ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 1999
First Extraordinary Session, 1999
Second Extraordinary Session, 1999
Third Extraordinary Session, 1999

Volume I
Chapters 1 — 169
COMPILED AND PUBLISHED
UNDER THE DIRECTION
OF
GREGORY M. GRAY
Clerk & Parliamentarian

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The Printing Press, Ltd. - Charleston, WV
FOREWORD

These volumes contain the Acts of the First Regular Session and the First, Second and Third Extraordinary Sessions of the 74th Legislature, 1999.

First Regular Session, 1999

The First Regular Session of the 74th Legislature convened on January 13, 1999. The Constitutional sixty-day limit on the duration of the session was midnight, March 13, 1999. The Governor issued a proclamation on March 10, 1999, extending the session for a period not to exceed seven days for the purpose of considering the Budget and supplementary appropriation bills. Subsequent proclamations were issued extending the session, and the Legislature adjourned sine die on March 22, 1999.

Bills totaling 1756 were introduced in the two houses during the session (1045 House and 711 Senate). The Legislature passed 306 bills, 164 House and 142 Senate.

for H. B. 2678, leaving a net total of 301 bills, 160 House and 141 Senate, which became law. One bill, H. B. 3029, became law without the signature of the Governor.

There were 119 Concurrent Resolutions introduced during the session, 76 House and 43 Senate, of which 35 House and 18 Senate were adopted. Thirty House Joint Resolutions and eight Senate Joint Resolutions were introduced, proposing amendments to the State Constitution. One Joint Resolution, H. J. R. 30, Unified Family Court Amendment, was adopted by the Legislature. The House introduced 32 House Resolutions, and the Senate introduced 35 Senate Resolutions, of which 27 House and 32 Senate were adopted.

The Senate failed to pass 77 House bills passed by the House, and 62 Senate bills failed passage by the House. Five House bills and five Senate bills died in conference: Com. Sub. for H. B. 2266, Removing the requirement of blowing a vehicle horn in certain instances; Com. Sub. for H. B. 2807, Strengthening child pornography laws; H. B. 2896, Relating to reducing the maximum tax credits available for qualified West Virginia capital companies; H. B. 2989, Increasing the number of members on the Greater Huntington Park and Recreation District Board; H. B. 3038, Prohibiting assessors in those counties where the assessed value of all property in the county is not maintained at sixty percent of the appraised value from receiving additional funding; Com. Sub. for S. B. 536, Setting forth responsibility of division of juvenile services for care and evaluation of juvenile delinquents; S. B. 692, Revising laws governing domestic relations generally; S. B. 706, Increasing salaries of state police; S. B. 709, Providing salary increase to certain state officials; and S. B. 711, Increasing salary of superintendent of schools.

First Extraordinary Session, 1999

The Proclamation calling the Legislature into Extraordinary Session immediately following the conclusion of business and adjournment sine die of the Regular Session, contained seven items for consideration.

The Legislature passed 9 bills, 6 House and 3 Senate. The House adopted one House Resolution and the Senate adopted four Senate Resolutions.
The Legislature adjourned the Extraordinary Session *sine die* on March 22, 1999.

**Second Extraordinary Session, 1999**

The Proclamation calling the Legislature into Extraordinary Session at 5:00 P.M., May 18, 1999, contained four items for consideration.

The Legislature passed eleven bills, eight House Bills and three Senate Bills. The Legislature adopted one concurrent resolution, House Concurrent Resolution 1, providing for an adjournment of the Legislature until the 19th day of June, 1999, unless reconvened prior thereto by a majority vote of the Committee on Rules of the House and the Committee on Rules of the Senate. The House adopted one House Resolution and the Senate adopted four Senate Resolutions.

*Sine die* adjournment came on June 19, 1999.

**Third Extraordinary Session, 1999**

The Legislature met in Extraordinary Session at 6:00 P.M., August 17, 1999, to address the issues of the severe drought which has plagued the State and insurance benefits covered under the Public Employees Insurance Agency.

The Legislature passed one bill, H. B. 301, which appropriates moneys for the aforementioned purposes. The House adopted one House Resolution and the Senate adopted four Senate Resolutions.

*Sine die* adjournment occurred seventy-five minutes later the same day.

* * * * * * * * * * * *

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

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

**GREGORY M. GRAY**

*Clerk of the House and**

*Keeper of the Rolls.*
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### REGULAR SESSION, 1999

### OFFICERS

**Speaker** — Robert S. Kiss, Beckley  
**Clerk** — Gregory M. Gray, Charleston  
**Sergeant at Arms** — Oce Smith, Fairmont  
**Doorkeeper** — John A. Roberts, Hedgesville

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<td>Jeff Davis (D)</td>
<td>New Cumberland</td>
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<td>Tamara Pettit (D)</td>
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<td>Roy E. Givens (D)</td>
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<td>Third</td>
<td>Tal Hutchins (D)</td>
<td>Wheeling</td>
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<td>A. James Manchin (D)</td>
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<td>Paul Edward Prunty (D)</td>
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<td>61st; 63rd-65th; 67th-68th; 70th; 72nd-74th</td>
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<td>Barbara Evans Fleischauer (D)</td>
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<td>Sheirl L. Flecher (R)</td>
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<td>Nancy Houston (D)</td>
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<td>Charlene J. Marshall (D)</td>
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<td>Forty-fifth</td>
<td>Larry A. Williams (D)</td>
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<td>Appt. 10/8/93, 71st; 72nd-74th</td>
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<td>David Collins (D)</td>
<td>Davis</td>
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<td>Harold K. Michael (D)</td>
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<td>Allen V. Evans (R)</td>
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<td>Larry V. Fairchild (R)</td>
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<td>John Overington (R)</td>
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<td>John Doyle (D)</td>
<td>Shepherdstown</td>
<td>66th; 71st-74th</td>
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<td>Dale Manuel (D)</td>
<td>Charleston Town</td>
<td>69th-74th</td>
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(D) Democrats .................................................................... 75
(R) Republicans ................................................................... 25

TOTAL ................................................................................. 100

[ xxxi ]
MEMBERS OF THE SENATE

REGULAR SESSION, 1999

OFFICERS

President — Earl Ray Tomblin, Chapmanville
Clerk — Darrell E. Holmes, Charleston
Sergeant at Arms — Tony DeRaimo, Leewood
Doorkeeper — Andrew J. Trail, Charleston

<table>
<thead>
<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Legislative Service</th>
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<tr>
<td>First</td>
<td>Edwin J. Bowman (D)</td>
<td>Weirton</td>
<td>72nd-74th</td>
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<td>Andy McKenzie (R)</td>
<td>Wheeling</td>
<td>73rd-74th</td>
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<td>Second</td>
<td>Larry J. Edgell (D)</td>
<td>New Martinsville</td>
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<td>Jeffrey V. Kessler (D)</td>
<td>Glen Dale</td>
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<td>Third</td>
<td>Donna J. Boley (R)</td>
<td>St. Marys</td>
<td>Appt. 5/14/85, 67th; 68th-74th</td>
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<td>J. Frank Deem (R)</td>
<td>Vienna</td>
<td>(House 52nd-56th); 57th-62nd; 64th-65th; (House 69th); 72nd-74th</td>
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<td>Oshel B. Craigo (D)</td>
<td>Winfield</td>
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<td>Marie E. Redd (D)</td>
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<td>H. Truman Chafin (D)</td>
<td>Williamson</td>
<td>66th-74th</td>
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<td>John Pat Fanning (D)</td>
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<td>58th-64th; 67th-68th; 73rd-74th</td>
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<td>Lloyd G. Jackson II (D)</td>
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<td>68th-69th; 72nd-74th</td>
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<td>Earl Ray Tomblin (D)</td>
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<td>(House 62nd-64th); 65th-74th</td>
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<td>John R. Mitchell, Jr. (D)</td>
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<td>Vic Sprouse (R)</td>
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<td>Billy Wayne Bailey, Jr. (D)</td>
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<td>Roman W. Prezioso, Jr. (D)</td>
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<td>Sarah M. Minear (R)</td>
<td>Parsons</td>
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<td>Walt Helmick (D)</td>
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<td>Mike Ross (D)</td>
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<td>Herbert S. Snyder (D)</td>
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<td>John R. Unger II (D)</td>
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<td>Brooks P. McCabe, Jr. (D)</td>
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<td>Martha Yeager Walker (D)</td>
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COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 1999

STANDING

AGRICULTURE AND NATURAL RESOURCES
Kelley (Chair of Agriculture), Boggs (Vice Chair of Agriculture), Yeager (Chair of Natural Resources), Tillis (Vice Chair of Natural Resources), Angotti, Butcher, Damron, Davis, Dempsey, Ennis, Ferrell, Flanigan, McGraw, Perdue, Pethtel, Prunty, Stemple, Williams, Willis, Anderson, Border, Evans, Leggett, Overington and Riggs.

BANKING AND INSURANCE
Thompson (Chair of Banking), Cann (Vice Chair of Banking), Beane (Chair of Insurance), Johnson (Vice Chair of Insurance), Amores, Angotti, Davis, Flanigan, Hatfield, Hutchins, Jenkins, Laird, Perdue, Spencer, J. Smith, Tillis, H. White, Wright, Azinger, Capito, Facemyer, Faircloth, Harrison, Romine and L. White.

CONSTITUTIONAL REVISION
Fleischauer (Chair), Kominar (Vice Chair), Collins, Dalton, Frederick, Givens, Hines, Houston, Laird, Leach, Linch, McGraw, Pethtel, Pino, Rowe, Varner, H. White, Wills, Wright, Anderson, Armstead, Harrison, Overington, Riggs and Webb.

EDUCATION
Mezzatesta (Chair), Manuel (Vice Chair), Boggs, Damron, Davis, Dempsey, Ennis, Houston, Hubbard, Martin, Pethtel, Shelton, Sparks, Stemple, Susman, C. White, Williams, Willis, Yeager, Anderson, Armstead, Fletcher, Harrison, Romine and Stalnaker.

FINANCE
Michael (Chair), Doyle (Vice Chair), Ashley, Beane, Campbell, Cann, Compton, Fleischauer, Frederick, Jenkins, Kelley, Kominar, Laird, Leach, Mezzatesta, Pettit, Proudfoot, Thompson, Warner, Border, Evans, Facemyer, Hall, Leggett and Miller.

[ XXXIII ]
GOVERNMENT ORGANIZATION
Douglas (Chair), Collins (Vice Chair), Angotti, Butcher, Caputo, Everson, Flanigan, Hatfield, Kuhn, Louisos, Manchin, Marshall, McGraw, Perdue, Prunty, J. Smith, Tucker, Varner, H. White, Azinger, Modesitt, Overington, L. Smith, Stalnaker and Willison.

HEALTH AND HUMAN RESOURCES
Compton (Chair), Hutchins (Vice Chair), Caputo, Fleischauer, Hatfield, Houston, Hubbard, Kelley, Leach, Louisos, Mahan, Marshall, Perdue, Rowe, J. Smith, Spencer, Stemple, Susman, C. White, Capito, Fletcher, Harrison, Miller, Romine and L. Smith.

INDUSTRY AND LABOR
Pettit (Chair), Kuhn (Vice Chair), Butcher, Cann, Caputo, Coleman, Dalton, Doyle, Frederick, Houston, Louisos, Mahan, Manchin, Prunty, Sparks, Tillis, Tucker, Williams, Armstead, Evans, Modesitt, Overington, Schadler, L. Smith and Webb.

JUDICIARY
Staton (Chair), Amores (Vice Chair), Coleman, Dalton, Ferrell, Givens, Hines, Hunt, Hutchins, Johnson, Linch, Mahan, Pino, Rowe, Spencer, Stemple, Tillis, Wills, Capito, Faircloth, Riggs, Schadler, Smirl, Webb and L. White.

POLITICAL SUBDIVISIONS
Proudfoot (Chair), Campbell (Vice Chair), Ashley, Damron, Davis, Everson, Flanigan, Givens, Hines, Johnson, Kuhn, Linch, Marshall, Pettit, C. White, Willis, Wills, Yeager, Facemyer, Schadler, Smirl, Stalnaker, Trump, L. White and Willison.

ROADS AND TRANSPORTATION
Warner (Chair), Everson (Vice Chair), Ashley, Boggs, Butcher, Coleman, Damron, Ennis, Hubbard, Kominar, Manchin, Manuel, Marshall, Pethtel, Shelton, Susman, Thompson, C. White, Yeager, Anderson, Border, Hall, Leggett, Miller and Stalnaker.

RULES
Kiss (Chair), Douglas, Givens, Manuel, Martin, Mezzatesta, Michael, Pino, Staton, Varner, Faircloth, Miller, Riggs and Trump.
VETERANS AFFAIRS
Givens (Chair), Frederick (Vice Chair), Coleman, Collins, Doyle, Everson, Ferrell, Kelley, Kuhn, Linch, Manchin, Manuel, Shelton, Sparks, Thompson, Tucker, H. White, Wright, Yeager, Azinger, Evans, Fletcher, Modesitt, Smirl and Willison.

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JOINT
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ENROLLED BILLS
J. Smith (Chair), Dempsey (Vice Chair), Wright and Overington.

GOVERNMENT AND FINANCE
Kiss (Chair), Martin, Mezzatesta, Michael, Staton, Trump and L. White.

GOVERNMENT OPERATIONS
Douglas (Chair), Collins, Varner, Stalnaker and Willison.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Hunt (Chair), Linch (Vice Chair), Compton, Jenkins, Faircloth and Riggs.

PENSIONS AND RETIREMENT
Jenkins (Chair), Hubbard (Vice Chair), Campbell, J. Smith, Williams, Hall and Harrison.

RULES
Kiss (Chair), Martin and Trump.

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STATUTORY LEGISLATIVE COMMISSIONS
________________________

FOREST MANAGEMENT REVIEW
Williams (Chair), Mahan (Vice Chair), Angotti, Martin, Proudfoot and Willison.

INTERSTATE COOPERATION
Shelton (Chair), Amores, Doyle, Jenkins, Yeager, Overington and Stalnaker.
OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY
Mezzatesta (Chair), Doyle, Manuel, Williams and Anderson.

OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY
Compton (Chair), Douglas, Leach, Martin, Michael, Facemyer and Hall.

OVERSIGHT COMMISSION ON REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY
Manuel (Chair), Leach, Michael, Pino, Warner and Faircloth.

SPECIAL INVESTIGATIONS
Kiss (Chair), Martin, Staton, Faircloth and Trump.
COMMITTEES OF THE SENATE
Regular Session, 1999

STANDING

AGRICULTURE
Anderson (Chair), Love (Vice Chair), Ball, Dittmar, Helmick, Mitchell, Ross, Unger, Deem and Minear.

BANKING AND INSURANCE
Helmick (Chair), Kessler (Vice Chair), Chafin, Craigo, Dittmar, Fanning, Minard, Prezioso, Sharpe, Snyder, Wooton, Deem and Sprouse.

CONFIRMATIONS
Love (Chair), Chafin (Vice Chair), Bailey, Bowman, Jackson, Minard, Mitchell, Wooton and McKenzie.

EDUCATION
Jackson (Chair), Plymale (Vice Chair), Bailey, Ball, Edgell, Helmick, Hunter, Mitchell, Oliverio, Redd, Schoonover, Unger, Boley and Minear.

ENERGY, INDUSTRY AND MINING
Sharpe (Chair), McCabe (Vice Chair), Anderson, Chafin, Fanning, Helmick, Hunter, Jackson, Kessler, Oliverio, Ross, Snyder, Deem and McKenzie.

FINANCE
Craigo (Chair), Sharpe (Vice Chair), Anderson, Bailey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Unger, Walker, Boley, Minear and Sprouse.

GOVERNMENT ORGANIZATION
Bowman (Chair), Bailey (Vice Chair), Ball, Jackson, Kessler, McCabe, Minard, Plymale, Redd, Schoonover, Snyder, Walker, Wooton, Boley and Minear.

[ XXXVII ]
SENATE COMMITTEES

HEALTH AND HUMAN RESOURCES
Walker (Chair), Prezioso (Vice Chair), Craigo, Hunter, McCabe, Plymale, Redd, Ross, Sharpe, Snyder, Unger, Wooton, Boley and Sprouse.

INTERSTATE COOPERATION
Minard (Chair), Redd (Vice Chair), Anderson, Bowman, Schoonover, Unger and Minear.

JUDICIARY
Wooton (Chair), Snyder (Vice Chair), Ball, Dittmar, Fanning, Hunter, Kessler, McCabe, Minard, Mitchell, Oliverio, Redd, Ross, Schoonover, Deem and McKenzie.

LABOR
Fanning (Chair), Hunter (Vice Chair), Ball, Edgell, Love, Mitchell, Prezioso, Schoonover, Deem and McKenzie.

MILITARY
Prezioso (Chair), Edgell (Vice Chair), Bailey, Dittmar, Helmick, Hunter, Minard, Oliverio and Boley.

NATURAL RESOURCES
Dittmar (Chair), Mitchell (Vice Chair), Anderson, Ball, Bowman, Craigo, Love, Minard, Prezioso, Ross, Schoonover, Snyder, Deem and Minear.

PENSIONS
Plymale (Chair), Fanning (Vice Chair), Edgell, Jackson, McCabe, Walker and Sprouse.

RULES
Tomblin (Chair), Anderson, Chafin, Craigo, Jackson, Sharpe, Walker, Wooton, Minear and Sprouse.

SMALL BUSINESS
Oliverio (Chair), Unger (Vice Chair), Anderson, Bowman, Craigo, Fanning, Kessler, McCabe, Ross, Sharpe, Boley and Sprouse.

TRANSPORTATION
Ross (Chair), Ball (Vice Chair), Dittmar, Kessler, Love, Oliverio, Plymale, Redd and McKenzie.
SENATE COMMITTEES

JOINT

ENROLLED BILLS
Schoonover (Chair), Bailey, Edgell, Walker and McKenzie.

GOVERNMENT AND FINANCE
Tomblin (Chair), Chafin, Craigo, Jackson, Sharpe, Wooton and Sprouse.

GOVERNMENT OPERATIONS
Bowman (Chair), Bailey, Craigo, Walker and Minear.

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Ross (Chair), Anderson (Vice Chair), Schoonover, Snyder, Unger and Minear.

PENSIONS AND RETIREMENT
Plymale (Chair), Fanning (Vice Chair), Edgell, Jackson, McCabe, Walker and Sprouse.

RULES
Tomblin (Chair), Chafin and Sprouse.

STATUTORY LEGISLATIVE COMMISSIONS

FOREST MANAGEMENT REVIEW COMMISSION
Helmick (Chair), Bowman, Love, Plymale, Ross and Minear.

INTERSTATE COOPERATION
Minard (Chair), Redd (Vice Chair), Anderson, Bowman, Schoonover, Unger and Minear.

OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY
Jackson (Chair), Bailey, Craigo, Plymale, Prezioso and Minear.
OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY
Walker (Chair), Craigo, Hunter, Prezioso, Sharpe, Snyder and Boley.

OVERSIGHT COMMISSION ON REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY
Love (Chair), Bailey, Craigo, Helmick, Hunter and McKenzie.

SPECIAL INVESTIGATIONS
Tomblin (Chair), Chafin, Sharpe, Wooton and Sprouse.
AN ACT to amend article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-c, relating to the department of agriculture; creating a special revenue account for deposit of certain moneys and explicitly excluding certain accounts.

Be it enacted by the Legislature of West Virginia:

That article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section four-c, to read as follows:
ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-4c. Agriculture fees fund.

There is hereby created a special revenue account within the state treasury to be known as "Agricultural Fees Fund". Expenditures from the fund shall be used exclusively by the commissioner of agriculture for the purpose of enforcement and administration of this chapter. Moneys paid into the account shall be from all moneys collected under this chapter, except those designated in article one-a; article two-g; article twenty-one; article twenty-one-a; article twenty-three; article twenty-five; article twenty-six; article twenty-seven; and section twenty-three, article sixteen-a.

CHAPTER 2

(Com. Sub. for H. B. 2206 — By Delegate Doyle)

[Passed February 24, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting the sale of or offering for sale any meat or poultry product on which the processor's expiration date has expired; and prohibiting alteration of expiration dates.

Be it enacted by the Legislature of West Virginia:

That section ten, article two-b, 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 2B. INSPECTION OF MEAT AND POULTRY.

§19-2B-10. Additional prohibitions.

