting to the seller a properly
executed exemption certificate; and

(mm) Sales of aircraft repair, remodeling and main-
tenance services when such services are to an aircraft
operated by a certificated or licensed carrier of persons
or property, or by a governmental entity, or to an engine
or other component part of an aircraft operated by a
certificated or licensed carrier of persons or property,
or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property, or by a governmental entity, as part of the repair, remodeling or maintenance service and sales of machinery, tools, or equipment, directly used or consumed exclusively in the repair, remodeling, or maintenance of aircraft, aircraft engines, or aircraft component parts, for a certificated or licensed carrier of persons or property, or for a governmental entity.


(a) Subject to the exceptions set forth in subsection (b) of this section, 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 expendi-
tures 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.

(b) Accelerated payment.—(1) For calendar years
beginning after the thirty-first day of December, one
thousand nine hundred ninety, taxpayers whose average
monthly installment for the previous calendar year
exceeds one hundred thousand dollars, shall remit the
tax attributable to the first fifteen days of June each
year on or before the twenty-third day of said month of
June.

(2) For purposes of complying with subdivision (1) of
this subsection (b), the taxpayer shall remit an amount
equal to the amount of tax imposed by this article on
actual taxable sales of tangible personal property and
sales of taxable services during the first fifteen days of
June or, at the taxpayer's election, taxpayer may remit
an amount equal to fifty percent of taxpayer's liability
for tax under this article on taxable sales of tangible
personal property and sales of taxable services made
during the preceding month of May.

(3) For a business which has not been in existence for
a full calendar year, the total tax due from the business
during such prior calendar year shall be divided by the
number of months, including fractions of a month, that
it was in business during such prior calendar year; and
if that amount exceeds one hundred thousand dollars,
the tax attributable to the first fifteen days of June each
year shall be remitted on or before the twenty-third day
of said month of June as provided in subdivision (2) of
this subsection (b).

(4) When a taxpayer required to make an advanced
payment of tax under subdivision (1) of this subsection
(b) makes out its return for the month of June, which
is due on the fifteenth day of July, such taxpayer may claim as a credit against its liability under this article for tax on taxable transactions during the month of June the amount of the advanced payment of tax made under subdivision (1) of this subsection (b).


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, and that on and after the first day of August, one thousand nine hundred ninety-two, and continuing each month thereafter through the last day of August, one thousand nine hundred ninety-six, the first five million dollars of proceeds of this tax for each month shall be paid into the "Education Enhancement Fund" created by section nine-d, article six, chapter twelve of this code: 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 appropriate higher education governing board for further implementation of the fee schedules established in articles eight and nine, chapter eighteen-b of this code.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8. Credits against tax.

§11-21-74. Employer's return and payment of withheld taxes.

§11-21-8. Credits against tax.

(a) Business and occupation tax credit.—A credit shall
be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this code: Provided, that the amount of such business and occupation tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

For purposes of this section, the tax imposed under article thirteen, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion or revitalization allowed for such year.

(b) Severance tax credit.—On and after the first day of July, one thousand nine hundred eighty-seven, a credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen-a, chapter eleven of this code: Provided, That the amount of such severance tax credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect to which said tax under article thirteen-a was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation
electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen-a shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

(c) *Expiration of credit.*—The credit authorized in subsection (b) of this section shall expire and not be authorized or allowed for any taxable year beginning on or after the first day of October, one thousand nine hundred ninety.

§11-21-74. **Employer's return and payment of withheld taxes.**

(a) *General.*—Every employer required to deduct and withhold tax under this article shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the tax commissioner and pay over to the tax commissioner the taxes so required to be deducted and withheld. Where the aggregate amount so deducted and withheld by any employer is less than twenty-five dollars in a calendar quarter and the aggregate for the calendar year can reasonably be expected to be less than one hundred dollars, the tax commissioner may by regulation permit an employer to file an annual return and pay over to the tax commissioner the taxes deducted and withheld on or before the last day of the month following the close of such calendar year. The tax commissioner may, if he believes such action necessary for the protection of the revenues, require any employer to make such return and pay to him the tax deducted and withheld at any time, or from time to time.

(b) *Monthly returns and payments of withheld tax on and after June 1, 1971.*—Notwithstanding the provisions of subsection (a), on and after June 1, 1971, every employer required to deduct and withhold tax under
this article shall, for each of the first eleven months of
the calendar year, on or before the twentieth day of the
succeeding month and for the last calendar month of the
year, on or before the last day of the succeeding month,
file a withholding return as prescribed by the tax
commissioner and pay over to the tax commissioner the
taxes so required to be deducted and withheld, if such
withheld taxes aggregate one hundred dollars or more
for such month; except any employer with respect to
whom the tax commissioner may have by regulation
provided otherwise in accordance with the provisions of
subsection (a): Provided, That in accordance with
regulations promulgated by the tax commissioner, a
payment of withheld tax may be subject to the credit
set forth in section nine-b, article fifteen of this chapter
and the credit set forth in section three-b, article fiftee-

(c) Deposit in trust for tax commissioner.—Whenever
any employer fails to collect, truthfully account for, or
pay over the tax, or to make returns of the tax as
required in this section, the tax commissioner may serve
a notice requiring such employer to collect the taxes
which become collectible after service of such notice, to
deposit such taxes in a bank approved by the tax
commissioner, in a separate account, in trust for and
payable to the tax commissioner, and to keep the amount
of such tax in such account until payment over to the
tax commissioner. Such notice shall remain in effect
until a notice of cancellation is served by the tax
commissioner.

(d) Accelerated payment.

(1) Notwithstanding the provisions of subsections (a)
and (b) of this section, for calendar years beginning
after the thirty-first day of December, one thousand nine
hundred ninety, every employer required to deduct and
withhold tax whose average payment per calendar
month for the preceding calendar year under subsection
(b) exceeded one hundred thousand dollars shall remit
the tax attributable to the first fifteen days of June each
year on or before the twenty-third day of said month of
June.
(2) For purposes of complying with subdivision (1) of this subsection (d), the employer shall remit an amount equal to the withholding tax due under this article on employee compensation subject to withholding tax payable or paid to employees for the first fifteen days of June or, at the employer's election, the employer may remit an amount equal to fifty percent of the employer's liability for withholding tax under this article on compensation payable or paid to employees for the preceding month of May.

(3) For an employer which has not been in business for a full calendar year, the total amount the employer was required to deduct and withhold under subsection (b) for such prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during such prior calendar year, and if that amount exceeds one hundred thousand dollars, the employer shall remit the tax attributable to the first fifteen days of June each year on or before the twenty-third day of said month of June, as provided in subdivision (2) of this subsection (d).

(4) When an employer required to make an advanced payment of withholding tax under subdivision (1) of this subsection (d) makes out its return for the month of June, which is due on the twentieth day of July, such employer may claim as a credit against its liability under this article for tax on employee compensation paid or payable for employee services rendered during the month of June the amount of the advanced payment of tax made under subdivision (1) of this subsection (d).

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-9a. Credits against primary tax; election of taxpayer.

Credit for primary taxes imposed under article thirteen-a, chapter eleven of this code.—A credit shall be allowed against the primary tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for the severance tax imposed under article thirteen-a, chapter eleven of this code: Provided,
That the amount of such severance tax credit shall not exceed fifty percent of the primary tax liability of the taxpayer under this article, which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect to which said tax under article thirteen-a was imposed, and shall not in any event exceed fifty percent of the primary tax liability of the taxpayer under this article for such taxable year: Provided, however, That the entire amount of the severance tax liability of the taxpayer, which was 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 subsection, 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 severance tax liability for the taxable year, which was taken as a deduction on its federal return for such taxable year.

For purposes of this section, the tax imposed under article thirteen-a, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen-a computed without reduction for the tax credit for coal loading facilities or for industrial expansion or revitalization allowed for such year.

Expiration of credit.—The credit authorized in this section shall expire and not be authorized or allowed for any taxable year beginning on or after the first day of October, one thousand nine hundred ninety.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article
1. State Depositories.
1A. Linked Deposit Program.
2. Payment and Deposit of Taxes and Other Amounts Due The State or Any Political Subdivision.
3. Appropriations, Expenditures and Deductions.
5. Public Securities.
6. West Virginia State Board of Investments.
ARTICLE 1. STATE DEPOSITORIES.

§12-1-1. Legislative findings and purpose.

The Legislature finds and declares that the efficient collection, disbursement, management and investment of public moneys by the state board of investments will benefit the citizens, teachers and public employees of this state by reducing the costs of government and providing sources of increased revenue without the necessity of increased taxation; and to achieve these goals, the board of investments, an independent entity immune to the changing political climate, shall provide a stable and continuous source of professional financial management, and shall be given the authority to develop and maintain modern systems, consistent with sound financial practices, for the collection, disbursement, management and investment of such moneys.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by board of investments.

The state board of investments shall designate the state and national banks in this state which shall serve as depositories for all state funds placed in demand deposits. Any such state or national bank shall, upon request to such board, be designated as a state depository for such deposits, if such bank meets the requirements set forth in this chapter.

Demand deposit accounts shall consist of receipt, disbursement and investment accounts. Receipt ac-
counts shall be those accounts in which are deposited moneys belonging to or due the state of West Virginia or any official, department, board, commission or agency thereof.

Disbursement accounts shall be those accounts from which are paid moneys due from the state of West Virginia or any official, department, board, commission, political subdivision or agency thereof to any political subdivision, person, firm or corporation, except moneys paid from investment accounts.

Investment accounts shall be those accounts established by the board of investments for the buying and selling of securities for investment for the state of West Virginia or any official, department, board, commission or agency thereof or to meet obligations to paying agents or for paying charges incurred for the custody, safekeeping and management of such securities pursuant to the provisions of section five, article five of this chapter, or for paying the charges of any bank or trust company acting as paying agent or copaying agent for a bond issue of the state pursuant to the provisions of section seven-a, article one, chapter fifty-seven of this code.

The board of investments shall promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code of West Virginia, as amended, concerning depositories for receipt accounts and investment accounts prescribing the selection criteria, procedures, compensation and such other contractual terms as it considers to be in the best interests of the state giving due consideration to: (1) The activity of the various accounts maintained therein; (2) the reasonable value of the banking services rendered or to be rendered the state by such depositories; and (3) the value and importance of such deposits to the economy of the communities and the various areas of the state affected thereby.

The board of investments shall select depositories for disbursement accounts through competitive bidding by eligible banks in this state. The board shall promulgate rules and regulations, in accordance with the provisions
of chapter twenty-nine-a of the code of West Virginia, as amended, prescribing the procedures and criteria for such bidding and selection. It shall, in its invitations for bids, specify the approximate amounts of deposits, the duration of contracts to be awarded and such other contractual terms as it considers to be in the best interests of the state, consistent with obtaining the most efficient service at the lowest cost.

The amount of money needed for current operation purposes of the state government, as determined by the board of investments, shall be maintained at all times in the state treasury, in cash or in disbursement accounts with banks designated as depositories in accordance with the provisions of this section. No state officer or employee shall make or cause to be made any deposits of state funds in banks not so designated.

§12-1-3. Depositories for interest earning deposits; qualifications.

Any state or national bank or any state or federal savings and loan association in this state shall, upon request made to the board of investments, be designated as an eligible depository for interest earning deposits of state funds if such bank or state or federal savings and loan association meets the requirements set forth in this chapter. For purposes of this article, the term “interest earning deposits” includes certificates of deposit. The board of investments shall make and apportion such interest earning deposits and shall prescribe the interest rates, terms and conditions of such deposits, all in accordance with the provisions of article six of this chapter: Provided, That state or federal savings and loan associations insured by an agency of the federal government shall be eligible for such deposits not in excess of one hundred thousand dollars: Provided, however, That notwithstanding any provision of this article to the contrary, no such interest earning deposits may be deposited in any depository which has been in existence over a period of five years which does not have a loan to deposit ratio of fifty percent or more and which does not have farm, single or multifamily residential unit loans in an amount greater than twenty-five
24 percent of the amount of loans representing a loan-to-deposit ratio of fifty percent. For the purpose of making
25 the foregoing calculation, the balances due the depository on the following loans shall be given effect: (1) Qualifying residential loans held by the depository; (2) qualifying loans made in participation with other
26 financial institutions; (3) qualifying loans made in participation with agencies of the state, federal or local
governments; and (4) qualifying loans originated and serviced by the depository but owned by an out-of-state
investor. The computation of the criteria for eligibility specified above shall be based on the average daily
balances of deposits, the average daily balances of total loans and qualifying residential loans for the period
being reported.

§12-1-4. Bonds to be given by depositaries.

1 Before allowing any money to be deposited with any eligible depository in excess of the amount insured by
2 an agency of the federal government, the board of investments shall require such depository to give a
collaterally secured bond, in the amount of not less than ten thousand dollars, payable to the state of West
3 Virginia, conditioned upon the prompt payment, whenever lawfully required, of any state money, or part
thereof, that may be deposited with such depository, or of any accrued interest on deposits. Such bond shall be
4 a continuous bond but may be increased or decreased in amount or replaced by a new bond with the approval
5 of the board of investments. The collateral security for such bond shall consist of bonds of the United States,
6 of the federal land banks, of the federal home loan banks, or bonds of the state of West Virginia or of any
7 county, district or municipality of this state, or other bonds or securities approved by the board of invest-
8 ments. All bonds so secured are here designated as collaterally secured bonds. Withdrawal or substitution
9 of any collateral pledged as security for the performance of the conditions of such bond may be permitted with
10 the approval in writing of the state board of invest-
11 ments. All depository bonds shall be recorded by the
12 board of investments in a book kept in its office for the
purpose, and a copy of such record, certified by the board of investments, shall be prima facie evidence of the execution and contents of such bond in any suit or legal proceeding. All collateral securities shall be delivered to or deposited for the account of the board of investments, and in the event said securities are delivered to the board of investments, it shall furnish a receipt therefor to the owner thereof. The board of investments and its bondsmen shall be liable to any person for any loss by reason of the embezzlement or misapplication of said securities by the board of investments or any of its employees, and for the loss thereof due to the board of investments' negligence or the negligence of its employees; and such securities shall be delivered to the owner thereof when liability under the bond which they are pledged to secure has terminated. The board of investments may permit the deposit under proper receipt of such securities with one or more banking institutions within or outside the state of West Virginia and may contract with any such institution for safekeeping and exchange of any such collateral securities, and may prescribe the rules and regulations for handling and protecting the same.

§12-1-9. Transfer of funds by check or bank wire; requirements.

Subject to applicable banking regulations or state law, the state board of investments may transfer funds by check or bank wire whenever actually needed to pay the warrants drawn by the auditor upon the treasury, to equalize deposits or to provide funds to purchase investments for the account of the state. All checks drawn for transfer of funds shall have printed or stamped on the face of same "for transfer of funds only", or if the transfer is made by wire, the bank wire and supporting documents shall be marked "for transfer of funds only".

§12-1-10. Board of investments to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.

The state board of investments shall keep in its office
a record showing the account of each depository. Under the account of each depository, entry shall be made showing the amount and date of each deposit, the amount and date of each withdrawal and the balance on deposit. The board of investments shall cause the state's account with each depository to be settled at the end of every month of the year and the balance in the depository to the credit of the board of investments to be carried forward to the account of the next month.

All the statements and records shall be reconciled monthly and the reconciled reports shall be kept in the board of investments' office. The reconciled records for each month shall be kept in the board of investments' office for a period of five years.

§12-1-12. When treasurer shall make funds available to the board of investments; depositories outside the state.

When the funds in the treasury exceed the amount needed for current operational purposes, as determined by the board of investments, the treasurer shall make all of such excess available for investment by the board of investments, which shall invest the same for the benefit of the general revenue fund.

Whenever the funds in the treasury exceed the amount for which depositories within the state have qualified, or the depositories within the state which have qualified are unwilling to receive larger deposits, the board of investments may designate depositories outside the state, disbursement accounts being bid for in the same manner as required by depositories within the state, and when such depositories outside the state have qualified by giving the bond prescribed in section four of this article, the state treasurer shall deposit funds therein in like manner as funds are deposited in depositories within the state under this article.

The board of investments may transfer funds to banks outside the state for investment purposes or to meet
$12-1-13. Payment of banking services.

The board of investments is authorized to pay for banking services, and services ancillary thereto, by either a compensating balance in a noninterest bearing account maintained at the financial institution providing the services or with a state warrant as described in section one, article five of this chapter.

If payment is made by a state warrant, the board of investments is authorized to establish within the consolidated fund an investment pool which will generate sufficient income to pay for all banking service provided to the state. All income earned by the investment pool shall be paid into a special account of the state board of investments to be known as the banking services account and shall be used solely for the purpose of paying for all banking services, and services ancillary thereto, provided to the state.

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.

§12-1A-2. Legislative findings.

§12-1A-3. Limitations on investment in linked deposits.

§12-1A-4. Applications for loan priority; loan package.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

§12-1A-6. Rate of loan; certification and monitoring of compliance; report.

§12-1A-7. Liability of state, board of investments and director.

§12-1A-1. Definitions.

(a) “Board” means the West Virginia state board of investments.

(b) “Director” means the director of the governor’s office of community and industrial development.

(c) “Eligible small business” means any business which employs two hundred or less employees or has gross annual receipts of four million dollars or less.

(d) “Eligible lending institution” means a financial institution that is eligible to make commercial loans, is
10 a public depository of state funds and agrees to participate in the linked deposit program.

12 (e) "Linked deposit" means a certificate of deposit placed by the state board of investments with an eligible lending institution at up to three percent below current market rates, as determined and calculated by the state board of investments, 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.

1 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 board of investments 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-3. Limitations on investment in linked deposits.

1 (a) The state board of investments may invest in
linked deposits: Provided, That at the time of the placement of the linked deposit not more than ten percent of the state's total investment portfolio is so invested. The total amount so deposited at any one time shall not exceed, in the aggregate, two hundred twenty-five million dollars, of which fifty million dollars shall be provided for linked deposits to West Virginia flood victims from the twenty-nine counties eligible for federal disaster aid as listed by the federal emergency management agency: Provided, however, That after the first day of April, one thousand nine hundred eighty-seven, the state board of investments shall reserve ten million dollars of the unallocated aggregate for linked deposits to such West Virginia flood victims and may use the remaining balance of such unallocated moneys in the regular linked deposit program: Provided further, That after the first day of January, one thousand nine hundred eighty-eight, the remaining balance of unallocated moneys may be used in the regular linked deposit program: And provided further, That effective the first day of July, one thousand nine hundred ninety-one, the board of investments may not invest in linked deposits until such time as the board of investments has determined that there are adequate funds available to meet the needs of the education enhancement fund, as set forth in section nine-d, article six of this chapter.

(b) Small business linked deposit funds shall not be used to provide each applicant with more than fifty thousand dollars for a reduced rate loan for each nonmanufacturing job created or preserved or provide more than one hundred twenty-five thousand dollars for a reduced rate loan for each manufacturing job created or preserved. This subsection shall not preclude any flood victim from applying for a linked deposit under the flood program.

§12-1A-4. Applications for loan priority; loan package.

(a) An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from eligible small businesses. The lending institution shall apply all usual lending
5 standards to determine the credit worthiness of each
6 eligible small business.

7 (b) An eligible small business shall certify on its loan
8 application that the reduced rate loan will be used
9 exclusively to create new jobs or preserve existing jobs
10 and employment opportunities. An eligible small
11 business shall make a sworn affidavit stating that the
12 reduced rate loan will not be used to refinance an
13 existing debt, unless it can be demonstrated to show the
14 business will fail if not granted such loan. Whoever
15 knowingly makes a false statement concerning such
16 application shall be prohibited from entering into the
17 linked deposit loan program.

18 (c) In considering which eligible small businesses
19 should receive reduced rate loans, the eligible lending
20 institution shall give priority to the economic needs of
21 the area in which the business is located, including
22 whether the business is located in a county declared to
23 be a federal disaster area by the federal emergency
24 management agency, and the number of jobs to be
25 created. If jobs are to be preserved by the receipt of such
26 loan, the eligible lending institution shall decide
27 between small businesses that had no profit in the last
28 tax year verified by independent audit filed for relief
29 under the federal bankruptcy laws in the past year or
30 has been adversely affected by a nonreimbursed
31 casualty loss due to a natural disaster. An eligible small
32 business shall make a sworn affidavit stating that one
33 of the above mentioned circumstances applies to their
34 business. There shall also be a continuous internal audit
35 conducted by the state board of investments which shall
36 be made available to the Legislature annually.

37 (d) The eligible financial institution shall forward to
38 the state board of investments a linked deposit loan
39 package, in the form and manner as prescribed by the
40 board. The package shall include such information as
41 required by the board, including the amount of the loan
42 requested and the number of jobs to be created or
43 sustained by each eligible small business. The institution
44 shall certify that each applicant is an eligible small
45 business, and shall, for each business, certify the present
§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

(a) The board of investments 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 board of investments 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 board of investments 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 board of investments 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 board of investments 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 board of investments and the director, the board of investments may
place certificates of deposit with the eligible lending
institution at three percent below current market rates,
as determined and calculated by the board of invest-
ments. Upon acceptance of the linked deposit loan
package for flood victims or any portion thereof, the
board of investments may place certificates of deposit
with the eligible lending institution at five percent
below current market rates, as determined and calcu-
lated by the board of investments. When necessary, the
board may place certificates of deposit prior to accep-
tance of a linked deposit loan package.

(e) The eligible lending institution shall enter into a
deposit agreement with the board, 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 board.

§12-1A-6. Rate of loan; certification and monitoring of
compliance; report.

(a) Upon the placement of a linked deposit with an
eligible lending institution, such institution is required
to lend such funds to each approved eligible small
business listed in the linked deposit loan package
required in subsection (d), section four of this article,
and in accordance with the deposit agreement required
by subsection (c), section five of this article. The loan
shall be at three percent below the present borrowing
rate applicable to each business. The loan shall be at five
percent below the present borrowing rate applicable to
each flood victim. A certification of compliance with this
section in the form and manner as prescribed by the
board shall be required of the eligible lending
institution.

(b) The board shall take any and all steps necessary
to implement the linked deposit program and monitor compliance of eligible lending institutions and eligible small businesses. The board and the industrial development authority shall notify each other at least quarterly of the names of the businesses receiving financial assistance from their respective programs.

By the first day of January, April, July and October of each year, the board shall report on the linked deposit program for the preceding calendar quarter to the governor and to the joint committee on government and finance. The reports shall set forth the linked deposits made by the board under the program during the quarter and shall include information regarding the nature, terms and amounts of the loans upon which the linked deposits were based and the eligible small business to which the loans were made.

§12-1A-7. Liability of state, board of investments and director.

The state, the board 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 board.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

§12-2-3. Deposit of moneys by state officials and employees.

§12-2-4. Duty of depositories.

§12-2-5. Deposits in correspondent banks of state depositories.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

All officials and employees of the state authorized by statute to accept moneys due the state of West Virginia shall keep a daily itemized record of such moneys so received for deposit in the state treasury and shall
deposit within twenty-four hours with the state board of investments all moneys received or collected by them for or on behalf of the state for any purpose whatsoever. The treasurer and the board of investments shall promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code governing the procedure for such deposits.

The official or employee making such deposits with the state board of investments shall prepare such deposit lists in such manner and upon such report forms as may be prescribed by the board of investments. Once the board has satisfied itself that all deposits have been promptly prepared and deposited, it shall transfer all such funds to a special bank account of the state treasurer and provide him with such deposit report. The original of this report shall accompany the deposit to the treasurer. Certified or receipted copies shall be immediately forwarded by the state treasurer to the state auditor and to the secretary of administration, and a copy shall be provided to the board of investments. The original of the deposit report shall become a part of the treasurer's permanent record.

When so paid, such moneys shall be credited to the state fund and treated by the auditor and treasurer as part of the general revenue of the state: Provided, That all moneys received out of appropriations made by the Congress of the United States shall be recorded in special fund accounts, apart from the general revenues of the state, in the state treasury and all such moneys shall not be used for any purpose whatsoever unless and until authorized and directed by the Legislature, excepting the following funds which shall be recorded in separate accounts:

(a) All funds excluded by the provisions of section six, article eleven, chapter four of this code;

(b) All funds derived from the sale of farm and dairy products from farms operated by any agency of the state government other than the farm management commiss...
(c) All endowment funds, bequests, donations, executive emergency funds, and death and disability funds;

(d) All fees and funds collected at state educational institutions for student activities;

(e) All funds derived from collections from dormitories, boardinghouses, cafeterias and road camps;

(f) All moneys received from counties by institutions for the deaf and blind on account of clothing for indigent pupils;

(g) All insurance collected on account of losses by fire and refunds;

(h) All funds derived from bookstores and sales of blank paper and stationery, and collections by the chief inspector of public offices;

(i) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking funds, general school fund, school fund, state fund (moneys belonging to counties, districts and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the public service commission for the investigation and supervision of applications and all funds and moneys payable to or received by the natural resources commission of West Virginia;

(j) All moneys collected or received under any act of the Legislature providing that funds collected or received thereunder shall be used for specific purposes.

All moneys, excepted as aforesaid, shall be paid into the state treasury in the same manner as collections not so excepted, and shall be recorded in separate accounts to be used and expended only for the purposes for which the same are authorized to be collected by law. The gross amount collected in all cases shall be paid into the state treasury, and commissions, costs and expenses of collection authorized by general law to be paid out of the gross collection are hereby authorized to be paid out of the moneys collected and paid into the state treasury in the same manner as other payments are made from the state treasury.

The state board of investments shall have authority to
establish an imprest fund or funds in the office of any
state agency or institution making proper application to
the board. To implement this authority the board shall
promulgate rules and regulations, in accordance with
the provisions of chapter twenty-nine-a of this code. The
board or its designee shall annually audit all such funds
and prepare a list of all such funds showing the location
and amount as of fiscal year end, retaining such list as
a permanent record of the board until such time as the
legislative auditor shall have completed an audit of the
imprest funds of all agencies and institutions involved.

§12-2-3. Deposit of moneys by state officials and
employees.

All officials and employees of the state authorized by
statute to accept moneys due the state of West Virginia
shall deposit such moneys in such manner as the board
of investments shall direct and shall promptly transmit
or cause to be transmitted such deposits, together with
a certificate of deposit, as soon as practicable to the
depository in which they desire to make the deposit, and
shall retain and record the deposit lists.

§12-2-4. Duty of depositories.

Immediately upon the receipt of such deposit, it shall
be the duty of the depository to credit the state board
of investments with the amount of the deposit, to date
and sign the certificate of deposit by some legally
constituted official of the depository and promptly
transmit such certificate to the state board of invest-
ments.

§12-2-5. Deposits in correspondent banks of state
depositories.

When any payment of money has been made to the
state for road bonds or other purposes outside of the
state, the board of investments shall have authority to
place the same to the credit of one or more state
depositories in one or more of its correspondent banks
located within or without the state. The board of
investments shall, upon making such a deposit in such
correspondent bank, secure from it a proper certificate
9 of deposit certifying the amount and the name of the
10 state depository to whose credit the deposit was made
11 by the board of investments. The board of investments
12 shall forward a copy of such certificate to the state
13 depository receiving such deposit through its corre-
14 spondent bank, and it shall be the duty of such
15 depository immediately to issue to the state of West
16 Virginia a proper certificate of deposit for the amount
17 so deposited, dated the same day the deposit was made
18 in such correspondent bank. Before making such deposit
19 however, the board of investments shall secure written
20 authority from such depository, designating the name
21 and address of its correspondent bank or banks in which
22 deposits are to be made and the maximum amount to
23 be deposited in each. The depository bonds of all state
24 depositories so authorizing and receiving such deposits
25 in their correspondent banks shall be liable for such
26 deposits the same as if the deposits had been made with
27 them directly, whether such bonds are so conditioned or
28 not, and all depository bonds hereafter issued shall so
29 provide.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND
DEDUCTIONS.

§12-3-1. Manner of payment from treasury; form of checks.
§12-3-11. Travel expenses; rules to be promulgated concerning same; dues
   to voluntary organizations; recruitment expenses for West
   Virginia higher education governing boards; moving expenses of
   employees of West Virginia higher education governing boards.

§12-3-1. Manner of payment from treasury; form of
checks.

1 Every person claiming to receive money from the
2 treasury of the state shall apply to the auditor for a
3 warrant for same. The auditor shall thereupon examine
4 the claim, and the vouchers, certificates and evidence,
5 if any, offered in support thereof, and for so much
6 thereof as he shall find to be justly due from the state,
7 if payment thereof be authorized by law, and if there
8 be an appropriation not exhausted or expired out of
9 which it is properly payable, he shall issue his warrant
10 on the treasurer, specifying to whom and on what
11 account the money mentioned therein is to be paid, and
to what appropriation the same is to be charged. On the presentation of such warrant to the treasurer, he shall ascertain whether the same has been drawn in pursuance of an appropriation made by law, and if he finds it to be so, he shall in that case, but not otherwise, endorse his check upon such warrant, directed to some depository, which check shall be payable to the order of the person who is to receive the money therein specified; or he may issue a bank wire in payment of such warrant. If such check shall not be presented for payment within six months after it is drawn, it shall then be the duty of the treasurer to credit it to the depository on which it was drawn, to credit the state fund with the amount, and immediately notify the auditor to make corresponding entries on his books. No state depository shall pay a check unless it is presented within six months after it is drawn and every check shall bear upon its face the words, "Void, unless presented for payment within six months". All claims required by law to be allowed by any court, and payable out of the state treasury, shall have the seal of the court allowing or authorizing the payment of the same affixed by the clerk of such court to his certificate of its allowance; and no such claim shall be audited and paid by the auditor unless the seal of such court be thereto attached as aforesaid. No tax or fee shall be charged by the clerk for affixing his seal to the certificate, referred to in this section. The treasurer and the board of investments shall jointly promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code governing the procedure for such payments from the treasury.

§12-3-11. Travel expenses; rules to be promulgated concerning same; dues to voluntary organizations; recruitment expenses for West Virginia higher education governing boards; moving expenses of employees of West Virginia higher education governing boards.

1 The governor shall promulgate rules and regulations concerning out-of-state travel by state officials and
employees, except those in the legislative and judicial branches of the state government and except for the attorney general, auditor, secretary of state, treasurer, board of investments and commissioner of agriculture and their employees. The Legislature, the supreme court of appeals and the attorney general, auditor, secretary of state, treasurer, board of investments and commissioner of agriculture shall promulgate rules and regulations concerning out-of-state travel for their respective branches and departments of state government. Copies of such rules and regulations shall be filed with the auditor, and the secretary of state. It shall be unlawful for the auditor to issue a warrant in payment of any claim for out-of-state travel expenses incurred by a state officer or employee unless such claim meets all the requirements of the rules and regulations so filed.

Payment for dues or membership in annual or other voluntary organizations shall be made from the proper item or appropriation after an itemized schedule of such organizations, together with the amount of such dues or membership, has been submitted to the budget director and approved by the governor.

It shall be lawful for a higher education governing board to authorize the payment of traveling expenses incurred by any person invited to visit the campus of any state institution of higher education or any other facility under control of the board to be interviewed concerning his possible employment by the board or agent thereof.

It shall be lawful for a higher education governing board to authorize payment of: (1) All or part of the reasonable expense incurred by a person newly employed by the board in moving his household furniture, effects and immediate family to his place of employment; and (2) all or part of the reasonable expense incurred by an employee of the board in moving his household furniture, effects and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interest of the state: Provided, That no part of the
moving expenses of any one such employee shall be paid more frequently than once in twelve months.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-13. Bank reconciliations; balancing state accounts.

The Legislature finds that the bank accounts of the treasury contain numerous unreconciled items and that the single audit report for the period ending on the thirtieth day of June, one thousand nine hundred eighty-nine, states that as of the end of the audit period there were forty million ninety-three thousand six hundred eighty-one dollars and forty-seven cents more in the bank accounts maintained by the state treasurer than recorded on the accounting records of the state. Therefore, the Legislature directs that:

(a) The state treasurer shall take all necessary actions to identify all unreconciled items on the bank accounts maintained by the state treasurer. All items identified on or before the thirtieth day of June, one thousand nine hundred ninety, shall be recorded in the state account(s) to which they have been identified. Any unreconciled items not identified on or before the thirtieth day of June, one thousand nine hundred ninety, shall be recorded in a special revenue account known as the "single audit account".

(b) All moneys identified in the single audit report as not having been recorded on the accounting records of the state treasurer shall be recorded in the single audit account. If after the recording of said moneys in the single audit account, the treasurer is able to identify the appropriate state accounts the moneys should be credited to, he is hereby authorized to transfer such moneys from the single audit account to the appropriate account.

(c) Effective on the first day of July, one thousand nine hundred ninety, the state treasurer shall file a report with the governor reflecting all actions taken concerning unreconciled items in bank accounts maintained by the state treasurer through the period ending on the thirtieth day of June, one thousand nine hundred ninety. After the governor has reviewed the report and determined that the state treasurer has complied with all previous provisions of this code section, the governor
shall certify the report to the board of investments. The board of investments is then authorized to use, in such manner as it determines, the balance in the single audit account to eliminate any imbalance in the state accounts caused by the investment losses incurred during the period beginning on the first day of August, one thousand nine hundred eighty-four, and ending on the thirty-first day of January, one thousand nine hundred eighty-nine.

(d) Effective on the first day of July, one thousand nine hundred ninety, the state treasurer shall take action to ensure that all bank accounts of the state treasurer are reconciled each month. If after six months from receipt of a bank statement any items remain as unreconcilable, the state treasurer shall record such amounts as a debit or credit to the state's general revenue fund. The board of investments shall keep in its office separate accounts with each depository and shall take action to ensure that all bank accounts of the board are reconciled each month. If after six months from receipt of a bank statement any items remain as unreconcilable, the board shall record such amounts as a debit or credit to the state's general fund.

ARTICLE 5. PUBLIC SECURITIES.

§12-5-2. Treasurer custodian of securities; charges to companies for care, exchange and substitution of securities.

§12-5-4. Treasurer and board of investments to keep accounts and make collections.

§12-5-6. When notes deemed securities; appraisal.

§12-5-2. Treasurer custodian of securities; charges to companies for care, exchange and substitution of securities.

The treasurer of this state, unless otherwise expressly provided by law, shall be custodian of all securities required by law to be deposited with the state or held in legal custody by the state, and all departments of this state, commissioners or agents of the state, who hold any such securities, shall transfer and deliver the same to the state treasurer to be kept and held by him as legal custodian thereof until released in the manner provided by law.
The board of investments may by formal order of record fix fair and reasonable charges for the care, custody, exchange and substitution of securities deposited by insurance companies and companies issuing annuity contracts and such charges shall be collected from such companies by the state treasurer and deposited by him in the general revenue fund: Provided, That no such charge shall be made against any such company having securities of the par value of less than three hundred thousand dollars deposited hereunder.

§12-5-4. Treasurer and board of investments to keep accounts and make collections.

It shall be the duty of the treasurer and the board of investments to keep an accurate account of all securities received by them respectively and collect and account for the interest as the same becomes due and payable and the principal whenever same is due.

§12-5-6. When notes deemed securities; appraisal.

(a) Whenever, by statute of this state, any public official, board, commission or department of this state is charged with the approval of securities required as collateral for the deposit of public or other funds, or required to be deposited with the state treasurer, or board of investments or an investment of capital or surplus or a reserve or other fund, is required to be maintained consisting of designated securities deposited with the board of investments, such securities shall, at the discretion of such public official, board, commission or department, be deemed to include and mean notes executed by the person or corporation required to make such deposit and made payable to the state of West Virginia upon demand, in the event of insolvency or default by such person or corporation, for the benefit of those for whom such securities are deposited, when such notes are secured by duly executed deeds of trust on improved, unencumbered real property located in the state and owned by the person or corporation executing such notes, said deeds of trust to be approved by the attorney general of the state as to sufficiency of form and manner of execution and accompanied by proper
abstracts of title and fire insurance policies equal to the
amounts of such notes and recorded among the land
records of the county in which the real property is
located: Provided, That whenever any such note so
secured by a deed of trust on real property owned by
any such person or corporation is approved by any
public official, board, commission or department of this
state, the real property shall have an appraised value
of at least thirty per centum more than the amount of
such note, said value to be determined by an appraisal
of two landowners, who are citizens of this state and
generally recognized as experienced real estate apprais-
ers, appointed by the public official, board, commission
or department, charged with the approval of such
securities, the expenses of such appraisal to be borne by
the person or corporation required to make such deposit,
and each unit of such real property shall have an
appraised value of at least fifty thousand dollars.

By improved real property as used herein is meant all
real property within the limits of an incorporated city
or town on which permanent buildings suitable for
residential, industrial or commercial use are located.

Real property, for purposes hereof, shall not be
deemed to be encumbered by reason of the existence of
instruments reserving rights-of-way, sewer rights and
rights in walls, nor by reason of building restrictions or
other restrictive covenants, nor by reason of the fact that
it, or any part thereof, is subject to lease under which
rents or profits are reserved to the owner: Provided,
That the deed of trust for such investment is a full and
unrestricted first lien upon such property.

(b) Any such public official, board, commission or
department of this state charged with the approval of
securities required to be deposited as aforesaid, shall, at
least annually and oftener if deemed proper, appoint a
disinterested person or persons, not exceeding three, to
make an examination and appraisal of the securities so
deposited to determine if such securities meet the
requirements of the law of this state, and the cost of such
examination and appraisal not less than ten dollars nor
more than twenty-five dollars per diem for each person,
and expenses, shall be borne by the person or corporation required to make such deposits as security.

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-1a. Legislative findings.

The Legislature finds and declares that teachers and other public employees throughout the state are experiencing economic difficulty and that in order to reduce this economic hardship on these dedicated public employees, and to help foster sound financial practices, the state board of investments is given the authority to develop, implement and maintain an efficient and modern system for the collection, disbursement, investment and management of the state’s money. The Legislature further finds that in order to implement these sound fiscal policies, the board of investments shall operate as an independent board with its own full-time staff of financial professionals immune to changing political climates, in order to provide a stable and continuous source of professional financial management.

§12-6-4. Officers; executive secretary; term; organization; board staff; 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. 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 first effective date of this article. Effective with any vacancy in the position of executive secretary, the board shall appoint an executive secretary to serve at the will and pleasure of
the board, which executive secretary may not be a
member of the board: Provided, That the executive
secretary shall have at least a bachelor's degree in either
business administration or accounting in an accredited
program and/or have at least five years' experience in
investment management or securities markets, said
experience to have occurred within the ten years next
preceding the date of appointment of the secretary:
Provided, however, That the executive secretary may be
paid a salary as determined by the board out of
appropriations by the Legislature: Provided further,
That the board shall appoint a staff to act 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.

§12-6-5. Powers of the board.

The board may exercise all powers necessary or
appropriate to carry out and effectuate its corporate
purposes. The board may:

(1) Adopt and use a common seal and alter the same
at pleasure;

(2) Sue and be sued;
(3) Enter into contracts and execute and deliver instruments;

(4) Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages and other instruments;

(5) Promulgate and enforce bylaws and rules for the management and conduct of its affairs;

(6) Retain and employ legal, accounting, financial and investment advisors and consultants;

(7) Acquire (by purchase, gift or otherwise), hold, exchange, pledge, lend and sell or otherwise dispose of securities and invest funds in interest earning deposits;

(8) Maintain accounts with banks, securities dealers and financial institutions both within and outside this state;

(9) Engage in financial transactions whereby securities are purchased by the board under an agreement providing for the resale of such securities to the original seller at a stated price;

(10) Engage in financial transactions whereby securities held by the board are sold under an agreement providing for the repurchase of such securities by the board at a stated price;

(11) Consolidate and manage moneys, securities and other assets of the pension funds and other funds and accounts of the state and the moneys of political subdivisions which may be made available to it under the provisions of this article;

(12) Enter into agreements with political subdivisions of the state whereby moneys of such political subdivisions are invested on their behalf by the board;

(13) Charge and collect administrative fees from political subdivisions for its services;

Exercise all powers generally granted to and exercised by the holders of investment securities with respect to management thereof;
(15) Contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of securities held by the board; and

(16) Develop and implement a centralized receipts processing center.

§12-6-6. Costs and expenses; fees for services; special revenue account; costs of determining third parties' liability; recoupment of investment losses.

(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. The charge shall be on a pro rata basis of actual earnings of the various funds managed by the board. The charge shall be deposited to the credit of the general revenue fund.

(b) There is hereby created in the state treasury a special revenue account to be known as the "loss expenses account." The purpose of this account is to provide funds to the board of investments to pay costs, fees and expenses incurred, or to be incurred, for the following: (1) Investigation and pursuit of claims against third parties for the investment losses incurred during the period beginning the first day of August, one thousand nine hundred eighty-four, and ending on the thirty-first day of January, one thousand nine hundred eighty-nine; (2) for consulting services regarding the restructuring of the office of the treasurer following said losses; and (3) for implementation of the recommendations made as a result of the consultations regarding restructuring. That special revenue account shall be funded by depositing income derived by the board from securities lending and recoveries from third parties. The board is authorized to deposit into the special revenue account, and to expend in accordance with the provisions of this section, those funds received from such recoveries and not more than two million dollars annually from income derived by the board from securities lending. Funds in the loss expense account in excess of reasonably estimated costs, fees and expenses for any fiscal year and any funds remaining in such
special revenue account at the end of each fiscal year
after expenditures, for the purposes specified above,
may be transferred by the board to its "liquidity
investment pool," to be used, in such manner as the
board determines, to eliminate the present imbalance in
the state accounts caused by the investment losses
described above in this subsection. The authority for this
special revenue account expires on the thirtieth day of
June, one thousand nine hundred ninety-five.

§12-6-9d. Legislative findings; loans to the state; purpose
for which moneys transferred may be dis­
bursed and expended; terms and conditions
for repayment; creation of special account in
state treasury.

(a) The Legislature hereby finds and declares that the
West Virginia supreme court of appeals has determined
that public education has a constitutionally preferred
status; that there is a large amount of investable funds
in the consolidated pension fund; that loans made under
commercially reasonable terms to finance needed public
education improvements are necessary investments in
the future of West Virginia; and that loans from the
consolidated pension fund will assist in financing the
needs of primary and secondary education, without in
any way impairing the solvency or financial soundness
of the consolidated pension fund. This section is enacted
in view of these findings.

(b) Whenever the governor determines that there are
insufficient general revenue funds available for the
timely payment for necessary improvements in public
education as appropriated by the Legislature in the
budget bills for the fiscal years one thousand nine
hundred ninety-one and one thousand nine hundred
ninety-two, the governor may request the state board of
investments to lend those moneys necessary to meet such
payment and the state board of investments shall
transfer moneys from the consolidated pension fund to
the special sinking fund account created in the state
treasury by subsection (d) of this section, in the amount
determined by the governor to be sufficient and
necessary to meet such payments, within the amount
The manner and timing of such transfers shall be in the discretion of the board of investments. The total of the amounts transferred may not exceed a total of one hundred million dollars during the fiscal years one thousand nine hundred ninety-one and one thousand nine hundred ninety-two. On the date the loan is transferred to the special sinking fund created in subsection (d) of this section, interest shall accrue at the current interest rate of the fund from which the loan originated, plus one-fourth of one percent, and the current interest rate shall be recalculated every six months.

(c) Full repayment of all moneys transferred, with interest, shall be made to the board of investments by payment into such pension fund from amounts appropriated by the Legislature or in the absence of appropriations from the amounts specified in section thirty, article fifteen, chapter eleven of this code, by budget action as first priority from the moneys available for each fiscal year. Repayment of the loans shall begin six months from the date the funds were transferred and payments shall be made every six months thereafter, or sooner if agreed to in writing by the board of investments and the governor: Provided, That all loans shall be repaid in full by the last day of August, one thousand nine hundred ninety-six.

(d) There is hereby created in the state treasury a special account, designated the "Education Enhancement Fund," which is a sinking fund for the deposit, withdrawal and repayment of moneys transferred pursuant to this section and section thirty, article fifteen, chapter eleven of this code, in accordance with the special fund doctrine for budgetary transfer activities involving more than one fiscal year. Management of such fund shall be a responsibility of the board of investments. If any moneys remain in said fund after repayment in full to the appropriate pension fund or funds, such moneys shall be transferred to the general revenue fund within thirty days of the last repayment.
(e) Upon the written request of the governor, the board of investments shall transfer to the general revenue fund, from the funds available in the educational enhancement fund, those funds necessary for the timely payment for necessary improvements in public education as appropriated by the Legislature.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.


§13-1-17. Bonds may be registered; coupon bonds may be registered as to principal.

§13-1-18. Registration of coupon bonds as to interest; exchange of registered bond for coupon bond.


If three fifths of all the votes cast for and against the proposition to incur debt and issue negotiable bonds shall be in favor of the same, the governing body of the political division shall, by resolution, authorize the issuance of such bonds in an amount not exceeding the amount stated in the proposition; fix the date thereof; set forth the denominations in which they shall be issued, which denominations shall be one hundred dollars or multiples thereof; determine the rate or rates of interest which the bonds shall bear, which rate or rates of interest shall be within the maximum rate stated in the proposition submitted to vote and payable semiannually, prescribe the medium with which the bonds shall be payable; require that the bonds shall be made payable at the office of the state board of investments and at such other place or places as the body issuing the same may designate; provide for a sufficient levy to pay the annual interest on the bonds and the principal at maturity; fix the times within the maximum period, as contained in the proposition submitted to vote, when the bonds shall become payable, which shall not exceed thirty-four years from the date thereof; and prescribe a form for executing the bonds authorized.
§13-1-17. Bonds may be registered; coupon bonds may be registered as to principal.

The bonds issued hereunder may be registered or coupon bonds. Coupon bonds may be registered as to the principal in the owner's name by the state board of investments on books which shall be kept at its office for the purpose and the registration shall also be noted on the bonds, after which no transfer shall be valid unless made by the state board of investments on the books of registration and similarly noted on the bonds. Bonds registered as to principal may be discharged from registration by being transferred to bearer, after which they shall be transferable by delivery; but may again, and from time to time, be registered as to the principal amount as before. The registration of coupon bonds as to the principal sum shall not affect the negotiability of the interest coupons, but title to the same shall pass by delivery.

§13-1-18. Registration of coupon bonds as to interest; exchange of registered bond for coupon bond.

Coupon bonds may also be registered as to the interest by the holder surrendering the bonds with the unpaid coupons attached, which bonds and coupons shall be canceled by the state board of investments. New bonds of the same date and tenor and for the same amounts as the bonds surrendered, or, at the option of the holder, a single bond for the aggregate amount of the bonds surrendered, but without interest coupons attached, shall be issued in the place of the coupon bonds and registered in the manner required in the preceding section. A registered bond may at any time be surrendered and be exchanged by the holder for a coupon bond by the holder delivering the registered bond to the state board of investments who shall cancel the same and who shall cause a new bond of the same date and tenor and for the same amount to be issued, and with interest coupons for the interest thereafter to accrue thereon attached, and deliver the same to the holder of the surrendered bond. The governing body of the county, municipal corporation or school district which issued
the original bond shall issue and execute the new bond required by this section and shall pass the resolutions and ordinances necessary to authorize the same. The expense of such registration shall in all cases be paid by the holder of the bonds.

CHAPTER 18. EDUCATION.

Article
9A. Public School Support.
22D. Higher Education Student Assistance Loan Program.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-1. Legislative findings; public school support plan.
§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-8a. Foundation allowance for regional educational service agencies.
§18-9A-9. Foundation allowance for other current expense and substitute employees.
§18-9A-13b. Allowances for remedial and accelerated education programs and salary equity.

§18-9A-1. Legislative findings; public school support plan.

1 The Legislature finds and declares that the future of education in this state is dependent upon a plan of financial support for the public schools which provides for a fair and adequate pay scale for teachers sufficient to ensure teacher excellence, as well as adequate financial support for the public schools generally; upon an economic base which ensures levels of revenue sufficient to fund the public schools; and upon independent professional management of public funds in order to assure a climate of financial stability and responsibility in which construction and maintenance of school facilities becomes possible.

13 The plan of support for the public schools, which will be known as the West Virginia public school support plan, will fix statutorily both state and county responsibility for the financing of the same. In enacting this plan, the Legislature has in mind the following purpose:

18 To effect a basic foundation support plan that shall
provide for program growth which will assure more equitable educational opportunity for all children and youth irrespective of where they may live.

§18-9A-4. Foundation allowance for professional educators.

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-four and thirty-three one-hundredths professional educators to each one thousand students in adjusted enrollment: Provided, however, That for the school year commencing on the first day of July, one thousand nine hundred ninety-one, and thereafter, no county shall receive an allowance for such personnel which number is in excess of fifty-three and one-half professional educators to each one thousand students in adjusted enrollment: Provided further, 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: And 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 in each school year thereafter, each county board shall establish and maintain a minimum ratio of fifty professional instructional
personnel per one thousand students in adjusted enrollment: And provided further, That no county shall have less than a total of five principals and central office administrators. 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. 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. It is the intent of the Legislature that in planning reductions in force to comply with reduced ratios of professional educators to students in adjusted enrollment, county boards shall consider positions for elimination in the following order: (1) Central office administrators, (2) assistant principals, and (3) principals.

No county shall increase the number of administrative personnel employed as either professional educators or pay grade “H” service personnel above the number which were employed, or for which positions were posted, on the thirtieth day of June, one thousand nine hundred ninety, and, therefore, county boards shall whenever possible utilize classroom teachers for curriculum administrative positions through the use of modified or extended contracts: Provided, That the governor shall submit a recommendation to the Legislature at the beginning of the regular session thereof in the year one thousand nine hundred ninety-one, which proposes a method for establishing a responsible level of administrative support for each county school system and a pay scale differentiation on a daily rate between classroom positions and administrative positions when all other factors are equal.

Every county board of education shall annually determine the number of professional educators em-
ployed that exceeds the number allowed by the public school support plan and determine the amount of salary supplement that would be available per state authorized employee if all expenditures for such excess employees were converted to annual salaries for state authorized professional educators within their county. Such information shall be published annually in each school report card of each such county.

§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>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>
</tr>
</thead>
<tbody>
<tr>
<td>1989-90</td>
<td>76.5</td>
<td>45.5</td>
</tr>
<tr>
<td>1990-91</td>
<td>76.0</td>
<td>45.0</td>
</tr>
<tr>
<td>1991-92</td>
<td>75.5</td>
<td>44.5</td>
</tr>
<tr>
<td>Year</td>
<td>Ratio</td>
<td>Percentage</td>
</tr>
<tr>
<td>-----------</td>
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<td>------------</td>
</tr>
<tr>
<td>1992-93</td>
<td>75.0</td>
<td>44.0</td>
</tr>
<tr>
<td>1993-94</td>
<td>74.5</td>
<td>43.75</td>
</tr>
<tr>
<td>1994-95 and thereafter</td>
<td>74.0</td>
<td>43.5</td>
</tr>
</tbody>
</table>

(c) 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 the minimum ratio of professional instructional personnel per one thousand students in adjusted enrollment 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.


For the fiscal year beginning on the first day of July, one thousand nine hundred ninety, 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 as of the first day of July, one thousand nine hundred ninety.
Distribution of the computed allowance for the fiscal year beginning on the first day of July, one thousand nine hundred ninety, 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.

For the fiscal year beginning on the first day of July, one thousand nine hundred ninety-one, and for each fiscal year thereafter, the allowance for administrative cost shall be equal to one hundred fifty dollars multiplied by the number of professional educators authorized in compliance with sections four and five-a of this article. The allowance shall be distributed to the counties in equal amounts.

§18-9A-8a. Foundation allowance for regional educational service agencies.

For the fiscal year beginning on the first day of July, one thousand nine hundred ninety-one, and for each fiscal year thereafter, the foundation allowance for regional educational service agencies shall be equal to sixty-three one-hundredths percent of the allocation for professional educators as determined in section four of this article. 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: Provided, That each of the three amounts set forth in subparagraphs (1), (2) and (3) of this section shall not
5 exceed the preceding year's allowance by more than four percent:

7 (1) For current expense, for the year one thousand nine hundred ninety-nine and thereafter, 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. 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

16 (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 number of professional educators authorized for the county in compliance with sections four and five-a of this article; plus

23 (3) For service personnel substitutes or current expense, two and five-tenths percent of the computed state allocation for service personnel as determined in section five of this article. Distribution to the counties shall be made proportional to the number of service personnel authorized for the county in compliance with sections five and five-a of this article; plus

30 (4) For academic materials, supplies and equipment for use in instructional programs, two hundred dollars multiplied by the number of professional instructional personnel employed in the schools of the county. Distribution shall be made to each county for allocation to the faculty senate of each school in the county on the basis of two hundred dollars per professional instructional personnel employed at the school. Faculty senate means a faculty senate created pursuant to section five, article five-a of this chapter. Decisions for the expenditure of such funds shall be made at the school level by the faculty senate in accordance with the provisions of said section five, article five-a, and shall not be used to supplant the current expense expenditures of the county.
(5) For the school year one thousand nine hundred ninety-ninety-one only, there shall be a one-time additional appropriation of five hundred thousand dollars to be distributed to the counties on a needs basis. Funds shall be distributed to those very few counties in which costs for the delivery of educational services are extraordinarily greater than in the vast majority of counties, thus impairing the quality of education in those few counties. The factors used to determine eligibility for funds shall be sparsity of student population, combined with geographical barriers to the efficient transportation of students; or extraordinary growth in net enrollment for school year one thousand nine hundred ninety-nine—ninety-one which exceed the allowance for increased enrollment appropriated in the budget for that year. Prior to the distribution of funds, the state superintendent shall establish that the applying county has demonstrated efficiency and fiscal responsibility in staffing, and in maximum sharing of services with adjoining counties and the regional educational service agency for that county in the use of the total local county budget.