In addition to any other prohibitions contained in this article, it shall be unlawful:
(a) For any person to operate any establishment under state inspection which is not clean and sanitary;

(b) To slaughter any adulterated animal or poultry intended to be sold or offered for sale through a commercial outlet or distributor;

(c) To sell or offer for sale through a commercial outlet or distributor any carcass, meat product or poultry product for human consumption which is adulterated;

(d) To slaughter for human consumption any animal or poultry tagged or permanently identified as "W.Va. condemned," or abbreviation thereof;

(e) To process, sell or offer for sale for human consumption any carcass, meat product or poultry product which is mislabeled with intent to deceive or which is marked "W.Va. inspected and condemned," or abbreviation thereof;

(f) To process in an establishment under state inspection for sale through any commercial outlet or distributor any carcass, meat product or poultry product intended for human consumption and derived, in whole or in part, from any calf, pig, kid, lamb, chicken or turkey which is so immature as to be lacking in nutritional value;

(g) To knowingly or intentionally expose any carcass, meat product and poultry product in any establishment under state inspection to insects, live animals or any contamination;

(h) To add kangaroo meat, horse meat, mule meat or other equine meat to any animal meat, meat product or poultry product to be sold or offered for sale through commercial outlets or distributors for human consumption;

(i) To remove any hide, skin or any other part of an unborn or stillborn animal in the confines of a room in an establishment where any animals or poultry, carcasses, meat products or poultry products are slaughtered or processed, as the case may be, or to be sold or offered for sale through a commercial outlet or distributor;
(j) To process for human consumption in any establishment subject to state inspection any carcass, meat product and poultry product derived from any animal or poultry which died other than by slaughter;

(k) To transport to any commercial outlet or distributor for the purpose of being sold or offered for sale therein, any carcass, meat product or poultry product which is not marked, branded or stamped as having been inspected and passed by the commissioner or by the United States department of agriculture;

(l) For any commercial outlet or distributor to receive, for the purpose of being sold or offered for sale therein, any carcass, meat product or poultry product which is not marked, branded or stamped as having been inspected and passed by the commissioner or by the United States department of agriculture;

(m) To slaughter any horse, mule or other equine in any establishment under state inspection in which animals or poultry are slaughtered for human consumption for the purpose of being sold or offered for sale through commercial outlets;

(n) To bring any kangaroo meat, horse meat, mule meat or other equine meat into any establishment under state inspection where animal or poultry carcasses, meat products or poultry products are processed for human consumption for the purpose of being sold or offered for sale through commercial outlets;

(o) To transport, process, sell or offer for sale any kangaroo meat, horse meat, mule meat or other equine meat within this state for human consumption unless it is conspicuously and plainly identified or stamped as such;

(p) For any person to use an establishment number not assigned to him or her or to use an establishment number in connection with operations concerning which a different establishment number was assigned by the commissioner;

(q) To remove from any article any retained tag affixed by the commissioner, unless such removal is authorized by him or her;
(r) To remove from any room, compartment, equipment or utensil any rejection tag or rejection notice affixed by the commissioner, unless such removal is authorized by him or her;

(s) For a licensee to use any container bearing an official inspection mark unless it contains the exact carcass, meat product or poultry product which was in the container at the time such contents were inspected and passed: Provided, That such a container may be otherwise used if such official inspection mark thereon is removed, obliterated or destroyed, and such other use is authorized by reasonable rules promulgated by the commissioner;

(t) For any person, other than the commissioner, to possess, keep or use, except as authorized by the commissioner, any label or device for the affixing of a mark, brand or stamp prescribed for inspection purposes hereunder;

(u) For any person, with intent to deceive, to possess, keep or use any label, mark, brand or stamp similar in character or import to an official label, mark, brand or stamp prescribed by the commissioner hereunder or to an official label, mark, brand or stamp used by the United States department of agriculture;

(v) To falsely make, falsely issue, falsely publish, alter, forge, simulate or counterfeit any inspection certificate, memorandum, label, mark, brand, or stamp, or device for making an inspection mark, brand or stamp, or to possess, keep or use the same, with intent to deceive;

(w) For any person to refuse to permit the commissioner to enter and inspect at any time, upon presentation of appropriate credentials, an establishment under state inspection, or to interfere with any such lawful entry or inspection;

(x) For any person to refuse to permit the commissioner, upon presentation of appropriate credentials, to examine and copy the records described in section five of this article;

(y) For a person to prevent or fail to decharacterize or denature carcasses, meat products or poultry products as prescribed by reasonable rules promulgated by the commissioner;
(z) For a person to transport offal, blood, or inedible and condemned parts of animal and poultry carcasses from slaughterhouses, processing plants or other related industries: Provided, That such products may be transported if placed in suitable containers with tight covers, or watertight tanks so as not to contaminate the public highways or private roadways while going to or from the points of pickup;

(aa) For a person to store offal, blood, or inedible and condemned parts of animal and poultry carcasses from slaughterhouses, processing plants or other related industries during interim transit movement in refrigerated warehouses, food lockers or other related industries: Provided, That such products may be otherwise stored if properly marked “NOT FOR HUMAN FOOD” “FOR ANIMAL FOOD ONLY” and identified as approved products to be used for animal food;

(bb) For a person knowingly to deliver a dead or dying animal or poultry to an establishment in this state;

(cc) For any person to transport carcasses, meat products and poultry products that are intended for human consumption in a manner which would permit the products to become adulterated;

(dd) For any person to forcibly assault, resist, oppose, impede, intimidate or interfere with the commissioner or his or her representative while engaged in or on account of the performances of his or her official duties;

(ee) For any person to deliver, with intent to deceive, any graded meat product, poultry product or any other agricultural commodity to a state institution that does not meet the grade specifications for that grade when a specified grade is required in a contract;

(ff) To sell any meat product or poultry product for which the processor’s expiration date has expired;

(gg) To alter, change or cover-up the expiration date of any meat product or poultry product established by the processor.
In addition to any other powers conveyed in this article, the commissioner may inspect any meat product, poultry product or any other agricultural commodity sold to a state institution to enforce the provisions of this subdivision.

CHAPTER 3

(Com. Sub. for S. B. 219 — By Senators Anderson, Ross, Sharpe, Bailey, Schoonover, Love, Dittmar, Kessler and Ball)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the inspection of meat and poultry; authorizing the commissioner of agriculture to assess civil penalties against slaughterers, processors and distributors for violations of this article; providing for recording of liens; permitting commissioner to settle cases; and limiting recovery of damages against the state.

Be it enacted by the Legislature of West Virginia:

That section eleven, article two-b, 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 2B. INSPECTION OF MEAT AND POULTRY.

§19-2B-11. Criminal penalties; civil penalties.

(a) Criminal penalties.

(1) Any person who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than two hundred nor more than one thousand dollars and upon conviction of each subsequent offense shall be fined not less than four hundred nor more than two thousand dollars.
(2) If a person knowingly sells, offers for sale or distribution, or attempts to sell, offers for sale or distribution of a carcass, meat product or poultry product that is contaminated with pathogenic microorganisms or otherwise adulterated, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than ten thousand dollars upon conviction of each offense.

(b) Civil penalties.

(1) Any slaughterer, processor or distributor who violates any of the provisions of this article or regulations adopted hereunder may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations; the seriousness of the violation, including any hazards to the health and safety of the public; and the demonstrated good faith efforts by the charged party to ensure that similar violations do not recur.

(2) The commissioner may assess a penalty of not more than five hundred dollars for a first violation and not more than one thousand dollars for each subsequent violation.

(3) The civil penalty is payable to the state of West Virginia and may be collected in any manner for collection of debt to the state. If a person assessed a civil penalty pursuant to this subsection neglects or refuses to pay, the amount of that penalty, together with interest calculated at ten percent per annum, may be filed as a lien in favor of the state upon any and all property of the person, both real and personal. The lien shall be recorded in the records kept in the office of the county clerk in the county wherein the violation occurred. The county clerk in the recording county shall enter the same to record without requiring payment of recording fees as a condition precedent to the recording. A notice of the lien shall be mailed or delivered to the person against whose property the lien has been placed. All penalties, together with any interest, collected by the state, pursuant to this subsection, shall be deposited in the general revenue fund.
(4) Notwithstanding any other provision of the law to the contrary, the commissioner may enter into consent agreements or negotiated settlement agreements for the civil penalties assessed pursuant to this subsection.

(5) No state court may allow the recovery of damages for administrative action taken by the commissioner if the court finds, as a matter of law, that there was probable cause for such action.

CHAPTER 4

(Com. Sub. for H. B. 2972 — By Mr. Speaker, Mr. Kiss, and Delegates Martin, Proudfoot, Michael, Staton and Trump)

[Passed March 12, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-d, relating to the regulation of traditional milk and cheese production methods; establishing legislative findings; prohibiting the division of health and local health departments from regulating certain cheese manufacturing and distribution; and authorizing rules by the commissioner of agriculture to regulate manufacture of certain cheese production.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11D. TRADITIONAL CHEESE PRODUCTION.

§19-11D-1. Legislative findings.
§19-11D-2. Applications of article.
§19-11D-3. Exemption from regulatory control; authorizing rules by the commissioner of agriculture.
§19-11D-1. Legislative findings.

1 The Legislature finds that local production and sale of
2 locally manufactured cheese products is a culturally significant
3 tradition and that the preservation of historic methods of cheese
4 production is in the public interest; that local cheese production
5 is an important part of the economic livelihood of many
6 families and small businesses in this state; and that the unique
7 quality of home and farm-based cheese products cannot be
8 duplicated using manufacturing and food production require-
9 ments enforced by local boards of health. Therefore, the
10 Legislature finds that it is in the public interest to exempt
11 certain local cheese production and local cheese products from
12 regulations of the division of health related to food sanitation
13 enforced by local boards of health, and to place the production
14 of certain home and farm-based cheese products under the
15 jurisdiction of the department of agriculture.


(a) In order for cheese production to fall within the exemp-
2 tion created in section two of this article, all of the following
3 criteria must apply:

(1) The cheese must be manufactured at a home or farm-
5 based site using either raw milk from West Virginia cows,
6 production of which is regulated by the department of agricul-
7 ture, or commercially pasteurized cow’s milk;

(2) The cheese products must be aged at least sixty days;

(3) The cheese products must be sold directly to the
9 consumer at the production site or marketed in local restaurants
10 or local small businesses not engaged in interstate commerce:
Provided, That for the purposes of this article, acceptance of a
13 national credit card shall not be construed as engaging in
14 interstate commerce.

(b) The exemptions contained in this article are not applica-
16 ble to:

(1) Persons and businesses manufacturing more than five
18 thousand pounds of cheese products per year;
(2) Cheese products sold to the ultimate consumer outside the borders of the state;

(3) Cheese products marketed by mail or on the internet; or

(4) Cheese products the sale or manufacture of which is governed by applicable federal law.

§19-11D-3. Exemption from regulatory control; authorizing rules by the commissioner of agriculture.

The manufacture of cheese products described in section two of this article is exempt from: (a) Pasteurization, packaging, labeling and all other health related requirements established in this code or rules promulgated by the division of health, and (b) regulatory control by the division of health and county or local health departments or sanitarians. Powers of the commissioner of agriculture set forth in section ten, article eleven-a of this chapter are applicable to the manufacturing of home and farm-based cheese products described in section two of this article. The commissioner of agriculture is authorized to promulgate rules pursuant to article three, chapter twenty-nine-a of this code, considering and promoting traditional methods of cheese production, while providing minimum health and sanitation standards necessary for the protection of the public, including standards for cleanliness, handling, and protection from contamination. Emergency rules for this purpose are authorized.

CHAPTER 5

(H. B. 3023 — By Delegates Doyle, Michael, Thompson, Pettit, Laird and Facemyer)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to repeal section thirty, article three-a, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, four, five, six,
seven, eight, ten, ten-a, twelve, seventeen and twenty-nine of said article; to further amend said article by adding thereto four new sections, designated sections two-a, ten-b, ten-c and twenty-seven-a; and to amend and reenact section eleven, article seven of said chapter, all relating generally to the sale of liquor at retail; further legislative findings, declaration and purpose; operation of state store by commissioner in certain circumstances; revising definitions; appointments to retail liquor licensing board; powers and duties of commissioner; modification of market zones; increasing number of Class B licenses in a market zone in limited circumstances; limitation on number of licenses held; principal officers, partners and members of applicants for licenses; requirement that applicant for license hold federal license to sell liquor at wholesale; bidding procedures; preference for resident bidders; bids for licenses issued for a ten-year period beginning the first day of July, two thousand and for every ten-year period thereafter; determination of minimum bids; rejection of bids; notice to current licensee of highest bid in certain circumstances; issuance of license to current licensee in certain circumstances; bid preference for current licensee; new bids for licenses in certain circumstances; unlawful inducement of another to refrain from bidding for a license or from operating an outlet; criminal and civil penalties; expiration of licenses for the period ending on the thirtieth day of June, two thousand and for every ten-year period thereafter; the annual license fees; the imposition of municipal licenses and fees on retail licensees; providing for payment by electronic funds transfer by retail licensees; surety bonds guaranteeing payment for liquor; establishing minimum prices for sale of liquor by retail licensees; revocation of license for failure to operate outlet; reduction of authorized outlets for failure to operate; issuance of Class B license in the stead of an unoperated Class A license outlet; restriction on bids; legislative rules governing determination of failure to operate; review of revocation or reduction; purchases of liquor from licensee where license revoked, expired or surrendered; and contracts for delivery of liquor by retail licensee.

Be it enacted by the Legislature of West Virginia:
That section thirty, article three-a, chapter sixty of the code of
West Virginia, one thousand nine hundred thirty-one, as amended, be
repealed; that sections three, four, five, six, seven, eight, ten, ten-a,
twelve, seventeen and twenty-nine of said article be amended and
reenacted; that said article be further amended by adding thereto four
new sections, designated sections two-a, ten-b, ten-c and twenty-
seven-a; and that section eleven, article seven of said chapter be
amended and reenacted, all to read as follows:

Article
  3A. Sales by Retail Liquor Licensees.
  7. Licenses to Private Clubs.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-2a. Further legislative findings, declarations and purpose.
§60-3A-3. Sale of liquor by retail licensees permitted; cessation of retail sale of
  liquor by state.
§60-3A-4. Definitions.
§60-3A-5. Creation of retail liquor licensing board; members, terms, meetings and
  officers; general provisions.
§60-3A-6. General powers and duties of board and commissioner.
§60-3A-7. Market zones; Class A and Class B retail licenses.
§60-3A-8. Retail license application requirements; retail licensee qualifications.
§60-3A-10a. Preference for resident bidders.
§60-3A-10b. Bidding procedure for licenses issued for the ten-year period beginning
  July 1, 2000, and licenses issued for each ten-year period thereafter.
§60-3A-10c. Criminal penalties for unlawful inducement.
§60-3A-12. Annual retail license fee; expiration and renewal or retail licenses.
§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase
  liquor from state; transportation and storage; method of payment.
§60-3A-27a. Revocation of license or reduction of authority to operate retail outlet
  for failure to operate retail outlet.
§60-3A-29. Disposition of inventory upon revocation or surrender of retail license.

§60-3A-2a. Further legislative findings, declarations and purpose.

(a) In addition to the findings and declarations set forth in
subsection (a), section two of this article, the Legislature hereby
finds and declares that:

(1) The provisions of this article as enacted during the
regular session of the Legislature in the year one thousand nine
hundred ninety were intended to require that all licenses issued
for the retail sale of liquor expire as of the first day of July, two
thousand, and that the issuance of retail licenses for the ten-year period beginning the first day of July, two thousand, and for each ten-year period thereafter, be based on sealed competitive bids;

(2) It is the intention of the Legislature to provide that all retail licenses issued beginning the first day of July, two thousand, expire ten-years from the date of issuance and that every ten-years the issuance of retail licenses be based on competitive bids;

(3) The purposes set forth in subsection (b), section two of this article remain the purposes of the Legislature;

(4) Many of those persons who currently hold retail licenses have not only provided the services to the public contemplated by this article, but in many instances have provided employment and otherwise made substantial contributions to the economic and civic development of the communities in which they conduct business, and therefore, current licensees should be afforded special consideration if their bids for the licenses issued for the ten-year period beginning the first day of July, two thousand, be unsuccessful;

(5) Those persons who are issued a retail license for the ten-year period beginning on the first day of July, two thousand, and for any ten-year period thereafter should also be afforded special consideration if their bids for a retail license are unsuccessful; and

(6) Further statutory changes are desirable to effect the purposes set forth in subsection (b), section two of this article.

(b) It is, therefore, the further purposes of the Legislature in providing for the retail sale of liquor to:

(1) Require that all licenses issued for the ten-year period beginning the first day of July, two thousand, and for each ten-year period thereafter be based on sealed competitive bids;

(2) Provide current licensees who, having bid in the manner required by the provisions of this article, fail to submit the highest bid for licenses issued for the ten-year period beginning
the first day of July, two thousand, and for each ten-year period thereafter an additional opportunity to obtain the license; and

(3) Effect statutory changes to further the purposes provided in this section and section two of this article.

§60-3A-3. Sale of liquor by retail licensees permitted; cessation of retail sale of liquor by state.

(a) Notwithstanding any provision of this code to the contrary, the sale of liquor by retail licensees in accordance with the provisions of this article is lawful.

(b) Upon the opening of a retail outlet in any market zone, the state shall, as soon as practicable, discontinue operating any and all state liquor stores and agency stores within the market zone so long as a retail outlet is in operation in the market zone.

(c) No provision of this section shall prevent the commissioner, with the consent of the board, from operating a state liquor store in a market zone pursuant to the provisions of article three of this chapter where there are no retail outlets in operation, and the operation of any retail outlet in the market zone is prevented by a matter in controversy pending judicial adjudication or the licensee is unable or unwilling to open a retail outlet: Provided, That, the board determines that the resolution of the controversy will continue for such duration that the opening of a state liquor store is necessary to meet reasonable consumer concerns of availability of liquor.

§60-3A-4. Definitions.

(a) “Applicant” means any person who bids for a retail license, or who seeks the commissioner’s approval to purchase or otherwise acquire a retail license from a retail licensee, in accordance with the provisions of this article.

(b) “Application” means the form prescribed by the commissioner which must be filed with the commissioner by any person bidding for a retail license.

(c) “Board” means the retail liquor licensing board created by this article.
(d) "Class A retail license" means a retail license permitting the retail sale of liquor at more than one retail outlet.

(e) "Class B retail license" means a retail license permitting the sale of liquor at only one retail outlet.

(f) "Current licensee" means a person who holds a retail license at the time of the reenactment of this section in the year one thousand nine hundred ninety-nine or that person's successor or any person who holds a retail license when it expires at the end of a ten-year period.

(g) "Designated areas" means one or more geographic areas within a market zone designated as such by the board.

(h) "Executive officer" means the president or other principal officer, partner or member of an applicant or retail licensee, any vice president or other principal officer, partner or member of an applicant or retail licensee in charge of a principal business unit or division, or any other officer, partner or member of an applicant or retail licensee who performs a policy-making function.

(i) "Liquor" means alcoholic liquor as defined in section five, article one of this chapter, and also includes both wine and fortified wines as those terms are defined in section two, article eight of this chapter.

(j) "Market zone" means a geographic area designated as such by the board for the purpose of issuing retail licenses.

(k) "Person" means an individual, firm, corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.

(l) "Retail license" means a license issued under the provisions of this article permitting the sale of liquor at retail.

(m) "Retail licensee" means the holder of a retail license.

(n) "Retail outlet" means a specific location where liquor may be lawfully sold by a retail licensee under the provisions of this article.
§60-3A-5. Creation of retail liquor licensing board; members, terms, meetings and officers; general provisions.

(a) There is hereby continued the state retail liquor licensing board which shall be composed of five members, three of whom shall be appointed by the governor by and with the advice and consent of the Senate, one of whom shall be the secretary of tax and revenue, and one of whom shall be the commissioner. The secretary of tax and revenue and the commissioner shall serve as the chairman and secretary, respectively, of the board. No more than two of the three members appointed by the governor shall be of the same political party. No member of the board may hold a retail license or have any financial interest, directly or indirectly, in any retail licensee.

(b) The provisions of this subsection apply to the three members appointed by the governor. They shall be appointed for overlapping terms of three years each and until their respective successors have been appointed and have qualified. Members may be reappointed for any number of terms. Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by Section 5, Article IV of the constitution of this state. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the occurrence of the vacancy. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office. Members shall receive compensation of one hundred dollars per day for each day actually engaged in the performance of their duties as board members, and in addition shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties. Appointments to fill vacancies made after the amendment to this section made in one thousand nine hundred ninety-nine shall be made to provide that after the next two appointments, and thereafter, there is a member from each of the congressional districts of this state as delineated in accordance with section three, article two, chapter one of this code.
(c) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman.

(d) Staff, office facilities and costs of operation of the board shall be provided by the commissioner.

§60-3A-6. General powers and duties of board and commissioner.

(a) The board shall create, based on economic and demographic factors, market zones within the state for the issuance of Class A and Class B retail licenses, and, if deemed necessary or desirable by the board, to create one or more designated areas within such market zones for the issuance of Class B retail licenses.

(b) The commissioner shall:

(1) Prescribe application forms for persons desiring to acquire retail licenses and adopt an orderly procedure and timetable for investigating, processing and approving applications;

(2) Develop a form of retail license to be issued to each retail licensee under the provisions of this article;

(3) Disseminate to the public information relating to the issuance of retail licenses;

(4) Promulgate standards for advertising the sale, availability, price and selection of liquor;

(5) Set minimum standards for retail outlets regarding the amount and variety of alcoholic liquors which they must offer for sale at each retail outlet;

(6) Enforce the provisions of this article;

(7) Impose civil penalties upon retail licensees;

(8) Enter the retail outlet of any retail licensee at reasonable times for the purpose of inspecting the same, and determining the compliance of such retail licensee with the provisions of this article and any rules promulgated by the board or the commissioner pursuant to the provisions of this article; and
(9) Issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of section twenty-six or section twenty-eight of this article, which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees, and shall be enforced in the manner specified in section one, article five, chapter twenty-nine-a of this code with like effect as if such section was set forth in extenso herein.

(c) The board and the commissioner shall each:

(1) Engage accounting, legal and other necessary professional consultants to assist them in carrying out their respective duties under this article; and

(2) Adopt, amend, or repeal such procedural, interpretive and legislative rules, consistent with the policy and objectives of this article, as they may deem necessary or desirable for the public interest in carrying out the provisions of this article. Such rules shall be adopted, amended and repealed in accordance with the provisions of chapter twenty-nine-a of this code.

§60-3A-7. Market zones; Class A and Class B retail licenses.

(a) The market zones established by the board for the retail sale of liquor within this state under the enactment of this section in one thousand nine hundred ninety may not be modified by the board unless authorized by the Legislature. For each market zone established, the commissioner may issue one Class A retail license and one or more Class B retail licenses. Each Class A retail license shall permit the holder of the license to operate the number of retail outlets the board authorized for that market zone. The number of Class B retail licenses to be issued by the commissioner within each market zone shall not exceed fifty percent of the number of retail outlets authorized for the Class A retail license for that market zone, except as otherwise authorized by subsection (e) of this section or section twenty-seven-a of this article: Provided, That, except as authorized by subsection (e) of this section or section twenty-seven-a of this article, in a market zone where the number of retail outlets authorized under the Class A retail license is an
odd number, the number of Class B retail licenses which may be issued in that market zone shall be rounded up to the next highest whole number following that number which is equal to fifty percent of the number of retail outlets authorized under the Class A retail license.

(b) If the board determines that a market zone is not suited for the issuance of a Class A retail license, then only Class B retail licenses may be authorized for that market zone and the board shall determine the maximum number of Class B retail licenses which may be issued for that market zone.

(c) When authorizing Class B retail licenses for a market zone, the board may create one or more designated areas within the market zone and authorize one Class B retail license for each designated area. For each market zone, the commissioner may issue additional Class B retail licenses for retail outlets to be located outside any designated area, but the number of additional Class B retail licenses, when added to the total number of Class B retail licenses issued for all designated areas within the market zone, shall not exceed the maximum number of Class B retail licenses permitted under subsection (a) of this section for that market zone, except as authorized by subsection (e) of this section or section twenty-seven-a of this article.

(d) A person may hold one or more Class A retail licenses and one or more Class B retail licenses, but for the same market zone no person shall hold a Class A retail license and a Class B retail license or more than one Class B retail license.

(e) Notwithstanding any provision of subsection (a) or (c) of this section, no later than sixty days prior to the receipt of the bids described in section ten-b of this article, the board may authorize the commissioner to issue an additional Class B license in a market zone for the ten-year period which begins next following first day of July, where the board determines that:

(1) Each outlet authorized to operate in the market zone has been open and in operation for not less than one year;
(2) Changes in economic and demographic factors, including substantial population increases within the market zone, clearly demonstrate the need for an additional retail outlet or outlets within the market area to meet an increase in consumer demand; and

(3) The issuance of an additional Class B license in the market zone will not significantly impair the efforts to procure the revenues described in subsection (b), section ten-b of this article.

(f) The board shall establish the minimum bid for any additional Class B licenses authorized under subsection (e) of this section.

(g) No person may hold a combination of licenses that, in the aggregate, authorizes the operation of more than twenty-five percent of the total number of retail outlets authorized under the provisions of this article to operate in this state.

§60-3A-8. Retail license application requirements; retail licensee qualifications.

(a) Prior to or simultaneously with the submission of a bid for a retail license, each applicant shall file an application with the commissioner, stating under oath the following:

(1) If the applicant is an individual, his or her name and residence address;

(2) If the applicant is other than an individual, the name and business address of the applicant; the state of its incorporation or organization; the names and residence addresses of each executive officer and other principal officer, partner or member of the entity; a copy of the entity’s charter or other agreement under which the entity operates; and the names and residence addresses of any person owning, directly or indirectly, at least twenty percent of the outstanding stock, partnership, or other interests in the applicant; and

(3) That the applicant has never been convicted in this state or any other state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state
court or any federal court for a violation of any state or federal 
liquor law, and if the applicant is other than an individual, that
none of its executive officers, other principal officers, partners 
or members, or any person owning, directly or indirectly, at
least twenty percent of the outstanding stock, partnership, or 
other interests in the applicant, has been convicted.

(b) An applicant shall provide the commissioner any 
additional information requested by the commissioner.

(c) Whenever a change occurs in any information provided 
to the commissioner, the change shall immediately be reported 
to the commissioner in the same manner as originally provided.

(d) The commissioner shall disqualify each bid submitted 
by an applicant under section ten of this article, and no appli-
cant shall be issued or eligible to hold a retail license under this 
article, if:

(1) The applicant has been convicted in this state of any 
felony or other crime involving moral turpitude or convicted of 
any felony in this or any other state court or any federal court 
for a violation of any state or federal liquor law; or

(2) Any executive officer or other principal officer, partner 
or member of the applicant, or any person owning, directly or 
indirectly, at least twenty percent of the outstanding stock, 
partnership, or other interests in the applicant, has been 
convicted in this state of any felony or other crime involving 
moral turpitude or convicted of any felony in this or any other 
state court or any federal court for a violation of any state or 
federal liquor law.

(e) The commissioner shall not issue a retail license to an 
applicant which does not hold a license issued pursuant to 
federal law to sell liquor at wholesale.


(a) Except as provided in section ten-b of this article, bids 
for licenses shall be governed by the provisions of this section.

(b) The issuance of retail licenses shall be based on sealed 
competitive bids in accordance with the provisions of this
section. Bids for the issuance of retail licenses shall be obtained by public notice published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be each market zone within which a retail outlet shall be located. The second publication of the notice shall appear more than sixty days next preceding the final day for submitting bids.

(c) Each bid shall indicate the market zone for which the retail license is sought, whether the bid is for a Class A retail license or Class B retail license, and, if the board has created one or more designated areas for the market zone, whether the bid is for the Class B retail license to be issued for any designated area. No bid shall be altered or withdrawn after the appointed hour for the opening of the bids. Subject to the provisions of section ten-b of this article, each retail license shall be awarded to the highest bidder. In market zones where two or more Class B retail licenses are authorized (other than for a designated area or areas), the licenses shall be awarded to those persons submitting the highest bids. No bid shall be considered unless the bond required under section eleven of this article is submitted to the commissioner. All bids for a retail license may be rejected by the board if the board determines that the highest bid is inadequate, in which event the commissioner shall begin anew the bidding process for that retail license.

(d) Each person desiring to submit a bid shall file the bid with the commissioner prior to the specified date and hour for the bid openings. The failure to deliver or the nonreceipt of a bid prior to the appointed date and hour constitutes sufficient reason for the rejection of a bid. After the award of the retail license, the commissioner shall indicate upon the successful bid that it was the successful bid. Thereafter, a copy of the bid and the bidder's application shall be maintained as a public record, shall be open to public inspection in the commissioner's office and shall not be destroyed without the written consent of the legislative auditor.
Prior to the issuance of the retail license to the successful bidder, the bid price and the annual retail license fee, as specified in section twelve of this article, shall be paid to the commissioner by money order, certified check or cashier's check. All retail licenses shall be signed by the commissioner in the name of the state.

(f) If the successful bidder fails to pay to the commissioner the bid price and the annual retail license fee, at the time specified by the commissioner, the bond provided for in section eleven of this article shall be forfeited and the bidder shall not be issued the retail license. The commissioner shall then issue the retail license to the next highest bidder for the retail license or reject all bids and start anew the bidding procedure for the retail license.

§60-3A-10a. Preference for resident bidders.

In determining the highest bidder for purposes of section ten of this article, the board shall afford a five percent preference for West Virginia resident bidders, which shall be computed by adding five percent of the bid price to the bid price submitted by each resident bidder. For purposes of this section a bidder shall be considered to be a West Virginia resident if the bidder: (1) Has resided in this state for at least four years immediately prior to the date on which the bid is opened; or, if the bidder is an applicant other than an individual, has had its headquarters or principal place of business in this state for at least four years immediately prior to that date; and (2) meets the requirements set forth in section forty-four, article three, chapter five-a of this code relating to a residency of vendors, except for the requirement of having paid business and occupation taxes.

§60-3A-10b. Bidding procedure for licenses issued for the ten-year period beginning July 1, 2000, and licenses issued for each ten-year period thereafter.

(a) The issuance of Class A licenses and Class B licenses for the ten-year period beginning the first day of July, two thousand, and for each ten-year period thereafter, shall be based
upon sealed competitive bid in accordance with the provisions of section ten of this article except as provided in this section.

(b) Prior to accepting bids for Class A licenses and Class B licenses to be issued for the ten-year period beginning the first day of July, two thousand, the board shall determine the minimum bid for each license based upon a review of the sales at each retail outlet permitted to operate under the license and such other factors as the board may determine to generate the revenues from liquor license renewal projected by the governor's official revenue estimates for fiscal year two thousand as presented to the regular session of the Legislature in the year one thousand nine hundred ninety-nine.

(c) Prior to accepting bids for Class A licenses and Class B licenses to be issued for the ten-year periods beginning the first day of July, two thousand ten, and the first day of July every ten-years thereafter, the board shall determine the minimum bid for each license based upon a review of the sales at each retail outlet permitted to operate under the license and such other factors as the board may determine to generate the revenues from liquor license renewal projected by the governor's official revenue estimates for the fiscal year preceding the expiration of the retail licenses.

(d) All bids for a retail license for the ten-year period beginning the first day of July, two thousand, or for any ten-year period thereafter may be rejected by the board if the board determines that the highest bid fails to meet the minimum bid. The board may also reject any or all bids for a market zone where, in the aggregate, the bids for all of the retail licenses in the market zone fail to meet the minimum aggregate bid for that market zone. Where the board determines the highest bid meets or exceeds the minimum bid, the board shall determine whether, at the time of the bid, the same retail license was held for the period ending the thirtieth day of June, two thousand, or for any ten-year period thereafter, on the thirtieth day of June preceding the expiration of the license. If the current licensee holding the same retail license at the time of submission of the bid for the period ending the thirtieth day of June, two thousand, or for any ten-year period thereafter, on the thirtieth day
of June preceding the expiration of the retail license, submitted a bid that was not less than the minimum bid and is, after considering any preference applicable under the provisions of section ten-a of this article, an unsuccessful bidder for the license for the period beginning the first day of July, two thousand, or for any ten-year period thereafter, on the first day of July when the retail license expires, the commissioner shall notify the person that upon paying the amount of the highest bid, subject to the provisions of subsection (e) of this section, and upon compliance with all other requirements imposed by the provisions of this article for the issuance of the license, the retail license for the ten-year period beginning the first day of July, two thousand, or for any ten-year period thereafter, shall be issued to the current licensee. If, within the time determined by the commissioner, the current licensee pays the amount to the commissioner and complies with all other requirements imposed by the provisions of this article for the issuance of the license, the retail license for the ten-year period beginning the first day of July, two thousand, or for any ten-year period thereafter, shall be issued to the current licensee.

(e) The board shall, in determining the amount a current licensee who is an unsuccessful bidder shall pay as described in subsection (d) of this section, afford the unsuccessful bidder a preference. If the unsuccessful bidder is a West Virginia resident as defined in section ten-a of this article, the board shall afford the unsuccessful bidder a five percent preference in addition to the five percent preference afforded under section ten-a of this article. If the unsuccessful bidder is not a West Virginia resident, the board shall afford the unsuccessful bidder a five percent preference. The preference shall be computed by subtracting the preference percentage of the highest bid price from the highest bid price: Provided, That under no circumstances may the preference bring the price of the bid below the minimum bid established by the board: Provided, however, That a current licensee who is not operating any of the retail outlets for which he or she is authorized under the license is not eligible for the preference provided for under this section.

(f) In the event all bids submitted for a license fail to meet the minimum bid amount for the license as determined by the
board, the board may offer the license for bid again after it
determines a new minimum bid amount for the license.

§60-3A-10c. Criminal penalties for unlawful inducement.

(a) Any person who gives another person any thing of value
to induce the other to refrain from bidding for a retail license is
guilty of a misdemeanor and, upon conviction, shall be fined
not more than ten thousand dollars, and, in addition, shall be
subject to a civil penalty payable to the commissioner of not
more than one million dollars.

(b) Any person who gives a person any thing of value to
induce the other to refrain from operating an outlet authorized
under a retail license is guilty of a misdemeanor and, upon
conviction, shall be fined not more than ten thousand dollars,
and, in addition, shall be subject to a civil penalty payable to the
commissioner of not more than one million dollars.

§60-3A-12. Annual retail license fee; expiration and renewal of
retail licenses.

(a) The annual retail license period is from the first day of
July to the thirtieth day of June of the following year. The
annual retail license fee for a Class A retail license is the sum
obtained by multiplying the number of retail outlets operated by
the retail licensee in the market zone to which the Class A retail
license applies by one thousand dollars. The annual retail
license fee for a Class B retail license is one thousand dollars.
The annual retail license fee for the initial year of issuance shall
be prorated based on the number of days remaining between the
date of issuance and the following thirtieth day of June.

(b) All retail licenses expire on the thirtieth day of June of
each year and may be renewed only upon the submission to the
commissioner of the same information required for the issuance
of the license and any additional information requested by the
commissioner on the forms and by the date prescribed by the
commissioner, together with the payment to the commissioner
of the applicable annual retail license fee required under this
section.
(c) No person may sell liquor at any retail outlet if the retail license applicable to the outlet has been suspended or revoked, or has expired.

(d) All retail licenses issued or renewed under the provisions of this article for the period ending the thirtieth day of June, two thousand, or on the thirtieth day of June for any ten-year period thereafter, expire and are of no further force or effect as of the first day of July, in the year two thousand, or as of the first day of July every ten years thereafter.

(e) Notwithstanding any provision of section eighteen, article four of this chapter to the contrary, a municipality may invoke the authority granted by section four, article thirteen, chapter eight of this code to require an annual license from each retail licensee and require payment for the license in amounts not to exceed the amounts provided in subsection (a) of this section.

§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from state; transportation and storage; method of payment.

(a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according to a uniform pricing schedule. The commissioner shall obtain if possible, upon request, any liquor requested by a retail licensee.

(b) Wholesale prices shall be established in order to yield a net profit for the general fund of not less than six million five hundred thousand dollars annually on an annual volume of business equal to the average for the past three years. The net revenue derived from the sale of alcoholic liquors shall be deposited into the general revenue fund in the manner provided in section seventeen, article three of this chapter.

(c) The commissioner shall specify the maximum wholesale markup percentage which may be applied to the prices paid by the commissioner for all liquor, other than wine, in order to determine the prices at which all liquor, other than wine, will be
sold to retail licensees. A retail licensee shall purchase all liquor, other than wine, for resale in this state only from the commissioner, and the provisions of sections twelve and thirteen, article six of this chapter shall not apply to the transportation of the liquor: Provided, That a retail licensee shall purchase wine from a wine distributor who is duly licensed under article eight of this chapter. All liquor, other than wine, purchased by retail licensees shall be stored in the state at the retail outlet or outlets operated by the retail licensee: Provided, however, That the commissioner, in his or her discretion, may upon written request permit a retail licensee to store liquor at a site other than the retail outlet or outlets. 

(d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic funds transfer which shall be initiated by the commissioner on the business day following the retail licensees order or by money order, certified check or cashier's check which shall be received by the commissioner at least twenty-four hours prior to the shipping of the alcoholic liquors: Provided, That if a retail licensee posts with the commissioner an irrevocable letter of credit or bond with surety acceptable to the commissioner from a financial institution acceptable to the commissioner guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks in an amount up to the amount of the letter of credit.

(e)(1) A retail licensee may not sell liquor to persons licensed under the provisions of article seven of this chapter at less than one hundred ten percent of the retail licensee’s cost as defined in section six, article eleven-a, chapter forty-seven of this code.

(2) A retail licensee may not sell liquor to the general public at less than one hundred ten percent of the retail licensee’s cost as defined in section six, article eleven-a, chapter forty-seven of this code.

§60-3A-27a. Revocation of license or reduction of authority to operate retail outlet for failure to operate retail outlet.
(a)(1) The commissioner may revoke a Class A retail license if the licensee fails to operate at least one of the retail outlets authorized under the license. The commissioner may revoke a Class B retail license if the licensee fails to operate the retail outlet authorized under the license.

(2) The commissioner may not accept the bid of a person who has had a license revoked pursuant to subdivision (1) of this subsection when the license is offered for bid following the revocation.

(b)(1) Where a person operates at least one of the retail outlets authorized under a Class A license, but fails to operate the full number of retail outlets authorized under the license, the commissioner may reduce the number of retail outlets the person is authorized to operate under the license by the number that is not being operated.

(2) Notwithstanding any provision of section seven of this article to the contrary, the board may authorize the commissioner to issue, subject to the bid requirements of section ten of this article, a Class B license in the stead of each retail outlet for which authority to operate under a Class A license has been reduced under subdivision (1) of this subsection.

(3) The commissioner may not accept the bid of a person who has had the number of retail outlets authorized under a license reduced pursuant to subdivision (1) of this subsection for any Class B license issued in the stead of a retail outlet previously authorized under the reduced license.

(c) The board shall propose legislative rules for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code prescribing the criteria under which the commissioner is to determine whether a retail licensee has failed to operate an outlet.

(d) A revocation or reduction under this section is subject to the provisions for notice, hearing and review prescribed in section twenty-eight of this article.

§60-3A-29. Disposition of inventory upon revocation or surrender of retail license.
In the event of the revocation, expiration or surrender of any retail license in accordance with the provisions of this article, the commissioner may, in his or her discretion, purchase, or authorize another person to purchase, all or any portion of the liquor inventory of the retail licensee. If the commissioner elects to purchase, or authorizes another person to purchase, the inventory or any portion of the inventory, the retail licensee shall sell the inventory as directed by, and upon terms determined by, the commissioner.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-11. Licensee must purchase alcoholic liquors from or through commissioner or retail licensee; exceptions.

(a)(1) All licensees shall purchase all alcoholic liquors sold by them from the West Virginia alcohol beverage control commissioner at prices established by the commissioner for sales of the alcoholic liquors to the public generally or from any retail licensee licensed under the provisions of article three-a of this chapter, except that the licensees may purchase those wines permitted to be sold at retail pursuant to article eight of this chapter from those distributors licensed pursuant to said article at the same prices the distributors sell the wines to retailers licensed pursuant to said article.

(2) A licensee may by contract approved by the commissioner receive deliveries of alcoholic liquor from a retail liquor store, and the provisions of sections twelve and thirteen, article six of this chapter shall not apply to the transportation of that alcoholic liquor.

(b) In all reports filed under section sixteen, article fifteen, chapter eleven of this code, retail licensees licensed under the provisions of article three-a of this chapter shall separately identify the amount of sales tax on sales of liquor to licensees in the manner required by the tax commissioner.