§18-9A-13b. Allowances for remedial and accelerated education programs and salary equity.

Commencing with the school year beginning on the first day of July, one thousand nine hundred ninety-one and thereafter, funds which accrue from allocations due to changes in adjusted enrollment above that computed for each preceding school year shall be allocated in the following manner:

(1) Up to 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, except that for the school year commencing on the first day of July, one thousand nine hundred ninety, only, the allocation to salary equity shall be made in accordance with the provisions of section five-d, article four, chapter eighteen-a of this code;

(2) Twenty percent of these funds shall be allocated
to implement remedial and accelerated programs as
developed under guidelines of the state board, except
that for the school year commencing on the first day of
July, one thousand nine hundred ninety, only, the
allocation to implement remedial and accelerated
programs shall be made only to the extent funds are
appropriated for such programs; and

(3) The balance shall be distributed for the support of
professional educator salaries in accordance with
legislative appropriation.


To provide for the support of increased net enroll-
ments in the counties in a school year over the net
enrollments used in the computation of total state aid
for that year, there shall be appropriated for that
purpose from the general revenue fund an amount equal
to the average total state aid per net pupil multiplied
by the total of all of the increases in the net enrollments
of the counties made by comparing the most recent
reports of net enrollment for the second school month
to the immediately previous year’s reports for the same
school month.

Upon determination of the several increases in the
respective counties’ net enrollments, as of the close of the
second school month, each county showing such increase
shall be allocated an amount equal to that county’s
average per net pupil total state aid multiplied by the
increase in that county’s net enrollment determined as
provided heretofore. Such allocations shall be distrib-
uted not later than the thirty-first day of December of
each year to the counties having increases in net
enrollment as heretofore provided. If the amount
appropriated for this purpose shall not be sufficient to
provide payment in full for the total of these several
allocations, each county allocation shall be reduced to an
amount which is proportionate to the appropriation
compared to the total of the several allocations, and the
allocations as thus adjusted shall be distributed to the
counties as provided in this section: Provided, That the
governor shall request a supplemental appropriation at
the next legislative session for the reduced amount.
31 No provision of this section shall be construed to in any way affect the allocation of moneys for educational purposes to a county under other provisions of law.

ARTICLE 22D. HIGHER EDUCATION STUDENT ASSISTANCE LOAN PROGRAM.


§18-22D-4. Limitations on investment in linked deposits.

§18-22D-5. Applications for loans; loan package.

§18-22D-6. Acceptance or rejection of loan package; deposit agreement.

§18-22D-8. Certification and monitoring of compliance; reports.


1 The following words when used in this article have the meaning hereinafter ascribed to them, unless the context clearly indicates a different meaning:

4 (a) “Board” or “governing 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 referred to in this article, unless the context clearly indicates a different meaning.

9 (b) “Eligible lending institution” or “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 West Virginia higher education student assistance loan program.

14 (c) “Eligible student” means any individual who:

15 (1) Is a citizen or eligible noncitizen of the United States;

17 (2) Has been a resident of the state for at least one year immediately preceding the date of application for a West Virginia higher education student assistance loan;

21 (3) Is currently enrolled in good standing or accepted for enrollment at the approved institution of higher education in this state of the student’s choice; and

24 (4) Is certified by such institution in accordance with section three of this article.
(d) "Linked deposit" means a certificate of deposit placed by the state board of investments with an eligible lending institution at three percent below current market rates, as determined and calculated by the state board of investments, provided the institution agrees to lend the value of such deposit, according to the deposit agreement provided for by this article, to eligible students at three percent below the present borrowing rate applicable to each such student at the time of the deposit of state funds in the institution.

(e) "Approved institution of higher education in this state" means nonprofit, degree-granting two-year and four-year colleges and universities located in West Virginia.

§18-22D-4. Limitations on investment in linked deposits.

The state board of investments shall invest in linked deposits as identified by the board through an approved application, provided that at the time of placement of the linked deposit, exclusive of the linked deposit program provided 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.

§18-22D-5. Applications for loans; loan package.

(a) An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from applicants certified as eligible students. The lending institution shall apply all usual lending standards to determine the credit worthiness of each eligible student. In no case shall the applicant request, nor the eligible lending institution approve, an annual loan amount in excess of the maximum amount indicated on the form certifying such applicant as an eligible student.

(b) An eligible student shall certify on the loan

1 The state, the governing boards and the state board of investments are not liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible student. Any delay in payment or default on the part of an eligible student does not in any manner affect the deposit agreement between the eligible lending institution and the state board of investments.

ARTICLE 30. WEST VIRGINIA HIGHER EDUCATION TUITION TRUST ACT.

§18-30-5. Appointment of board of directors; terms; compensation; proceedings generally.

1 (a) The board of directors shall consist of the secretary of education and the arts, who shall be the chairman of the board, the executive secretary of the state board of investments, 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 secretary of education and the arts, executive secretary of the state board of investments, 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.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-1. Definitions.

1 The state, the governing boards and the state board of investments are not liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible student. Any delay in payment or default on the part of an eligible student does not in any manner affect the deposit agreement between the eligible lending institution and the state board of investments.

ARTICLE 30. WEST VIRGINIA HIGHER EDUCATION TUITION TRUST ACT.

§18-30-5. Appointment of board of directors; terms; compensation; proceedings generally.

1 (a) The board of directors shall consist of the secretary of education and the arts, who shall be the chairman of the board, the executive secretary of the state board of investments, 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 secretary of education and the arts, executive secretary of the state board of investments, 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.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-1. Definitions.
§18A-4-2. State minimum salaries for teachers.
§18A-4-5. Salary equity among the counties; state salary supplement.
§18A-4-5a. County salary supplements for teachers.
§18A-4-5b. County salary supplements for school service personnel.
§18A-4-5d. 1990 appropriation for salary equity.
§18A-4-8. Employment term and class titles of service personnel; definitions.
§18A-4-8a. Service personnel minimum monthly salaries.
§18A-4-9. Payment of teachers and other employees; withholdings.
§18A-4-1. Definitions.

1 For the purpose of this article, 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 requirements stipulated in the definitions set forth in the next paragraph in items (2) to (13), inclusive.

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 was 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 identified teaching deficiency documented through the state approved county personnel evaluation system.

In-field master's compensation is contingent upon recognition of the in-field master's classification and the educator's assignment. The West Virginia board of education shall establish regulations for the administration and implementation of the in-field master's salary schedule.

Only those professional educators who are assigned to teach, for a minimum of fifty (50) percent of the instructional day, subjects which are consistent with the endorsement(s) recognized as meeting the in-field master's classification shall be eligible for compensation.
based on the in-field master's schedule. If scheduling
constraints prevent the educator from being assigned to
derendorsements recognized for the in-field master's
classification for a minimum of fifty (50) percent of the
instructional day, the educator may petition the county
board of education for such compensation. After review,
the county board of education shall submit the petition
to the state department of education on behalf of the
educator for determination of in-field master's compensa-
tion. Such petitions must be filed on an annual basis.

If a professional educator, who was previously
employed in an area recognized for in-field master's
classification, is reassigned to work full time in an area
not recognized on said educator's certificate for in-field
master's classification as a result of (1) voluntary
reassignment to assist the county in meeting a critical
staffing need or (2) a reduction in force, the educator
may petition the county board of education for continued
payment under the in-field master's salary schedule.
After review, the county board of education shall
petition the state department of education on an annual
basis to continue such payment. In no case shall
approval be granted for more than three years. The
county board of education must provide documentation
to justify each request.

Upon request for a specific master's degree program,
the appropriate governing board of higher education
shall provide all of the course work for a master's degree
program that is designated as in-field for the certifica-
tion area of the professional educator who makes the
request. The course work for such program shall be
initiated no later than two years from the date requested
and shall be provided to the greatest extent feasible
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 prescribed by such
governing board. If the 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 appropriate governing board of higher education shall develop a plan to provide "M.A." 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 "M.A." degree classification in their teaching field.

Effective the first day of July, one thousand nine hundred ninety-two, the following definitions shall be applicable and the preceding definitions numbered (8) and (9) shall be renumbered (9) and (11), respectively, and the preceding definition (10) shall be reconstituted in definition (12).

(11) "In-field master's" means the above-defined master's degree and one of the following:

(a) Twenty-four (24) semester hours of post baccalaurate graduate credit, within or external to the advanced degree, confined to one specialization completed at the undergraduate level on the educator's professional certificate or its equivalent, or

(b) A master's degree earned prior to the first day of July, one thousand nine hundred ninety-two, in (i) a program specialization completed at the undergraduate level, or (ii) a state approved sub-area of the specialization which is consistent with a specialization, completed at the undergraduate level, on the educator's professional certificate or its equivalent, or

(c) Twelve (12) semester hours of graduate credit above and beyond the course work completed for the endorsement recognized for in-field master's classification only if the course work for the endorsement was also completed at the graduate level: Provided, That in certification areas where the total course work requirements for initial certification exceed the minimum required for in-field classification, the state department of education may by rule establish exceptions.
(12) "In-field M.A. plus 15" means the above-defined M.A. plus 15 including recognition of an above-defined in-field master's, 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.

(13) "In-field M.A. plus 30" means the above-defined M.A. plus 30 including recognition of an above-defined in-field master's, 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, or "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.

§18A-4-2. State minimum salaries for teachers.

Effective the first day of July, one thousand nine hundred ninety through the thirtieth day of June, one thousand nine hundred ninety-one, each teacher shall receive the amount prescribed in the “1990-91 state minimum salary schedule” as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

1990-91 STATE MINIMUM SALARY SCHEDULE

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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 "1990-91 state minimum salary schedule", shall be paid in equal
62 monthly installments, and shall be deemed a part of the
63 state minimum salaries for teachers.
64 Effective the first day of July, one thousand nine
65 hundred ninety-one through the thirtieth day of June,
66 one thousand nine hundred ninety-two, each teacher
67 shall receive the amount prescribed in the “1991-92 state
68 minimum salary schedule” as set forth in this section,
69 specific additional amounts prescribed in this section or
70 article, and any county supplement in effect in a county
71 pursuant to section five-a of this article during the
72 contract year.

73 **1991-92 STATE MINIMUM SALARY SCHEDULE**

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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 "1991-92 state minimum salary schedule", shall be paid in equal monthly installments, and shall be deemed a part of the state minimum salaries for teachers.

On and after the first day of July, one thousand nine hundred ninety-two, 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 either column (8), (10), or (12) to which they are entitled in lieu of column (7), (9), or (11).

Effective the first day of July, one thousand nine hundred ninety-two and thereafter, each teacher shall receive the amount prescribed in the "1992-93 state minimum salary schedule" as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.
### 1992-93 State Minimum Salary Schedule

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Note: The table continues with similar entries for the next years.
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 "1992-93 state minimum salary schedule", shall be paid in equal monthly installments, and shall be deemed a part of the state minimum salaries for teachers.

§18A-4-5. Salary equity among the counties; state salary supplement.

(a) For the purposes of this section, salary equity among the counties means that the salary potential of school employees employed by the various districts throughout the state does not differ by greater than ten percent between those offering the highest salaries and those offering the lowest salaries. In the case of professional educators, such difference shall be calculated utilizing the average of the professional educator salary schedules, degree classifications B.A. through Doctorate and years of experience zero through twenty, in effect in the five counties offering the highest salary schedules compared to the lowest such salary schedule in effect among the fifty-five counties. In the case of school service personnel, such difference shall be calculated utilizing the average of the school service personnel salary schedules, pay grades "A" through "H" and years of experience zero through thirty, in effect in the five counties offering the highest such salary schedules compared to the lowest such salary schedule in effect among the fifty-five counties.
(b) To assist the state in meeting its objective of salary equity among the counties, as defined in subsection (a) of this section, on and after the first day of July, one thousand nine hundred eighty-four, subject to available state appropriations and the conditions set forth herein, each teacher and school service personnel shall receive a supplemental amount in addition to the amount from the state minimum salary schedules provided for in this article.

State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code. The amount allocated for salary equity shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide under sections four and five, article nine-a, chapter eighteen of this code: Provided, That in making such division an adequate amount of state equity funds shall be reserved to finance the appropriate foundation allowances and staffing incentives provided for in said article nine-a.

Pursuant to this section, each teacher and school service personnel shall receive the amount that is the difference between their authorized state minimum salary and ninety-five percent of the maximum salary schedules prescribed in sections five-a and five-b of this article, reduced by any amount provided by the county as a salary supplement for teachers and school service personnel on the first day of January of the fiscal year immediately preceding that in which the salary equity appropriation is distributed: Provided, That no amount received pursuant to this section shall be decreased as a result of any county supplement increase instituted after the first day of January, one thousand nine hundred eighty-four, unless and until the objective of salary equity is reached: Provided, however, That any amount received pursuant to this section may be reduced proportionately based upon the amount of funds appropriated for this purpose.

No county may reduce any salary supplement that
was in effect on the first day of January, one thousand nine hundred eighty-four, except as permitted by sections five-a and five-b of this article.

§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 classification of training, experience, responsibility and other requirements.

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 ninety, 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 the first day of January, one thousand nine
hundred eighty-four, by any county board of education.

§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 min-
imums fixed by this article.

These county schedules shall be uniform throughout
the county with regard to any training classification,
xperience, 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 estab-
lishing 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 ninety,
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, vaca-
tion 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 the first day of January, one
thousand nine hundred eighty-four, by any county board
of education.

§18A-4-5d. 1990 appropriation for salary equity.

Notwithstanding any other provisions of this code to
the contrary, for the fiscal year beginning on the first
day of July, one thousand nine hundred ninety only, not
less than twenty-seven million four hundred thousand dollars shall be appropriated and expended for salary equity among the counties in addition to such amounts as were expended for such purpose prior to the effective date of this section: Provided, That for professional educators each person shall receive a minimum salary equity adjustment of five hundred thirty-five dollars per year and that for service personnel each person shall receive a minimum salary equity adjustment of twenty dollars per month: Provided, however, That beginning on the first day of July, one thousand nine hundred ninety, such minimum salary equity adjustments shall be paid through the appropriate salary schedules pursuant to sections two and eight-a of this article: Provided further, That the remainder of the equity money shall be distributed as directed in section five of this article: And provided further, That an adequate amount of such funds shall be reserved to finance the appropriate foundation allowances for fixed charges as provided for in section six, article nine-a, chapter eighteen of this code: And provided further, That notwithstanding the provisions of said sections five and five-c of this article, foundation allowances other than for fixed charges shall not be financed from such funds.

§18A-4-8. Employment term and class titles of service personnel; definitions.

The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel shall be no less than ten months, a month being defined as twenty employment days: Provided, That the county board of education may contract with all or part of these personnel for a longer term. The beginning and closing dates of the ten-month employment term shall not exceed forty-three weeks. Service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement shall be applicable.

Service personnel employed in the same classification for more than the two hundred day minimum employ-
ment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred day minimum employment term.

No service employee, without his agreement, shall be required to report for work more than five days per week and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

Should an employee whose regular work week is scheduled from Monday through Friday agree to perform any work assignments on a Saturday or Sunday, the employee shall be paid for at least one-half day of work for each such day he reports for work, and if the employee works more than three and one-half hours on any Saturday or Sunday, he shall be paid for a least a full day of work for each such day.

Custodians required to work a daily work schedule that is interrupted, that is, who do not work a continuous period in one day, shall be paid additional compensation which shall be equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, and payable entirely from county funds.

Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, his salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon his advanced classification and allowable years of employment.

An employee's contract as provided in section five, article two of this chapter shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and any county salary schedule in excess of the minimum requirements of this article.

The column heads of the state minimum pay scale and class titles, set forth in section eight-a of this article, are defined as follows:
“Pay grade” means the monthly salary applicable to class titles of service personnel.

“Years of employment” means the number of years which an employee classified as service personnel has been employed by a board of education in any position prior to or subsequent to the effective date of this section and including service in the armed forces of the United States if the employee were employed at the time of his induction. For the purpose of section eight-a of this article, years of employment shall be limited to the number of years shown and allowed under the state minimum pay scale as set forth in section eight-a of this article.

“Class title” means the name of the position or job held by service personnel.

“Accountant I” means personnel employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll.

“Accountant II” means personnel employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations.

“Accountant III” means personnel who are employed in the county board of education office to manage and supervise accounts payable and/or payroll procedures.

“Aide I” means those personnel selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide or general aide.

“Aide II” means those personnel referred to in the “Aide I” classification who have completed a training program approved by the state board of education, or who hold a high school diploma or have received a general educational development certificate. Only personnel classified in an Aide II class title shall be employed as an aide in any special education program.

“Aide III” means those personnel referred to in the “Aide I” classification who hold a high school diploma or a general educational development certificate, and
have completed six semester hours of college credit at an institution of higher education or are employed as an aide in a special education program and have one year’s experience as an aide in special education.

“Aide IV” means personnel referred to in the “Aide I” classification who hold a high school diploma or a general educational development certificate and who have completed eighteen hours of state board-approved college credit at a regionally accredited institution of higher education, or who have completed fifteen hours of state board-approved college credit at a regionally accredited institution of higher education and successfully completed an in-service training program determined by the state board to be the equivalent of three hours of college credit.

“Audiovisual technician” means personnel employed to perform minor maintenance on audiovisual equipment, films, supplies and the filling of requests for equipment.

“Auditor” means personnel employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts.

“Braille or sign language specialist” means personnel employed to provide braille and/or sign language assistance to students.

“Bus operator” means personnel employed to operate school buses and other school transportation vehicles as provided by the state board of education.

“Buyer” means personnel employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs.

“Cabinetmaker” means personnel employed to construct cabinets, tables, bookcases and other furniture.

“Cafeteria manager” means personnel employed to direct the operation of a food services program in a
school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school.

"Carpenter I" means personnel classified as a carpenter's helper.

"Carpenter II" means personnel classified as a journeyman carpenter.

"Chief mechanic" means personnel employed to be responsible for directing activities which ensure that student transportation or other board-owned vehicles are properly and safely maintained.

"Clerk I" means personnel employed to perform clerical tasks.

"Clerk II" means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines.

"Computer operator" means qualified personnel employed to operate computers.

"Cook I" means personnel employed as a cook's helper.

"Cook II" means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school and shall include personnel who have been employed as a "Cook I" for a period of four years, if such personnel have not been elevated to this classification within that period of time.

"Cook III" means personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system.

"Crew leader" means personnel employed to organize the work for a crew of maintenance employees to carry out assigned projects.

"Custodian I" means personnel employed to keep buildings clean and free of refuse.
“Custodian II” means personnel employed as a watchman or groundsman.

“Custodian III” means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.

“Custodian IV” means personnel employed as head custodians. In addition to providing services as defined in “Custodian III,” their duties may include supervising other custodian personnel.

“Director or coordinator of services” means personnel not defined as professional personnel or professional educators in section one, article one of this chapter, who are assigned to direct a department or division.

“Draftsman” means personnel employed to plan, design and produce detailed architectural/engineering drawings.

“Electrician I” means personnel employed as an apprentice electrician helper or who holds an electrician helper license issued by the state fire marshal.

“Electrician II” means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal.

“Electronic technician I” means personnel employed at the apprentice level to repair and maintain electronic equipment.

“Electronic technician II” means personnel employed at the journeyman level to repair and maintain electronic equipment.

“Executive secretary” means personnel employed as the county school superintendent’s secretary or as a secretary who is assigned to a position characterized by significant administrative duties.

“Food services supervisor” means qualified personnel not defined as professional personnel or professional educators in section one, article one of this chapter, employed to manage and supervise a county school system’s food service program. The duties would include
preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency, and keeping aggregate records and reports.

“Foremen” means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment.

“General maintenance” means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system.

“Glazier” means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks.

“Graphic artist” means personnel employed to prepare graphic illustrations.

“Groundsmen” means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings.

“Handyman” means personnel employed to perform routine manual tasks in any operation of the county school system.

“Heating and air conditioning mechanic I” means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

“Heating and air conditioning mechanic II” means personnel employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

“Heavy equipment operator” means personnel employed to operate heavy equipment.

“Inventory supervisor” means personnel who are employed to supervise or maintain operations in the
receipt, storage, inventory and issuance of materials and supplies.

"Key punch operator" means qualified personnel employed to operate key punch machines or verifying machines.

"Locksmith" means personnel employed to repair and maintain locks and safes.

"Lubrication man" means personnel employed to lubricate and service gasoline or diesel-powered equipment of a county school system.

"Machinist" means personnel employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. Such personnel should also have ability to work from blueprints and drawings.

"Mail clerk" means personnel employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels and other mail.

"Maintenance clerk" means personnel employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts.

"Mason" means personnel employed to perform tasks connected with brick and block laying and carpentry tasks related to such laying.

"Mechanic" means personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system.

"Mechanic assistant" means personnel employed as a mechanic apprentice and helper.

"Multi-classification" means personnel employed to perform tasks that involve the combination of two or more class titles in this section or as created by the West Virginia board of education. In such instances the minimum salary scale shall be the higher pay grade of the class titles involved.
“Office equipment repairman I” means personnel employed as an office equipment repairman apprentice or helper.

“Office equipment repairman II” means personnel responsible for servicing and repairing all office machines and equipment. Personnel shall be responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair.

“Painter” means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system.

“Paraprofessional” means a person certified pursuant to section two-a, article three of this chapter to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of pupils under the direction of a principal, a teacher, or another designated professional educator: Provided, That no person employed on the effective date of this section in the position of an aide may be reduced in force or transferred to create a vacancy for the employment of a paraprofessional.

“Plumber I” means personnel employed as an apprentice plumber and helper.

“Plumber II” means personnel employed as a journeyman plumber.

“Printing operator” means personnel employed to operate duplication equipment, and as required, to cut, collate, staple, bind and shelve materials.

“Printing supervisor” means personnel employed to supervise the operation of a print shop.

“Programmer” means personnel employed to design and prepare programs for computer operation.

“Roofing/sheet metal mechanic” means personnel employed to install, repair, fabricate and maintain roofs,
gutters, flashing and duct work for heating and ventilation.

“Sanitation plant operator” means personnel employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection.

“School bus supervisor” means qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promoting good relationships with parents, pupils, bus operators and other employees.

“Secretary I” means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.

“Secretary II” means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent such employees from holding or being elevated to a higher classification.

“Secretary III” means personnel assigned to the county board of education office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control or any personnel who have served in a position which meets the definition of “Secretary II” or “Secretary III” herein for twelve years.

“Supervisor of maintenance” means skilled personnel not defined as professional personnel or professional
The responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a board of education.

"Supervisor of transportation" means qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses, and other mechanical and mobile equipment used by the county school system.

"Switchboard operator-receptionist" means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance.

"Truck driver" means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles.

"Warehouse clerk" means personnel employed to be responsible for receiving, storing, packing and shipping goods.

"Watchman" means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties.

"Welder" means personnel employed to provide acetylene or electric welding services for a school system.

In addition to the compensation provided for in section eight-a of this article, for service personnel, each service employee shall, notwithstanding any provisions in this code to the contrary, be entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to such employee's hours of employment or the methods or sources of compensation.
Service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale set forth in section eight-a of this article, may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he is employed.

The county boards shall review each service personnel employee job classification annually and shall reclassify all service employees as required by such job classifications. The state superintendent of schools is hereby authorized to withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by such county boards. Further, he shall order county boards to correct immediately any improper classification matter and with the assistance of the attorney general shall take any legal action necessary against any county board to enforce such order.

The state board of education is authorized to establish other class titles of service personnel positions and jobs not listed in this section. The state board of education is further authorized to provide appropriate pay grades for such positions and jobs but pay shall be established within the minimum salary scale in section eight-a of this article.

No service employee, without his written consent, may be reclassified by class title, nor may a service employee, without his written consent, be relegated to any condition of employment which would result in a reduction of his salary, rate of pay, compensation or benefits earned during the current fiscal year or which would result in a reduction of his salary, rate of pay, compensation or benefits for which he would qualify by continuing in the same job position and classification held during said fiscal year and subsequent years.

Any board failing to comply with the provisions of this article may be compelled to do so by mandamus, and shall be liable to any party prevailing against the board for court costs and his reasonable attorney fee, as determined and established by the court.
§18A-4-8a. Service personnel minimum monthly salaries.

1 STATE MINIMUM PAY SCALE PAY GRADE

<table>
<thead>
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<th>PAY GRADE</th>
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<td>A</td>
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<td>Braille or Sign Language Specialist</td>
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<td>Buyer</td>
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<td>H</td>
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<td>Draftsman</td>
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<td>Foreman</td>
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<td>Glazier</td>
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<td>Lubrication Man</td>
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<td>88</td>
<td>Machinist</td>
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<td>Sanitation Plant Operator</td>
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<td>School Bus Supervisor</td>
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<td>Supervisor of Transportation</td>
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<tr>
<td>115</td>
<td>Welder</td>
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</table>

On and after the first day of July, one thousand nine hundred ninety, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours day shall be at least the amounts indicated in the "state minimum pay scale pay grade" as set forth in this section, and the minimum
monthly pay for each service employee whose employ-
ment is for a period of three and one-half hours or less
a day shall be at least one half the amount indicated in
the "state minimum pay scale pay grade" set forth in
this section, 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 re-
quired daily work hours shall not be changed to prevent
the payment of time and one-half wages or the employ-
ment of another employee.

The minimum pay for extra-duty assignments as
defined in section eight-b of this article, that are beyond
the normal working day, 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 perform-
ing the assignment shall be pro-rated 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-4-9. Payment of teachers and other employees;
withholdings.

Teachers and all other employees whose salaries or
wages are payable out of the school current fund shall be paid for their services by orders duly signed by the president and secretary of the board in accordance with the following provisions: Notwithstanding any other provisions of this chapter and chapter eighteen, the number of pays to be made during the school year to the various classes of employees shall be determined by the board: Provided, That the sum of such pays for any employee does not exceed the equivalent of an annual salary based upon twelve calendar months. In the event a teacher or other employee is not paid the full salary or wage earned in the fiscal year in which the work is performed, the unpaid amount may be paid during July and August of the following fiscal year. Adjustments for time loss due to absence may be made in the next pay-check following such time loss.

The county board may withhold the pay of any teacher or employee until he has made the reports required by the board or the state superintendent.

Accompanying the pay of each employee shall be an accounting of gross earnings, all withholdings and the dollar value of all benefits provided by the state on behalf of the employee.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1g. Rate incentives for utility investment in qualified clean coal and clean air control technology facilities.

§24-2-11b. Continuing prudence reviews.

§24-2-1g. Rate incentives for utility investment in qualified clean coal and clean air control technology facilities.

(a) The Legislature hereby finds and declares that the state of West Virginia has been a major supplier of coal to the electric power industry both within and outside of the state of West Virginia; the congress of the United States is currently considering legislation to limit the emissions of oxides of sulfur and nitrogen from coal.
fired electric generating plants; the continued use of
clean coal for generating electrical energy can be accom-
plished in an environmentally acceptable manner
through the use of current state of the art and emerging
clean coal and clean air technology; it is in the interest
of the economy of West Virginia to encourage the use
of such technologies for the production of electricity and
steam; revenues from the continued production of coal
are important to the State of West Virginia and are
necessary for the funding of education and other vital
state services; the construction of electric utility
generation and transmission facilities may continue for
many years following the finalization of plans for such
facilities; and the prudence of the construction of such
facilities may be affected by changing conditions during
the extended interval between finalization of plans and
completion of construction.

(b) Upon a finding that it is in the public interest of
this state, as provided in section one, article one of this
chapter, the public service commission shall authorize
rate-making allowances for electric utility investment in
clean coal and clean air technology facilities or electric
utility purchases of power from clean coal technology
facilities located in West Virginia which shall provide
an incentive to encourage investments in such
technology.

(c) For purposes of this section a qualified clean coal
or clean air technology facility must use coal produced
in West Virginia for no less than seventy-five percent
of its fuel requirements.

(d) The public service commission shall determine, at
such time and in such proceeding, form and manner as
is considered appropriate by the commission, the extent
to which any electric utility investment or purchases of
power qualify for incentive rate-making pursuant to this
section.

§24-2-11b. Continuing prudence reviews.

(a) If, in granting a certificate of convenience and
necessity for the construction of an electric utility
generating plant, a facility to comply with the federal
Clean Air Act, as amended, or transmission line, the commission determines that the completion date for such plant or line is more than one year from the date of the order granting the certificate, the commission may require that such construction project or projects be subject to a continuing prudence review pursuant to this section.

(b) If the commission determines that continuation of a certificate subject to a continuing prudence review is not warranted or that the certificate should be amended, it may rescind or modify its authorization for construction.

(c) The commission shall promulgate such rules and regulations as it determines are necessary for the administration of this section. The commission shall specify, either by rule or for a specific certificated project, the frequency of each prudence review, the rate-making treatment to be afforded partially completed projects, and such other terms and conditions as it determines are reasonable.

CHAPTER 6
(H. B. 309—By Delegate Berry)

[Passed August 25, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article twelve-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers, duties and responsibilities of the farm management commission generally; and authorizing the commission to convey certain real property to or from any other entity in order to facilitate the construction of a regional jail or correctional facility by the regional jail and correctional facilities authority or the state building commission.

Be it enacted by the Legislature of West Virginia:

That section five, 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.


(a) On or before the first day of July, one thousand nine hundred ninety, the commission shall meet and confer with respect to the development of a management plan to determine the optimum use or disposition of all institutional farms, at which time the farm management director shall provide the commission with a complete inventory of all institutional farms, and such information relating to easements, mineral rights, appurtenances, farm equipment, agricultural products, livestock, inventories and farm facilities as may be necessary to develop such management plan. The commission shall complete and provide to the governor a management plan, which plan shall set forth the objectives of the commission with respect to institutional farms, the criteria by which the commission shall determine the optimum use or disposition of such property, and determinations as to whether each institutional farm shall be used in production, sold, or leased, in whole or in part. Prior to the adoption of any plan, the commission shall consult with the secretaries of the various departments of state government and shall request from such secretaries suggestions for land use and resource development on farm commission lands. On or before the first day of December, one thousand nine hundred ninety, such management plan shall be presented to the Legislature, by providing a copy to the president of the Senate and the speaker of the House of Delegates. The commission may confer with any other agency or individual in implementing and adjusting its management plan. The management plan established pursuant to this subsection may be amended, from time to time, as may be necessary.

(b) The commission shall manage its institutional farms, equipment and other property in order to most efficiently produce food products for state institutions and shall implement the intent of the Legislature as set
forth by this article. From the total amount of food, milk
and other commodities produced on institutional farms,
the commission shall sell, at prevailing wholesale prices,
and each of the institutions under the control of the
division of health and the division of corrections shall
purchase, a proportionate amount of these products
based on the dietary needs of each institution.

(c) If requested by the commissioner of corrections,
the commission may authorize the division of corrections
to operate a farm or other enterprise using inmates as
labor on such lands. The commissioner of corrections
shall be responsible for the selection, direction and
supervision of the inmates and shall assign the work to
be performed by inmates.

(d) The commission is hereby authorized and empow-
ered to:

(1) Lease to public or private parties, for purposes
including agricultural production or experimentation,
public necessity, or other purposes permitted by the
management plan, any land, easements, equipment, or
other property, except that property may not be leased
for any use in any manner that would render the land
toxic for agricultural use, nor may toxic or hazardous
materials as identified by the commissioner of agricul-
ture be used or stored upon such property unless all
applicable state and federal permits necessary are
obtained. Any lease for an annual consideration of one
thousand dollars or more shall be by sealed bid auction
and the commission shall give notice of such auction by
publication thereof as a Class II-0 legal advertisement
in compliance with the provisions of article three,
chapter fifty-nine of this code, and the publication area
for such publication shall be the county in which the
property to be leased is located;

(2) Transfer to the public land corporation land
designated in its management plan as land to be
disposed of, which land shall be sold, exchanged or
otherwise transferred pursuant to sections four and five,
article one-a, chapter twenty of this code: Provided, That
the net proceeds of the sale of farm commission lands
shall be deposited in the general revenue fund of the state: Provided, however, That no sale may be concluded until on or after the fifteenth day of March, one thousand nine hundred ninety-one, except with respect to: (A) Properties located at institutions closed on or before the effective date of this section, the tenth day of March, one thousand nine hundred ninety; or (B) properties conveyed to or from the farm management commission to or from any other entity in order to facilitate the construction of a regional jail or correctional facility by the regional jail and correctional facilities authority or the state building commission, with the decision to execute any such conveyance being solely within the discretion of, and at the direction of, the regional jail and correctional facilities authority;

(3) Develop lands to which it has title for the public use including forestation, recreation, wildlife, stock grazing, agricultural production, rehabilitation and/or other conservation activities and may contract or lease for the proper development of timber, oil, gas or mineral resources, including coal by underground mining or by surface mining where reclamation as required by specifications of the division of energy will increase the beneficial use of such property. Any such contract or lease shall be by sealed bid auction as provided for in subdivision (1) above;

(4) Exercise all other powers and duties necessary to effectuate the purposes of this article.

(e) Notwithstanding the provisions of subsection (d) herein, no timberland may be leased, sold, exchanged or otherwise disposed of unless the division of forestry of the department of commerce, labor and environmental resources certifies that there is no commercially salable timber on the timberland, an inventory is provided, an appraisal of the timber is provided, and the sale, lease, exchange or other disposition is accomplished by the sealed bid auction procedure provided above in subdivisions (1) or (2), as applicable.
The commission shall promulgate, pursuant to chapter twenty-nine-a of this code, rules and regulations relating to the powers and duties of the commission as enumerated in this section.

CHAPTER 7

(Com. Sub. for S. B. 5—By Senators Burdette, Mr. President, and Harman, By Request of the Executive)

[Passed August 26, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the “West Virginia Public Employees Insurance Act”; setting forth a short title and legislative intent; providing definitions; continuing public employees insurance agency; composition of agency; creating the position of director; appointment, qualifications, duties, and responsibilities of director; employees of agency to be included in classified service; establishing expiration date of agency; creating public employees insurance agency finance board; providing for appointment, qualifications, terms and removal of members, compensation and expenses, and expiration date of finance board; director to establish premiums with legislative approval upon termination of the board; establishing powers and duties of finance board; development of initial and future annual financial plans; approval of plans required by actuary; board required to amend plan if in actuary’s opinion plan will generate insufficient revenues; exempting financial plans from rule-making requirements; employees to be notified of changes in types and levels of costs and benefits; quarterly review of plans and modifications to plan; creating public employees insurance agency advisory board; composition, qualifications, appointment and terms of members; powers and duties of advisory board; reimbursement of expenses of advisory board members; authorizing and requiring director to establish group hospital and surgical insurance, group major medical insurance, group
prescription drug insurance, and group life and accidental death insurance plans; requiring the director to make optional group life and accidental death insurance available; rating of employees for claims experience purposes; establishing conditions of insurance program, including reasonable and customary expenses, coordination of benefits, encouraging "wellness" programs and activities; authorizing contracting authority for various group insurance plans; authorizing contracting authority for various group insurance plans for retired employees, their spouses and dependents; statement of benefits to employees; prohibition with respect to fraud or misrepresentations; civil penalties; withholding of benefits; extended insurance coverage after termination or retirement; requiring director to establish program for favorable federal income tax treatment; optional dental, optical, disability and prepaid retirement plan to be made available by director to employees, with employee to bear full premium cost thereof with separate funds established and required; preferred provider plan or system to be established for reduction of costs, with director authorized to renegotiate contracts in respect thereof; noncoverage of preexisting conditions of injury, sickness, pregnancy or other health condition within specified period prior to effective coverage with exceptions; payment of costs by employer; agency to deposit moneys in a special fund; authorization to accept gifts, grants and matching funds; payment by employers of proportionate share of administrative costs; prohibition against direct or indirect benefitting from contracts by specified officials, members, or employees, with criminal penalties and exception for certain contracts; participation in insurance program not mandatory, with exceptions; members of Legislature eligible for coverage upon payment of full coverage costs; director to promulgate rules and regulations for administration of article; entitlement of certain retirees and employees to continue coverage; reserve fund for budget excess; required quarterly report by finance board and director to joint committee on government and finance; and severability section.

Be it enacted by the Legislature of West Virginia:
That article sixteen, 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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

§5-16-1. Short title; legislative intent.

§5-16-2. Definitions.

§5-16-3. Public employees insurance agency continued; appointment, qualification, compensation, and duties of director of agency; employees; civil service coverage; director vested after specified date with powers of public employees insurance board; expiration of agency.

§5-16-4. Public employees insurance agency finance board created; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

§5-16-6. Creation and composition of advisory board; powers and duties of board generally; expenses.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules and regulations for administration of plans; what plans may provide; optional plan; separate rating for claims experience purposes.

§5-16-8. Conditions of insurance program.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance and limitation; awarding of contract; reinsurance; certificates for covered employees; discontinuance of contracts.

§5-16-10. Contract provisions for group hospital and surgical, group major medical, group prescription drug and group life and accidental death insurance for retired employees, their spouses and dependents.

§5-16-11. To whom benefits paid.

§5-16-12. Misrepresentation by employee or provider; penalty.

§5-16-13. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; increased retirement benefits for retired employees with accrued annual and sick leave; additional eligible retired employees; option for health insurance coverage without life insurance coverage made available to retirees; health insurance for surviving dependents of deceased employees.
§5-16-16. Preferred provider plan.
§5-16-17. Preexisting conditions not covered; defined.
§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of treasurer with respect thereto.
§5-16-19. Authorization to take advantage of acts of congress, accept gifts, grants and matching funds.
§5-16-20. Expense fund.
§5-16-21. No member or employee of public employees insurance agency shall gain directly or indirectly from any contract or contracts provided for hereunder; criminal penalties.
§5-16-22. Permissive participation; exemptions.
§5-16-23. Members of Legislature may be covered, if cost of the entire coverage is paid by such members.
§5-16-24. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.
§5-16-25. Reserve fund.
§5-16-26. Quarterly report.
§5-16-27. Severability.

§5-16-1. Short title; legislative intent.

The short title by which this article may be referred to is "West Virginia Public Employees Insurance Act" and it is the express intent of the Legislature to encourage and promote a uniform partnership relation between all employers and employees participating in the insurance plan or plans formulated under the provisions of this article and constituting the insurance program, and to hereby declare such insurance program to be for a public purpose.

§5-16-2. Definitions.

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:

(1) "Advisory board" means the public employees insurance agency advisory board created by this article.

(2) "Agency" means the public employees insurance agency created by this article.

(3) "Director" means the director of the public employees insurance agency created by this article.
(4) "Employee" means any person, including elected officers, who works regularly full time in the service of the state of West Virginia and, for the purpose of this article only, the term "employee" also means any person, including elected officers, who works regularly full time in the service of a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; 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 comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code, and which is supported in part by state, county or municipal funds; any person who works regularly full time in the service of the university of West Virginia board of trustees or the board of directors of the state college system; and any person who works regularly full time in the service of a combined city-county health department created pursuant to article two, chapter sixteen of this code. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

(5) "Employer" means the state of West Virginia, its boards, agencies, commissions, departments, institutions or spending units; a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; 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 comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to
section one, article two-a, chapter twenty-seven of this
code, and which is supported in part by state, county or
municipal funds; and a combined city-county health
department created pursuant to article two, chapter
sixteen of this code. Any matters of doubt as to who is
an “employer” within the meaning of this article shall
be decided by the director. The term “employer” shall
not include within its meaning the national guard.

(6) “Finance board” means the public employees
insurance agency finance board created by this article.

(7) “Retired employee” shall mean an employee of the
state who retired after the twenty-ninth day of April,
one thousand nine hundred seventy-one, and an em-
ployee of the university of West Virginia board of
trustees or the board of directors of the state college
system or a county board of education who retires on or
after the twenty-first day of April, one thousand nine
hundred seventy-two, and all additional eligible em-
ployees who retire on or after the effective date of this
article and meet the minimum eligibility requirements
for their respective state retirement system: Provided,
That for the purposes of this article such employees who
are not covered by a state retirement system shall, in
the case of education employees, meet the minimum
eligibility requirements of the state teachers retirement
system, and in all other cases, meet the minimum
eligibility requirements of the public employees retire-
ment system.

§5-16-3. Public employees insurance agency continued;
appointment, qualification, compensation, and
duties of director of agency; employees; civil
service coverage; director vested after specified date with powers of public employees
insurance board; expiration of agency.

(a) The public employees insurance agency, heretofore
created, is continued, and shall consist of the director,
the finance board, the advisory board and such em-
ployees as may be authorized by law. The director shall
be appointed by the governor, with the advice and
consent of the Senate. He or she shall serve at the will
and pleasure of the governor, unless earlier removed from office for cause as provided by law. The director shall have at least three years experience in health insurance administration prior to appointment as director. The director shall receive an annual salary established by the governor not to exceed fifty-five thousand dollars and actual expenses incurred in the performance of official business. The director shall employ such administrative, technical and clerical employees as shall be required for the proper administration of the insurance programs herein provided. The director shall perform such duties as are required of him or her under the provisions of this article and shall be the chief administrative officer of the public employees insurance agency.

(b) All positions in the agency, except for the director and his or her personal secretary, shall be included in the classified service of the civil service system pursuant to article six, chapter twenty-nine of this code. Any person required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included herein on or after the effective date of this article 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 required to be included in the classified service by the provisions of this subsection who was employed in any of the positions included herein as of the effective date of this section shall be thereafter severed, removed or terminated in his or her employment prior to his or her entry into the classified service except for cause as if such person had been in the classified service when severed, removed or terminated.

(c) The director shall be responsible for the administration and management of the public employees insurance agency as provided for in this article and in connection therewith shall have the power and authority to make all rules and regulations necessary to effectuate the provisions of this article. Nothing in sections four or five of this article shall limit the director's ability to
manage on a day-to-day basis the group insurance plans
to, administrative contracting, studies, analyses
and audits, eligibility determinations, utilization
management provisions and incentives, provider negoti-
tions, provider contracting and payment, designation
of covered and noncovered services, offering of addi-
tional coverage options or cost containment incentives,
pursuit of coordination of benefits and subrogation, or
any other actions which would serve to implement the
plan or plans designed by the finance board.

(d) The public employees insurance agency shall
terminate in the manner provided in section four, article
ten, chapter four of this code, on the first day of July,
one thousand nine hundred ninety-three, unless ex-
tended by legislation enacted before the termination
date.

§5-16-4. Public employees insurance agency finance
board created; qualifications, terms and
removal of members; quorum; compensation
and expenses; termination date.

(a) There is hereby created the public employees
insurance agency finance board, which shall consist of
the director and four 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 the members initially
appointed by the governor shall be appointed not later
than the tenth day of September, one thousand nine
hundred ninety, and may serve and may perform the
duties required by this article until such time as the
Senate may convene to give its advice and consent. 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. Members may be reappointed for
successive terms. No more than three members (includ-
ing the director) may be of the same political party.

(b) Of the four members appointed by the governor,
one member shall represent the interests of education
employees, one shall represent the interests of public
employees and two shall be selected from the public at large. The two members appointed from the public shall each have experience in the financing, development or management of employee benefit programs. No member may be removed from office by the governor except for official misconduct, incompetence, neglect of duty, neglect of fiduciary duty or other specific responsibility imposed by this article, or gross immorality.

(c) The director shall serve as chairperson of the finance board, which shall meet at such time and place as shall be specified by the call of the director or upon the written request to the director of at least two members. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. Three members shall constitute a quorum. Members may be compensated fifty dollars for each day or portion of a day actually spent in the performance of their duties and may be reimbursed for reasonable and necessary expenses actually incurred in the performance of their duties.

(d) The finance board shall terminate on the thirtieth day of June, one thousand nine hundred ninety-three, unless extended by legislation enacted before the termination date.

(e) Upon termination of the board and notwithstanding any provisions in this article to the contrary, the director is authorized to assess monthly employee premium contributions and to change the types and levels of costs to employees only in accordance with this subsection. Any assessments or changes in costs imposed pursuant to this subsection shall be implemented by rules and regulations of the director promulgated pursuant to the provisions of chapter twenty-nine-a of this code. Any employee assessments or costs authorized by the finance board shall remain in effect until amended by rule or regulation of the director promulgated pursuant to this subsection.

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

(a) The purpose of the finance board created by this
article is to bring fiscal stability to the public employees insurance agency through development of an annual financial plan designed to meet the agency's estimated total financial requirements, taking into account all revenues projected to be made available to the agency, and apportioning necessary costs equitably among participating employers, employees and retired employees and providers of health care services.

(b) The finance board shall retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group health insurance plans, to estimate the total financial requirements of the public employees insurance agency for each fiscal year and to review and render written professional opinions as to financial plans proposed by the finance board. The finance board shall also employ the actuary to develop alternative financing options and to perform such other services as may be requested by the finance board. All reasonable fees and expenses for actuarial services shall be paid by the public employees insurance agency. Any financial plan or modifications to a financial plan approved or proposed by the finance board pursuant to this section shall be submitted to and reviewed by the actuary, and may not be finally approved and submitted to the governor and to the Legislature without the actuary's written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the agency, excluding incurred but unreported claims, for the fiscal year for which the plan is proposed. The actuary's opinion on the initial plan required by subsection (d) of this section shall allow for a target of forty-five days of accounts payable to be carried over into the next fiscal year. The actuary's opinion on the financial plan for fiscal year one thousand nine hundred ninety-two shall allow for between thirty and forty-five days of accounts payable to be carried over into the next fiscal year. The actuary's opinion on the financial plan for any succeeding fiscal year shall allow for no more than thirty days of accounts payable to be carried over into the next fiscal year. The actuary's opinion for any
fiscal year shall not include a requirement for establishment of a reserve fund.

(c) All financial plans required by this section shall include the design of a benefit plan or plans. All financial plans shall establish:

1. Maximum levels of reimbursement which the public employees insurance agency makes to categories of health care providers;
2. Any necessary cost containment measures for implementation by the director;
3. The levels of premium costs to participating employers; and
4. The types and levels of cost to participating employees and retired employees.

The financial plans may provide for different levels of costs based on the insureds' ability to pay. The financial plans may also include optional alternative benefit plans with alternative types and levels of cost. The finance board may develop policies which encourage the use of West Virginia health care providers.

(d) **Initial plan.**—The director shall convene the first meeting of the finance board no later than the fifteenth day of September, one thousand nine hundred ninety. For presentation by the director at the first meeting, the governor shall prepare an estimate of the total amount of general and special revenues which the state has or will have available to fund the public employees insurance agency and its programs for the fiscal year ending on the thirtieth day of June, one thousand nine hundred ninety-one.

The finance board shall prepare, no later than the tenth day of November, one thousand nine hundred ninety, a proposed financial plan designed to generate revenues sufficient to meet all program and administrative costs of the public employees insurance agency which have already been incurred but are unpaid, or which the actuary estimates will be incurred and paid during the remainder of fiscal year one thousand nine
hundred ninety-one, excluding incurred but unreported claims. The finance board shall establish in the proposed financial plan a target of forty-five days of accounts payable which may be carried over into the next fiscal year.

The finance board shall request its actuary to review the proposed financial plan and to render a written professional opinion stating whether the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the public employees insurance agency for the fiscal year. The actuary’s report shall explain the basis of his or her opinion. If the actuary concludes that the proposed financial plan will not generate sufficient revenues to meet all anticipated costs, then the finance board shall make necessary modifications to the proposed plan to ensure that all actuarially-determined financial requirements of the agency will be met.

Upon obtaining the actuary’s opinion and making all necessary modifications to the proposed plan, the finance board shall conduct two or more public hearings to receive public comment on the proposed financial plan, shall review such comments, and shall finalize and approve the financial plan no later than the twentieth day of November, one thousand nine hundred ninety. Employees shall be notified of any changes in the types and levels of employee costs or benefits contained in the financial plan at least thirty days prior to the date of implementation of the financial plan.

The finance board shall submit to the governor and to the Legislature the final, approved financial plan no later than the first day of December, one thousand nine hundred ninety. The financial plan shall become effective and shall be implemented by the director on the first day of January, one thousand nine hundred ninety-one.

(e) Plan for fiscal year one thousand nine hundred ninety-two.—No later than the first day of December, one thousand nine hundred ninety, the governor shall prepare and provide to the finance board an estimate of the total amount of general and special revenues
which the state will have available to fund the public employees insurance agency and its programs for the fiscal year beginning the first day of July, one thousand nine hundred ninety-one. The finance board shall request its actuary to estimate the total financial requirements of the public employees insurance agency for the fiscal year.

The finance board shall prepare a proposed financial plan designed to generate revenues sufficient to meet all estimated program and administrative costs of the public employees insurance agency for the fiscal year. The proposed financial plan shall allow for between thirty and forty-five days of accounts payable to be carried over into the next fiscal year. Before final adoption of the proposed financial plan, the finance board shall request its actuary to review the plan and to render a written professional opinion stating whether the plan will generate sufficient revenues to meet all estimated program and administrative costs of the public employees insurance agency for the fiscal year. The actuary's report shall explain the basis of its opinion. If the actuary concludes that the proposed financial plan will not generate sufficient revenues to meet all anticipated costs, then the finance board shall make necessary modifications to the proposed plan to ensure that all actuarily-determined financial requirements of the agency will be met.

Upon obtaining the actuary's opinion, the finance board shall conduct one or more public hearings in each congressional district to receive public comment on the proposed financial plan, shall review such comments, and shall finalize and approve the financial plan.

The finance board shall submit to the governor and to the Legislature its final, approved financial plan for fiscal year one thousand nine hundred ninety-two, together with the actuary's final written opinion, no later than the first day of May, one thousand nine hundred ninety-one. The financial plan shall become effective and shall be implemented by the director on the first day of July, one thousand nine hundred ninety-one.
Annual plans.—The finance board shall prepare, in the manner provided in subsection (e) of this section, an annual financial plan for fiscal year one thousand nine hundred ninety-three and each fiscal year thereafter during which the finance board remains in existence. Any such financial plan shall be designed to allow thirty days or less of accounts payable to be carried over into the next fiscal year. For each such fiscal year, the governor shall provide his estimate of total revenues to the finance board no later than the first day of July of the preceding fiscal year. The finance board shall submit its final, approved financial plan, after obtaining the necessary actuary’s opinion and conducting one or more public hearings in each congressional district, to the governor and to the Legislature no later than the first day of January preceding the fiscal year. The financial plan for a fiscal year shall become effective and shall be implemented by the director on the first day of July of such fiscal year.

The provisions of chapter twenty-nine-a of this code shall not apply to the preparation, approval and implementation of the financial plans required by this section.

The finance board shall meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the public employees insurance agency. The board shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures, and any other factors affecting the fiscal stability of the plan, and may make any additional modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met. The financial board may not change the types and levels of cost to employees during its quarterly review except in the event of a true emergency.

For any fiscal year in which legislative appropriations differ from the governor’s estimate of general and special revenues available to the agency, the finance board shall, within thirty days after passage of the
budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

(j) The types and levels of costs to employers, employees and retired employees participating in public employees insurance agency group insurance plans which are currently in effect on the effective date of this article, are hereby authorized. The types and levels of costs to employees participating in public employees insurance agency group insurance plans which are currently in effect on the effective date of this article shall remain in effect unless and until changed or authorized to be changed by the finance board in a financial plan prepared and approved in accordance with this section.

§5-16-6. Creation and composition of advisory board; powers and duties of board generally; expenses.

(a) The public employees insurance agency advisory board is hereby created and established to provide advice and make recommendations to the director concerning group hospital and surgical insurance, group major medical insurance, and group life and accidental death insurance for all employees in the manner as hereinafter provided. All business of the advisory board shall be transacted in the name of West Virginia public employees insurance agency advisory board.

(b) The advisory board shall consist of fifteen members who are citizens of the United States and residents of this state as follows: Three members representing licensed health care professionals, health care facilities or other types of health care providers, appointed by the governor, with the advice and consent of the Senate; five members either covered by the public employees insurance plans or from organizations representing such employees, one of whom shall represent either retired public employees or retired educators, appointed by the governor, with the advice and consent of the Senate, and selected so as to represent as broadly as possible all elements of the employees covered by the plan: Provided, That such members shall
not be (1) employees of or contractors to any health care
facility, (2) licensed health care professionals, (3)
members of the immediate family of licensed health
care professionals, or (4) an employee of or contractor
to any such licensed health care professionals; the
insurance commissioner or his or her designee; one
representative of the West Virginia health care cost
review authority, appointed by the governor, with the
advice and consent of the Senate; five members from the
public at large appointed by the governor, with the
advice and consent of the Senate. Members of the board
shall be selected to represent, as broadly as possible, the
different geographical areas within the state. No more
than ten of the fifteen members of the board shall be
of the same political party.

Of the members first appointed by the governor to the
advisory board, one health care provider member shall
be appointed for a term of two years; one health care
provider member shall be appointed for a term of four
years and one health care provider member shall be
appointed for a term of five years; the member who is
the representative of the West Virginia health care cost
review authority shall be appointed for a term of three
years; the five members who are participants in the
public employees insurance plan shall be appointed to
terms of one, two, three, four and five years respectively;
and the five members who are the public at large shall
be appointed to terms of one, two, three, four and five
years respectively. Subsequent appointed members shall
be appointed to five-year terms except for members
appointed to fill vacancies who shall serve for the
remainder of the vacant term. Members of the advisory
board are eligible for reappointment upon the expiration
of their terms but may not serve more than two full
five-year terms consecutively. Members' terms shall
commence on the first day of September of the year of
appointment and end on the thirty-first day of August
in the year in which the term expires.