(c) Notwithstanding the provisions of section thirty, article fifteen, chapter eleven of this code to the contrary, the amount of the sales taxes collected by the tax commissioner shall be
deposited in a revolving fund account in the state treasurer’s office, designated the “drunk driving prevention fund”, and administered by the commission on drunk driving prevention, subject to appropriations by the Legislature.

CHAPTER 6

(Com. Sub. for H. B. 2790 — By Delegates Kelley, Boggs, Yeager, Williams and Willis)

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact section nine-a, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring confinement and vaccination or revaccination of any domestic animal bitten by a rabid animal; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article twenty, 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 20. DOGS AND CATS.

§19-20-9a. Dogs, cats, etc.; rabies observation.

(a) Any person who owns or harbors any dog, cat or other domesticated animal, whether licensed or unlicensed, which bites any person, shall forthwith confine and quarantine the animal for a period of ten days for rabies observation.

(b) If any unvaccinated domesticated animal is bitten by a rabid animal, the owner shall confine the bitten animal for a period of six months. The animal shall be vaccinated or revaccinated after five months.

(c) If the animal is not confined and quarantined as directed in subsections (a) and (b) of this section, the humane officer,
dog warden or sheriff may cause the animal to be placed in the custody and care of a licensed veterinarian for that purpose at the owner's expense. The penalty for any violation of this section is a fine of fifty dollars or confinement in the county or regional jail for a period of no less than two nor more than three days.

CHAPTER 7

(Com. Sub. for H. B. 2200 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 21, 1999; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

TITLE I—GENERAL PROVISIONS.

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

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

Sec. 2. Definitions.—For the purpose of this bill:
“Governor” shall mean the governor of the state of West Virginia.

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

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

The “fiscal year two thousand” shall mean the period from the first day of July, one thousand nine-hundred ninety-nine, through the thirtieth day of June, two thousand.

“General revenue fund” shall mean the general operating fund of the state and includes all moneys received or collected by the state except as provided in section two, article two, chapter twelve of the code or as otherwise provided.

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

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

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

“Personal services” shall mean salaries, wages and other compensation paid to full-time, part-time and temporary employees of the spending unit but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit.
Unless otherwise specified, appropriations for "personal services" shall include salaries of heads of spending units.

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

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

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

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

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

Each spending unit shall be responsible for and charged monthly for all postage meter service and shall reimburse the appropriate revolving fund monthly for all such amounts. Such expenditures shall be considered a current expense.
“Equipment” shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.

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

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

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

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

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

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: Provided, That the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to the various agencies of the department: Provided, however, That no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: Provided further, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by chapter five-f of the code shall have the authority to transfer funds appropriated to “personal services” and “employee benefits” to other lines
within the same account and no funds from other lines shall be transferred to the "personal services" line: And provided further, That upon written request of the speaker of the house of delegates, the auditor shall transfer within the general revenue fund amounts from the total appropriations of the house of delegates to other agencies, boards or departments: And provided further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary may transfer the funds formerly appropriated to such agency, board or function in order to implement such consolidation. No funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the state road fund for the office of the secretary of the department of transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

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

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

Funds of the state of West Virginia not heretofore classified as to purpose and existing within the funds of the treasury shall be determined by the governor and transferred to a special account for the purpose of expenditure as part of the general fund of the state.

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


## TITLE II—APPROPRIATIONS

### §1. Appropriations from general revenue.

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§14. Total appropriations.
§15. General school fund.

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

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

LEGISLATIVE

1—Senate

Fund 0165 FY 2000 Org 2100

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The appropriations for the senate for the fiscal year 1999 are to remain in full force and effect and are hereby reappropriated to June 30, 2000. Any balances so reappropriated may be transferred and credited to the fiscal year 2000 accounts.

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

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

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

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

2—House of Delegates

Fund 0170 FY 2000 Org 2200

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<td>Compensation of Members (R)</td>
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<td>2</td>
<td>Compensation and Per Diem of Officers and Employees (R)</td>
<td>005</td>
<td>521,162</td>
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<td>3</td>
<td>Current Expenses and Contingent Fund (R)</td>
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<td>3,500,000</td>
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<td>4</td>
<td>Expenses of Members (R)</td>
<td>399</td>
<td>1,120,000</td>
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<td>5</td>
<td>Total</td>
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<td>$7,341,162</td>
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The appropriations for the house of delegates for the fiscal
year 1999 are to remain in full force and effect and are hereby
reappropriated to June 30, 2000. Any balances so
reappropriated may be transferred and credited to the fiscal year
2000 accounts.

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

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

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

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

3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2000 Org 2300

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Budget Allocation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint Committee on Government and Finance (R)</td>
<td>104</td>
<td></td>
<td>$5,858,327</td>
</tr>
<tr>
<td>Legislative Printing (R)</td>
<td>105</td>
<td></td>
<td>940,000</td>
</tr>
<tr>
<td>Legislative Rule-Making Review Committee (R)</td>
<td>106</td>
<td></td>
<td>205,500</td>
</tr>
</tbody>
</table>
The appropriations for the joint expenses for the fiscal year 1999 are to remain in full force and effect and are hereby reappropriated to June 30, 2000. Any balances so reappropriated may be transferred and credited to the fiscal year 2000 accounts.

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

The appropriation for the Tax Reduction and Federal Funding Increased Compliance (TRAFFIC) (fund 0175, activity 642) is intended for possible general state tax reductions or the offsetting of any reductions in federal funding for state programs. It is not intended as a general appropriation for expenditure by the Legislature.

**JUDICIAL**

4—Supreme Court—

**General Judicial**

Fund 0180 FY 2000 Org 2400

1 Personal Services (R) ............... 001 $ 32,064,174
2 Annual Increment (R) ............... 004 487,600
3 Social Security Matching (R) ........ 011 2,469,519
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Employees' Insurance (R)</td>
<td>012</td>
<td>$3,747,176</td>
</tr>
<tr>
<td>Public Employees' Retirement (R)</td>
<td>016</td>
<td>$2,892,718</td>
</tr>
<tr>
<td>Other Expenses (R)</td>
<td>029</td>
<td>$4,341,050</td>
</tr>
<tr>
<td>Judges' Retirement System (R)</td>
<td>110</td>
<td>$5,416,036</td>
</tr>
<tr>
<td>Other Court Costs (R)</td>
<td>111</td>
<td>$2,600,000</td>
</tr>
<tr>
<td>Judicial Training Program (R)</td>
<td>112</td>
<td>$300,000</td>
</tr>
<tr>
<td>Mental Hygiene Fund (R)</td>
<td>113</td>
<td>$975,000</td>
</tr>
<tr>
<td>Family Law Master Program (R)</td>
<td>190</td>
<td>$1,449,474</td>
</tr>
<tr>
<td>Guardianship Attorney Fees (R)</td>
<td>588</td>
<td>$150,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$56,892,747</strong></td>
</tr>
</tbody>
</table>

The appropriations to the supreme court of appeals for the fiscal years 1997, 1998 and 1999 are to remain in full force and effect and are hereby reappropriated to June 30, 2000. Any balances so reappropriated may be transferred and credited to the fiscal year 2000 accounts.

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

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

**EXECUTIVE**

5—Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2000 Org 0100

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,731,859</td>
</tr>
</tbody>
</table>

...
## APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Salary of Governor</td>
<td>002</td>
<td>90,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>17,250</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>444,904</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>1,000,118</td>
</tr>
<tr>
<td>6</td>
<td>National Governors’ Association</td>
<td>123</td>
<td>66,200</td>
</tr>
<tr>
<td>7</td>
<td>Southern States Energy Board</td>
<td>124</td>
<td>28,732</td>
</tr>
<tr>
<td>8</td>
<td>WV Human Resource Investment Council</td>
<td>294</td>
<td>262,438</td>
</tr>
<tr>
<td>9</td>
<td>Southern Growth Policies Board</td>
<td>299</td>
<td>24,339</td>
</tr>
<tr>
<td>10</td>
<td>Southern Technology Council</td>
<td>308</td>
<td>10,000</td>
</tr>
<tr>
<td>11</td>
<td>Southern Governors’ Association</td>
<td>314</td>
<td>5,740</td>
</tr>
<tr>
<td>12</td>
<td>National Governors’ Association for State Budget Officers</td>
<td>315</td>
<td>11,500</td>
</tr>
<tr>
<td>13</td>
<td>Total</td>
<td></td>
<td>3,693,080</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Publication of Papers and Transition Expenses (fund 0101, activity 465) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

### 6—Governor’s Office—

**Custodial Fund**

(WV Code Chapter 5)

_Fund 0102 FY 2000 Org 0100_

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$533,691</td>
</tr>
<tr>
<td>2</td>
<td>To be used for current general expenses, including compen-</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>sation of employees, household maintenance, cost of official</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>functions and additional household expenses occasioned by</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>such official functions.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 7—Governor’s Office—

_Governor’s Cabinet on Children and Families_
(WV Code Chapter 5)

Fund 0104 FY 2000 Org 0100

1 Unclassified (R) ................. 099 $ 309,152
2 Family Resource Networks ........... 274 1,505,000
3 Starting Points Centers and Parent Education Services (R) ........... 316 1,244,500
4 Total .................................. $ 3,058,652

Any unexpended balances remaining in the appropriations for Unclassified (fund 0104, activity 099) and Starting Points Centers and Parent Education Services (fund 0104, activity 316) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

8—Governor’s Office—

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2000 Org 0100

1 Civil Contingent Fund—Total (R) ...... 114 $ 3,650,000

Any unexpended balances remaining in the appropriations for Civil Contingent Fund—Total (fund 0105, activity 114), Civil Contingent Fund—Surplus (fund 0105, activity 263) and Unclassified—Surplus—Total (fund 0105, activity 098) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

From this appropriation there may be expended, at the discretion of the governor, an amount not to exceed one thousand dollars as West Virginia’s contribution to the interstate oil compact commission.

The above appropriation is intended to provide contingency funding for accidental, unanticipated, emergency or unplanned events which may occur during the fiscal year and is not to be expended for the normal day-to-day operations of the governor’s office.
## 9—Auditor's Office—

### General Administration

(WV Code Chapter 12)

<table>
<thead>
<tr>
<th>Fund 0116 FY 2000 Org 1200</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2 Salary of Auditor</td>
<td>002</td>
</tr>
<tr>
<td>3 Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>4 Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>5 Unclassified (R)</td>
<td>099</td>
</tr>
<tr>
<td>6 Office Automation (R)</td>
<td>117</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0116, activity 099), Office Automation (fund 0116, activity 117) and Payroll System Acquisition (fund 0116, activity 594) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

## 10—Auditor's Office—

### Family Law Masters

**Administration Fund**

(WV Code Chapter 48A)

<table>
<thead>
<tr>
<th>Fund 0117 FY 2000 Org 1200</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>096</td>
</tr>
</tbody>
</table>

The above appropriation shall be expended for the administrative expenses of the family law masters program, excluding personal services and employee benefits.

## 11—Treasurer's Office

(WV Code Chapter 12)
## APPROPRIATIONS

### Fund 0126 FY 2000 Org 1300

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,699,796</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Treasurer</td>
<td>002</td>
<td>70,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>34,856</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>564,407</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>1,710,610</td>
</tr>
<tr>
<td>6</td>
<td>Abandoned Property Program</td>
<td>118</td>
<td>285,725</td>
</tr>
<tr>
<td>7</td>
<td>Debt Payment on Morris Street—Workers Compensation Building</td>
<td>290</td>
<td>1,366,483</td>
</tr>
<tr>
<td>8</td>
<td>Tuition Trust Fund (R)</td>
<td>692</td>
<td>155,051</td>
</tr>
<tr>
<td>9</td>
<td>School Building Sinking Fund Debt Service (R)</td>
<td>770</td>
<td>$7,029,000</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td></td>
<td>$12,915,928</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0126, activity 099), Imaging System (fund 0126, activity 006), School Building Sinking Fund Debt Service (fund 0126, activity 770), Tuition Trust Fund (fund 0126, activity 692) and Tuition Trust Fund—Surplus (fund 0126, activity 837) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

### 12—Department of Agriculture

(WV Code Chapter 19)

### Fund 0131 FY 2000 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$3,412,811</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Commissioner</td>
<td>002</td>
<td>70,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>70,600</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,281,495</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>1,160,825</td>
</tr>
</tbody>
</table>
Ch. 7] APPROPRIATIONS

6 Gypsy Moth Program (R) .................. 119 876,429
7 Mingo County Surface Mine Project (R) 296 150,000
8 Predator Control ......................... 470 90,000
9 Charleston Farmers Market (R) ........... 476 152,480
10 Bee Research .............................. 691 70,000
11 Moorefield Agriculture Center (R) ...... 786 344,892
12 Microbiology Program .................... 785 150,000
13 Tri-County Fair Association .............. 343 100,000
14 Total .................................. $ 7,929,532
15 Any unexpended balances remaining in the appropriations
16 for Unclassified (fund 0131, activity 099), Gypsy Moth
17 Program (fund 0131, activity 119), Mingo County Surface Mine
18 Project (fund 0131, activity 296), Charleston Farmers Market
19 (fund 0131, activity 476), Moorefield Agriculture Center (fund
20 0131, activity 786) and Capital Improvements—Total—Surplus
21 (fund 0131, activity 672) at the close of the fiscal year 1999 are
22 hereby reappropriated for expenditure during the fiscal year
23 2000.
24 A portion of the Unclassified appropriation may be trans-
25 ferred to a special revenue fund for the purpose of matching
26 federal funds for marketing and development activities.

13—Department of Agriculture—

State Soil Conservation Committee
(WV Code Chapter 19)

Fund 0132 FY 2000 Org 1400

1 Personal Services ......................... 001 $ 429,184
2 Annual Increment ......................... 004 8,400
3 Employee Benefits ....................... 010 149,427
4 Unclassified (R) ......................... 099 282,455
5 Soil Conservation Projects (R) .......... 120 2,500,000
6 Maintenance of Flood Control
7 Projects (R) .......................... 522 1,993,480
8 Total ............................... $ 5,362,946

9 Any unexpended balances remaining in the appropriations
10 for Unclassified (fund 0132, activity 099), Maintenance of
11 Flood Control Projects (fund 0132, activity 522), Soil Conser-
12 vation Projects (fund 0132, activity 120) and Soil Conservation
13 Projects—Surplus (fund 0132, activity 269) at the close of the
14 fiscal year 1999 are hereby reappropriated for expenditure
15 during the fiscal year 2000.

14—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

Fund 0135 FY 2000 Org 1400

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>FY 2000 Org 1400</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td></td>
<td>$ 370,773</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td></td>
<td>8,085</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td></td>
<td>139,342</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td></td>
<td>76,928</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td>$ 595,128</td>
</tr>
</tbody>
</table>

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

15—Department of Agriculture—

Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2000 Org 1400

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>FY 2000 Org 1400</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural Awards</td>
<td>121</td>
<td></td>
<td>$ 0</td>
</tr>
<tr>
<td>Fairs and Festivals</td>
<td>122</td>
<td></td>
<td>425,000</td>
</tr>
</tbody>
</table>
3 Commissioner's Awards and Programs 737 $90,000

4 Total ....................... $ 515,000

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

Fund 0150 FY 2000 Org 1500

1 Personal Services (R) ............... 001 $ 2,248,692
2 Salary of Attorney General ............ 002 75,000
3 Annual Increment (R) ............... 004 34,900
4 Employee Benefits (R) ............... 010 665,332
5 Unclassified (R) ...................... 099 608,598
6 Better Government Bureau (R) ....... 740 249,463

7 Total ............................. $ 3,881,985

Any unexpended balance remaining in the above appropriation at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

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

17—Secretary of State
(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2000 Org 1600
<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$585,557</td>
</tr>
<tr>
<td>Salary of Secretary of State</td>
<td>002</td>
<td>$65,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$13,170</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$226,931</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>$380,497</td>
</tr>
<tr>
<td>Administrative Law Division Improvements</td>
<td>344</td>
<td>$58,793</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,329,948</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, activity 099) and Technology Improvements (fund 0155, activity 599) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

18—State Election Commission  
(WV Code Chapter 3)  
Fund 0160 FY 2000 Org 1601  
1 Unclassified—Total ............... 096 $12,000

DEPARTMENT OF ADMINISTRATION

19—Department of Administration—Office of the Secretary  
(WV Code Chapter 5F)  
Fund 0186 FY 2000 Org 0201  
1 Unclassified—Total ............... 096 $289,729

20—Consolidated Public Retirement Board  
(WV Code Chapter 5)  
Fund 0195 FY 2000 Org 0205  
1 The division of highways, division of motor vehicles, bureau of employment programs, public service commission
and other departments, bureaus or divisions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

21—Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2000 Org 0209

1 Personal Services ...................... 001 $ 495,801
2 Annual Increment ...................... 004 11,090
3 Employee Benefits .................... 010 151,766
4 Unclassified ........................... 099 556,863
5 GAAP Project (R) ....................... 125 1,275,164
6 Total .................................. $ 2,490,684

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, activity 125) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

22—Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 0583 FY 2000 Org 0210

1 Asynchronous Transfer Mode (ATM) Program .................. 199 $ 0

23—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2000 Org 0211

1 Personal Services ...................... 001 $ 484,536
2 Annual Increment ...................... 004 20,300
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Code</th>
<th>Appropriation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Fire Service Fee</td>
<td>126</td>
</tr>
<tr>
<td>6</td>
<td>Capital Complex—Capital Outlay (R)</td>
<td>417</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Capitol Building Preservation (fund 0230, activity 503), Capitol Building Preservation—Surplus (fund 0230, activity 675), Capital Improvements—Capitol Complex—Surplus (fund 0230, activity 676), Capitol Complex—Capital Outlay (fund 0230, activity 417), Capitol Complex—Capital Outlay—Surplus (fund 0230, activity 526), Capitol Complex Master Plan—Total—Surplus (fund 0230, activity 606), Chilled Water Plant—Phase III (fund 0230, activity 291), Capitol Complex—Capital Outlay—Total—Surplus (fund 0230, activity 777) and Capitol Building Roof—Total—Surplus (fund 0230, activity 820) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

#### 24—Division of Purchasing
(WV Code Chapter 5A)

Fund 0210 FY 2000 Org 0213

<table>
<thead>
<tr>
<th>Code</th>
<th>Appropriation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Purchasing Card Program</td>
<td>711</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

The division of highways shall reimburse the Unclassified appropriation (fund 2031, activity 099) within the division of purchasing for all actual expenses incurred pursuant to the
provisions of section thirteen, article two-a, chapter seventeen of the code.

25—Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2000 Org 0217

1 Unclassified—Total 096 $ 25,000
2 To pay expenses of members of the commission on uniform state laws.

26—Board of Risk and Insurance Management

(WV Code Chapter 29)

Fund 0217 FY 2000 Org 0218

1 Unclassified—Total 096 $ 0
2 Unclassified 099 5,304,116
3 Premium Enhancement 346 2,000,000
4 Total 7,304,116

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

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

27—Education and State Employees’ Grievance Board

(WV Code Chapter 18)
### Fund 0220 FY 2000 Org 0219

1. Personal Services ................................ 001 $ 673,122
2. Annual Increment .................................. 004 7,683
3. Employee Benefits ................................. 010 199,864
4. Unclassified ....................................... 099 169,678
5. Total .............................................. $ 1,050,347

#### 28—Ethics Commission
(WV Code Chapter 6B)

#### Fund 0223 FY 2000 Org 0220

1. Personal Services ................................. 001 $ 192,908
2. Annual Increment ................................. 004 1,850
3. Employee Benefits ................................. 010 58,980
4. Unclassified ....................................... 099 119,979
5. Total .............................................. $ 373,717

#### 29—Public Defender Services
(WV Code Chapter 29)

#### Fund 0226 FY 2000 Org 0221

1. Personal Services ................................. 001 $ 257,331
2. Annual Increment .................................. 004 4,050
3. Employee Benefits ................................. 010 89,240
4. Unclassified (R) .................................. 099 95,540
5. Appointed Counsel Fees and Public Defender Corporations (R) ........... 127 0
6. Appointed Counsel Fees (R) .................... 788 14,337,469
7. Public Defender Corporations (R) ............ 352 12,773,436
8. Total .............................................. $ 27,557,066
Any unexpended balances remaining in the above appropriations at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000 (except Personal Services (fund 0226, activity 001), Annual Increment (fund 0226, activity 004) and Employee Benefits (fund 0226, activity 010)).

Any balances so reappropriated (except Unclassified (fund 0226, activity 099)) are hereby redesignated Appointed Counsel Fees and Public Defender Corporation (fund 0226, activity 127).