The advisory board shall hold a meeting at least twice
each year and shall designate the time and place of such
meeting. Nine advisory board members shall constitute
a quorum at any meeting of the advisory board. Each advisory board member shall be entitled to one vote on each question before the advisory board. A majority of the quorum present shall be required for a decision by the advisory board at its meetings. The advisory board shall keep a record of its proceedings.

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. 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.

The advisory board shall be responsible for advising and making recommendations to the director regarding the administration and management of the public employees insurance agency as provided for in this article. Under no circumstances, however, will the decisions, advice or recommendations of the advisory board be controlling or binding on the director.

No member of the advisory board shall receive any compensation for serving as such; however, each member of the advisory board shall be reimbursed for all reasonable and necessary expenses actually incurred by him or her in carrying out his or her duties as a member of the advisory board.

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules and regulations for administration of plans; what plans may provide; optional plans; separate rating for claims experience purposes.

The agency shall establish a group hospital and surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group major medical insurance plan or plans, and a group life and accidental death insurance plan or plans for those employees herein made eligible, and to establish and promulgate rules and regulations for the administration of such plans,
subject to the limitations contained in this article. Such plans may also include, among other things, medicines, medical equipment, prosthetic appliances, and such other inpatient and outpatient services and expenses deemed appropriate and desirable by the agency.

The agency shall make available to each employee herein made eligible, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance in an amount not to exceed fifty thousand dollars for life insurance and fifty thousand dollars for accidental death insurance as established under the rules and regulations of the agency. In addition, each employee shall be entitled to have his spouse and dependents, as defined by the rules and regulations of the agency, included in such optional coverage, at full cost to the employee, in an amount not to exceed five thousand dollars for life insurance and five thousand dollars for accidental death insurance for the spouse and not to exceed two thousand dollars in life insurance and two thousand dollars in accidental death insurance for each eligible dependent; and with full authorization hereby to the agency to make the same available and provide such opportunity of purchase to each employee.

The finance board may cause to be separately rated for claims experience purposes (1) all employees of the state of West Virginia, (2) all teaching and professional employees of the university of West Virginia board of trustees or the board of directors of the state college system and county boards of education, (3) all nonteaching employees of the university of West Virginia board of trustees or the board of directors of the state college system and county boards of education, or (4) any other categorization which would ensure the stability of the overall program.

§5-16-8. Conditions of insurance program.

The insurance plans herein provided for shall be designed by the public employees insurance agency:

(1) To provide a reasonable relationship between the hospital, surgical, medical, and prescription drug
benefits to be included and the expected reasonable and customary hospital, surgical, medical and prescription drug expenses as established by the director to be incurred by the affected employee, his or her spouse and his or her dependents. The establishment of reasonable and customary expenses by the public employees insurance agency pursuant to the preceding sentence is not subject to the state administrative procedures act in chapter twenty-nine-a of this code.

(2) To include reasonable controls which may include deductible and coinsurance provisions applicable to some or all of the benefits, and shall include other provisions, including, but not limited to, copayments, preadmission certification, case management programs, and preferred provider arrangements.

(3) To prevent unnecessary utilization of the various hospital, surgical, medical and prescription drug services available.

(4) To provide reasonable assurance of stability in future years for the plans.

(5) To provide major medical insurance for said employees.

(6) To provide certain group life and accidental death insurance for the employees covered under this article.

(7) To include provisions for the coordination of benefits payable by the terms of such plans with the benefits to which such employee, or his or her spouse or his or her dependents may be entitled by the provisions of any other group hospital, surgical, medical, major medical, or prescription drug insurance or any combination thereof.

(8) To provide a cash incentive plan for employees, spouses, and dependents by the thirty-first day of December, one thousand nine hundred eighty-eight, to increase utilization of, and to encourage the use of, lower cost alternative health care facilities, health care providers and generic drugs. Such plan shall be reviewed annually by the director and the advisory board.
(9) To provide "wellness" programs and activities which will include, but not be limited to, benefit plan incentives to discourage tobacco, alcohol and chemical abuse and an educational program to encourage proper diet and exercise. In establishing "wellness" programs, the division of vocational rehabilitation shall cooperate with the public employees insurance agency in establishing statewide wellness programs and with such division of vocational rehabilitation to contact county boards of education for the use of facilities, equipment or any service related to such purpose, at the request of the director, under the authority hereby granted to contract therefor. Boards of education shall be limited to charging only the cost of janitorial service and increased utilities for the use of the gymnasium and related equipment. The cost of the exercise program shall be paid by county boards of education, the public employees insurance agency, or participating employees, their spouses or dependents. All exercise programs shall be made available to all employees, their spouses or dependents and shall not be limited to employees of county boards of education.

(10) To provide a program, to be administered by the director, for a patient audit plan with reimbursement up to a maximum of one thousand dollars annually, to employees for discovery of health care provider or hospital overcharges when the affected employee brings such overcharge to the attention of the plan. The hospital or health care provider shall certify to the director that it has provided, prior to or simultaneously with the submission of the statement of charges for payments, an itemized statement of the charges to the employee participant for which payment is requested of the plan.

(11) To require that all employers give written notice to each covered employee prior to institution of any changes in benefits to employees, and to include appropriate penalty for any employer not providing the required information to any employee.
§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

The director is hereby given exclusive authorization to execute such contract or contracts as are necessary to carry out the provisions of this article and to provide the plan or plans of group hospital and surgical insurance coverage, group major medical insurance coverage, group prescription drug insurance coverage and group life and accidental death insurance coverage selected in accordance with the provisions of this article, such contract or contracts to be executed with one or more agencies, corporations, insurance companies or service organizations licensed to sell group hospital and surgical insurance, group major medical insurance, group prescription drug insurance and group life and accidental death insurance in this state.

The group life and accidental death insurance herein provided for shall be in the amount of ten thousand dollars for every employee. The amount of the group life and accidental death insurance to which an employee would otherwise be entitled shall be reduced to five thousand dollars upon such employee attaining age sixty-five.

All of the insurance coverage to be provided for under this article may be included in one or more similar contracts issued by the same or different carriers.

The provisions of article three, chapter five-a of this code, relating to the division of purchases of the department of finance and administration, shall not apply to any contracts for any insurance coverage or professional services authorized to be executed under the provisions of this article. Before entering into any contract for any insurance coverage, as herein authorized, said director shall invite competent bids from all
qualified and licensed insurance companies or carriers, who may wish to offer plans for the insurance coverage desired. The director shall deal directly with insurers in presenting specifications and receiving quotations for bid purposes. No commission or finder's fee, or any combination thereof, shall be paid to any individual or agent; but this shall not preclude an underwriting insurance company or companies, at their own expense, from appointing a licensed resident agent, within this state, to service the companies' contracts awarded under the provisions of this article. Commissions reasonably related to actual service rendered for such agent or agents may be paid by the underwriting company or companies: Provided, That in no event shall payment be made to any agent or agents when no actual services are rendered or performed. The director shall award such contract or contracts on a competitive basis. In awarding the contract or contracts the director shall take into account the experience of the offering agency, corporation, insurance company or service organization in the group hospital and surgical insurance field, group major medical insurance field, group prescription drug field and group life and accidental death insurance field, and its facilities for the handling of claims. In evaluating these factors, the director may employ the services of impartial, professional insurance analysts or actuaries or both. Any contract executed by the director with a selected carrier shall be a contract to govern all eligible employees subject to the provisions of this article. Nothing contained in this article shall prohibit any insurance carrier from soliciting employees covered hereunder to purchase additional hospital and surgical, major medical or life and accidental death insurance coverage.

The director may authorize the carrier with whom a primary contract is executed to reinsure portions of such contract with other carriers which elect to be a reinsurer and who are legally qualified to enter into a reinsurance agreement under the laws of this state.

Each employee who is covered under any such contract or contracts shall receive a statement of
benefits to which such employee, his or her spouse and
his or her dependents are entitled thereunder, setting
forth such information as to whom such benefits shall
be payable, to whom claims shall be submitted, and a
summary of the provisions of any such contract or
contracts as they affect the employee, his or her spouse
and his or her dependents.

The director may at the end of any contract period
discontinue any contract or contracts it has executed
with any carrier and replace the same with a contract
or contracts with any other carrier or carriers meeting
the requirements of this article.

§5-16-10. Contract provisions for group hospital and
surgical, group major medical, group prescrip-
tion drug and group life and accidental
death insurance for retired employees, their
spouses and dependents.

Any contract or contracts entered into hereunder may
provide for group hospital and surgical, group major
medical, group prescription drug and group life and
accidental death insurance for retired employees and
their spouses and dependents as defined by rules and
regulations of the public employees insurance agency,
and on such terms as the director may deem
appropriate.

In the event the public employees insurance agency
provides the above benefits for retired employees, their
spouses and dependents, the public employees insurance
agency shall adopt rules and regulations prescribing the
conditions under which retired employees may elect to
participate in or withdraw from the plan or plans. Any
contract or contracts herein provided for shall be
secondary to any hospital, surgical, major medical,
prescription drug or other health insurance plan
administered by the United States department of health
and human services to which the retired employee,
spouse or dependent may be eligible under any law or
regulation of the United States.
§5-16-11. To whom benefits paid.

Any benefits payable under any group hospital and surgical, group major medical and group prescription drug plan or plans may be paid either directly to the attending physician, hospital, medical group, or other person, firm, association or corporation furnishing the service upon which the claim is based, or to the insured upon presentation of valid bills for such service, subject to such provisions designed to facilitate payments as may be made by the director.

§5-16-12. 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 who knowingly secures or attempts to secure greater benefits than those to which the person is entitled, by willfully misrepresenting the presence or extent of benefits to which the person is entitled under a collateral insurance source, or by willfully misrepresenting any material fact relating to any other information requested by the director or by willfully overcharging for services provided, or by willfully misrepresenting 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 director 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.

§5-16-13. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; increased retirement benefits
for retired employees with accrued annual and sick leave; additional eligible retired employees; option for health insurance coverage without life insurance coverage made available to retirees; health insurance for surviving dependents of deceased employees.

(a) The director is hereby authorized to provide under any contract or contracts entered into under the provisions of this article that the costs of any such group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance benefit plan or plans may be paid by the employer and employee. In addition, each employee shall be entitled to have his or her spouse and dependents, as defined by the rules and regulations of the public employees insurance agency, included in any group hospital and surgical insurance, group major medical insurance or group prescription drug insurance coverage: Provided, That such spouse and dependent coverage shall be limited to excess or secondary coverage for each spouse and dependent who has primary coverage from any other source. For purposes of this section, the term "primary coverage" means individual or group hospital and surgical insurance coverage or individual or group major medical insurance coverage or group prescription drug coverage in which the spouse or dependent is the named insured or certificate holder. The director may require proof regarding spouse and dependent primary coverage and shall adopt rules and regulations governing the nature, discontinuance and resumption of any employee’s coverage for his or her spouse and dependents.

(b) Should a participating employee be terminated from employment involuntarily or in reduction of work force, the employee’s insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee: Provided, That an employee discharged for misconduct shall not be eligible for extended benefits under this section: Provided, however, That coverage may be extended up to the maximum period of three months, while administrative
remedies contesting the charge of misconduct are pursued: Provided further, That should the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within twelve months of his prior termination, he or she shall not be considered a new enrollee and shall not be required to again contribute his or her share of the premium cost, if he or she had already fully contributed such share during the prior period of employment.

(c) Except as otherwise provided in subsection (f) for higher education full-time faculty employed on an annual contract basis other than for twelve months, when a participating employee, who has elected to participate in the plan before the first day of July, one thousand nine hundred eighty-eight, is compelled or required by law to retire before reaching the age of sixty-five, or when a participating employee voluntarily retires as provided by law, that employee's accrued annual leave and sick leave, if any, shall be credited toward an extension of the insurance coverage provided by this article, according to the following formulae: Such insurance coverage for a retired employee shall continue one additional month for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. For a retired employee, his or her spouse and dependents, such insurance coverage shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his retirement.

(d) Notwithstanding the preceding subsection, except as otherwise provided in subsection (f) for higher education full-time faculty employed on an annual contract basis other than for twelve months, when a participating employee who elects to participate in the plan on and after the first day of July, one thousand nine hundred eighty-eight, is compelled or required by law to retire before reaching the age of sixty-five, or when such a participating employee voluntarily retires as
provided by law, that employee's annual leave or sick leave, if any, shall be credited toward one-half of the premium cost of the insurance provided by this article, for periods and scope of coverage determined according to the following formulae: (1) one additional month of single retiree coverage for every two days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement; (2) one additional month of coverage for a retiree, his or her spouse and dependents for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his or her retirement. The remaining premium cost shall be borne by such retired employee if he or she elects such coverage. For purposes of this subsection, an employee who has been a participant under spouse or dependent coverage and who reenters the plan within twelve months after termination of his or her prior coverage, shall be considered to have elected to participate in the plan as of the date of commencement of the prior coverage. For purposes of this subsection, an employee shall not be considered a new employee after returning from extended authorized leave on or after the first day of July, one thousand nine hundred eighty-eight.

(e) In the alternative to the extension of insurance coverage through premium payment provided in the two preceding subsections, on and after the first day of July, one thousand nine hundred eighty-eight, the participating employee's accrued annual leave and sick leave may be applied, on the basis of two days retirement service credit for each one day of accrued annual and sick leave, toward an increase in the employee's retirement benefits with such days constituting additional credited service in computation of such benefits under any state retirement system. However, such credited service shall not be used in meeting initial eligibility for retirement criteria, but only as additional service credited in excess thereof.

(f) When a participating employee, who is a higher education full-time faculty member employed on an annual contract basis other than for twelve months, is
compelled or required by law to retire, on or after the
first day of August, one thousand nine hundred eighty-
eight, before reaching the age of sixty-five, or when such
a participating employee voluntarily retires as provided
by law, on or after the first day of August, one thousand
nine hundred eighty-eight, that employee's insurance
coverage, as provided by this article, shall be extended
according to the following formulae: Such insurance
coverage for a retired higher education full-time faculty
member, formerly employed on an annual contract basis
other than for twelve months, shall continue beyond the
effective date of his or her retirement one additional
year for each three and one-third years of teaching
service, as determined by uniform guidelines estab-
lished by the university of West Virginia board of
trustees and the board of directors of the state college
system, for individual coverage, or one additional year
for each five years of teaching service for “family”
coverage.

(g) Any employee who retired prior to the twenty-first
day of April, one thousand nine hundred seventy-two,
and who also otherwise meets the conditions of the
“retired employee” definition in section two of this
article shall be eligible for insurance coverage under the
same terms and provisions of this article. The premium
cost for any such coverage as established by the finance
board shall be borne by such retired employee.

(h) All retirees under the provisions of this article,
including those defined in section two of this article;
those retiring prior to the twenty-first day of April, one
thousand nine hundred seventy-two; and those hereafter
retiring, shall be eligible for and permitted to obtain
health insurance coverage. The premium cost for any
such coverage as established by the finance board, shall
be borne by such retired employee.

(i) A surviving spouse and dependents of a deceased
employee, who was either an active or retired employee
just prior to such decease, shall be entitled to be
included in any group insurance coverage provided
under this article, and such spouse and dependents shall
bear the premium cost of such insurance coverage. The
finance board shall establish the premium cost of any
such coverage.

(j) In construing the provisions of this section or any
other provisions of this code, the Legislature declares
that it is not now nor has it ever been the Legislature's
intent that elected public officials be provided any sick
leave, annual leave or personal leave, and the enactment
of this section is based upon the fact and assumption
that no statutory or inherent authority exists extending
sick leave, annual leave or personal leave to elected
public officials and the very nature of such positions
preclude the arising or accumulation of such, so as to
be thereafter usable as premium paying credits for
which such officials may claim extended insurance
benefits.

§5-16-14. Program qualifying for favorable federal
income tax treatment.

The director shall develop, implement and have in
place by the thirty-first day of December, one thousand
nine hundred ninety, deductible and employee premium
programs which qualify for favorable federal income
tax treatment under section 125 of the Internal Revenue
Code.

§5-16-15. Optional dental, optical, disability and prepaid
retirement plan.

On and after the first day of July, one thousand nine
hundred eighty-nine, the director shall make available
to participants in the public employees insurance system
(1) a dental insurance plan; (2) an optical insurance plan;
(3) a disability insurance plan; and (4) a prepaid
retirement insurance plan. Public employees insurance
participants may elect to participate in any one of these
plans separately or in combination. Notwithstanding
anything in this article to the contrary, all actuarial and
administrative costs of each plan shall be totally borne
by the premium payments of the participants or local
governing bodies electing to participate in that plan.
The director is authorized to employ such administra-
tive practices and procedures with respect to these
optional plans as are authorized for the administration
of other plans under this article. The director shall
establish separate funds (1) for deposit of dental
insurance premiums and payment of dental insurance
claims, (2) for deposit of optical insurance premium
payments and payment of optical insurance claims, (3)
for deposit of disability insurance premium payments
and payment of disability insurance claims. Such funds
shall not be supplemented by nor be used to supplement
any other funds.

§ 5-16-16. Preferred provider plan.

The director shall, on or before the first day of April,
one thousand nine hundred eighty-eight, or as soon as
practicable, establish a preferred provider system for
the delivery of health care to plan participants by all
health care providers, which may include, but not be
limited to, medical doctors, chiropractors, physicians,
osteopathic physicians, surgeons, hospitals, clinics,
nursing homes, pharmacies and pharmaceutical
companies.

The director shall establish the terms of the preferred
provider system and the incentives therefor. The terms
and incentives may include multi-year renewal options
as are not prohibited by the constitution of this state.

§ 5-16-17. Preexisting conditions not covered; defined.

A preexisting condition is an injury, sickness or
pregnancy, or any condition relating to that injury,
sickness or pregnancy, for which a participant is
diagnosed, receives treatment, or incurs expenses within
three months prior to the effective date of coverage:
Provided, That a preexisting condition shall not include
a condition which meets the definition of handicap as
provided in section three, article eleven, chapter five of
this code.

For all participants enrolling in the plan after the
effective date of this section, no payment shall be made
for expenses incurred for or in connection with a
preexisting condition unless the expenses are incurred
after the expiration of a one-year period during which
the participant is continuously participating in the plan:
16 Provided, That these provisions shall not apply to
17 employees who return from extended authorized leave
18 on or after the effective date of this section.

§5-16-18. Payment of costs by employer; schedule of
insurance; special funds created; duties of
treasurer with respect thereto.

1 All employers operating from state general revenue or
2 special revenue funds or federal funds or any combina-
3 tion thereof shall budget the cost of insurance coverage
4 provided by the public employees insurance agency to
5 current and retired employees of the employer as a
6 separate line item, titled PEI, in its respective annual
7 budget and shall be responsible for the transfer of funds
8 to the director for the cost of insurance for employees
9 covered by the plan. Each spending unit shall pay to the
10 director its proportionate share from each source of
11 funds. Any agency wishing to charge general revenue
12 funds for insurance benefits for retirees under section
13 thirteen of this article must provide documentation to
14 the director that such benefits cannot be paid for by any
15 special revenue account or that the retiring employee
16 has been paid solely with general revenue funds for
17 twelve months prior to retirement.

18 All other employers not operating from the state
19 general revenue fund shall pay to the director their
20 share of premium costs from their respective budgets.
21 The finance board shall establish such employers’ share
22 of premium costs to reflect and pay the actual costs of
23 such coverage including incurred but not reported
24 claims.

25 The contribution of such other employers (namely: a
26 county, city or town in the state; any separate corpora-
27 tion or instrumentality established by one or more
28 counties, cities or towns, as permitted by law; any
29 corporation or instrumentality supported in most part
30 by counties, cities or towns; any public corporation
31 charged by law with the performance of a governmental
32 function and whose jurisdiction is coextensive with one
33 or more counties, cities or towns; any comprehensive
34 community mental health center or comprehensive
mental retardation facility established, operated or licensed by the secretary of health and human resources pursuant to section one, article two-a, chapter twenty-seven of this code, and which is supported in part by state, county or municipal funds; and a combined city-county health department created pursuant to article two, chapter sixteen of the code) for their employees shall be such percentage of the cost of the employees' insurance package as the employers deem reasonable and proper under their own particular circumstances.

The employee's proportionate share of the premium or cost shall be withheld or deducted by the employer from such employee's salary or wages as and when paid and such sums shall be forwarded to the director with such supporting data as the director may require.

All moneys received by the public employees insurance agency shall be deposited in a special fund or funds as are necessary in the state treasury and the treasurer of the state shall be custodian of such fund or funds and shall administer such fund or funds in accordance with the provisions of this article or as the director may from time to time direct. The treasurer shall pay all warrants issued by the state auditor against such fund or funds as the director may direct in accordance with the provisions of this article. On and after the first day of July, one thousand nine hundred eighty-eight, all payments previously required to be made to the public employees insurance board shall be made to the public employees insurance agency.

§5-16-19. Authorization to take advantage of acts of congress, accept gifts, grants and matching funds.

The public employees insurance agency is authorized to take full advantage of the benefits and provisions of any acts of congress and to accept any and all gifts, grants and matching funds, whether in the form of money or services.

§5-16-20. Expense fund.

The Legislature shall annually appropriate such sums
as may be necessary to pay the proportionate share of
the administrative costs for the state as an employer,
and each division, agency, board, commission or
department of the state which operates out of special
revenue funds or federal funds or both shall pay its
proportionate share of the administrative costs of the
insurance plan or plans authorized under the provisions
of this article. All other employers not operating from
the state general revenue fund shall pay their propor-
tionate share of the administrative costs of the insurance
plan or plans authorized under the provisions of this
article.

§5-16-21. No member or employee of public employees
insurance agency shall gain directly or
indirectly from any contract or contracts
provided for hereunder; criminal penalties.

No elected or appointed official of the state of West
Virginia; nor any member, officer, or employees of the
Legislature; nor any officer, agent, servant or employee
in the executive branch of state government shall have
any interest, direct or indirect, in the gain or profits
arising from any contract or contracts provided for in
this article. Any such person who shall gain, directly or
indirectly, from any contract or contracts herein
provided for, except as an insured beneficiary thereof,
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be punished by a fine not exceeding one
thousand dollars, or by imprisonment in the county jail
for a period not exceeding one year, or by both, in the
discretion of the court: Provided, That nothing in this
section shall be construed to prohibit an elected or
appointed official of this state, nor an employee of the
legislative, judicial or executive branches, from provid-
ing health care or entering into contracts provided for
in section seventeen of this article.

§5-16-22. Permissive participation; exemptions.
The provisions of this article shall not be mandatory
upon any employee or employer who is not an employee
of or is not the state of West Virginia, its boards,
agencies, commissions, departments, institutions or
spending units or a county board of education, and nothing contained in this article shall be construed so as to compel any employee or employer to enroll in or subscribe to any insurance plan authorized by the provisions of this article.

Those employees enrolled in the insurance program authorized under the provisions of article two-b, chapter twenty-one-a of this code shall not be required to enroll in or subscribe to an insurance plan or plans authorized by the provisions of this article, and the employees of any department which has an existing insurance program for its employees to which the government of the United States contributes any part or all of the premium or cost thereof may be exempted from the provisions of this article. Any employee or employer exempted under the provisions of this paragraph may enroll in any insurance program authorized by the provisions of this article at any time, to the same extent as any other qualified employee or employer, but any such employee or employer shall not remain enrolled in both such programs. The provisions of articles fourteen, fifteen and sixteen, chapter thirty-three of this code, relating to group life insurance, accident and sickness insurance, and group accident and sickness insurance, shall not be applicable to the provisions of this article whenever the provisions of said articles and chapter are in conflict with or contrary to any provision set forth herein or to any plan or plans established by the public employees insurance agency.

Employers, other than the state of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education shall be exempt from participating in the insurance program provided for by the provisions of this article unless participation by the employer has been approved by a majority vote of the employer's governing body. It shall be the duty of the clerk or secretary of the governing body of an employer who by such majority vote becomes a participant in the insurance program to notify the director not later than ten days after such vote.
§5-16-23. Members of Legislature may be covered, if cost of the entire coverage is paid by such members.

Notwithstanding the definition of the term "employee" contained in section two of this article and notwithstanding any other provision of this article to the contrary, members of the Legislature may participate in and be covered by any insurance plan or plans authorized hereunder for state officers and employees, except that all members of the Legislature who elect to participate in or to be covered by any such plan or plans shall pay their proportionate individual share of the full cost for all group coverage on themselves and their spouses and dependents, so that there will be no cost to the state for the coverage of any such members, spouses and dependents.

§5-16-24. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.

The director shall promulgate such rules and regulations as may be required for the effective administration of the provisions of this article. Except as specifically provided in subsection (e), section four of this article, all rules and regulations of the public employees insurance agency and all hearings held by the public employees insurance agency shall be exempt from the provisions of chapter twenty-nine-a of this code. Any rules and regulations now in existence promulgated by the public employees insurance board or director shall remain in full force and effect until they are amended or replaced by the director.

Such regulations shall provide that any employee of the state who has been compelled or required by law to retire before reaching the age of sixty-five years shall be eligible to participate in the public employees' health insurance program at his own expense for the cost of coverage after any extended coverage to which he, his
spouse and dependents may be entitled by virtue of his 
accrued annual leave or sick leave, pursuant to the 
provisions of section thirteen of this article, has expired. 
Any employee who voluntarily retires, as provided by 
law, shall be eligible to participate in the public 
employees' health insurance program at his own expense 
for the cost of coverage after any extended coverage to 
which he, his spouse and dependents may be entitled by 
virtue of his accrued annual leave or sick leave, 
pursuant to the provisions of section thirteen of this 
article, has expired. The dependents of any deceased 
retired employee shall be entitled to continue their 
participation and coverage upon payment of the total 
cost for such coverage.

Any employee who is on a medical leave of absence, 
approved by his employer, shall, subject to the following 
provisions of this paragraph, be entitled to continue his 
coverage until he returns to his employment, and such 
employee and employer shall continue to pay their 
proportionate share of premium costs as provided by 
this article: Provided, That the employer shall be 
obligated to pay its proportionate share of the premium 
cost only for a period of one year: Provided, however, 
That during the period of such leave of absence, the 
employee shall, at least once each month, submit to the 
employer the statement of a qualified physician certify-
ing that the employee is unable to return to work.

Any retiree, retiring heretofore or hereafter, shall be 
eligible to participate in the public employees' life 
insurance program, including the optional life insurance 
coverage as already available to active employees under 
this article, at his own expense for the cost of coverage, 
based upon actuarial experience; and the director shall 
pay, prepare, by rule and regulation, for such participation 
and coverages under declining term insurance and 
optional additional coverage for such retirees.