30—Committee for the Purchase of Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2000 Org 0224

1 Unclassified—Total .................. 096 $ 4,656

31—Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2000 Org 0225

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

32—West Virginia Prosecuting Attorneys' Institute

Fund 0557 FY 2000 Org 0228

1 Forensic Medical Examinations ........ 683 $ 253,659
2 Federal Funds/Grant Match ............ 749 80,000
3 Total .................................. $ 333,659

DEPARTMENT OF EDUCATION

33—State Department of Education—
### School Lunch Program
(WV Code Chapters 18 and 18A)

**Fund 0303 FY 2000 Org 0402**

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
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<td>2 Annual Increment</td>
<td>004</td>
<td>$3,588</td>
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<td>010</td>
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<td>4 Unclassified</td>
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<td>$1,781,447</td>
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### 34-State FFA-FHA Camp and Conference Center
(WV Code Chapters 18 and 18A)

**Fund 0306 FY 2000 Org 0402**

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<th>Item</th>
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<tr>
<td>1 Personal Services</td>
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<td>2 Annual Increment</td>
<td>004</td>
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### 35-State Department of Education
(WV Code Chapters 18 and 18A)

**Fund 0313 FY 2000 Org 0402**

<table>
<thead>
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<th>Item</th>
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<th>Amount</th>
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<tr>
<td>1 Personal Services</td>
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<td>2 Annual Increment</td>
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<td>$34,915</td>
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<td>3 Employee Benefits</td>
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<td>$874,350</td>
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<td>4 Unclassified</td>
<td>099</td>
<td>$3,700,000</td>
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<tr>
<td>5 WV Education Information System</td>
<td>138</td>
<td>$3,816,130</td>
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<td>6 (WVEIS)</td>
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<td></td>
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<tr>
<td>7 34/1000 Waiver</td>
<td>139</td>
<td>$200,000</td>
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<td>Item</td>
<td>Description</td>
<td>Appropriations</td>
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<td>---------------------------------------------------------</td>
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<tr>
<td>8</td>
<td>Increased Enrollment</td>
<td>140, 1,425,218</td>
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<td>9</td>
<td>National Science Foundation Match</td>
<td>142, 139,500</td>
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<td>10</td>
<td>Safe Schools</td>
<td>143, 2,000,000</td>
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<tr>
<td>11</td>
<td>Implementation of Norm Referenced Testing Program</td>
<td>297, 1,489,883</td>
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<td>12</td>
<td>Technology Repair and Modernization</td>
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<td>13</td>
<td>Curriculum Technology</td>
<td>300, 252,185</td>
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<td>14</td>
<td>Resource Center</td>
<td>747,575</td>
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<td>15</td>
<td>Employment Programs Rate Relief</td>
<td>1,000,000</td>
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<td>16</td>
<td>Governor's Honors Academy</td>
<td>190,000</td>
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<td>17</td>
<td>Micro Computer Network</td>
<td>506, 150,000</td>
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<td>18</td>
<td>Three Tier Funding</td>
<td>596, 0</td>
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<td>19</td>
<td>Technology and Telecommunications Initiative (R)</td>
<td>521, 371,390</td>
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<td>20</td>
<td>Adult Advisory Council</td>
<td>636, 150,000</td>
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<td>21</td>
<td>Foreign Student Education (R)</td>
<td>639, 0</td>
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<tr>
<td>22</td>
<td>Technology Demonstration Project</td>
<td>640, 35,043</td>
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<td>23</td>
<td>State Teacher of the Year</td>
<td>649, 50,000</td>
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<td>24</td>
<td>Principals Mentorship</td>
<td>650, 2,427,000</td>
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<tr>
<td>25</td>
<td>Educational Enhancements</td>
<td>744, 50,000</td>
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<tr>
<td>26</td>
<td>Allowance for Work Based Learning</td>
<td>758, 150,000</td>
</tr>
<tr>
<td>27</td>
<td>Pickens School Support</td>
<td>807, 25,000</td>
</tr>
<tr>
<td>28</td>
<td>Marshall University Graduate College</td>
<td>809, 100,000</td>
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<tr>
<td>29</td>
<td>Webster County Board of Education/</td>
<td>353, 452,992</td>
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<tr>
<td>30</td>
<td>Hacker Valley</td>
<td>355, 270,000</td>
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<td>31</td>
<td>Writing Project</td>
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<td>32</td>
<td>Tax Assessment Errors</td>
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<td>33</td>
<td>HVAC Technicians</td>
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</table>
APPROPRIATIONS

36 Pendleton County Allowance for Transfer ....................... 356 170,000
37 READS Program ......................... 365 300,000
38 MATH Program ......................... 368 300,000
39 End of Course Exams ..................... 369 250,000
40 Service Personnel College Hours ....... 378 164,239

41 Total .................................. $ 23,656,974

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

Any unexpended balances remaining in the appropriations for Computer Basic Skills (fund 0313, activity 145), Increased Enrollment (fund 0313, activity 140) Technology and Telecommunications Initiative (fund 0313, activity 596), and Foreign Student Education (fund 0313, activity 636), at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

36—State Department of Education—Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2000 Org 0402

1 Special Education—Counties ............ 159 $ 7,336,561
2 Special Education—Institutions ........ 160 2,984,173
3 Education of Juveniles Held in
   Predispositional Juvenile
   Detention Centers ................. 302 540,079
4 Education of Institutionalized Juveniles
   and Adults ....................... 472 4,994,378
5 Potomac Center ...................... 810 312,805
6 Educational Services/Upshur County,
   Potomac Highlands, and Lory Julian 382 599,301
7 Total ................................ $ 16,767,297
From the above appropriations, the superintendent shall have authority to expend funds for the costs of special education for those children residing in out-of-state placements.

37—State Department of Education—

State Aid to Schools

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>0317</td>
<td>2000</td>
<td>0402</td>
<td>Other Current Expenses</td>
<td>$110,962,528</td>
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<tr>
<td>151</td>
<td></td>
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<td>Professional Educators</td>
<td>710,087,853</td>
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<td>152</td>
<td></td>
<td></td>
<td>Service Personnel</td>
<td>226,418,360</td>
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<tr>
<td>153</td>
<td></td>
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<td>Fixed Charges</td>
<td>82,693,498</td>
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<tr>
<td>154</td>
<td></td>
<td></td>
<td>Transportation</td>
<td>32,986,482</td>
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<tr>
<td>155</td>
<td></td>
<td></td>
<td>Administration</td>
<td>7,719,048</td>
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<tr>
<td>156</td>
<td></td>
<td></td>
<td>Improve Instructional Programs</td>
<td>$33,000,000</td>
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<tr>
<td>157</td>
<td></td>
<td></td>
<td>Basic Foundation Allowances</td>
<td>1,203,867,769</td>
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<tr>
<td>158</td>
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<td>Less Local Share</td>
<td>($261,439,074)</td>
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<td>159</td>
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<td>Total Basic State Aid</td>
<td>942,428,695</td>
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<tr>
<td>160</td>
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<td>Public Employees' Insurance Match</td>
<td>139,884,303</td>
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<tr>
<td>161</td>
<td></td>
<td></td>
<td>Teachers’ Retirement System</td>
<td>212,027,000</td>
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<tr>
<td>162</td>
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<td>School Building Authority</td>
<td>22,667,670</td>
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<td>163</td>
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<td>Total</td>
<td>$1,317,007,668</td>
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</tbody>
</table>

38—State Board of Education—

Vocational Division

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>0390</td>
<td>2000</td>
<td>0402</td>
<td>Personal Services</td>
<td>$742,809</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>12,335</td>
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</tbody>
</table>
3 Employee Benefits .................. 010 307,473
4 Unclassified ......................... 099 878,952
5 Wood Products—
6 Forestry Vocational Program (R) .. 146 63,024
7 Albert Yanni Vocational Program .... 147 139,300
8 Vocational Aid ....................... 148 12,555,507
9 Adult Basic Education ............... 149 2,743,941
10 Equipment Replacement .............. 150 1,019,750
11 Program Modernization (R) .......... 305 600,000
12 Aquaculture Support ................ 769 203,548
13 Total ................................ $ 19,266,639

Any unexpended balances remaining in the appropriations
for Wood Products—Forestry Vocational Program (fund 0390,
activity 146) and Program Modernization (fund 0390, activity
305) at the close of the fiscal year 1999 are hereby
reappropriated for expenditure during the fiscal year 2000.

39—State Board of Education—
Division of Educational Performance Audits
(WV Code Chapters 18 and 18A)
Fund 0573 FY 2000 Org 0402
1 Personal Services .................... 001 $ 450,397
2 Annual Increment ..................... 004 2,500
3 Employee Benefits ................... 010 150,009
4 Unclassified .......................... 099 235,500
5 Total ................................ $ 838,406

40—West Virginia Schools for the Deaf and the Blind
(WV Code Chapters 18 and 18A)
Fund 0320 FY 2000 Org 0403
Ch. 7 | APPROPRIATIONS

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$5,792,587</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,000</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>2,209,392</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>1,518,421</td>
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<td>5</td>
<td>FM Auditory Equipment</td>
<td>395</td>
<td>120,000</td>
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<td>6</td>
<td>Total</td>
<td></td>
<td>$9,644,400</td>
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</table>

Any unexpended balances remaining in the appropriations for Fire and Smoke Alarm System—Surplus (fund 0320, activity 726) and Capital Outlay, Repairs and Equipment—Surplus (fund 0320, activity 677) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

DEPARTMENT OF EDUCATION AND THE ARTS

41—Department of Education and the Arts—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0294 FY 2000 Org 0431

<table>
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<th>Description</th>
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<tr>
<td>1</td>
<td>Underwood Youth Center</td>
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<td>2</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>1,813,666</td>
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<td>3</td>
<td>Joint Commission on Vocational—Technical—Occupational Education</td>
<td>109</td>
<td>30,000</td>
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<td>5</td>
<td>Center for Professional Development (R)</td>
<td>115</td>
<td>1,807,445</td>
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<tr>
<td>6</td>
<td>WVU—University Affiliated Center for Developmental Disabilities</td>
<td>157</td>
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<td>WV Humanities Council</td>
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<td>9</td>
<td>Center for Professional Development—Principals’ Academy (R)</td>
<td>415</td>
<td>500,000</td>
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<tr>
<td>11</td>
<td>Technical Preparation Program (R)</td>
<td>440</td>
<td>932,397</td>
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<tr>
<td>12</td>
<td>Community Schools/Mini Grants (R)</td>
<td>530</td>
<td>200,971</td>
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</table>
13 Hospitality Training ................. 600  550,000
14 Workforce Program Continuation ...... 405  400,000
15 Total ..................................  $ 6,234,479

Any unexpended balances remaining in the appropriations
for Unclassified (fund 0294, activity 099), Center for Professional Development (fund 0294, activity 115), Technical Preparation Program (fund 0294, activity 440) and Community Schools/Mini Grants (fund 0294, activity 530) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

42—Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2000 Org 0432

1 Personal Services ..................... 001  $ 1,688,441
2 Annual Increment .................... 004  33,700
3 Employee Benefits ................. 010  589,645
4 Mountain Stage ....................... 024  0
5 Huntington Symphony ................. 027  0
6 Martin Luther King, Jr. Holiday Celebration .......... 031  10,000
8 Unclassified .......................... 099  648,569
9 Fairs and Festivals .................. 122  0
10 Historical Preservation Grants ...... 311  0
11 West Virginia Public Theater ....... 312  0
12 Theater Arts of West Virginia ...... 464  0
13 Capital Outlay, Repairs and Equipment (R) ........ 589  0
15 Grants for Competitive Arts Programs . 624  1,000,000
16 Culture and History Programming .. 732  300,014
Any unexpended balances remaining in the appropriations for Capital Outlay, Repairs and Equipment (fund 0293, activity 589) and Capital Outlay, Repairs and Equipment—Surplus (fund 0293, activity 677) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

The Unclassified appropriation includes funding for the arts funds, department programming funds, grants, fairs and festivals and Camp Washington Carver and shall be expended only upon authorization of the division of culture and history and in accordance with the provisions of chapter five-a, article three, and chapter twelve of the code.

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

43—Library Commission
(WV Code Chapter 10)

Fund 0296 FY 2000 Org 0433

<table>
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<th>Item Description</th>
<th>Org</th>
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<td>Books and Films</td>
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<td>Services to State Institutions</td>
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<td>156,310</td>
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<td>Services to Blind and Handicapped</td>
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<td>42,729</td>
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<tr>
<td>Item</td>
<td>Description</td>
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<tr>
<td>8</td>
<td>Grants to Public Libraries</td>
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<td>9</td>
<td>Libraries—Special Projects</td>
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<td>Total</td>
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</table>

**44—Educational Broadcasting Authority**

(WV Code Chapter 10)

Fund 0300 FY 2000 Org 0439

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<th>Item</th>
<th>Description</th>
<th>Appropriations</th>
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<td>1</td>
<td>Personal Services</td>
<td>001 $3,197,163</td>
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<td>2</td>
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<td>4</td>
<td>Unclassified</td>
<td>099 1,226,902</td>
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<td>5</td>
<td>Capital Improvements - 600 Capitol Street</td>
<td>313 0</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$ 5,530,579</td>
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</table>

8 These funds may be transferred to special revenue accounts for matching college, university, city, county, federal and/or other generated revenues.

**45—Board of Trustees of the University System of West Virginia and Board of Directors of the State College System Central Office**

Control Account

(WV Code Chapters 18B and 18C)

Fund 0333 FY 2000 Org 0452

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tr>
<td>1</td>
<td>Public Employees’ Insurance</td>
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<td>3</td>
<td>Unclassified</td>
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<td>4</td>
<td>Higher Education Grant Program (R)</td>
<td>164 0</td>
</tr>
<tr>
<td>5</td>
<td>Tuition Contract Program (R)</td>
<td>165 703,552</td>
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<tr>
<td>6</td>
<td>Minority Doctoral Fellowship</td>
<td>166 0</td>
</tr>
</tbody>
</table>
Underwood-Smith Scholarship Program—
Student Awards (R) ................... 167  0
WVNET .................................. 169  2,401,656
Total ................................. $6,688,832

Any unexpended balances remaining in the appropriations for Higher Education Grant Program (fund 0333, activity 164), Tuition Contract Program (fund 0333, activity 165), Underwood—Smith Scholarship Program—Student Awards (fund 0333, activity 167) and Higher Education Technology Initiative—Surplus (fund 0333, activity 508) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

The appropriation for Minority Doctoral Fellowship (fund 0333, activity 166) may be transferred to special revenue accounts for matching college, university, city, county, federal, and/or other generated revenues.

46—Board of Trustees of the University System of West Virginia and Board of Directors of the State College System—Higher Education Efficiency Fund

Control Account

(WV Code Chapter 18B)
Fund 0578 FY 2000 Org 0452

Strategic Planning and Compliance—
Institutions—Total .................... 772  $10,945,308

47—Board of Trustees of the University System of West Virginia

Control Account

(WV Code Chapter 18B)
Fund 0327 FY 2000 Org 0461

Unclassified .......................... 099  $178,871,848
2 Marshall University—Southern WV
3 Community and Technical College
4 2+2 Program (R) ...................... 170 350,000
5 Jackson’s Mill ....................... 461 500,000
6 Marshall University—
7 Autism Training Center .......... 548 575,000
8 Marshall and West Virginia University
9 Faculty and Course Development
10 International Study Project (R) .... 549 35,000
11 Marshall University—Forensic Lab (R) 572 450,000
12 WVU Law School—Skills Program ... 745 200,000
13 WVU College of Engineering and
14 Mineral Resources—Diesel Training—
15 Transfer (R) .......................... 852 20,000
16 Total ................................. $181,001,848
17 Any unexpended balances remaining in the appropriations
18 for Marshall University—Southern WV Community and
19 Technical College 2+2 Program (fund 0327, activity 170),
20 Marshall University—Forensic Lab (fund 0327, activity 572),
21 WVU College of Engineering and Mineral Resources—Diesel
22 Training—Transfer (fund 0327, activity 852), Marshall and
23 West Virginia University Faculty and Course Development
24 International Study Project (fund 0327, activity 549), Higher
25 Education Technology Initiative (fund 0344, activity), Chestnut
26 Blight Research (fund 0344, activity 780), and Jackson’s Mill-
27 Surplus (fund 0344, activity 842) at the close of the fiscal year
28 1999 are hereby reappropriated for expenditure during the fiscal
29 year 2000.

48—Board of Trustees of the University System of West Virginia—

University of West Virginia

Health Sciences Account

(WV Code Chapter 18B)
### APPROPRIATIONS

**Fund 0323 FY 2000 Org 0478**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Appropriation</th>
<th>Notes</th>
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<tbody>
<tr>
<td>1</td>
<td>School of Osteopathic Medicine - Medical Education</td>
<td>129 $0</td>
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<tr>
<td>2</td>
<td>Marshall School of Medicine - Medical Education</td>
<td>158 $0</td>
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<td>3</td>
<td>WVU-Health Sciences - Medical Education</td>
<td>178 $0</td>
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<td>4</td>
<td>School of Osteopathic Medicine</td>
<td>172 $6,465,261</td>
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<tr>
<td>5</td>
<td>Marshall School of Medicine</td>
<td>173 $11,628,195</td>
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<td>6</td>
<td>WVU—Health Sciences</td>
<td>174 $41,635,343</td>
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<td>7</td>
<td>WVU—School of Health Sciences—Charleston Division</td>
<td>175 $3,914,507</td>
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<td>8</td>
<td>Health Sciences Scholarship Fund (R)</td>
<td>176 $0</td>
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<td>9</td>
<td>Primary Health Education Program Support (R)</td>
<td>177 $4,604,950</td>
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<td>10</td>
<td>Medical Education</td>
<td>178 $0</td>
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<td>11</td>
<td>Vice Chancellor for Health Sciences</td>
<td>473 $275,782</td>
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<td>12</td>
<td>WVU Charleston Division—Poison Control Hot Line (R)</td>
<td>510 $487,666</td>
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<tr>
<td>13</td>
<td>MA Public Health Program and Health Science Technology</td>
<td>623 $0</td>
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<td>14</td>
<td>WVU—Health Career Opportunities Program (R)</td>
<td>850 $0</td>
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<td>15</td>
<td>Rural Health Initiative Site Support Program (R)</td>
<td>853 $2,980,000</td>
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<td>16</td>
<td>Correctional Telemedicine Project</td>
<td>406 $500,000</td>
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<tr>
<td>17</td>
<td>Capital Outlay and Equipment</td>
<td>542 $2,000,000</td>
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<td>18</td>
<td>Total</td>
<td>$74,491,704</td>
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Any unexpended balances remaining in the appropriations for Primary Health Education Program Support (fund 0323, activity 177), Rural Health Initiative Site Support (fund 0323, activity 295), Health Sciences Scholarship Fund (fund 0323, activity 176), WVU—Health Career Opportunities Program (fund 0323, activity 850), WVU Charleston Division—Poison Control Hot Line (fund 0323, activity 510), Marshall University Medical School—Capital Improvements (fund 0323, activity 814) and Rural Health Initiative Site Support Program (fund 0323, activity 853) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

49—Board of Directors of the State College System

Control Account

(WV Code Chapter 18B)

Fund 0330 FY 2000 Org 0481

1 Unclassified—Total .................. 096 $ 84,403,241

2 Any unexpended balance remaining in the appropriation for Workforce Development (fund 0330, activity 832) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

50—State Board of Rehabilitation—Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2000 Org 0932

1 Personal Services ...................... 001 $ 4,310,348
2 Annual Increment ..................... 004 124,961
3 Employee Benefits .................... 010 1,597,016
4 Unclassified .......................... 099 150,000
5 Case Services ....................... 162 2,676,365
6 Workshop Development .................. 163 1,799,000
7 Traumatic Brain and Spinal Cord Injury 813 250,000
8 Ron Yost Personal Assistance Fund ... 407 150,000
9 Total ....................................... $ 11,057,690

Any unexpended balance remaining in the appropriation for Technology - Related Assistance Revolving Loan Fund for Individuals with Disabilities (fund 0310, activity 766) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000 and may be transferred to a special account for the purpose of disbursement or loan.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

51—Department of Health and Human Resources—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2000 Org 0501

1 Unclassified .......................... 099 $ 132,856
2 Rural Health Care Providers Revolving Loan Fund .................. 211 500,000
3 Total ........................................ $ 632,856

52—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2000 Org 0506

1 Personal Services ................. 001 $ 6,706,066
2 Annual Increment .................... 004 131,907
3 Employee Benefits ................. 010 2,817,828
4 Unclassified ......................... 099 4,324,964
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<td>Corporate Nonprofit Community Health Centers—F.M.H.A. Mortgage Finance</td>
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<td>6</td>
<td>Primary Care Centers-Mortgage Finance</td>
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<td>7</td>
<td>Appalachian State Low Level Radioactive Waste Commission</td>
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<td>8</td>
<td>Safe Drinking Water Program</td>
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<td>9</td>
<td>Transitional Funding for Local Health Departments</td>
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<td>10</td>
<td>Women, Infants and Children</td>
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<td>11</td>
<td>Early Intervention</td>
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<td>12</td>
<td>Cancer Registry</td>
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<td>13</td>
<td>Black Lung Clinics</td>
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<td>14</td>
<td>Pediatric Dental Services</td>
<td>550</td>
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<td>15</td>
<td>Vaccine for Children</td>
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<td>16</td>
<td>Adult Influenza Vaccine</td>
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<td>17</td>
<td>Tuberculosis Control</td>
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<td>18</td>
<td>Regional EMS Entities</td>
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<td>19</td>
<td>Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (R)</td>
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<td>20</td>
<td>Epidemiology Support</td>
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<td>21</td>
<td>Rural EMS Equipment and Training</td>
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<td>Primary Care Support</td>
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<td>State Aid to Local Health Departments</td>
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<td>Health Right Free Clinics</td>
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<td>25</td>
<td>Osteoporosis Prevention Fund</td>
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<td>26</td>
<td>State EMS Coordinator</td>
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<td>EMS Training for Children</td>
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</table>
34 Emergency Response Entities—
35 Special Projects .................. 822 1,250,000
36 Pet Scan Equipment ................. 431 200,000
37 Total .............................. $ 48,770,980
38 Any unexpended balances remaining in the appropriations
39 for Unclassified (fund 0407, activity 099, fiscal year 1997) and
40 Maternal and Child Health Clinics, Clinicians and Medical
41 Contracts and Fees (fund 0407, activity 575) at the close of the
42 fiscal year 1999 are hereby reappropriated for expenditure
43 during the fiscal year 2000.
44 From the Maternal and Child Health Clinics, Clinicians,
45 and Medical Contracts and Fees line item, $400,000 shall be
46 transferred to the Breast and Cervical Cancer Diagnostic
47 Treatment Fund.