§5-16-25. Reserve fund.

In the event that the budgeted allocation to the public 
employees insurance agency exceeds actual costs in any 
given month, the director shall deposit those moneys in
a reserve fund maintained by the public employees insurance board or director, for the exclusive purpose of offsetting any future increases in group insurance plan costs.

§5-16-26. Quarterly report.

By the thirtieth day of October, one thousand nine hundred ninety-one, and on or before the thirtieth day of January, April, July and October of each year thereafter, the director shall prepare for the approval of the finance board, and thereafter present to the joint committee on government and finance a quarterly report setting forth:

(a) A summary of the cost to the plan of health care claims incurred in the preceding calendar quarter;

(b) A summary of the funds accrued to the plan by legislative appropriation, employer and employee premiums or otherwise in the preceding calendar quarter for payment of health care claims;

(c) An explanation of all cost containment measures, increased premium rates and any other plan changes adopted by the director in the preceding calendar quarter and estimated cost savings and enhanced revenues resulting therefrom, and a certification that the director made a good faith effort to develop and implement all reasonable health care cost containment alternatives;

(d) Expected claim costs for the next calendar year;

(e) Such other information as the director deems appropriate; and

(f) Any other financial or other information as may be requested by the joint committee on government and finance.

§5-16-27. Severability.

If any provision of this article 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 article, and to this end the provisions of this article are declared to be severable.
AN ACT to amend and reenact sections one, two, three, four, five, six, seven and eight, article nine of chapter four; to amend and reenact sections five, twenty-two-c, twenty-eight and fifty-four, article ten, chapter five; to further amend said article ten by adding thereto a new section, designated section twenty-two-d; to further amend said chapter five by adding thereto a new article, designated article ten-d; to amend and reenact sections two, nine and ten, article six, chapter twelve; to amend and reenact section twenty-six, article two, chapter fifteen; to amend and reenact sections four, thirty-four and thirty-five-b, article seven-a, chapter eighteen; to further amend article seven-a by adding thereto three new sections, designated sections eighteen-a, twenty-six-i and thirty-five-c; to amend and reenact section fourteen-d, article three, chapter thirty-three; to amend and reenact section three, article nine, chapter fifty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to public retirement systems; creation of a legislative committee on pensions and retirement, providing for its membership, duties, responsibilities and authority and compensation; providing for unified accounting of the public employees retirement system; providing supplemental benefits for certain annuitants; creating a consolidated public retirement board; providing for its membership, powers, duties, responsibilities and liabilities, officers, meetings and compensation; providing for the employment of an actuary for the board; providing for the transfer of administration of the public employees retirement system, the teachers retirement system, the department of public safety's
death, disability and retirement fund and the retirement system for judges of courts of record to the consolidated board as of a specified date; creating a teachers' defined contribution retirement system, defining terms therefor; providing for the administration of the system by the consolidated board; providing guidelines for participation in the system; providing for member and employer contributions; creating member annuity accounts, termination of membership; providing for the commencement of annuity payments; providing for the amount of annuity payments, providing for supplemental annuity contracts; providing for the investment of pension funds in corporate stock and providing restrictions on certain investments; providing a calculation for the allocation of funds to the teachers retirement reserve fund; providing a supplemental benefit for retired teachers; defining terms that will be used to determine reemployment for certain retirees, requiring a waiver and disclosure statement; providing for acceptance of work for the state on a contract basis for early retirees; providing for the termination of benefits, procedure and appeal; providing for the redirection of a percentage of proceeds from the additional fire and casualty insurance premium tax.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven and eight, article nine of chapter four be amended and reenacted; that sections five, twenty-two-c, twenty-eight and fifty-four, article ten, chapter five be amended and reenacted; that said article ten be further amended by adding thereto a new section, designated section twenty-two-d; that chapter five be further amended by adding thereto a new article, designated article ten-d; that sections two, nine and ten, article six, chapter twelve be amended and reenacted; that section twenty-six, article two, chapter fifteen be amended and reenacted; that sections four, thirty-four and thirty-five-b, article seven-a, chapter eighteen be amended and reenacted; that said article seven-a be further amended by adding thereto three new sections, designated sections eighteen-a, twenty-six-i and thirty-five-c; that section four-a, article twenty-three of said chapter eighteen be amended and reenacted; that said chapter
eighteen be further amended by adding thereto a new article, designated article seven-b; that section fourteen-d, article three, chapter thirty-three be amended and reenacted; and that section three, article nine, chapter fifty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

Chapter
4. The Legislature.
5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.
15. Public Safety.
18. Education.
33. Insurance.
51. Courts and Their Officers.

CHAPTER 4. THE LEGISLATURE

ARTICLE 9. LEGISLATIVE COMMITTEE ON PENSIONS AND RETIREMENT.

§4-9-1. Definitions.
§4-9-2. Creation of committee.
§4-9-3. Powers and duties.
§4-9-4. Appointment of members; terms.
§4-9-5. Time and place of meetings; officers.
§4-9-6. Staff.
§4-9-7. Assistance of other agencies.
§4-9-8. Members' expenses; reimbursement.

§4-9-1. Definitions.
1. (1) "Committee" as used in this article means the legislative committee on pensions and retirement.

2. (2) "State retirement legislation" means a proposed bill or resolution which would have a fiscal or actuarial effect on any state retirement system. This definition is to be liberally construed so that all reasonable doubts are resolved in favor of inclusion.

3. (3) "Actuarial note" means an analysis and statement of the cost, actuarial soundness and adherence to sound pension policy of pension or retirement related legislation submitted by a qualified actuary or actuarial firm.
§4-9-2. Creation of committee.

There is hereby created a permanent joint standing committee to continually study and investigate public retirement systems. The name of the committee shall be the legislative committee on pensions and retirement. The committee shall have all the powers of any other standing committee and all pension and retirement related legislation introduced in the Legislature shall be referred to the committee in addition to any other reference the presiding officer may designate: Provided, that upon reference of any pension or retirement related legislation, the committee shall forward such legislation to an actuary or actuarial firm who shall return an actuarial note to the committee prior to the committee's consideration of such legislation.

§4-9-3. Powers and duties.

The committee shall make a continuing study and investigation of retirement benefit plans applicable to nonfederal government employees in this state. The powers and duties of the committee shall include, but not be limited to, the following:

(a) Study of retirement benefit plans applicable to nonfederal government employees in the state of West Virginia, including, without limitation, federal plans available to such employees;

(b) Making of recommendations within the scope of the study with particular attention to financing of the various pension funds and financing of accrued liabilities;

(c) Consideration of all aspects of pension planning and operation, and making of recommendations designed to establish and maintain sound pension policy as to all funds;

(d) Filing of a report to each regular session of the Legislature;

(e) Analyzing of each item of proposed pension and retirement legislation, including amendments thereto, with particular reference to analysis as to cost, actuarial soundness, and adherence to sound pension policy, and
reporting of its findings in regard thereto to the Legislature; and

(f) Maintenance of reference materials concerning pension and retirement matters, including, without limitation, information as to laws and systems in other states.

§4-9-4. Appointment of members; terms.

The committee shall consist of seven members of the Senate to be appointed by the president of the Senate and seven members of the House of Delegates to be appointed by the speaker of the House. No more than five of the seven members appointed by the president of the Senate and the speaker of the House, respectively, may be members of the same political party. Appointments shall be made in the same manner as any other joint standing committee of the Legislature. Members shall serve until their successor has been appointed.

§4-9-5. Time and place of meetings; officers.

The committee shall hold meetings at such times and places as it may designate. The president of the Senate shall appoint a cochair of the committee from the Senate members and the speaker of the House of Delegates shall appoint a cochair of the committee from the House of Delegates members.

§4-9-6. Staff.

The committee may employ such professional, clerical and technical assistants as it deems necessary in order to perform the duties herein prescribed.

§4-9-7. Assistance of other agencies.

The committee may request information from any state officer or agency in order to assist in carrying out the terms of this article, and such officer or agency is authorized and directed to promptly furnish any data requested.

§4-9-8. Members' expenses; reimbursement.

The members of the committee and its assistants shall
be reimbursed for all expenses actually and necessarily incurred in the performance of their duties hereunder from the fund of the joint committee on government and finance. Compensation and other expenses of the committee may be paid from the fund of the joint committee on government and finance.

CHAPTER 5.
GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

Article 10. West Virginia Public Employees Retirement Act.
10D. Consolidated Public Retirement Board.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-5. Board of trustees created; powers and duties generally; composition.
§5-10-22c. 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.
§5-10-22d. Supplemental benefits for certain annuitants.
§5-10-28. Unified accounting; funds.
§5-10-54. Termination of benefits; procedure.

§5-10-5. Board of trustees created; powers and duties generally; composition.

The board of trustees of the West Virginia public employees retirement system is hereby continued. The administration and management of the retirement system, the responsibility for making effective the provisions of this article, and the authority to make all rules and regulations therefor are hereby vested in the said board of trustees through the thirtieth day of June, one thousand nine hundred ninety-one, and thereafter in the consolidated public retirement board created by article ten-d of this chapter and except as otherwise specifically provided in this article. The board shall consist of five trustees, as follows:
(a) The auditor of the state, by virtue of his office;
(b) The treasurer of the state, by virtue of his office;
(c) The commissioner of finance and administration, by virtue of his office;
(d) A resident of the state, who is not a member, retirant or beneficiary of the retirement system, to be appointed by the governor, by and with the advice and consent of the Senate;
(e) One member of the retirement system, who is an employee of a participating public employer other than the state of West Virginia, to be appointed by the governor, by and with the advice and consent of the Senate.

§5-10-22c. 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.

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. The Legislature further finds that main-
ing an actuarily sound retirement fund is a necessity
and that the reemployment of persons who retire under
this section in any manner, including reemployment on
a contract basis, is contrary to the intent of the early
retirement program and severely threatens the fiscal
integrity of the retirement fund.

(a) For the purposes of this section: (1) "Contract"
means any personal service agreement, not involving the
sale of commodities, that cannot be performed within
sixty days or that exceeds two thousand five hundred
dollars in any twelve-month period. The term "contract"
do not include any agreement obtained by a retireant
through a bidding process and which is for the furnishing
of any commodity to a government agency;
(2) "governmental entity" means the state of West
Virginia; a constitutional branch or office of the state
government, or any subdivision thereof; a county, city
or town in the state; a county board of education; a
separate corporation or instrumentality established
pursuant to a state statute; any other entity currently
permitted to participate in any state public retirement
system or the public employees insurance agency; or any
officer or official of any entity listed above who is acting
in his or her official capacity; (3) "part-time elected or
appointed office" means any elected or appointed office
that pays annual compensation of less than two thousand
five hundred dollars or requires less than sixty days of
service in any twelve-month period; (4) "substitute
teacher" means a teacher, public school librarian,
registered professional nurse employed by the county
board of education or any other person employed for
counselling or instructional purposes in a public school
in this state who is temporarily fulfilling the duties of
an existing real person employed in a specific position
who is temporarily absent from that specified position.

(b) 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 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, and from any state, county or municipal position, covered under the two divisions of this retirement system (the state division and the public employer, nonstate division) including those so employed on said beginning date and leaving the system during the incentive period and who are eligible for taking deferred retirement (but not disability retirees) may elect to participate in this incentive 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.

Active, contributing members 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, and make use of the incentive retirement program 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 they 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.

(c) Any member participating in this retirement incentive program is not eligible to accept further employment or accept, directly or indirectly, work on a contract basis from any governmental entity: Provided, That nothing in this section shall affect any contract entered into prior to the effective date of this section: Provided, however, That the executive director may approve, upon written request and for good cause shown, an exception allowing a retirant to perform work on a contract basis. The executive director shall report all approved exceptions to the board of trustees: Provided further, That a person may retire under this section and thereafter serve in an elective office: And provided further, That he shall not receive an incentive option 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 during which the member shall rejoin and reenter the retirement system and pay contributions therefor, such regular annuity shall be recalculated and an increased annuity due to such additional employment shall be granted and computed on regular basis and in similar manner as under section forty-eight of this article. 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 option under this section during the
term of service in said office, but the same shall be
suspended during such period: And provided further,
That at the end of such term and cessation of service
in such appointive office the incentive option provided
for under this section shall be resumed: And provided
further, That any person elected or appointed to office
by the state or any of its political subdivisions who
waives whatever salary, wage or per diem compensation
he may be entitled to by virtue of service in such office
and who does not receive any income therefrom except
such reimbursement of out-of-pocket costs and expenses
as may be permitted by the statutes governing such
office shall continue to receive an incentive option under
this section. Such service shall not be counted as
contributed or credited service for purposes of comput-
ing retirement benefits.

If such elected or appointed office is a part-time
elected or appointed office, a person electing retirement
under this section may serve in such elected or ap-
pointed office without a loss of the benefits provided
under this section.

Prior to the initiation or renewal of any contract
entered into pursuant to the provisions of this section or
the acceptance of any elective or appointive office by a
person who has elected to retire under the early
retirement provisions of this article, such person shall
complete a disclosure and waiver statement executed
under oath and acknowledged by a notary public. The
board shall promulgate rules, pursuant to chapter
twenty-nine-a of this code, regarding the form and
contents of the disclosure and waiver statement. The
disclosure and waiver statement shall be forwarded to
the appropriate state public retirement system admin-
istrator who shall take action to ensure that the early
retirement incentive benefits are reduced in accordance
with the provisions of this section. The administrator
shall then certify such action in writing to the appro-
priate governmental entity.

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.
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 or as hereby specifically permitted to those retiring and thereafter serving in elective office, as aforesaid.

The additional annuity allowed for temporary early retirement under these options, in respect of state division retirants of this system, 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 transferred by heads of spending units from the unused portion of salary and fringe benefits in their budgets accruing in respect of 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 for payment of such additional annuity, the funds of the retirement system to be used for payment of the base annuity under the early retirement incentive program: Provided, That such additional annuity shall be paid from the unused portion of both salary and fringe benefits and with any remainder of any fringe benefit moneys, as such, to remain with the spending unit and any remainder of salary, as such, to be directed as additional funding to the teachers retirement system and as a part of the assets thereof. 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. With respect to public employer division retirants (nonstate division retirants of the system), such incentive annuity shall be paid from the nonstate division funds of the system.

(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. 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 the remaining salary and fringe benefits as aforesaid: Provided, That this vacant position abolishment provision shall not apply to any county or municipal position except those under the authority of a county board of education, nor to any position or positions, whether designated by spending unit, department, agency, commission, entity or otherwise, which the governor in respect of the executive branch, or the chief justice of the supreme court of appeals in respect of the judicial branch, or the president of the Senate or speaker of the House of Delegates, in respect of the legislative branch, may exempt or amend, under such abolishment provision, upon his respective recommenda-
tion that such exemption or amendment is necessary to provide for continuity of governmental operation or 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 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.

(h) The board shall promulgate rules and regulations in accordance with the provisions of article three, chapter twenty-nine of this code regarding the calculation of the amount of incentive option that may be forfeited pursuant to the provisions of subsection (b) of this section.

§5-10-22d. **Supplemental benefits for certain annuitants.**

Beginning on the first day of January, one thousand nine hundred ninety-one, as an additional supplement to other retirement allowances provided, and notwithstanding the provisions of section twenty-two-b of this article requiring appropriation by the Legislature for payment of certain supplemental benefits, any annuitant who is receiving a retirement annuity on the effective date of this section shall receive a supplemental benefit, prospectively, if the effective date of retirement for such
annuitant was prior to the first day of January, one thousand nine hundred eighty-one. Each such annuitant shall receive as his or her supplemental benefit an increased annual amount which is the product of the sum of six dollars multiplied by his or her years of credited service. Nothing in this or any other section of this code shall be construed to require any appropriation of state general revenue funds for the payment of any benefit provided for in this section.

§5-10-28. Unified accounting; funds.

For financing and accounting purposes, the West Virginia public employees retirement system shall consist of only one division, including in combination the participating state employees and participating public employees who are not state employees. Unified accounting of the retirement system transactions shall be maintained for all the assets of the system. The retirement system funds shall be (1) the members deposit fund, (2) the employers accumulation fund, (3) the retirement reserve fund, (4) the income fund, and (5) the expense fund. Nothing contained in this section or any prior provision of law shall be interpreted to mean that any assets of the system, regardless of their origin or date of receipt, are to be in any manner segregated or insulated for the purposes of either paying benefits due or determining or establishing accounting or actuarial methodologies or functions utilized by the retirement system. The amendments to this section adopted during the third extraordinary session of the 1990 legislative session shall not be construed to limit the powers of the board relating to contributions to or benefits of the public employees retirement system, and any and all powers residing in the board previously administering the public employees retirement system shall be preserved.

§5-10-54. Termination of benefits; procedure.

Whenever the board determines that (1) any person has knowingly made any false statement or falsified or permitted to be falsified any record or records of the retirement system in an attempt to defraud the system,
or (2) any person who resumes employment with a governmental entity or accepts, directly or indirectly, work on a contract basis from a governmental entity, except as provided for under this article, the board shall terminate any benefit that person has received, is receiving and is entitled to receive under the early retirement provisions of this article. Further, if any person taking early retirement under this article desires to revoke his or her early retirement incentive, he or she shall be allowed to do so if he or she is entitled to regular retirement pursuant to this article: Provided, That such revocation shall be retroactive to the date of last employment and any incentive annuity, under any incentive option, already received by the retiree be repaid to the retirement system. Any person who revokes his or her early retirement incentive shall be thereafter carried upon the records of the retirement system as a regular retiree and shall not be entitled to any enhanced benefit by reason of the early retirement options contained in this article: Provided, however, That any person who chose to retire under the early retirement provisions of this article who would not have been and is not eligible for regular retirement but for the early retirement incentive options must reapply for admission to a retirement system and repay all pension benefits plus regular interest which would have been earned by the fund in the period during which the annuity payments were paid to him or her since the date his or her employment ceased.

Any termination of benefits may be appealed pursuant to the state administrative procedures act in chapter twenty-nine-a of this code. The board shall promulgate rules and regulations regarding the procedure for termination of benefits and the repayment of any benefit in accordance with the provisions of article three, chapter twenty-nine-a of this code.

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-1. Consolidated public retirement board created; transition; members; vacancies.

§5-10D-2. Chairman and vice chairman; executive secretary; employees; treasurer; legal advisor; actuary.
§5-10D-3. Board meetings; quorum; vote; proceedings; compensation.
§5-10D-4. Employment of an actuary; duties; compensation.

§5-10D-1. Consolidated public retirement board created; transition; members; vacancies.

(a) There is hereby created a consolidated public retirement board to administer all public retirement plans in this state. It shall administer the public employees retirement system established in article ten, chapter five of this code; the teachers retirement system established in article seven-a, chapter eighteen of this code; the teachers' defined contribution retirement system created by article seven-b, chapter eighteen of this code; the death, disability and retirement fund of the department of public safety created by article two, chapter fifteen of this code; and the judges' retirement system created under article nine, chapter fifty-one of this code;

(b) The consolidated public retirement board shall begin administration of the systems listed in subsection (a) of this section on the first day of July, one thousand nine hundred ninety-one: Provided, That the board shall begin administration of the teachers' defined contribution retirement system established in article seven-b, chapter eighteen of this code on the first day of January, one thousand nine hundred ninety-one. Prior to that date the existing entities which administer the system shall cooperate with the board in the orderly transition of all duties, responsibilities, records and other materials in their possession;

(c) The membership of the consolidated public retirement board consists of:

(1) The governor or his or her designee;

(2) The state auditor or his or her designee;

(3) The secretary of the department of administration or his or her designee;

(4) Four residents of the state, who are not members, retirants or beneficiaries of any of the public retirement systems, to be appointed by the governor, with the advice and consent of the Senate;
(5) A member, annuitant or retirant of the public employees retirement system who is or was a state employee; a member, annuitant or retirant of the public employees retirement system who is not or was not a state employee; a member, annuitant or retirant of the teachers retirement system; a member, annuitant or retirant of the department of public safety death, disability and retirement fund; and a member, annuitant or retirant of the teachers' defined contribution retirement system, all to be appointed by the governor, with the advice and consent of the Senate.

(d) The appointed members of the board shall serve five-year terms. Of the members initially appointed, three shall be appointed for two-year terms; three shall be appointed for three-year terms; and three shall be appointed for five-year terms. Thereafter, all members shall serve full five-year terms. A member appointed pursuant to subdivision (5), subsection-c of this section ceases to be a member of the board if he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed membership, the governor, within sixty days, shall fill the vacancy by appointment for the unexpired term. No more than five appointees shall be of the same political party.

(e) The consolidated public retirement board shall have all the powers, duties, responsibilities and liabilities of the public employees retirement system established pursuant to article ten, chapter five of this code; the teachers retirement system established pursuant to article seven-a, chapter eighteen of this code; the teachers' defined contribution system established pursuant to article seven-b, chapter eighteen of this code; the death, disability and retirement fund of the department of public safety created pursuant to article two, chapter fifteen of this code, and the judges' retirement system created pursuant to article nine, chapter fifty-one of this code and their appropriate governing boards. The consolidated public retirement board may promulgate all rules necessary to effectuate its powers, duties and responsibilities: Provided, That the board may adopt any or all of the rules and
regulations, previously promulgated, of a retirement system which it administers.

§5-10D-2. Chairman and vice chairman; executive secretary; employees; treasurer; legal advisor; actuary.

(a) The secretary of the department of administration shall call the first meeting of the consolidated public retirement board no later than the fifteenth day of January, one thousand nine hundred ninety-one.

(b) The board shall elect from its own number a chairman and vice chairman.

(c) The board shall appoint an executive secretary of the retirement systems. The executive secretary shall be the chief administrative officer of all the systems, and he or she shall not be a member of the board. He or she shall perform such duties as are required of him or her in this article and as the board from time to time delegates to him or her. The compensation of the executive secretary shall be fixed by the board subject to the approval of the governor. The executive secretary shall, with the approval of the board of trustees, employ such administrative, technical, and clerical employees as are required in the proper operation of the systems.

(d) The attorney general shall be the legal advisor to the board of trustees.

(e) An actuary, employed by the state or the board pursuant to section four of this article, shall be the actuarial consultant to the board.

(f) Prior to the first day of July, one thousand nine hundred ninety-one, the expenses of the board for the administration of the teachers' defined contribution retirement system created pursuant to article seven-b, chapter eighteen of this code shall be paid by the teachers retirement system created pursuant to article seven-a, chapter eighteen of this code.

§5-10D-3. Board meetings; quorum; vote; proceedings; compensation.

(a) The board shall hold a meeting at least once each
three months, and shall designate the time and place thereof. Five voting trustees constitute a quorum at any meeting of the board. Each member is entitled to one vote on each question before the board. The board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the board shall be public.

(b) The members shall serve as members without compensation for their services as such: Provided, That each member shall be reimbursed, upon approval of the board, for any necessary expenses actually incurred by him or her in carrying out his or her duties. No public employee member may suffer any loss of salary or wages on account of his or her service as trustee.

§5-10D-4. Employment of an actuary; duties; compensation.

(a) The board is hereby empowered and authorized to employ a state retirement actuary or actuarial firm with such qualifications as the board may prescribe or to utilize an actuary already in the employ of the state. The actuary or actuarial firm shall perform the following duties for the board:

(1) Analyze each item of state retirement legislation as to cost, actuarial soundness and adherence to sound pension policy;

(2) Prepare an actuarial note to be attached to each item of state retirement legislation prior to its formal introduction. Such actuarial note shall briefly summarize the proposed legislation and set forth its anticipated fiscal and actuarial impact on the affected state retirement system or systems; and

(3) Such other duties as the board or the board of trustees of the state public retirement system may assign.

(b) The state retirement actuary or actuarial firm, if one is employed by the board, shall be compensated in an amount to be fixed by the board. He or she shall receive, in addition, the necessary expenses incident to the performance of his or her duties. In the event that
the board utilizes an actuary already employed by the
state to perform duties for the board, the board shall
reimburse the department or agency which actually
employs the actuary for expenses, including the pro rata
portion of salary, that the actuary actually expends in
the performance of duties for the board.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.

§12-6-2. Definitions.  
§12-6-10. Restrictions on investments.

§12-6-2. Definitions.

1 As used in this article, unless a different meaning
2 clearly appears from the context:
3 (1) "Board" means the West Virginia state board of
4 investments;
5 (2) "Consolidated fund" means the investment fund
6 managed by the board and established pursuant to
7 subsection (b), section eight of this article;
8 (3) "Consolidated pension fund" means the investment
9 fund managed by the board and established pursuant to
10 subsection (a), section eight of this article;
11 (4) "Local government account" means the account
12 within the consolidated fund established pursuant to
13 subsection (b), section eight of this article;
14 (5) "Local government funds" means the moneys of a
15 political subdivision, including policemen's pension and
16 relief funds, firemen's pension and relief funds and
17 volunteer fire departments, transferred to the board for
18 deposit in the local government account;
19 (6) "Pension funds" means and includes the workers'
20 compensation fund; the state teachers retirement system
21 funds; the death, disability and retirement fund for
22 members of the department of public safety; the public
23 employees retirement system funds; the judges retire-
24 ment fund; and such other retirement or pension funds
25 and systems as may be hereafter established on behalf
of public employees of the state or of its political subdivisions and administered by the state; or pension funds established on behalf of public employees of its political subdivisions and administered by the political subdivisions;

(7) "Political subdivision" means and includes a county, municipality, or any agency, authority, board, commission or instrumentality of a county or municipality, and regional councils created pursuant to the provisions of section five, article twenty-five, chapter eight of this code;

(8) "Securities" means all bonds, notes, debentures or other evidences of indebtedness, and corporate stock;

(9) "State account" means the account within the consolidated fund established pursuant to subsection (b), section eight of this article; and

(10) "State funds" means all moneys of the state which may be lawfully invested except (a) the pension fund (as defined in subdivision (6) of this section) and (b) the "school fund" established by section four, article XII of the state constitution.


Notwithstanding the restrictions which may otherwise be provided by law as to the investment of funds, the board may invest funds made available to it in any of the following:

(a) Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;

(b) Any evidence of indebtedness issued by any United States government agency guaranteed as to the payment of both principal and interest, directly or indirectly, by the United States of America including, but not limited to, the following: Government National Mortgage Association, Federal Land Banks, Federal Home Loan Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Tennessee Valley Authority, United States Postal Service, Farmers Home Adminis-
transmission, Export-Import Bank, Federal Financing Bank, Federal Home Loan Mortgage Corporation, Student Loan Marketing Association and Federal Farm Credit Banks;

(c) Any evidence of indebtedness issued by the Federal National Mortgage Association to the extent such indebtedness is guaranteed by the Government National Mortgage Association;

(d) Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situate within this state, if the payment thereof is substantially insured or guaranteed by the United States of America or any agency thereof;

(e) Direct and general obligations of this state;

(f) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, such trust at the time of the acquisition of such undivided interest, is rated in one of the three highest rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts;

(g) Any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association organized and operating in the United States: Provided, That any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: Provided, however, That if any commercial paper and/or any such security will mature within one year from the date of its issuance, it shall, at the time of its acquisition, be rated in one of the two highest rating grades by such an agency: Provided further, That any such security not rated in one of the two highest rating grades by any such agency and commercial paper or other evidence of indebtedness of any private corporation or association shall be purchased only upon the written recommendation from an investment adviser that has over three hundred million dollars in other funds under its management;
(h) Negotiable certificates of deposit issued by any bank, trust company, national banking association or savings institution organized and operating in the United States, which mature in less than one year and are fully collateralized;

(i) Interest earning deposits including certificates of deposit, with any duly designated state depository, which deposits are fully secured by a collaterally secured bond as provided in section four, article one of this chapter; and

(j) Any corporate stock of any private corporation or association organized and operating in the United States and which is also listed on the Standard and Poor's List of 500.

§12-6-10. Restrictions on investments.

1 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. (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. (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. (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;

4. (4) At no time shall more than twenty percent of the portfolio of the consolidated pension fund be invested in securities described in subdivision (j) of section nine of this article; and

5. (5) At no time may any of the consolidated fund be invested in securities described in subdivision (j) of section nine of this article.
22 For the purpose of making the computations required
23 by this section, securities shall be valued in accordance
24 with generally accepted accounting principles.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-26. Continuation of death, disability and retirement
fund; retirement board.

1 There shall be continued the death, disability and
2 retirement fund heretofore created for the benefit of
3 members of the department of public safety and any
4 dependent of a retired or deceased member thereof.

5 There shall be deducted from the monthly payroll of
6 each member of the department of public safety and
7 paid into such fund six percent of the amount of his
8 salary, and an additional twelve percent of the monthly
9 salary of each member of said department shall be paid
10 by the state of West Virginia monthly into such fund out
11 of the annual appropriation for said department. There
12 shall also be paid into the fund such amounts as have
13 previously been collected by the superintendent of the
14 department of public safety on account of payments to
15 members for court attendance and mileage, rewards for
16 apprehending wanted persons, fees for traffic accident
17 reports and photographs, fees for criminal investigation
18 reports and photographs, fees for criminal history
19 record checks, fees for criminal history record reviews
20 and challenges or from any other sources designated by
21 the superintendent. All moneys payable into such fund
22 shall be deposited in the state treasury, and the
23 treasurer and auditor shall keep a separate account
24 thereof on their respective books.

25 The moneys in this fund, and the right of a member
26 to a retirement allowance, to the return of contributions,
27 or to any benefit under the provisions of this article, are
28 hereby exempt from any state or municipal tax; shall
29 not be subject to the execution, garnishment, attachment
30 or any other process whatsoever; and shall be unassign-
31 able except as is provided in this article.

32 The death, disability and retirement fund shall be
administered through the thirtieth day of June, one thousand nine hundred ninety-one, by a retirement board which shall consist of the attorney general, state treasurer, the superintendent and two members in active service of the department: Provided, That members of said retirement board shall not be entitled to receive any compensation in addition to the salary of their respective offices for any service rendered as a member of said retirement board: Provided, however, That the superintendent may pay out of funds appropriated for operation of said department the reasonable expenses of members of said board necessarily incurred in connection with dispatch of any business properly before such board. From the first day of July, one thousand nine hundred ninety-one and thereafter, the death, disability and retirement fund shall be administered by the consolidated public retirement board created by article ten-d, chapter five of this code. The two members of said department shall be elected to membership on the retirement board by vote of the members of the department of public safety; such election to be held on the first Tuesday in June next following the passage of this article and on the first Tuesday in June each two years thereafter. The attorney general, state treasurer and the superintendent of the department of public safety shall promulgate any and all necessary rules and regulations for holding in a fair and impartial manner the election on the first Tuesday in June next following the passage of this article and thereafter the retirement board consisting of the attorney general, state treasurer, superintendent and the two duly elected members of said department shall have authority to promulgate and, from time to time, revise rules and regulations for holding all subsequent elections in a fair and impartial manner. All elections shall be held under the direction of the superintendent of said department in accordance with said rules and regulations. The members of the department chosen to serve on said retirement board shall hold office for a period of two years commencing on the first day of July next following the date of such election. When any member elected to the retirement board shall die, resign
from the board, resign or be discharged from service in
the department, make application for retirement, be
retired, or become disabled, the office of such member
of the retirement board shall be declared vacant by the
superintendent of said department, and said superin-
tendent, to fill such vacancy, shall appoint the member
in active service of said department who as an unsuc-
cessful candidate at the preceding election of members
to said retirement board received the greatest number
of votes. No member of the retirement board shall
participate in any hearing at which his own petition for
retirement or the petition of any member of said
department who is related to him by blood or marriage
shall be presented for consideration.

At its first meeting following each election of
members to the retirement board, said board shall elect
one of its members to serve as chairman and a second
member to serve as secretary thereof. The retirement
board shall have the power to make rules and regula-
tions, not inconsistent with the provisions hereof,
governing procedure and order and manner of business
by and before such board. The retirement board shall
have the power to make awards and to revise and
terminate awards previously made for such times and
under such terms and conditions as are hereinafter
provided. The votes of a majority of the five members
of the board shall be necessary to the decision of any
matter by the board. Decisions made by the board shall
be supreme and final and there shall be no appeal
therefrom.

It shall be the duty of the retirement board on or
before the first day of July of each year to cause all
future awards from such fund to be valued and, to the
extent that moneys shall be available, reserves based on
sound actuarial principles for payment thereof to be
carried on the fund's account as a liability against the
reserve fund. The board shall have the authority to
employ an actuary for such purpose. The board shall
cause a system of accounting to be installed and
maintained to reflect currently and truly all transac-
tions or developments pertaining to age of members and
eligible dependents surviving deceased members, periods of service and aggregate earnings of all members eligible to participate in said fund and any other matter relating to maintenance of said fund or administration thereof, and each year to cause to be made and submitted to each member of said department a statement of the condition of said fund. Costs and expenses incurred in making actuarial studies, audits and installations and maintenance of such accounting system shall be paid by the superintendent from funds appropriated for operation of the department of public safety.

All moneys paid into and accumulated in said death, disability and retirement fund, except such amounts as shall be designated or set aside by the retirement board for payments of death, disability and retirement benefits and awards, shall be invested by the state board of investments as provided by law.

CHAPTER 18. EDUCATION.

Article 7A. State Teachers Retirement System.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-4. Teachers retirement board.
§18-7A-18a. Calculation of allocation to reserve fund.
§18-7A-26i. Supplemental benefits for retired teachers.
§18-7A-34. Loans to members.
§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.
§18-7A-35c. Termination of benefits; procedure.

§18-7A-4. Teachers retirement board.

1 The general administration and the management of the retirement system are hereby continued in a “teachers retirement board” through the thirtieth day of June, one thousand nine hundred ninety-one and thereafter, in the consolidated public retirement board...
created by article ten-d, chapter five of this code. The retirement board shall have the right to sue and be sued, plead and be impleaded, contract and be contracted with and shall make all necessary rules and regulations to carry out the provisions of this article. All of the business of the board shall be transacted, all of its funds invested, all warrants for money drawn and payments made, and all of its cash and securities and other property shall be held in the name of the “teachers retirement board.”

§18-7A-18a. Calculation of allocation to reserve fund.

(a) Beginning the first day of June, one thousand nine hundred ninety-one, the consolidated public retirement board, created pursuant to article ten-d, chapter five of this code, shall make an annual calculation of the aggregate full compensation actually received by the following persons:

(1) Those persons employed on or after the first day of July, one thousand nine hundred ninety-one, who would have been teacher members of the state teachers retirement system under this article if such persons’ employment had begun prior to such date; and

(2) Those persons employed on and after the first day of July, one thousand nine hundred ninety-one, who would have been nonteaching members of the state teachers’ retirement system under this article if such persons’ employment had begun prior to such date.

(b) There shall be an annual allocation from the state general revenue fund to the reserve fund, created by section eighteen of this article, equal to the sum of seven and one-half percent of the aggregate compensation totals of subdivisions one and two, subsection (a) of this section.

There shall be an additional allocation in each year an amount equal to the total of all irrevocably forfeited amounts in the suspension account established in section eleven, article seven-b of this chapter plus earnings thereon which have been certified to the several
contributing employers as irrevocably forfeited in the
prior fiscal year and subsequently utilized by said
contributing employers to reduce their total aggregate
contribution requirements pursuant to section seven-
teen, article seven-b of this chapter.

(c) The additional allocation provided in this section
represents a funding method by which a part of a
rational amortization plan will be established to
amortize the current unfunded liability of the teachers
retirement system created by this article. The additional
allocations are not and shall not be construed to be
moneys which are owed to, nor earned by any employee,
designated in subdivision (1) or (2), subsection (a) of this
section. The calculation of additional allocation provided
for herein is solely a mathematical formula to quantify
the savings in the state general revenue funds caused
by the enactment of the Teachers' Retirement Reform
Act codified in article seven-b of this chapter.

§18-7A-26i. Supplemental benefits for retired teachers.

Beginning on the first day of January, one thousand
nine hundred ninety-one, any annuitant who is receiving
a retirement annuity on the effective date of this section
shall receive a supplemental benefit, prospectively, if
the effective date of retirement for such annuitant was
prior to the first day of July, one thousand nine hundred
eighty-one, and such annuitant is not receiving supple-
mental benefits pursuant to section twenty-six-h of this
article. For the purposes of this section, "effective date
of retirement" means the last day of actual employment
or the last day carried on the payroll of the employer,
whichever is later, together with fully meeting all of the
eligibility requirements for retirement prior to the
aforesaid effective date.

Each such eligible annuitant shall receive as his or
her supplemental benefit an increased annual amount
which is the product of the sum of eighteen dollars
multiplied by his or her years of credited service.

For the purpose of calculating the supplemental
benefit provided in this section, fractional parts of a
service credit year are to be disregarded unless in excess
of one half of a credited service year, in which event a full year of service credit shall be given.

For the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant's own benefit and that which may be receivable as beneficiary of another, under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.

Prior to the first day of January, one thousand nine hundred ninety-one, the executive secretary of the board shall provide to the Legislature information as to the number of annuitants who retired before the first day of July, one thousand nine hundred eighty-one, the amounts of the annuities they receive, the amount of funds necessary to provide cost of living increases to such annuitants, and such other detail and related information as the joint committee on government and finance may direct.

§18-7 A-34. Loans to members.

A member of the retirement system upon written application may borrow from his individual account in the teachers accumulation fund, subject to these restrictions:

(1) Loans shall be made in multiples of ten dollars, the minimal loan being one hundred dollars and the maximum being eight thousand dollars except if the total amount of loaned money outstanding exceeds forty million dollars, the maximum will be three thousand dollars until the teachers retirement board determines that loans outstanding have been reduced to an extent that eight thousand dollar loans are again authorized.

(2) Loans to any one member shall not exceed one half of his contributions to his individual account in the teachers accumulation fund.

(3) Interest charged on the amount of the loan shall be six percent per annum, or a higher rate as set by the teachers retirement board. If repayable in installments, the interest shall not exceed the annual rate so established upon the principal amount of the loan, for the entire period of the loan, and such charge shall be added
to the principal amount of the loan. The minimal
interest charge shall be for six months.

(4) No member shall be eligible for more than one
loan in any one year.

(5) If a refund or benefit is payable to the borrower
or his beneficiary before he repays the loan with
interest, the balance due with interest to date shall be
deducted from such benefit or refund.

(6) From his monthly salary as a teacher the member
shall pay the loan and interest by deductions which will
pay the loan and interest in not more than sixty nor less
than six months. Upon notice of loan granted and
payment due, the employer shall be responsible for
making such salary deductions and reporting them to
the retirement board. At the option of the retirement
board, loan deductions may be collected as prescribed
herein for the collection of members’ contribution, or
may be collected through issuance of warrant by
employer. If the borrower decides to make loan pay-
ments while not paid for service as a teacher, the
retirement board must accept such payments.

§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 excep-
tions; certain positions abolished; special
rule of eighty; effective, termination, and
notice dates.

The Legislature hereby finds and declares that a
compelling state interest exists in providing a tempo-
rary, early retirement incentives program for encourag-
ing 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 supple-
mented herein, retroactive to such beginning date,
aforesaid. The Legislature further finds that maintain-
ing an actuarily sound retirement fund is essential and
that the reemployment in any manner, including
reemployment on a contract basis, by the state of any
person who retires under this section is contrary to the
intent of the early retirement program and severely
threatens the fiscal integrity of the retirement fund.

(a) For the purposes of this section: (1) “Contract”
means any personal service agreement, not involving the
sale of commodities, that cannot be performed within
sixty days or for which the total compensation exceeds
two thousand five hundred dollars in any twelve-month
period. The term “contract” does not include any
agreement obtained by a retirant through a bidding
process and which is for the furnishing of any commod-
ity to a government agency; (2) “governmental entity”
means the state of West Virginia; a constitutional
branch or office of the state government, or any
subdivision thereof; a county, city or town in the state;
a county board of education; a separate corporation or
instrumentality established pursuant to a state statute;
any other entity currently permitted to participate in
any state public retirement system or the public
employees insurance agency; or any officer or official of
any entity listed above who is acting in his or her official
capacity; (3) “substitute teacher” means a teacher,
public school librarian, registered professional nurse
employed by the county board of education or any other
person employed for counselling or instructional pur-
poses in a public school in this state who is temporarily
fulfilling the duties of an existing real person employed
in a specific position who is temporarily absent from
that specific position; (4) “part-time elected or ap-
pointed office” means any elected or appointed office
that compensates its members in an amount less than
two thousand five hundred dollars or requires less than
sixty days of service in any twelve-month period.
(b) 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 incentive 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.

(c) Eligible, active, contributing members, aforesaid, employed under agreement 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 agreement period and said school year; with proper credit to be granted for such extended period.

Also, eligible, active, contributing members employed, not under agreement, 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 or court proceeding which is pending on the passage date of this bill, 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 twenty-fourth 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.

(d) Any member participating in this retirement incentive program is not eligible to accept further employment or accept, directly or indirectly, work on a contract basis from a governmental entity: Provided, That nothing in this section shall effect any contract entered into prior to the effective date of this section: Provided, however, That the executive director may approve, upon written request for good cause shown, an exception allowing a retirant to perform work on a contract basis: Provided further, That a person may retire under this section and thereafter serve in an elective office: And provided further, That he or she shall not receive an incentive option 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 option shall
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 option under this section during the term of service in said office, but the same shall be suspended during such period: And provided further, That at the end of such term and cessation of service in such appointive office the incentive option provided for under this section shall be resumed: And provided further, That any person elected or appointed to office by the state or any of its political subdivisions who waives whatever salary, wage or per diem compensation he or she may be entitled to by virtue of service in such office and who does not receive any income therefrom except such reimbursement of out-of-pocket costs and expenses as may be permitted by the statutes governing such office shall continue to receive an incentive option under this section. Such service shall not be counted as contributed or credited service for purposes of computing retirement benefits.

If such elected or appointed office is a part-time elected or appointed office, a person electing retirement under this section may serve in such elective or appointive office with no loss of the benefits provided under this section.

Prior to the initiation or renewal of any contract entered into pursuant to this section or the acceptance of any elective or appointive office, a person who has elected to retire under the early retirement provisions of this article shall complete a disclosure and waiver statement executed under oath and acknowledged by a notary public. The board shall promulgate rules, pursuant to chapter twenty-nine-a of this code, regarding the form and contents of the waiver and disclosure statement. The disclosure and waiver statement shall be forwarded to the appropriate state public retirement system administrator who shall take action to ensure that the early retirement incentive option benefit is reduced in accordance with the provisions of this section. The administrator shall then certify such action in writing to the appropriate governmental entity.
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.

(e) 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.

(f) 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 abolish-
ment requirement shall not apply to elective positions
or appointed public officers whose positions are estab-
lished 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 retire-
ment 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 depart-
ment 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.

(g) 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 combi-
nation thereof not exceeding an aggregate of two years.

(h) 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.

§18-7A-35c. Termination of benefits; procedure.

Whenever the board determines that (1) any person
has knowingly made any false statement or falsified or
permitted to be falsified any record or records of the
retirement system in an attempt to defraud the system,
or (2) any person who resumes employment with any
governmental entity or accepts, directly or indirectly,
work on a contract basis from any governmental entity,
except as provided for under this article, the board shall
terminate any benefit that a person is receiving, has
received, or is entitled to receive under the early
retirement provisions of this article. Further, if any
taking early retirement under this article desires
to revoke his or her early retirement incentive, he or she
shall be allowed to do so if he or she is entitled to regular
retirement pursuant to this article: Provided, That such
revocation shall be retroactive to the date of last
employment and any incentive annuity already received
by the retiree be repaid to the retirement system. Any
person who revokes his or her early retirement incentive
shall be thereafter carried upon the records of the
retirement system as a regular retiree and shall not be
entitled to any enhanced benefit by reason of the early
retirement options contained in this article: Provided,
however, That any person who opted to retire pursuant
to the early retirement provisions of this article who
would not have been and is not eligible for regular
retirement but for the early retirement incentive options
must upon returning to the employment of a participating employer, reapply for admission to a retirement system and repay all pension benefits paid to that person since the date his previous employment ceased. Any termination of benefits may be appealed pursuant to the state administrative procedures act in chapter twenty-nine-a of this code. The board shall promulgate rules regarding the procedure for termination of benefits and the repayment of any benefit, in accordance with the provisions of article three, chapter twenty-nine-a of this code.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-1. Short title.
§18-7B-2. Definitions.
§18-7B-3. Defined contribution retirement system created and established; body corporate.
§18-7B-4. Article to be liberally construed; purpose.
§18-7B-5. Administration of the teachers' defined contribution retirement system.
§18-7B-6. Powers and duties of the consolidated board in the administration of the defined contribution system.
§18-7B-7. Participation in teachers' defined contribution retirement system; limiting participation in existing teachers retirement system.
§18-7B-8. Voluntary participation in system.
§18-7B-9. Members contribution; annuity account established.
§18-7B-10. Employer contributions.
§18-7B-11. Termination of membership.
§18-7B-12. Retirement, commencement of annuity payments.
§18-7B-14. Supplemental annuity contracts.
§18-7B-16. Years of employment service.
§18-7B-17. Deposits to the members' annuity accounts.
§18-7B-18. Right to benefits not subject to execution, etc.

§18-7B-1. Short title.

1 This article shall be known and may be cited as the "Teacher's Retirement Reform Act".

§18-7B-2. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:
(1) "Defined contribution system" or "system" means the teachers' defined contribution retirement system created and established by this article;

(2) "Existing retirement system" means the state teachers retirement system established in article seven-a of this chapter;

(3) "Existing employer" means any employer who employed or employs a member of the existing retirement system;

(4) "Consolidated board" or "board" means the consolidated public retirement board created and established pursuant to article ten-d, chapter five of this code;

(5) "Member" or "employee" means the following persons, if regularly employed for full-time service: (a) any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a non-teaching capacity by the state board of education, any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the department of corrections, the department of health or the department of human services; (l) any person who is regularly employed for full-time service by any county board of education, the state board of education or the teachers retirement board; and (m) the
administrative staff of the public schools including
deans of instruction, deans of men and deans of women,
and financial and administrative secretaries;
(6) "Regularly employed for full-time service" means
employment in a regular position or job throughout the
employment term regardless of the number of hours
worked or the method of pay;
(7) "Year of employment service" means employment
for at least ten months, a month being defined as twenty
employment days: Provided, That no more than one year
of service may be accumulated in any twelve-month
period;
(8) "Employer" means the agency of and within the
state which has employed or employs a member;
(9) "Compensation" means the full compensation
actually received by members for service whether or not
a part of such compensation is received from other
funds, federal or otherwise, than those provided by the
state or its subdivisions;
(10) "Public schools" means all publicly supported
schools, including normal schools, colleges and univer-
sities in this state;
(11) "Member contribution" means an amount re-
duced from the employee's regular pay periods, and
deposited into the member's individual annuity account
within the defined contribution retirement system;
(12) "Employer contribution" means an amount
deposited into the member's individual annuity account
on a periodic basis coinciding with the employee's
regular pay period by an employer from its own funds;
(13) "Annuity account" or "annuity" means an ac-
count established for each member to record the deposit
of member contributions and employer contributions
and interest, dividends or other accumulations credited
on behalf of the member;
(14) "Retirement" means a member's withdrawal
from the active employment of a participating employer
and completion of all conditions precedent to retirement;
(15) "Permanent, total disability" means a mental or
82 physical incapacity requiring the absence from employ-
ment service for at least six months: Provided, That such
84 incapacity is shown by an examination by a physician
85 or physicians selected by the board.

§18-7B-3. Defined contribution retirement system
-created and established; body corporate.

1 The teachers' defined contribution retirement system
2 is hereby created and established to provide for the
3 secure, fair and orderly retirement of the teachers and
4 related personnel of the state. The defined contribution
5 retirement system shall constitute a body corporate and
6 all business of the system shall be transacted in the
7 name of the teachers' defined contribution retirement
8 system.

§18-7B-4. Article to be liberally construed; purpose.

1 The provisions of this article shall be liberally
2 construed so as to provide a general annuity based
3 retirement system for teachers in this state. The purpose
4 of this article is to provide a defined contribution
5 retirement program which is fully funded on a current
6 basis from employer and employee contribution.

§18-7B-5. Administration of the teachers' defined contribu-
tion retirement system.

1 The consolidated public retirement board created
2 pursuant to article ten-d, chapter five of this code shall
3 administer the teachers' defined contribution retirement
4 system. The board may sue and be sued, contract and
5 be contracted with and conduct all the business of the
6 defined contribution system in the name of the teachers'
7 defined contribution retirement system.

§18-7B-6. Powers and duties of the consolidated board in
the administration of the defined contribution system.

1 The board has all powers necessary to effectuate the
2 purposes of this article. The board shall contract with
3 a private pension, insurance, annuity, mutual fund or
4 other qualified company or companies to administer the
5 day-to-day operations of the system. In selecting such
6 company or companies the board shall take into account
as its highest duty, the proper safeguard and protection of the member and employer contributions and the interest dividends, or other return thereon. The board shall promulgate rules regarding the proper investment of funds notwithstanding the provisions of article six, chapter twelve of this code.

§18-7B-7. Participation in teachers’ defined contribution retirement system; limiting participation in existing teachers retirement system.

Beginning the first day of July, one thousand nine hundred ninety-one, the teachers’ defined contribution retirement system shall be the single retirement program for all new employees whose employment commences on or after that date. No additional new employees except as may be provided herein may be admitted to the existing retirement system. Members of the existing retirement system whose employment continues beyond the first day of July, one thousand nine hundred ninety-one, are not affected by this article and shall continue to contribute and participate in the existing system without change in provisions or benefits.

Notwithstanding the provisions of section twenty-three, article seven-a of this chapter, any employee whose employment terminates after the thirtieth day of June, one thousand nine hundred ninety-one, who is later reemployed by an employer shall be eligible for membership only in the teachers’ defined contribution system: Provided, That if such reemployment with an existing employer occurs not more than six months after the employee’s previous employment, he or she shall be entitled to readmission to the existing retirement system in which he or she was originally a member: Provided, however, That if such employee has withdrawn his or her contributions from the existing retirement system, then readmission shall not be permitted and the employee will be entitled only to the defined contribution system.

An employee whose employment with an employer or an existing employer is suspended as a result of an approved leave of absence, approved maternity or paternity break in service, or any other approved break in service authorized by the board, is eligible for
readmission to the existing retirement system in which he or she was a member.

In all cases where a question exists as to readmission to membership in the existing retirement system, the board shall decide the question.

§18-7B-8. Voluntary participation in system.

Any employee who is a member of the existing retirement system may, upon written election, voluntarily elect membership in the defined contribution system, on a prospective basis, on or after the first day of July, one thousand nine hundred ninety-one. All benefits earned by any employee making such voluntary election under the existing retirement system prior to such a voluntary election shall be frozen and made available to that employee upon retirement as provided by the existing retirement system. For the purposes of this section “frozen” means that the member's salary, years of service and any other factor to determine benefits shall be calculated as of the date that the member elected membership in the defined contribution system and after that date no increase in salary, years of service or any other factor may be used to increase the retirement benefit above that which it would be if a person retired upon the date that the election is made. After having made such election the employee may not change such election or again become a member of the existing retirement system.

§18-7B-9. Members' contributions; annuity account established.

Each employee who is a member of the defined contribution system shall contribute four and one-half percent of his or her gross compensation by salary reduction. Such salary reductions shall be made by the employer at the normal payroll intervals and shall be remitted within five working days to the private pension, insurance, annuity, mutual fund, or other qualified company or companies designated by the board to administer the day-to-day operations of the system.

All member contributions shall be immediately deposited to an account or accounts established in the
name of the member and held in trust for the benefit of the member. An account agreement shall be issued to each member setting forth the terms and conditions under which contributions are received, and the investment and retirement options available to the member. The board shall promulgate by the thirtieth day of June, one thousand nine hundred ninety-one, pursuant to section six of this article, rules defining the minimum requirements for the investment and retirement options to be provided to the members.

Such rules, to the extent not inconsistent with the applicable provisions of the Internal Revenue Code of the United States, shall provide for varied retirement options including, but not limited to:

(1) Lump sum distributions;
(2) Joint and survivor annuities;
(3) Other annuity forms in the discretion of the board;
(4) Variable annuities which gradually increase monthly retirement payments: Provided, That said increased payments are funded solely by the existing current value of the member's account at the time the member's retirement payments commencement and not, to any extent, in a manner which would require additional employer or employee contributions to any member's account after retirement or after the cessation of employment; and
(5) The instances in which, if any, distributions or loans can be made to members from their annuity account balances prior to having attained the age of fifty-five.

§18-7B-10. Employer contributions.

Each participating employer shall annually make a contribution equal to seven and one-half percent of each member's gross compensation whose employment commenced on or after the first day of July, one thousand nine hundred ninety-one. The pro rata share of this amount shall be paid upon each date that a member contribution is made and shall be remitted as provided for in section nine of this article for credit to the
member's annuity account. Each participating employer has a fiduciary duty to its employees to ensure that the employer contributions are timely made. In the case of an officer or employee of the state, any unpaid contribution shall be a state debt, contracted as a result of a casual deficit in state revenues, to be accorded preferred status over other expenditures.

In the event that any payment is not timely made, the participating employer shall immediately give to the employee and the state auditor notice in writing of the nonpayment, in such form and accompanied by such documentation as may be required by the auditor. Notice to the auditor shall operate in the manner of a requisition, and the auditor shall transmit a warrant to the treasurer. At such time as funds are available in the appropriate account, the treasurer shall pay the employer contribution, together with appropriate daily interest.