53—Consolidated Medical Service Fund
(WV Code Chapter 16)
Fund 0525 FY 2000 Org 0506
1 Personal Services .................. 001 $ 531,371
2 Annual Increment .................. 004 10,300
3 Employee Benefits ................ 010 211,943
4 Special Olympics .................. 208 26,074
5 Behavioral Health Program—
6 Unclassified ....................... 219 22,449,313
7 Family Support Act ............... 221 1,090,257
8 Institutional Facilities Operations ... 335 43,176,676
9 Colin Anderson Community Placement 803 3,433,963
10 Renaissance Program ............. 804 200,000
11 Total .............................. $ 71,129,897
12 Any unexpended balances remaining in the appropriations
13 for Behavioral Health Program-Unclassified (fund 0525,
activity 219) and Colin Anderson Community Placement (fund 0525, activity 803) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

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

Additional funds have been appropriated in fund 5156, fiscal year 2000, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

From the above appropriation to Institutional Facilities Operations, together with available funds from the division of health—hospital services revenue account (fund 5156, activity 335), on July 1, 1999, the sum of one hundred fifty-thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

From the Colin Anderson Community Placement (fund 0525, activity 803) funds may be both expended for the community placement costs of the Colin Anderson clients and transferred to the Medical Services Program Fund to pay the Medicaid state share of the Medicaid cost of Colin Anderson clients in the community.
54—Division of Health—

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2000 Org 0506

1 West Virginia Drinking Water Treatment
2 Revolving Fund—Transfer ........ 689 $ 700,000

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

55—Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2000 Org 0510

1 Personal Services ......................... 001 $ 578,315
2 Annual Increment ......................... 004 12,112
3 Employee Benefits ....................... 010 192,784
4 Unclassified .............................. 099 184,121
5 Anti-Hate Program and
6 Human Rights Summit ................... 815 18,000
7 Total ...................................... $ 985,332

Any unexpended balance remaining in the appropriation for
Automated Management Information System (fund 0416,
activity 528) at the close of the fiscal year 1999 is hereby
reappropriated for expenditure during the fiscal year 2000.

56—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2000 Org 0511
<table>
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<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$19,692,117</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>456,261</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>7,540,669</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>19,956,786</td>
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<tr>
<td>5</td>
<td>Child Care Development</td>
<td>144</td>
<td>1,437,213</td>
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<tr>
<td>6</td>
<td>Medical Services Contracts and Office of Managed Care</td>
<td>183</td>
<td>2,323,020</td>
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<td>7</td>
<td>Medical Services</td>
<td>189</td>
<td>178,587,996</td>
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<tr>
<td>8</td>
<td>Women's Commission</td>
<td>191</td>
<td>131,104</td>
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<td>9</td>
<td>Social Services</td>
<td>195</td>
<td>44,040,138</td>
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<td>10</td>
<td>Family Preservation Program</td>
<td>196</td>
<td>1,565,000</td>
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<td>11</td>
<td>Child Protective Services Case Workers</td>
<td>468</td>
<td>7,317,646</td>
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<tr>
<td>12</td>
<td>OSCAR and RAPIDS</td>
<td>515</td>
<td>3,373,242</td>
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<td>13</td>
<td>Child Welfare System</td>
<td>603</td>
<td>2,500,449</td>
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<tr>
<td>14</td>
<td>Commission for the Deaf and Hard of Hearing</td>
<td>704</td>
<td>157,390</td>
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<td>15</td>
<td>Child Support Enforcement</td>
<td>705</td>
<td>1,698,542</td>
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<tr>
<td>16</td>
<td>Medicaid Auditing</td>
<td>706</td>
<td>578,372</td>
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<tr>
<td>17</td>
<td>Temporary Assistance for Needy Families/Maintenance of Effort</td>
<td>707</td>
<td>29,689,373</td>
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<tr>
<td>18</td>
<td>Child Care—Maintenance of Effort and Match</td>
<td>708</td>
<td>4,409,643</td>
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<td>19</td>
<td>WV Childrens' Health Fund—Transfer (R)</td>
<td>714</td>
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<td>20</td>
<td>Grants for Licensed Domestic Violence Programs and Statewide Prevention</td>
<td>750</td>
<td>1,000,000</td>
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<td>21</td>
<td>Indigent Burials (R)</td>
<td>851</td>
<td>680,000</td>
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<td>22</td>
<td>Medical Services Trust Fund Transfer</td>
<td>452</td>
<td>10,000,000</td>
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</table>
James “Tiger” Morton Catastrophic Illness Fund: 455 $1,000,000

Total: $338,134,961

Any unexpended balances remaining in the appropriations for Indigent Burials (fund 0403, activity 851) and West Virginia Childrens' Health Fund—Transfer (fund 0403, activity 714) at the close of fiscal year 1999 are hereby reappropriated for expenditure during fiscal year 2000.

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

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

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

57—Department of Military Affairs and Public Safety—

Office of the Secretary
(WV Code Chapter 5F)

Fund 0430 FY 2000 Org 0601

1 Unclassified—Total: 096 $257,771

58—Adjutant General—

State Militia
(WV Code Chapter 15)

Fund 0433 FY 2000 Org 0603

1 Personal Services: 001 $360,299
2 Annual Increment: 004 7,600
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<th>3</th>
<th>Employee Benefits</th>
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<td>8,779,121</td>
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<td>5</td>
<td>College Education Fund</td>
<td>232</td>
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<td>6</td>
<td>Armory Capital Improvements</td>
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<td>0</td>
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<tr>
<td>7</td>
<td>Mountaineer Challenge Academy</td>
<td>709</td>
<td>0</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$ 9,268,862</td>
</tr>
</tbody>
</table>

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

**59—West Virginia Parole Board**

(WV Code Chapter 62)

Fund 0440 FY 2000 Org 0605

<table>
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<th>1</th>
<th>Personal Services</th>
<th>001</th>
<th>112,115</th>
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<td>2</td>
<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>107,830</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>69,575</td>
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<td>5</td>
<td>Salaries of Members of West Virginia Parole Board</td>
<td>227</td>
<td>200,000</td>
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<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$ 490,620</td>
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**60—Office of Emergency Services**

(WV Code Chapter 15)

Fund 0443 FY 2000 Org 0606

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<td>5,300</td>
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<td>4</td>
<td>Unclassified</td>
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<td>31,751</td>
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<td>5</td>
<td>Federal Emergency Management</td>
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<td>6</td>
<td>Agency Match</td>
<td>188</td>
<td>715,610</td>
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### 61—Division of Corrections—
#### Central Office

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

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<th>Org 0608</th>
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<td>Employee Benefits</td>
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<td>111,004</td>
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<td><strong>Total</strong></td>
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<td><strong>$607,017</strong></td>
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### 62—Division of Corrections—
#### Correctional Units

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

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<th>Org 0608</th>
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<tr>
<td>Employee Benefits</td>
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<tr>
<td>Unclassified</td>
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<td>4,515,432</td>
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<td>Payment to Counties and/or Regional Jails</td>
<td>229</td>
<td>0</td>
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<tr>
<td>St. Mary's Correctional Facility</td>
<td>230</td>
<td>7,984,087</td>
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<tr>
<td>Denmar Correctional Facility</td>
<td>448</td>
<td>3,545,542</td>
</tr>
<tr>
<td>Mt. Olive Correctional Facility</td>
<td>533</td>
<td>18,716,995</td>
</tr>
<tr>
<td>Northern Correctional Facility</td>
<td>534</td>
<td>5,484,267</td>
</tr>
<tr>
<td>Inmate Medical Expense</td>
<td>535</td>
<td>0</td>
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<tr>
<td>Ohio County Correctional Facility</td>
<td>784</td>
<td>1,218,325</td>
</tr>
</tbody>
</table>
The commissioner of corrections shall within fifteen days after the close of each six-month period of said fiscal year, file with the legislative auditor and the department of administration an itemized report of expenditures made during the preceding six-month period. Such report shall include the total of expenditures made for personal services, annual increment, current expenses (inmate medical expenses and other), repairs and alterations and equipment. The commissioner of corrections shall also have the authority to transfer between line items appropriated to the individual correctional units above.

From the above appropriation to Unclassified, on July 1, 1999, the sum of two hundred thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

63—West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2000 Org 0612

1 Personal Services ......................... 001 $ 25,571,046
2 Annual Increment ......................... 004 162,850
Employee Benefits .................. 010  5,054,577
Unclassified .......................... 099  5,102,216
COPS Program—Federal Match ...... 327   0
Vehicle Purchase ..................... 451  1,000,000
Barracks Maintenance and
   Construction (R) ............... 494  113,947
Communications and Other
   Equipment (R) ................ 558  2,415,000
Trooper Retirement Fund .......... 605  16,928,826
Trooper Class/Grant Match (R) .. 733  1,576,837
Handgun Administration Expense (R) .. 747  66,817
Debt Payment/Capital Outlay,
   Renovations, Repair to Barracks . 751  2,000,000
COPS—Telecommunicators Match .... 816  253,173
Total .................................. $60,245,829

Any unexpended balances remaining in the appropriations
for Unclassified (fund 0453, activity 099), Barracks Main-
tenance and Construction (fund 0453, activity 494), Communica-
tions and Other Equipment (fund 0453, activity 558), Handgun
Administration Expense (fund 0453, activity 747) and Trooper
Class/Grant Match (fund 0453, activity 733) at the close of the
fiscal year 1999 are hereby reappropriated for expenditure
during the fiscal year 2000.

64—Division of Veterans Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2000 Org 0613

Personal Services .................... 001  $ 723,775
Annual Increment .................... 004  20,000
Employee Benefits .................. 010  340,683
4 Unclassified ....................... 099 16,570
5 Veterans Field Offices ............... 228 129,692
6 Veterans Toll Free Assistance Line .... 328 5,000
7 Veterans Reeducation Assistance (R) ... 329 270,000
8 Veterans Field Office Improvements (R) ............ 331 56,159
9 Veterans Grant Program (R) ............ 342 150,000
10 Veterans Monuments ................. 817 0
11 Women Veterans Monuments ............ 688 200,000
12 Veterans Memorial Fund ............... 690 23,455
13 Memorial Day Patriotic Exercise ...... 697 20,000
14 Huntington Veterans Memorial Arch .. 30,000
15 Total .................................. $ 1,985,334

Any unexpended balances remaining in the appropriations for Veterans Reeducation Assistance (fund 0456, activity 329), Barboursville Veterans Home Improvements (fund 0456, activity 466), Veterans Field Office Improvements (fund 0456, activity 331), and Veterans Monuments (fund 0456, activity 817) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

65—Division of Veterans Affairs—

Veterans Home
(WV Code Chapter 9A)

Fund 0460 FY 2000 Org 0618

1 Personal Services .................... 001 $ 610,811
2 Annual Increment ..................... 004 14,650
3 Employee Benefits ................... 010 350,917
4 Unclassified ......................... 099 161,734
5 Total .................................. $ 1,138,112
6 Any unexpended balance remaining in the appropriation for Barboursville Veterans Home Improvements (fund 0460, activity 466) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

### 66—Fire Commission

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Fund 0436 FY 2000 Org 0619</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
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</table>

### 67—Division of Criminal Justice Services

(Executive Order)

<table>
<thead>
<tr>
<th>Fund 0546 FY 2000 Org 0620</th>
<th></th>
</tr>
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<tr>
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<td>Unclassified</td>
<td>099</td>
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<tr>
<td>Statistical Analysis Program</td>
<td>597</td>
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<td>Total</td>
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</table>

### 68—Division of Juvenile Services

(WV Code Chapter 49)

<table>
<thead>
<tr>
<th>Fund 0570 FY 2000 Org 0621</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Central Office</td>
<td>701</td>
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<tr>
<td>Personal Services</td>
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<td>004</td>
</tr>
<tr>
<td>Description</td>
<td>Code</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>Juvenile Gatekeeper System</td>
<td>055</td>
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<td>Unclassified</td>
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<tr>
<td>Juvenile Transportation</td>
<td>730</td>
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<tr>
<td><strong>Total</strong></td>
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</tr>
</tbody>
</table>

69—State Facilities Protection Division
(WV Code Chapter 15)
Fund 0580 FY 2000 Org 0622

<table>
<thead>
<tr>
<th>Classification</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$ 0</td>
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</tbody>
</table>

70—Division of Protective Services
(WV Code Chapter 15)
Fund FY 2000 Org 0622

<table>
<thead>
<tr>
<th>Classification</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>400,000</td>
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<tr>
<td>Equipment</td>
<td>070</td>
<td>600,000</td>
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<td><strong>Total</strong></td>
<td></td>
<td>$1,000,000</td>
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</table>

DEPARTMENT OF TAX AND REVENUE
71—Department of Tax and Revenue—
Office of the Secretary
(WV Code Chapter 5F)
Fund 0465 FY 2000 Org 0701

<table>
<thead>
<tr>
<th>Classification</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$ 429,582</td>
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</tbody>
</table>

72—Tax Division
(WV Code Chapter 11)
Fund 0470 FY 2000 Org 0702

<table>
<thead>
<tr>
<th>Classification</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 9,730,830</td>
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</table>
### APPROPRIATIONS

<table>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>3,587,747</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>6,203,354</td>
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<tr>
<td>5</td>
<td>Remittance Processor</td>
<td>570</td>
<td>297,800</td>
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<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$20,045,631</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Automation Project (fund 0470, activity 442), Automation Project—Total—Surplus (fund 0470, activity 673), Property Tax Electronic Data Processing System Network Project (fund 0470, activity 684), Administrative Hearing Examiner Program (fund 0470, activity 713) and Property Tax and Coal Reserve Valuation Automation Project (fund 0470, activity 831) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

#### 73—Division of Professional and Occupational Licenses—

**State Athletic Commission**

(WV Code Chapter 29)

**Fund 0523 FY 2000 Org 0933**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$ 4,719</td>
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</table>

#### DEPARTMENT OF TRANSPORTATION

**74—Department of Transportation—**

**Office of the Secretary**

(WV Code Chapter 5F)

**Fund 0500 FY 2000 Org 0801**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$171,586</td>
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<td>2</td>
<td>Civil Air Patrol</td>
<td>234</td>
<td>86,952</td>
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<tr>
<td>3</td>
<td>Potomac Highlands Airport Authority</td>
<td>444</td>
<td>30,000</td>
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<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$288,538</td>
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</tbody>
</table>
Any unexpended balance remaining in the appropriation for Unclassified (fund 0500, activity 099) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

Any unexpended balance remaining in the appropriation for Port Authority (fund 0500, activity 443) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000 into fund 0581.

Any unexpended balance remaining in the appropriation for Aeronautics Commission (fund 0500, activity 818) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000 into fund 0582.

75—State Rail Authority
(WV Code Chapter 29)
Fund 0506 FY 2000 Org 0804
1 Unclassified—Total .................. 096 $ 718,787

76—Division of Public Transit
(WV Code Chapter 17)
Fund 0510 FY 2000 Org 0805
1 Unclassified—Total (R) ............... 096 $ 0
2 Unclassified ......................... 099 932,680
3 Federal Funds/Grant Match .......... 749 1,100,000
4 Total .................................. $ 2,032,680

Any unexpended balances remaining in the appropriations for Unclassified—Total (fund 0510, activity 096) and Federal Funds/Grant Match—Surplus (fund 0510, activity 857) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

77—Public Port Authority
(WV Code Chapter 17)
<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
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<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Ch. 7</strong> APPROPRIATIONS**</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Fund 0581 FY 2000 Org 0806</strong></td>
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<tr>
<td>1</td>
<td>Unclassified—Total .......................... 096</td>
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<td>$ 495,057</td>
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<td></td>
<td><strong>78—Aeronautics Commission</strong></td>
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<tr>
<td></td>
<td>(WV Code Chapter 29)</td>
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<tr>
<td></td>
<td><strong>Fund 0582 FY 2000 Org 0807</strong></td>
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<tr>
<td>1</td>
<td>Unclassified—Total .......................... 096</td>
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<td><strong>BUREAU OF COMMERCE</strong></td>
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<td></td>
<td><strong>79—Division of Forestry</strong></td>
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<tr>
<td></td>
<td>(WV Code Chapter 19)</td>
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<td></td>
<td><strong>Fund 0250 FY 2000 Org 0305</strong></td>
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<td>1</td>
<td>Personal Services ............................. 001</td>
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<td>$ 1,374,728</td>
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<tr>
<td>2</td>
<td>Annual Increment ............................. 004</td>
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<td>34,300</td>
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<td>3</td>
<td>Employee Benefits ............................ 010</td>
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<td>531,393</td>
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<td>4</td>
<td>Unclassified ................................... 099</td>
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<td>396,161</td>
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<td>5</td>
<td>Aerial Tanker Air Planes ....................... 752</td>
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<td>200,000</td>
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<tr>
<td>6</td>
<td>Total ...........................................</td>
<td></td>
<td>$ 2,536,582</td>
<td></td>
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<tr>
<td>7</td>
<td>Out of the above appropriation a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td><strong>80—Geological and Economic Survey</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>(WV Code Chapter 29)</td>
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<td></td>
<td><strong>Fund 0253 FY 2000 Org 0306</strong></td>
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<td>$ 1,236,821</td>
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<td>Annual Increment ............................. 004</td>
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<tr>
<td>3</td>
<td>Employee Benefits ............................ 010</td>
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<td>4</td>
<td>Unclassified ................................... 099</td>
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<td>365,547</td>
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<tr>
<td>5</td>
<td>Mineral Mapping System (R) .................... 207</td>
<td></td>
<td>1,208,488</td>
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</tbody>
</table>
6 Geographic Information System (R) ... 214 312,500
7 Computer Upgrade ..................... 349 6,125
8 Total .......................... $ 3,561,250

Any unexpended balances remaining in the appropriations for Mineral Mapping System (fund 0253, activity 207) and Geographic Information System (fund 0253, activity 214) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

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

81—West Virginia Development Office
(WV Code Chapter 5B)
Fund 0256 FY 2000 Org 0307

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
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<tr>
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<td>5</td>
<td>Partnership Grants (R)</td>
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<td>6</td>
<td>National Youth Science Camp</td>
<td>132</td>
<td>200,000</td>
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<tr>
<td>7</td>
<td>Local Economic Development Partnerships (R)</td>
<td>133</td>
<td>1,650,000</td>
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<td>9</td>
<td>ARC Assessment</td>
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<td>Intermodal Facilities</td>
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<td>11</td>
<td>Institute for Software Research</td>
<td>217</td>
<td>100,000</td>
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<td>12</td>
<td>Guaranteed Work Force Grant (R)</td>
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<td>3,411,009</td>
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<td>13</td>
<td>Small Business Financial Assistance (R)</td>
<td>360</td>
<td>318,931</td>
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<tr>
<td>14</td>
<td>Robert C. Byrd Institute for Advanced Flexible Manufacturing—Technology</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Ch. 7] APPROPRIATIONS

16 Outreach and Programs for Environmental and Advanced Technologies ................. 367 700,000
19 Industrial Park Assistance (R) ........ 480 1,400,000
20 WV Film Development Office ........ 498 102,609
21 Leverage Technology and Small Business Development Program (R) ........ 525 800,000
23 WV Partnership for Industrial Modernization (R) ................... 592 0
25 International Offices (R) ............... 593 926,966
26 Small Business Work Force (R) ........ 735 373,875
27 Polymer Alliance ....................... 754 100,000
28 National Institute of Chemical Studies . 805 100,000
29 WV Manufacturing Extension Partnership 731 200,000
30 Local Economic Development Assistance 819 5,000,000
31 Community College Workforce Development ....................... 750,000
33 Total ............................... $27,089,522

Any unexpended balances remaining in the appropriations for Partnership Grants (fund 0256, activity 131), Guaranteed Work Force Grant (fund 0256, activity 242), Local Economic Development Partnerships (fund 0256, activity 133), European Trade and Tourism Office (fund 0256, activity 763), Local Economic Development Assistance (fund 0256, activity 819), Small Business Financial Assistance (fund 0256, activity 360), Industrial Park Assistance (fund 0256, activity 480), Leverage Technology and Small Business Development Program (fund 0256, activity 525), Small Business Work Force (fund 0256, activity 735), International Offices (fund 0256, activity 593) and West Virginia Partnership for Industrial Modernization (fund 0256, activity 592) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.
The above appropriation to Local Economic Development Partnerships shall be used by the West Virginia development office for the award of funding assistance to county and regional economic development corporations or authorities participating in the certified development community program developed under the provisions of section three, article two, chapter five-b of the code. The West Virginia development office shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed thirty thousand dollars per county served by an economic development corporation or authority.