§18-7B-11. Termination of membership.

Any member whose employment with a participating employer terminates after the completion of six complete years of employment service shall be eligible to terminate his or her annuity account and receive a distribution from the member's annuity account, in an amount equal to the member's contribution plus one third of the employer contributions and any earnings thereon. Any member whose employment with a participating employer terminates after the completion of nine complete years of employment service shall be eligible to terminate his or her annuity account, in an amount equal to the member's contribution plus two thirds of the employer's contributions and any earnings thereon. Any member whose employment with a participating employer terminates after the completion of twelve complete years of employment service shall be eligible to terminate his or her annuity account and receive a distribution of all funds contributed and accumulated in his or her annuity account. Any member whose employment with a participating employer terminates prior to the completion of six
complete years of employment service shall be eligible
to terminate his or her annuity account and receive a
distribution from the member's annuity account, in an
amount equal to the member's contribution plus any
earnings thereon: Provided, That on the death or
permanent, total disability of any member, that member
shall be eligible to terminate his or her annuity account
and receive all funds contributed to or accumulated in
his or her annuity account.

The remaining balance, if any, in the member's
account after the distribution shall be remitted and paid
into a suspension account, hereby created, to be
administered by the board. The board shall promulgate
rules regarding the distribution of any balance in the
special account created by this section: Provided, That
any funds in the account shall be used solely for the
purpose of reducing employer contributions in future
years.

Any account balances remitted to the suspension
account herein shall be maintained by the board in said
suspension account in the name of the terminated
employee for a period of five years following initial
remittance to the suspension account. For each said
terminated employee at the culmination of the aforesaid
five-year period, the board shall certify in writing to
each contributing employer the amount of the account
balances plus earnings thereon attributable to each
separate contributing employers previously terminated
employees' accounts which have been irrevocably
forfeited due to the elapse of a five-year period since
termination pursuant to section sixteen of this article.

Upon certification to the several contributing employ-
ers of the aggregate account balances plus earnings
thereon which have been irrevocably forfeited pursuant
to this section, the several contributing employers shall
be permitted in the next succeeding fiscal year or years
to reduce their total aggregate contribution require-
ments pursuant to section seventeen of this article, for
the then current fiscal year by an amount equal to the
aggregate amounts irrevocably forfeited and certified as
such to each contributing employer.
Upon the utilization of the amounts irrevocably forfeited to any contributing employer as a reduction in the then current fiscal year contribution obligation and upon notification provided by the several contributing employers to the board of their intention to utilize irrevocably forfeited amounts, the board shall direct the distribution of said irrevocably forfeited amounts from the suspension account to be deposited on behalf of the contributing employer to the member annuity accounts of its then current employees pursuant to section seventeen of this article.

§18-7B-12. Retirement, commencement of annuity payments.
1 At any time after an employee reaches the age of fifty-five years, he or she may elect to take retirement by notifying the board or its designee in writing of such intention not less than sixty days prior to the effective date of retirement. Retirement payments shall commence within thirty days of the retirement date under such payment option or options as may be provided by the board and elected by the employee.

1 (a) The amount of annuity payments a retired member shall receive shall be based solely upon the balance in the member’s annuity account at the date of retirement, the retirement option selected, or in the event of an annuity option being selected, the actuarial life expectancy of the member, and such other factors as normally govern annuity payments.
2 (b) The board, or its designee, is authorized upon retirement of a member, with the approval of that member, to purchase an annuity with the balance of the member’s account. Upon delivery of the annuity to the member upon his or her retirement, the member shall execute a release surrendering any claim the member may have against the retirement trust.

§18-7B-14. Supplemental annuity contracts.
1 The board shall authorize the private pension, insurance, annuity, mutual fund or other qualified company or companies with whom it contracts to make
available to members such supplemental annuity options, disability and other insurance or benefits as the board deems appropriate: Provided, That such supplemental annuities, insurance and benefits shall be funded solely from employee contributions.


The board shall prepare or cause to be prepared, on an annual basis, an account statement for each members' annuity account. The statement shall include, but not be limited to, a statement of the current market value of the members' account. The board shall prescribe the form and content of the account statement not inconsistent with the provisions of this section.

§18-7B-16. Years of employment service.

A member of the defined contribution system who terminates employment with a participating employer and does not remove any funds from his or her annuity account and becomes reemployed with a participating employer within five years shall retain his or her previous years of employment service for purposes of the provisions of section eleven of this article.

§18-7B-17. Deposits to the members' annuity accounts.

Beginning on the first day of July, one thousand nine hundred ninety-one and thereafter, each county board of education shall deposit in the member's annuity account created pursuant to section nine of this article an amount equal to seven and one-half percent of all compensation paid to members of the defined contribution system in excess of that authorized for minimum salaries in sections two and eight-a, article four, chapter eighteen-a of this code to the extent that the excess exceeds the amount distributed for salary equity to the county.

§18-7B-18. Right to benefits not subject to execution, etc.

The right of any person to a benefit provided for in this article shall not be subjected to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court.
ARTICLE 23. ADDITIONAL POWERS, DUTIES AND RESPONSIBILITIES OF GOVERNING BOARDS OF STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-23-4a. Supplemental and additional retirement plans for employees; payroll deductions; authority to match employee contributions; retroactive curative and technical corrective action.

The governing boards shall have the authority to contract for a supplemental retirement plan for any or all of its employees to supplement the benefits such employees will receive under the state teachers retirement system. The governing boards shall have the authority to make additional periodic deductions from the salary payments due such employees in the amount they are required to contribute for the supplemental retirement plan selected by the board. The additional deductions shall not exceed five percent of the salary of employees under thirty-five years of age, six percent of the salary of those thirty-five through forty-four years of age, and seven and one-half percent of the salary of those forty-five years of age and above, and shall not cover any portion of an employee's salary which is covered by the state teachers retirement system.

The governing boards shall also have the authority to contract for an additional retirement plan for any of its employees who elect to participate solely in such a retirement plan selected by the governing boards without participating in the state retirement system. The governing boards shall have the authority to make periodic deductions from the salary payments due such employees in the amount they are required to contribute to the additional plan, which deductions shall be the same percentage of the participating employees' salaries as that deducted from the salaries of members of the state retirement system.

The board is further authorized, by way of additional compensation to such employees, to pay an amount equal to the contributions of such employees into either the supplemental or additional retirement plan from funds appropriated to it for personal services. Each participating employee shall have a full and immediate vested interest in the retirement and death benefits accrued
from all the moneys paid into such supplemental or
additional retirement plan for his benefit. Upon proper
requisition of the board, the auditor shall periodically
issue a warrant, payable as specified in the requisition,
for the total contributions so withheld from the salaries
of all participating employees and for the governing
board's matching funds.

Pursuant to the provisions contained in article seven-
a and article twenty-three of this chapter, once a
member has elected one of the options contained in
section fourteen-a, article seven-a of this chapter and
section four-a, article twenty-three of this chapter, he
cannot thereafter change such election. The Legislature
declares that the amendment of this section in Enrolled
Committee Substitute for House Bill No. 4672, enacted
at the regular session, one thousand nine hundred
eighty-eight, was inadvertent and remained in said bill
contrary to legislative intent that the same be deleted;
therefore, such language is hereby retroactively deleted
and expunged as of the effective date of said Enrolled
Committee Substitute for House Bill No. 4672 as
curative and technical corrective action. The Legislature
further declares that such ambiguous and deficient
language inadvertently enacted in said bill shall be
given no force and effect whatsoever in any litigation
involving such language.

Beginning on the first day of July, one thousand nine
hundred ninety-one, any person whose employment
commences on or after that date and is eligible to
participate in an additional retirement plan provided
pursuant to this section shall be required to participate
in said additional plan and shall not be eligible to
participate in any other state retirement system.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance pre-
mium 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 the teachers retirement system reserve
fund and 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 policy-holders 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 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
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 for the purposes set forth in this section. Sixty-five percent of the aforementioned revenues allocated shall be allocated to municipal policemen's and firemen's pension and relief funds; twenty-five percent of such allocated revenues shall be allocated to volunteer and part volunteer fire companies and departments, and ten percent of such allocated revenues shall be allocated to the Teachers Retirement System Reserve Fund created by section eighteen, article seven-a, chapter eighteen of this code: 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 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-3. Custody, permissible investment and administration of retirement system trust fund; state auditor's authority as administrator and trust fund fiduciary; refunds required, including interest.

The state treasurer shall be the custodian of the fund and of any investment securities of the retirement system and shall give a separate and additional bond for the faithful performance of his or her duties as such custodian. The governor shall fix the amount of such bond which shall be approved as to sufficiency and form by the attorney general and shall be filed in the office of the secretary of state. The premium on such bond shall be paid from the fund.

In a manner and to an extent consonant with sound administrative principles, the state board of investments shall have authority to invest such fund in interest-bearing securities of the United States of America, of the state of West Virginia and of any political subdivision thereof or such other investments as may be authorized or permitted by the provisions of article six, chapter twelve of this code.

The state auditor shall be the primary fiscal officer,
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responsible for the records and administration of the
trust fund, including budgetary matters incident to the
authority vested in him or her with respect to judicial
department appropriations under article VI, section 51
of the Constitution of West Virginia. The state auditor
shall also, as trust fund fiduciary, independently
determine anew, in a substantive sense and as a check
and balance, any information concerning eligible service
years, required money contributions, computation of
judge’s retirement benefit or spousal benefit or any
other substantive element of qualification supplied or
certified to the state auditor by any other public officer,
including the supreme court administrator or the chief
executive, toward proper final review before issuance of
a state warrant in payment of any benefit under the
judges’ retirement system.

Through the thirtieth day of June, one thousand nine
hundred ninety-one, the state auditor shall be the
primary fiscal officer, responsible for the records and
administration of the trust fund, including budgetary
matter incident to the authority vested in him or her
with respect to judicial department appropriations
under article VI, section 51 of the Constitution of West
Virginia. The state auditor shall also, as trust fund
fiduciary, independently determine anew, in a substan-
tive sense and as a check and balance, any information
concerning eligible service years, required money
contributions, computation of judge’s retirement benefit
or spousal benefit or any other substantive element of
qualification supplied or certified to the state auditor by
any other public officer, including the supreme court
administrator or the chief executive, toward proper
final review before issuance of a state warrant in
payment of any benefit under the judges’ retirement
system. From the first day of July, one thousand nine
hundred ninety-one and thereafter, the fund shall be
administered by the consolidated public retirement
board created by article ten-d, chapter five of this code.

In respect of any credited service heretofore acquired
under the Dostert decision and subsequent related
decisions, the state auditor shall make refund to any
person heretofore making payment to acquire such service credit, primary or derivative, in the amount so earlier paid, together with interest at the same rate such sum actually earned because of its investment by the auditor or treasurer, as the case may be, in the consolidated pension pool or with the interest such sum would have earned if timely invested in such pool, whichever amount of interest be greater.

CHAPTER 9

(Com. Sub. for H. B. 302—By Mr. Speaker, Mr. Chambers, and Delegate R. Burk, By Request of the Executive)

[Passed August 25, 1990; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and eight, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to empowering the state building commission to issue state building revenue bonds for facilities under the jurisdiction of the division of corrections or the regional jail and correctional facilities authority; and providing for prior legislative approval of projects undertaken by the state building commission.

Be it enacted by the Legislature of West Virginia:

That sections four and eight, article six, 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 6. STATE BUILDING COMMISSION.

§5-6-4. Powers of commission.

§5-6-8. Commission empowered to issue state building revenue bonds after legislative authorization; form and requirement for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

§5-6-4. Powers of commission.

1 The commission shall have power:

2 (1) To sue and be sued, plead and be impleaded;

3 (2) To have a seal and alter the same at pleasure;
(3) To contract to acquire and to acquire, in the name of the commission or of the state, by purchase, lease, lease-purchase, or otherwise, 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 personal property for its corporate purposes;

(5) To make bylaws for the management and regulation of its affairs;

(6) With the consent of the attorney general of the state of West Virginia, to use the facilities of his office, assistants and employees in all legal matters relating to or pertaining to the commission;

(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 commission that its interests will be best served;

(10) To construct a building or buildings on real property, which it may acquire, or which may be owned by the state of West Virginia, in the city of Charleston, as convenient as may be to the capitol building, together with incidental approaches, structures and facilities, subject to such consent and approval of the city of Charleston in any case as may be necessary; and, in addition, to acquire or construct a warehouse, including office space therein, in Kanawha county for the West Virginia alcohol beverage control commissioner, and equip and furnish the same; and to acquire or construct, through lease, purchase, lease-purchase, or bond financing, hospitals or other facilities, buildings, or additions or renovations to buildings as may be necessary for the safety and care of patients, inmates and guests at facilities under the jurisdiction of and supervision of the division of health and at institutions
under the jurisdiction of the division of corrections or
the regional jail and correctional facilities authority;
and to formulate and program plans for the orderly and
timely capital improvement of all of said hospitals and
institutions and the state capitol buildings; and to
construct a building or buildings in Kanawha county to
be used as a general headquarters by the division of
public safety to accommodate that division's executive
staff, clerical offices, technical services, supply facilities
and dormitory accommodations; and to develop, improve
and expand state parks and recreational facilities to be
operated by the division of commerce; and to establish
one or more systems or complexes of buildings and
projects under control of the commission; and, subject
to prior agreements with holders of bonds previously
issued, to change the same from time to time, in order
to facilitate the issuance and sale of bonds of different
series on a parity with each other or having such
priorities between series as the commission may
determine; and to acquire by purchase, eminent domain
or otherwise all real property or interests therein
necessary or convenient to accomplish the purposes of
this subdivision;

(11) To maintain, construct and operate a project
authorized hereunder;

(12) To charge rentals for the use of all or any part
of a project or buildings at any time financed, con-
structed, acquired or improved in whole or in part with
the proceeds of sale of bonds issued pursuant to this
article, subject to and in accordance with such agree-
ments with bondholders as may be made as hereinafter
provided: Provided, That on and after the effective date
of the amendments to this section, to charge rentals for
the use of all or any part of a project or buildings at
any time financed, constructed, acquired, maintained or
improved in whole or in part with the proceeds of sale
of bonds issued pursuant to this article, subject to and
in accordance with such agreements with bondholders
as may be made as hereinafter provided, or with any
funds available to the state building commission,
including, but not limited to, all buildings and property
owned by the state of West Virginia or by the state building commission, but no such rentals shall be charged to the governor, attorney general, secretary of state, state auditor, state treasurer, the Legislature and the members thereof, the supreme court of appeals, nor for their offices, agencies, official functions and duties;

(13) To issue negotiable bonds and to provide for the rights of the holders thereof;

(14) To accept and expend any gift, grant or contribution of money to, or for the benefit of, the commission, 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 or contribution;

(15) To enter on any lands and premises for the purpose of making surveys, soundings and examinations;

(16) To invest in United States government obligations, on a short-term basis, any surplus funds which the commission may have on hand pending the completion of any project or projects; and

(17) To do all things necessary or convenient to carry out the powers given in this article.

The rights and powers set forth in subdivision (10) of this section shall not be construed as in derogation of any rights and powers now vested in the West Virginia alcohol beverage control commissioner, the department of mental health, the commissioner of public institutions or the department of natural resources.

§5-6-8. Commission empowered to issue state building revenue bonds after legislative authorization; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

The commission is hereby empowered to raise the cost of a project, as defined in this article, by the issuance
of state building revenue bonds of the state, the
principal of and interest on which bonds shall be
payable solely from the special fund herein provided for
such payment. Subject to the proceedings pursuant to
which any bonds outstanding were authorized and
issued pursuant to this article, the commission shall
pledge the moneys in such special fund, except such part
of the proceeds of sale of any bonds to be used to pay
the cost of a project, for the payment of the principal
of and interest on bonds issued pursuant to this article,
such pledge to apply equally and ratably to separate
series of bonds or upon such priorities as the commission
shall determine. Such bonds shall be authorized by
resolution of the commission which shall recite an
estimate by the commission of such cost, and shall
provide for the issuance of bonds in an amount suffi-
cient, when sold as hereinafter provided, to produce
such cost, less the amount of any funds, grant or grants,
gift or gifts, contribution or contributions received, or
in the opinion of the commission expected to be received,
from the United States of America or from any other
source. The acceptance by the commission of any and all
such funds, grants, gifts and contributions, whether in
money or in land, labor or materials, is hereby expressly
authorized. All such bonds shall have and are hereby
declared to have all the qualities of negotiable instru-
ments. Such bonds shall bear interest at not more than
twelve percent per annum, payable semiannually, and
shall mature in not more than forty years from their
date or dates, and may be made redeemable at the
option of the state, to be exercised by the commission,
at such price and under such terms and conditions, all
as the commission may fix prior to the issuance of such
bonds. The commission shall determine the form of such
bonds, including coupons, if any, to be attached thereto
to evidence the right of interest payments, which bonds
shall be signed by the chairman and secretary of the
commission, under the great seal of the state, attested
by the secretary of state, and the coupons, if any,
attached thereto shall bear the facsimile signature of the
chairman of the commission. In case any of the officers
whose signatures appear on the bonds or coupons issued
as hereinbefore authorized shall 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 they had remained in office until such delivery. The commission shall fix the denominations of such bonds, the principal and interest of which shall be payable at the office of the treasurer of the state of West Virginia, at the capitol of the state, or, at the option of the holder, at some bank or trust company within or without the state of West Virginia to be named in the bonds, in such medium as may be determined by the commission. The bonds and interest thereon shall be exempt from taxation by the state of West Virginia, or any county or municipality therein. The commission may provide for the registration of such bonds in the name of the owners as to principal alone, and as to both principal and interest under such terms and conditions as the commission may determine, and shall sell such bonds in such manner as it may determine to be for the best interest of the state, taking into consideration the financial responsibility of the purchaser, and the terms and conditions of the purchase, and especially the availability of the proceeds of the bonds when required for payment of the cost of the project, such sale to be made at a price not lower than a price which, computed upon standard tables of bond values, will show a net return of not more than thirteen percent per annum to the purchaser upon the amount paid therefor. The proceeds of such bonds shall be used solely for the payment of the cost of the project for which bonds were issued, and shall be deposited and checked out as provided by section five of this article, and under such further restrictions, if any, as the commission may provide. If the proceeds of bonds issued for a project or a specific group of projects shall exceed the cost thereof, the surplus shall be paid into the fund hereinafter provided for payment of the principal and interest of such bonds. Such fund may be used for the purchase of any of the outstanding bonds payable from such fund at the market price, but at 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 cancelled, and shall not again be issued. Prior to the preparation of definitive bonds, the commission may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Notwithstanding the provisions of sections nine and ten, article six, chapter twelve of this code, revenue bonds issued under the authority herein granted shall be eligible as investments for the workers' compensation fund, teachers retirement fund, division of public safety death, disability and retirement fund, West Virginia public employees retirement system and as security for the deposit of all public funds. Such revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this article, or by the constitution of the state. For all projects authorized under the provisions of this article other than projects to be leased by the commission to the regional jail and correctional facilities authority, the aggregate amount of all issues of bonds outstanding at one time shall not exceed sixty-two million five hundred thousand dollars including the renegotiation, reissuance or refinancing of any such bonds, and no such project in connection with which bonds are to be issued shall be initiated by the commission unless and until the Legislature, through enactment of general law, approves the purpose, the amount of bonds to be issued, and the total cost for such project, construction or acquisition.

For projects which are to be leased by the commission to the regional jail and correctional facilities authority, legislative approval pursuant to the provisions of this section shall not be required if such projects have otherwise been approved by the Legislature in accordance with the provisions of subsection (m), section five, article twenty, chapter thirty-one of this code, and the limitations on the amount of revenue bonds which may be issued by the commission and the project costs shall be governed by the terms of any concurrent resolution adopted pursuant to said subsection.
CHAPTER 10

AN ACT directing the farm management commission to convey certain real property to the city of Moundsville and the county of Marshall; and providing that such conveyance shall be in the discretion of, and at the direction of, the regional jail and correctional facilities authority.

Be it enacted by the Legislature of West Virginia:

WEST VIRGINIA PENITENTIARY INSTITUTIONAL FARM.

§1. Farm management commission directed to convey portions of the West Virginia penitentiary institutional farm to city of Moundsville and county of Marshall.

Notwithstanding any provisions of article twelve-a, chapter nineteen of this code to the contrary, the farm management commission is hereby directed to transfer and convey unto the city of Moundsville and the county of Marshall certain portions of the parcel of land known as the West Virginia Penitentiary Institutional Farm, and any improvements, easements, or appurtenances thereon, being situate in Moundsville, Marshall County, West Virginia, as follows:

(1) A conveyance to the City of Moundsville of that parcel of land situate at the easterly end of the Marshall County Fairgrounds in the District of Clay of the County of Marshall consisting of twenty and six hundred twenty-seven thousandths acres (20.627 acres), the precise metes and bounds of which are to be determined by field survey; and

(2) A conveyance to the County of Marshall of either a parcel of land situate at the northeasterly corner of the intersection of Grave Creek Road with Fork Ridge
Road in the District of Clay in the County of Marshall, consisting of not more than ten acres, or a parcel of land, not exceeding ten acres, situate on the south side of Fork Ridge Road approximately two thousand feet in an easterly direction from the intersection of Fork Ridge Road and Twelfth Street in the District of Clay in the County of Marshall, as may be determined most appropriate for the location of the Marshall County Animal Shelter upon completion of a field survey and soils investigations conducted by the County of Marshall, the precise metes and bounds of which shall be determined by a field survey.

The decision to execute any such conveyance as described herein shall be solely within the discretion of, and at the direction of, the regional jail and correctional facilities authority.
RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 2
(By Delegates Love and Pettit)

[Adopted August 23, 1990]

Urging the Governor and Congressional Delegation of Ohio to oppose, halt and prevent the construction of a hazardous waste incineration plant by Waste Technologies Inc. (WTI) in East Liverpool, Ohio, across the Ohio River from Chester, West Virginia, in support of the Let's Improve Valley Environment (L.I.V.E.) Organization.

WHEREAS, West Virginia residents in Chester and Northern Hancock County have expressed great concerns about the risk to both air and water, what will be burned and emitted, monitoring and evaluation standards, and toxic spills; and

WHEREAS, Incineration poses many serious health and environmental problems including toxic air emissions, contaminated wastewater, toxic ash, fugitive emissions from storage tanks and storage and handling hazards; and

WHEREAS, There is little information on how great the risks created are and the industry is a continuous source of air and groundwater pollution; and

WHEREAS, The Environmental Protection Agency has not done an Environmental Impact Study for this plant, and in 1986 when the EPA last reviewed the current incineration technology the agency found it lacking and recommended better monitoring of incinerator stack emissions and short and long-term health consequences to communities; therefore, be it

Resolved by the Legislature of West Virginia:

That the Governor and Congressional Delegation of Ohio are hereby urged to oppose, halt and prevent the construction of a hazardous waste incineration plant by WTI in East Liverpool, in support of the L.I.V.E. Organization; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the Governor of Ohio, the
HOUSE CONCURRENT RESOLUTION 3

(By Mr. Speaker, Mr. Chambers, and Delegates Grubb, White, Hatfield, Cerra, Katz, Louderback, Rutledge, Compton, Buchanan, Damron, S. Cook, Prezioso, Sattes, Spencer, Berry, Tribett, Manuel, Pethtel, D. Cook, Reid, Susman, Browning, Staton, Seacrist, Houvouras, Hatcher, Williams, Schoonover, Murensky, Given, Farmer, Flanigan, Mezzatesta, Fantasia, Kelly, Wooton, Sharp, D. Miller, Rowe, V. Starcher, Murphy, Roop, Long, Beach, Basham and Michael)

[Adopted August 28, 1990]

Urging Congress to enact a national health plan providing access to health care for all Americans.

WHEREAS, At least thirty-seven million Americans, and three hundred forty thousand West Virginians, lack any public or private health insurance, an increase of more than twenty-five percent in the last decade; and

WHEREAS, Another twenty-six million Americans are estimated to be underinsured; and

WHEREAS, Seventy-five percent of the uninsured are workers and their families; and

WHEREAS, In the past twenty years health care costs in the United States outpaced inflation by a three to one margin; and

WHEREAS, This year we are expected to spend $660 billion on health care in this country, increasing to more than a trillion dollars by the year 2000; and

WHEREAS, The United States spends more than twelve percent of its gross national product on health care compared to eight percent in Canada and seven percent for the average industrial nation; and

WHEREAS, The United States spends twice as much on health care per person than the average of Canada, Great Britain, Japan, Sweden and West Germany; and

WHEREAS, According to a recent study, the United States has
the most costly health care system in the world, yet it ranks twenty-second in the world in infant mortality, twelfth in life expectancy at birth, twenty-first in child mortality, and twenty-fourth in percentage of low birth weight babies; and

WHEREAS, An association of manufacturers states that health benefits reduce the average company's profits by twenty-five percent, and that health benefits are the largest nonwage labor cost in the typical manufacturing corporation; and

WHEREAS, Rising health care costs are the leading cause of personal and small business bankruptcies in America; and

WHEREAS, Seventy-eight percent of all striking workers were engaged in disputes over the preservation of health benefits; and

WHEREAS, Spiraling health care costs have a dramatic impact on West Virginia's fiscal stability; and

WHEREAS, This impact has been especially evident in the current crisis involving the Public Employees Insurance Agency (PEIA); and

WHEREAS, Past efforts to stabilize the financial problems of PEIA have included increased deductibles for public employees, borrowing funds to cover payment backlogs to health care providers, and increasing taxes dedicated to cover debts; and

WHEREAS, Other areas of state government—including the medicaid program and workers' compensation fund—have experienced the harsh impact of skyrocketing health care costs; and

WHEREAS, Recent efforts to address increasing health care costs in West Virginia include the passage of legislation to control both physician and hospital charges; and

WHEREAS, None of these efforts have been able to curtail the continuing increase in health care costs and the concomitant negative impact on the state's finances; and

WHEREAS, According to another study many West Virginia families cannot afford health insurance or the rising costs of health care; and

WHEREAS, A comprehensive national health policy is needed to address the health care crisis; and
WHEREAS, The United States and South Africa are the only two industrialized nations in the world that have failed to enact a national health policy that guarantees all citizens access to basic health care; and

WHEREAS, Health care is a basic human right and should be available to all citizens; and

WHEREAS, Federal leadership is required to enact a national health plan; therefore, be it

Resolved by the Legislature of West Virginia:

That Congress is hereby urged to enact a national health plan designed to guarantee access to health care for all citizens; and, be it

Further Resolved, That the Clerk of the House of Delegates send a copy of this resolution to each member of the West Virginia Congressional Delegation.
## DISPOSITION OF BILLS ENACTED
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* Indicates new chapter, article or section.
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