82—Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2000 Org 0308

1 Personal Services ....................... 001 $ 1,573,000
2 Annual Increment ................... 004 21,799
3 Employee Benefits .................... 010 608,754
4 Unclassified ......................... 099 1,053,160
5 Crane Operators Certification Fund .... 783 36,000
6 Total ................................... $ 3,292,713

Any unexpended balance remaining in the appropriation for Computer/Technology Upgrades (fund 0260, activity 322) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

83—Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2000 Org 0310

1 Personal Services ....................... 001 $ 8,408,051
2 Annual Increment ................... 004 250,844
3 Employee Benefits .................... 010 3,827,125
4 Unclassified ......................... 099 107,883
5 Nongame Wildlife .................. 527  550,000
6 West Virginia Stream Partners Program 637  100,000
7 Upper Mud River Flood Control ...... 654  203,454
8 Law Enforcement .................... 806  300,000
9 Law Enforcement-Special Projects .... 787  10,000
10 Litter Control Conservation Officers ... 564  200,000

Total .................................. $13,957,357

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

84—Division of Miners' Health, Safety and Training
(WV Code Chapter 22)

Fund 0277 FY 2000 Org 0314

1 Personal Services .................. 001 $ 3,599,443
2 Annual Increment .................... 004  64,100
3 Employee Benefits .................. 010  1,250,355
4 Unclassified ......................... 099  1,029,000

5 West Virginia Diesel Equipment
6 Commission .......................... 712  30,000

Total .................................. $ 5,972,898

85—Board of Coal Mine Health and Safety
(WV Code Chapter 22)

Fund 0280 FY 2000 Org 0319

1 Personal Services .................. 001 $ 97,162
2 Annual Increment .................... 004  350
3 Employee Benefits .................. 010  23,860
4 Unclassified ......................... 099  39,482

5 Total .................................. $ 160,854
86—Coal Mine Safety and Technical Review Committee
(WV Code Chapter 22)
Fund 0285 FY 2000 Org 0320
1 Unclassified—Total ................. 096 $ 73,410

BUREAU OF ENVIRONMENT
87—Environmental Quality Board
(WV Code Chapter 20)
Fund 0270 FY 2000 Org 0311
1 Personal Services .................... 001 $ 64,819
2 Annual Increment ..................... 004 523
3 Employee Benefits ................... 010 23,858
4 Unclassified ......................... 099 30,106
5 Total ................................ $ 119,306

88—Interstate Commission on Potomac River Basin
(WV Code Chapter 29)
Fund 0263 FY 2000 Org 0313
1 West Virginia's Contribution to the
2 Interstate Commission on Potomac
3 River Basin—Total ................... 134 $ 44,299

89—Ohio River Valley Water Sanitation Commission
(WV Code Chapter 29)
Fund 0264 FY 2000 Org 0313
1 West Virginia's Contribution to the Ohio
2 River Valley Water Sanitation
3 Commission—Total ................... 135 $ 125,400

90—Division of Environmental Protection
(WV Code Chapter 22)
Fund 0273 FY 2000 Org 0313
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$4,073,842</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>78,050</td>
</tr>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,423,324</td>
</tr>
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<td>Unclassified</td>
<td>099</td>
<td>676,080</td>
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<tr>
<td>5</td>
<td>Black Fly Control</td>
<td>137</td>
<td>320,852</td>
</tr>
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<td>6</td>
<td>Federal Settlement</td>
<td>206</td>
<td>0</td>
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<tr>
<td>7</td>
<td>Dam Safety</td>
<td>607</td>
<td>128,109</td>
</tr>
<tr>
<td>8</td>
<td>Office of Water Resources-Non-Enforcement Activities</td>
<td>855</td>
<td>$1,200,000</td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
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<td></td>
<td>$7,900,257</td>
</tr>
</tbody>
</table>

**91—Air Quality Board**

(WV Code Chapter 16)

Fund 0550 FY 2000 Org 0325

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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</table>

**BUREAU OF SENIOR SERVICES**

(WV Code Chapter 29)

Fund 0420 FY 2000 Org 0508

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Local Programs Service Delivery Costs</td>
<td>200</td>
</tr>
<tr>
<td>6</td>
<td>Silver Haired Legislature</td>
<td>202</td>
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<tr>
<td>7</td>
<td>Area Agencies Administration</td>
<td>203</td>
</tr>
<tr>
<td>8</td>
<td>Foster Grandparents Stipends and Travel</td>
<td>205</td>
</tr>
<tr>
<td>9</td>
<td>In-Home Services for Senior Citizens</td>
<td>224</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td></td>
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</tbody>
</table>
BUREAU OF EMPLOYMENT PROGRAMS

93—Bureau of Employment Programs
(WV Code Chapter 23)
Fund 0572 FY 2000 Org 0323

1 Welfare-to-Work—Total (R) ............ 416 $ 1,000,000

2 Any unexpended balance remaining in the appropriation for
3 Welfare-to-Work—Total (fund 0572, activity 416) at the close
4 of the fiscal year 1999 is hereby reappropriated for expenditure
5 during the fiscal year 2000.

94—Claims Against the General Revenue Fund

1 Claims Against the State ............... 319 $ 0

2 Total TITLE II, Section 1—
3 General Revenue  $ 2,660,622,378

DEPARTMENT OF TRANSPORTATION

95—Division of Motor Vehicles
(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)
Fund 9007 FY 2000 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ......</td>
<td>$ 8,083,248</td>
</tr>
<tr>
<td>2 Annual Increment ......</td>
<td>100,750</td>
</tr>
<tr>
<td>3 Employee Benefits ......</td>
<td>2,858,727</td>
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<tr>
<td>4 Unclassified ...........</td>
<td>17,557,366</td>
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## Appropriations

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>International Fuel Tax Agreement</td>
<td>536</td>
<td>558,834</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$29,158,925</td>
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</tbody>
</table>

### 96—Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2000 Org 0803

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>040</td>
<td>$50,000,000</td>
</tr>
<tr>
<td>ARC Assessment</td>
<td>136</td>
<td>255,910</td>
</tr>
<tr>
<td>Maintenance, Expressway, Trunkline and Feeder</td>
<td>270</td>
<td>85,000,000</td>
</tr>
<tr>
<td>Maintenance, State Local Services</td>
<td>271</td>
<td>144,000,000</td>
</tr>
<tr>
<td>Maintenance, Contract Paving and Secondary Road Maintenance</td>
<td>272</td>
<td>50,000,000</td>
</tr>
<tr>
<td>Bridge Repair and Replacement</td>
<td>273</td>
<td>34,000,000</td>
</tr>
<tr>
<td>Inventory Revolving</td>
<td>275</td>
<td>2,000,000</td>
</tr>
<tr>
<td>Equipment Revolving</td>
<td>276</td>
<td>15,000,000</td>
</tr>
<tr>
<td>General Operations</td>
<td>277</td>
<td>40,316,000</td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>278</td>
<td>17,000,000</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>279</td>
<td>25,000,000</td>
</tr>
<tr>
<td>Appalachian Programs</td>
<td>280</td>
<td>10,000,000</td>
</tr>
<tr>
<td>Nonfederal Aid Construction</td>
<td>281</td>
<td>20,000,000</td>
</tr>
<tr>
<td>Highway Litter Control</td>
<td>282</td>
<td>1,600,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$494,171,910</td>
</tr>
</tbody>
</table>

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

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

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

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

97—Division of Highways—

Federal Aid Highway Matching Fund

(WV Code Chapters 17 and 17C)

Fund 9018 FY 2000 Org 0803

1 Interstate Construction ................. 278 $ 58,000,000
2 Other Federal Aid Programs ............ 279 175,000,000
3 Appalachian Programs ................. 280 90,000,000
4 Total .................................... $ 323,000,000

98—Claims Against the State Road Fund

1 Claims Against the State ............... 319 $ 0
2 Total TITLE II, Section 2—
3 State Road Fund ......................... $880,770,542
Sec. 3. Appropriations from other funds.—From the funds designated there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year two thousand.

**LEGISLATIVE**

*99—Crime Victims Compensation Fund*

(WV Code Chapter 14)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5 Economic Loss Claim Payment Fund (R)</td>
<td>334</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, activity 334) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

**EXECUTIVE**

*100—Chief Technology Officer Administration Fund*

(WV Code Chapter 5)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>096</td>
</tr>
<tr>
<td>2 Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>3 EPSCoR Undergraduate Scientific Instrumentation Program</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
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</tbody>
</table>
### 101—Auditor's Office—
**Land Operating Fund**
(WV Code Chapters 11A, 12 and 36)

<table>
<thead>
<tr>
<th>Fund 1206 FY 2000 Org 1200</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services 001 $134,058</td>
</tr>
<tr>
<td>2 Annual Increment 004 $4,400</td>
</tr>
<tr>
<td>3 Employee Benefits 010 $40,304</td>
</tr>
<tr>
<td>4 Unclassified 099 $198,994</td>
</tr>
</tbody>
</table>

Total $377,756

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

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

### 102—Auditor's Office—
**Securities Regulation Fund**
(WV Code Chapter 32)

<table>
<thead>
<tr>
<th>Fund 1225 FY 2000 Org 1200</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services 001 $488,139</td>
</tr>
<tr>
<td>2 Annual Increment 004 $4,722</td>
</tr>
<tr>
<td>3 Employee Benefits 010 $137,979</td>
</tr>
<tr>
<td>4 Unclassified 099 $404,862</td>
</tr>
</tbody>
</table>

Total $1,037,702

### 103—Auditor's Office—
**Technology Support and Acquisition**
### Appropriations

(WV Code Chapter 12)

#### Fund 1233 FY 2000 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$569,128</td>
</tr>
</tbody>
</table>

104—Auditor’s Office—

**Purchasing Card Administration Fund**

(WV Code Chapter 12)

#### Fund 1234 FY 2000 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$129,388</td>
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</tbody>
</table>

105—Auditor’s Office—

**Office of the Chief Inspector**

(WV Code Chapter 6)

#### Fund 1235 FY 2000 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,389,226</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>22,900</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>443,579</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$469,610</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td><strong>$2,325,315</strong></td>
</tr>
</tbody>
</table>

106—Treasurer’s Office—

**Technology Support and Acquisition**

(WV Code Chapter 12)

#### Fund 1329 FY 2000 Org 1300

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

107—Department of Agriculture

(WV Code Chapter 19)

#### Fund 1401 FY 2000 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$540,391</td>
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</tbody>
</table>
### Appropriations

<table>
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<tr>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,950</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>140,674</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
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<td>854,141</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>1,540,156</td>
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</table>

#### 108—Department of Agriculture—

*West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Fund 1408 FY 2000 Org 1400

<table>
<thead>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Student and Farm Loans—Total</td>
<td>235</td>
<td>540,039</td>
</tr>
</tbody>
</table>

#### 109—Department of Agriculture—

*General John McCausland Memorial Farm*

(WV Code Chapter 19)

Fund 1409 FY 2000 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>22,196</td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>010</td>
<td>15,598</td>
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<td>Unclassified</td>
<td>099</td>
<td>199,537</td>
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<td></td>
<td>237,331</td>
</tr>
</tbody>
</table>

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

#### 110—Department of Agriculture—

*Farm Operating Fund*

(WV Code Chapter 19)

Fund 1412 FY 2000 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
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</thead>
<tbody>
<tr>
<td>1</td>
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<td>970,658</td>
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</tbody>
</table>

#### 111—Attorney General—

*Antitrust Enforcement*
<table>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$215,692</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>935</td>
</tr>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>66,052</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>178,285</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$460,964</td>
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</tbody>
</table>

### 112—Attorney General—

**Preneed Funeral Regulation Fund**

(WV Code Chapter 47)

Fund 1513 FY 2000 Org 1500

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$223,279</td>
</tr>
</tbody>
</table>

### 113—Attorney General—

**Preneed Funeral Guarantee Fund**

(WV Code Chapter 47)

Fund 1514 FY 2000 Org 1500

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$775,000</td>
</tr>
</tbody>
</table>

### 114—Secretary of State—

**Trademark Registration**

(WV Code Chapters 3, 5, and 59)

Fund 1610 FY 2000 Org 1600

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$7,000</td>
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</tbody>
</table>

### DEPARTMENT OF ADMINISTRATION

#### 115—Office of the Secretary—

**Natural Gas Contract Refund Fund**

(WV Code Chapter 5A)
112 APPROPRIATIONS  [Ch. 7

Fund 2040 FY 2000 Org 0201

1 Unclassified—Total ...................... 096 $ 200,000

116—Division of Information Services and Communications
(WV Code Chapter 5A)

Fund 2220 FY 2000 Org 0210

1 Personal Services ....................... 001 $ 5,399,672
2 Annual Increment ....................... 004 92,815
3 Employee Benefits ..................... 010 1,595,824
4 Unclassified ............................. 099 1,794,731
5 Total ...................................... $ 8,883,042

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

There is hereby appropriated from this fund, in addition to
the above appropriation, the necessary amount for the expendi-
ture of funds other than personal services or employee benefits
to enable the division to provide information processing
services to user agencies. These services include, but are not
limited to, data processing equipment, office automation and
telecommunications.

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

117—Division of Purchasing—

Revolving Fund
(WV Code Chapter 5A)

Fund 2320 FY 2000 Org 0216

1 Personal Services ....................... 001 $ 600,645
### Ch. 7] APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>19,913</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>208,236</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>265,776</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>1,094,570</td>
</tr>
</tbody>
</table>

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

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable the division to provide printing, publishing and document services and for the purchase of supplies for resale to user agencies. These services include, but are not limited to, offset printing, electronic duplication/copying, microfilming, records storage and the sale of general office supplies.

---

**118—Division of Personnel**

(WV Code Chapter 29)

**Fund 2440 FY 2000 Org 0222**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$ 2,367,202</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>60,100</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>643,161</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>762,121</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$ 3,832,584</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Human Resource Information System (fund 2440, activity 641) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

The total amount of this appropriation shall be paid from a special revenue fund out of fees collected by the division of personnel.
119—WV Prosecuting Attorneys' Institute
(WV Code Chapter 7)
Fund 2521 FY 2000 Org 0228
1 Unclassified—Total 096 $ 628,792

DEPARTMENT OF EDUCATION
120—State Board of Education—
Strategic Staff Development
(WV Code Chapter 18)
Fund 3937 FY 2000 Org 0402
1 Unclassified—Total 096 $ 500,000
2 Any unexpended balance remaining in the appropriation for
3 Unclassified—Total (fund 3937, activity 096) at the close of the
4 fiscal year 1999 is hereby reappropriated for expenditure during
5 the fiscal year 2000.

121—State Department of Education—
School Building Authority
(WV Code Chapter 18)
Fund 3959 FY 2000 Org 0402
1 Personal Services 001 $ 434,421
2 Annual Increment 004 5,450
3 Employee Benefits 010 159,054
4 Unclassified 099 272,819
5 Total 099 $ 871,744
6 The above appropriation for the administrative expenses of
7 the school building authority shall be paid from the interest
8 earnings on debt service reserve accounts maintained on behalf
9 of said authority.
### 122—State Department of Education—

**FFA-FHA Camp and Conference Center**

(WV Code Chapter 18)

Fund 3960 FY 2000 Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$750,600</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$12,522</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$346,035</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$1,042,578</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$2,151,735</td>
</tr>
</tbody>
</table>

### DEPARTMENT OF EDUCATION AND THE ARTS

### 123—State College and University Systems—

**State Systems Registration Fee—**

**Revenue Bond Construction Fund**

(WV Code Chapters 18 and 18B)

Fund 4033 FY 2000 Org 0453

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Capital Outlay</td>
<td>511</td>
<td>$700,000</td>
</tr>
</tbody>
</table>

The appropriation for Capital Outlay (fund 4033, activity 511) shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Board of Trustees of the University System and the Board of Directors of the State College System and the funds may be allocated to any institution within the system.

The total amount of this appropriation shall be paid from unexpended proceeds of revenue bonds previously issued pursuant to section eight, article ten, chapter eighteen-b of the code, which have since been refunded.

### 124—State College and University Systems—

**State Systems Tuition Fee—**
Revenue Bond Construction Fund
(WV Code Chapters 18 and 18B)

Fund 4041 FY 2000 Org 0453

1. Capital Outlay .......................... 511 $ 3,100,008

Any unexpended balance remaining in the above appropriation at the close of fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000 except for fund 4041, activities 387, 388, 391, 392, 393, 394, 396, 397 and 398 which shall expire on June 30, 1999.

Any balance so reappropriated for 1997 Revenue Bond Costs (fund 4041, activity 734) is hereby redesignated as Capital Outlay (fund 4041, activity 511).

The appropriation for Capital Outlay (fund 4041, activity 511) shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Board of Trustees of the University System and the Board of Directors of the State College System and the funds may be allocated to any institution within the systems.

The total amount of this appropriation shall be paid from unexpended proceeds of revenue bonds previously issued pursuant to section eight, article twelve-b, chapter eighteen of the code, which have since been refunded.

125—State University System—

State System Registration Fee—

Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)

Control Account
(WV Code Chapters 18 and 18B)

Fund 4007 FY 2000 Org 0461

1. Debt Service (R) ....................... 040 $ 2,687,063
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Capital Repairs and Alterations (R)</td>
<td>251</td>
<td>2,690,400</td>
</tr>
<tr>
<td>3</td>
<td>Miscellaneous Projects (R)</td>
<td>252</td>
<td>400,000</td>
</tr>
<tr>
<td>4</td>
<td>Computer and Telecommunications</td>
<td>438</td>
<td>692,850</td>
</tr>
</tbody>
</table>

**Total** $6,470,313


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

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at university system institutions.

126—State University System—

State System Tuition Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4008 FY 2000 Org 0461

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service (R)</td>
<td>040</td>
<td>8,362,475</td>
</tr>
<tr>
<td>2</td>
<td>Building and Campus Renewal (R)</td>
<td>258</td>
<td>9,263,300</td>
</tr>
<tr>
<td>3</td>
<td>Facilities Planning and Administration (R)</td>
<td>386</td>
<td>190,000</td>
</tr>
<tr>
<td>4</td>
<td>Computer and Telecommunications</td>
<td>438</td>
<td>692,850</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$18,508,625</td>
</tr>
</tbody>
</table>

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

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at university system institutions.

127—State University System—

West Virginia University Health Sciences Center

Spending Authority

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2000 Org 0463

1 Unclassified—Total (R) . . . . . . . . . . . 096 $ 14,974,000

2 Any unexpended balance remaining in the appropriation for the West Virginia University Health Sciences Center is hereby reappropriated for expenditure during the fiscal year 2000.

128—State College System—

State System Registration Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4289 FY 2000 Org 0481

1 Debt Service (R) . . . . . . . . . . . . . . . . . . 040 $ 1,386,230

2 Capital Repairs and Alterations (R) . . . 251 1,547,000
Any unexpended balances remaining in the appropriations (except fiscal year 1997, activity 040) are hereby reappropriated for expenditure during the fiscal year 2000.

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

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at college system institutions.

129—State College System—

State System Tuition Fee—

Special Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4290 FY 2000 Org 0481

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 2000</th>
<th>Budget Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service (R)</td>
<td>040</td>
<td>$3,740,862</td>
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<tr>
<td>Capital Improvements (New) (R)</td>
<td>259</td>
<td>1,157,200</td>
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<tr>
<td>Facilities Planning and Administration</td>
<td>386</td>
<td>190,000</td>
</tr>
<tr>
<td>Capital Contingencies and Emergencies (R)</td>
<td>537</td>
<td>250,000</td>
</tr>
<tr>
<td>Building and Campus Renewal and Facilities Planning and Administration (R)</td>
<td>538</td>
<td>2,214,700</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>538</strong></td>
<td><strong>$7,552,762</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations (except for fiscal year 1997, activity 040, fiscal year 1985, activity 258, and fiscal year 1995, activity 259) are hereby reappropriated for expenditure during the fiscal year 2000.
The total amount of this appropriation shall be paid from the special capital improvement fund created in article twelve-b, chapter eighteen of the code. Projects are to be paid on a cash basis and made available from the date of passage.

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at college system institutions.

130—State Board of Rehabilitation—
Division of Rehabilitation Services—
West Virginia Rehabilitation Center
Special Account
(WV Code Chapter 18)
Fund 8664 FY 2000 Org 0932

<table>
<thead>
<tr>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$2,700,000</td>
</tr>
<tr>
<td>Workshop Development</td>
<td>163</td>
<td>450,000</td>
</tr>
<tr>
<td>Workshop-Supported Employment</td>
<td>484</td>
<td>50,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$3,200,000</td>
</tr>
</tbody>
</table>

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

131—Board of Barbers and Cosmetologists
(WV Code Chapters 16 and 30)
Fund 5425 FY 2000 Org 0505

<table>
<thead>
<tr>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$202,072</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>4,861</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>66,320</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>113,550</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$386,803</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the board of barbers and cosmetologists as provided by law.
132—Division of Health—
Vital Statistics
(WV Code Chapter 16)
Fund 5144 FY 2000 Org 0506

1. Personal Services ..................... 001 $ 232,878
2. Annual Increment ..................... 004 8,203
3. Employee Benefits ................... 010 116,866
4. Unclassified .......................... 099 99,950
5. Total .................................. $ 457,897

133—Division of Health—
Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)
(WV Code Chapter 16)
Fund 5156 FY 2000 Org 0506

1. Debt Service (R) ...................... 040 $ 2,420,000
2. Institutional Facilities Operations (R) . 335 32,811,806
3. Medical Services Trust Fund—
   Transfer (R) ......................... 512 23,300,000
4. Total .................................. $ 58,531,806

6. Any unexpended balances remaining in the appropriations
   for hospital services revenue account at the close of the fiscal
   year 1999 are hereby reappropriated for expenditure during the
   fiscal year 2000, except for fund 5156, activity 335 (fiscal year
   1997), and fund 5156, activity 040, and activity 566 (fiscal year

12. The total amount of this appropriation shall be paid from
the hospital services revenue account special fund created by
section fifteen-a, article one, chapter sixteen of the code, and
shall be used for operating expenses and for improvements in connection with existing facilities and bond payments.

The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the appropriation for Institutional Facilities Operations line to facilitate cost effective and cost saving services at the community level.

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this account or in connection with the line item designated Institutional Facilities Operations in the consolidated medical service fund (fund 0525, fiscal year 2000, organization 0506).

From the above appropriation to Institutional Facilities Operations, together with available funds from the consolidated medical services fund (fund 0525, activity 335), on July 1, 1999, the sum of one hundred fifty-thousand dollars shall be transferred to the department of agriculture—land division as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

134—Division of Health—

Laboratory Services

(WV Code Chapter 16)

Fund 5163 FY 2000 Org 0506

| 1 Personal Services ...................... 001 | $ 454,918 |
| 2 Annual Increment ...................... 004 | 9,450 |
| 3 Employee Benefits .................... 010 | 155,776 |
| 4 Unclassified .......................... 099 | 349,912 |
| 5 Total .................................. | $ 970,056 |

135—Division of Health—

Health Facility Licensing
### Ch. 7] APPROPRIATIONS 123

**WV Code Chapter 16**

**Fund 5172 FY 2000 Org 0506**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$185,698</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$2,800</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$67,067</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$102,904</td>
</tr>
<tr>
<td><strong>Total</strong></td>
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<td><strong>$358,469</strong></td>
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</tbody>
</table>

136—Division of Health—

*Hepatitis B Vaccine*

**Fund 5183 FY 2000 Org 0506**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$51,822</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$1,150</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$18,315</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$3,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,071,287</strong></td>
</tr>
</tbody>
</table>

137—Division of Health—

*Lead Abatement Fund*

**Fund 5204 FY 2000 Org 0506**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$65,042</td>
</tr>
</tbody>
</table>

138—West Virginia Health Care Authority

**Fund 5375 FY 2000 Org 0507**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,513,992</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$14,750</td>
</tr>
</tbody>
</table>
The above appropriation is to be expended in accordance with and pursuant to the provisions of article twenty-nine-b, chapter sixteen of the code and from the special revolving fund designated health care cost review fund.

139—Division of Human Services—

Health Care Provider Tax

(WV Code Chapter 11)

Fund 5090 FY 2000 Org 0511

1 Unclassified—Total ....................... 096 $ 139,012,285

From the above appropriation, an amount not to exceed two hundred thousand dollars shall be transferred to a special revenue account in the treasury for use by the department of health and human resources for administrative purposes. The remainder of all moneys deposited in the fund shall be transferred to the West Virginia medical services fund.

140—Division of Human Services—

Child Support Enforcement

(WV Code Chapter 48A)

Fund 5094 FY 2000 Org 0511

1 Unclassified—Total ....................... 096 $ 27,486,342

Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 5094, activity 096) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during fiscal year 2000.

141—Division of Human Services—

Medical Services Trust Fund

(WV Code Chapter 9)
Fund 5185 FY 2000 Org 0511

1 Eligibility Expansion ....................... 582 $ 5,459,833
2 State Institutions DPSH Payments ..... 583 6,566,355
3 Hospice Services ......................... 584 340,115
4 Match Drop .............................. 585 10,472,000
5 Total ................................... $ 22,838,303

The Match Drop line item above shall be used in conjunction with funds appropriated to the division of human services in the Medical Services line item (fund 0403, activity 189). The remainder of all moneys deposited in the fund shall be transferred to the division of human services accounts.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

142—State Armory Board—

General Armory Fund

(WV Code Chapter 15)

Fund 6102 FY 2000 Org 0604

1 Unclassified—Total ....................... 096 $ 401,899

143—West Virginia Division of Corrections—

Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2000 Org 0608

1 Personal Services ....................... 001 $ 88,976
2 Annual Increment ....................... 004 1,000
3 Employee Benefits ....................... 010 39,461
4 Unclassified .......................... 099 115,408
5 Total ................................ $ 244,845
144—West Virginia State Police—

Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2000 Org 0612

1 Personal Services .................... 001 $ 692,151
2 Annual Increment ..................... 004 3,150
3 Employee Benefits ................... 010 203,689
4 Unclassified (R) ..................... 099 556,567
5 Total .......................... $ 1,455,557

The total amount of this appropriation shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

Any unexpended balance remaining in the appropriation for Unclassified (fund 6501, activity 099) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

145—West Virginia State Police—

Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2000 Org 0612

1 Unclassified—Total ................... 096 $ 1,000,000

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

146—West Virginia State Police—

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)
Fund 6516 FY 2000 Org 0612

1 Unclassified—Total .................. 096 $ 500,000

147—West Virginia State Police—

Surplus Transfer Account
(WV Code Chapter 15)

Fund 6519 FY 2000 Org 0612

1 Unclassified—Total (R) ............... 096 $ 350,000

2 Any unexpended balance remaining in the appropriation for

3 Unclassified—Total (fund 6519, activity 096) at the close of the

4 fiscal year 1999 is hereby reappropriated for expenditure during

5 the fiscal year 2000.

148—WV State Police—

Central Abuse Registry Fund
(WV Code Chapter 15)

Fund 6527 FY 2000 Org 0612

1 Unclassified—Total .................. 096 $ 68,795

149—Regional Jail and Correctional Facility Authority
(WV Code Chapter 31)

Fund 6675 FY 2000 Org 0615

1 Personal Services ..................... 001 $ 745,646

2 Annual Increment ..................... 004 7,450

3 Employee Benefits ................... 010 245,156

4 Debt Service .......................... 040 9,000,000

5 Unclassified .......................... 099 548,089

6 Total ................................. $ 10,546,341

150—Division of Veterans Affairs—
Veterans Home
### Appropriations

(WV Code Chapter 19A)

Fund 6754 FY 2000 Org 0618

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$216,000</td>
</tr>
</tbody>
</table>

151—Fire Commission—

Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2000 Org 0619

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$414,465</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$5,200</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$127,347</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$440,080</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$987,092</td>
</tr>
</tbody>
</table>

Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 1999 is hereby available for expenditure as part of the fiscal year 2000 appropriation.

152—Criminal Justice Services—

Court Security Fund

(Executive Order)

Fund 6804 FY 2000 Org 0620

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

### Department of Tax and Revenue

153—Division of Banking—

Lending and Credit Rate Board

(WV Code Chapter 47A)

Fund 3040 FY 2000 Org 0303

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$5,000</td>
</tr>
<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>010</td>
<td>988</td>
</tr>
<tr>
<td>Ch. 7</td>
<td>APPROPRIATIONS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>----------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Unclassified</td>
<td>099</td>
<td>$5,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$10,988</td>
</tr>
</tbody>
</table>

154—Division of Banking  
(WV Code Chapter 31A)  
Fund 3041 FY 2000 Org 0303

| 1   | Personal Services | 001 | $1,154,290 |
| 2   | Annual Increment  | 004 | 14,558     |
| 3   | Employee Benefits | 010 | 375,760    |
| 4   | Unclassified      | 099 | 651,540    |
| 5   | Total             |     | $2,196,148 |

155—Tax Division—  
Office of Chief Inspector  
(WV Code Chapter 6)  
Fund 7067 FY 2000 Org 0702

| 1   | Personal Services | 001 | $0         |
| 2   | Annual Increment  | 004 | 0          |
| 3   | Employee Benefits | 010 | 0          |
| 4   | Unclassified      | 099 | 0          |
| 5   | Total             |     | $0         |

156—Tax Division—  
Cemetery Company Account  
(WV Code Chapter 35)  
Fund 7071 FY 2000 Org 0702

| 1   | Personal Services | 001 | $16,116    |
| 2   | Employee Benefits | 010 | 5,364      |
| 3   | Unclassified      | 099 | 10,900     |
| 4   | Total             |     | $32,380    |
130

**APPROPRIATIONS**

[Ch. 7]

157—*Tax Division—*

*Special Audit and Investigative Unit*

(WV Code Chapter 11)

Fund 7073 FY 2000 Org 0702

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$731,113</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$10,250</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$231,302</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$357,898</td>
</tr>
<tr>
<td>5</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,330,563</strong></td>
</tr>
</tbody>
</table>

158—*Insurance Commissioner—*

*Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 2000 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$416,950</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$1,500</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$104,580</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$241,000</td>
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<tr>
<td>5</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$764,030</strong></td>
</tr>
</tbody>
</table>

159—*Insurance Commissioner—*

*Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2000 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$203,984</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$750</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$71,254</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$160,200</td>
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<td>5</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$436,188</strong></td>
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</table>
160—Insurance Commissioner
(WV Code Chapter 33)
Fund 7152 FY 2000 Org 0704

1 Personal Services ...................... 001 $ 1,665,148
2 Annual Increment ....................... 004 29,950
3 Employee Benefits ..................... 010 529,550
4 Unclassified ........................... 099 1,066,550
5 Total .................................. $ 3,291,198

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

161—Racing Commission—Relief Fund
(WV Code Chapter 19)
Fund 7300 FY 2000 Org 0707

1 Medical Expenses—Total ............. 245 $ 57,000
2 The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.
3 No expenditures shall be made from this account except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

162—Racing Commission—Administration and Promotion
(WV Code Chapter 19)
Fund 7304 FY 2000 Org 0707

1 Personal Services ..................... 001 $ 53,700
2 Annual Increment ...................... 004 950
132

<table>
<thead>
<tr>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Employee Benefits 010</td>
</tr>
<tr>
<td>4 Unclassified 099</td>
</tr>
<tr>
<td>5 Total</td>
</tr>
</tbody>
</table>

163—Racing Commission—

*General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2000 Org 0707

| 1 Personal Services 001 | $1,138,980 |
| 2 Annual Increment 004 | 18,250 |
| 3 Employee Benefits 010 | 335,038 |
| 4 Unclassified 099 | 305,000 |
| 5 Total | $1,797,268 |

164—Racing Commission—

*Administration, Promotion and Education Fund*

(WV Code Chapter 19)

Fund 7307 FY 2000 Org 0707

| 1 Unclassified—Total 096 | $35,000 |

165—Alcohol Beverage Control Administration—

*Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2000 Org 0708

| 1 Personal Services 001 | $209,480 |
| 2 Annual Increment 004 | 2,150 |
| 3 Employee Benefits 010 | 80,507 |
| 4 Unclassified 099 | 159,022 |
| 5 Total | $451,159 |
166—Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2000 Org 0708

1 Personal Services ....................... 001  $ 2,706,044
2 Annual Increment ....................... 004  73,251
3 Employee Benefits ..................... 010  1,471,830
4 Unclassified .......................... 099  2,023,296
5 Total ..................................  $ 6,274,421

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

The above appropriation includes the salary of the commissioner and the salaries, expenses and equipment of administrative offices, warehouses and inspectors.

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

DEPARTMENT OF TRANSPORTATION

167—Division of Motor Vehicles

Driver's License Reinstatement Fund

(WV Code Chapter 17B)

Fund 8213 FY 2000 Org 0802

1 Unclassified—Total ..................... 096  $ 641,394

168—Division of Motor Vehicles

Driver Rehabilitation

(WV Code Chapter 17C)

Fund 8214 FY 2000 Org 0802

1 Unclassified—Total ..................... 096  $ 903,720
### 169—Division of Motor Vehicles

**Insurance Certificate Fees**  
(WV Code Chapter 20)

**Fund 8215 FY 2000 Org 0802**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$585,360</td>
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<td>Annual Increment</td>
<td>004</td>
<td>16,300</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>226,351</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
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<td>72,680</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$900,691</td>
</tr>
</tbody>
</table>

### 170—Division of Motor Vehicles

**Motorboat Licenses**  
(WV Code Chapter 20)

**Fund 8216 FY 2000 Org 0802**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
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<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$160,639</td>
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### 171—Division of Motor Vehicles

**Returned Check Fees**  
(WV Code Chapter 17)

**Fund 8217 FY 2000 Org 0802**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>$21,617</td>
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### BUREAU OF COMMERCE

#### 172—Division of Forestry

(WV Code Chapter 19)

**Fund 3081 FY 2000 Org 0305**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$306,189</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,350</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>83,189</td>
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### Ch. 7] APPROPRIATIONS

<table>
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<tr>
<th>Line</th>
<th>Description</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>359,357</td>
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<td>Total</td>
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</table>

**173—Division of Forestry**

*Timberland Enforcement Operations*

(WV Code Chapter 19)

Fund 3082 FY 2000 Org 0305

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>260,000</td>
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</table>

**174—Division of Forestry**

*Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 2000 Org 0305

<table>
<thead>
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<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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<td>3,371,791</td>
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</table>

**175—Geological and Economic Survey**

(WV Code Chapter 29)

Fund 3100 FY 2000 Org 0306

<table>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>41,369</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>535</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>7,473</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>177,766</td>
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<tr>
<td>5</td>
<td>Total</td>
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<td>227,143</td>
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The above appropriation shall be used in accordance with section four, article two, chapter twenty-nine of the code.

**176—West Virginia Development Office**

*Energy Assistance*

(WV Code Chapter 5B)

Fund 3144 FY 2000 Org 0307

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Energy Assistance—Total (R)</td>
<td>647</td>
<td>500,000</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Unclassified (fund 3144, activity 099) and Energy Assistance—Total (fund 3144, activity 647) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

177—Division of Labor

Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2000 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$766,306</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>14,483</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>285,252</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>775,657</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$1,841,698</strong></td>
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</table>

178—Division of Labor

Elevator Safety Act

(WV Code Chapter 21)

Fund 3188 FY 2000 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$170,263</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>1,157</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>58,584</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>77,385</td>
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<tr>
<td><strong>Total</strong></td>
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<td><strong>$307,389</strong></td>
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</tbody>
</table>
1 Unclassified-Total .......................... 096 $ 10,000

180—Division of Labor—

Amusement Rides/Amusement Attraction Safety Fund

(WV Code Chapter 21)

Fund 3192 FY 2000 Org 0308

1 Unclassified—Total .......................... 096 $ 75,000

181—Division of Natural Resources—

(WV Code Chapter 20)

Fund 3200 FY 2000 Org 0310

1 Personal Services .......................... 001 $ 6,650,176
2 Annual Increment .......................... 004 135,196
3 Employee Benefits .......................... 010 2,593,013
4 Unclassified ................................. 099 1,945,687
5 Capital Improvements and
6 Land Purchase (R) .......................... 248 1,248,568
7 Total ................................. $ 12,572,640

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

11 Any unexpended balance remaining in the appropriation for
12 Capital Improvements and Land Purchase (fund 3200, activity
13 248) at the close of the fiscal year 1999 is hereby
14 reappropriated for expenditure during the fiscal year 2000.

182—Division of Natural Resources

Game, Fish and Aquatic Life Fund

(WV Code Chapter 20)

Fund 3202 FY 2000 Org 0310

1 Unclassified—Total .......................... 096 $ 20,000
## Appropriations

### 183—Division of Natural Resources

**Nongame Fund**

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Fund 3203 FY 2000 Org 0310</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services ...........</td>
<td>001</td>
</tr>
<tr>
<td>2 Annual Increment ..........</td>
<td>004</td>
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<tr>
<td>3 Employee Benefits ..........</td>
<td>010</td>
</tr>
<tr>
<td>4 Unclassified ..............</td>
<td>099</td>
</tr>
<tr>
<td>5 Total ..................</td>
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</tr>
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</table>

### 184—Division of Natural Resources

**Planning and Development Division**

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Fund 3205 FY 2000 Org 0310</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services ..........</td>
<td>001</td>
</tr>
<tr>
<td>2 Annual Increment ..........</td>
<td>004</td>
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<tr>
<td>3 Employee Benefits ..........</td>
<td>010</td>
</tr>
<tr>
<td>4 Unclassified ..............</td>
<td>099</td>
</tr>
<tr>
<td>5 Total ..................</td>
<td></td>
</tr>
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</table>

### 185—Division of Natural Resources

**Whitewater Study and Improvement Fund**

(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Fund 3253 FY 2000 Org 0310</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total ..........</td>
<td>096</td>
</tr>
</tbody>
</table>

### 186—Division of Natural Resources

**Recycling Assistance Fund**

(WV Code Chapter 20)

| Fund 3254 FY 2000 Org 0310 |  |
1. Personal Services .......................... 001 $ 147,440
2. Annual Increment .......................... 004 2,150
3. Employee Benefits .......................... 010 58,015
4. Unclassified (R) .......................... 099 1,487,164
5. Total ........................................... $ 1,694,769

Any unexpended balance remaining in the appropriation for Unclassified (fund 3254, activity 099) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

187—Division of Natural Resources

Whitewater Advertising and Promotion Fund
(WV Code Chapter 20)
Fund 3256 FY 2000 Org 0310

1. Unclassified—Total ......................... 096 $ 20,000

BUREAU OF EMPLOYMENT PROGRAMS

188—Bureau of Employment Programs

Workers' Compensation Fund
(WV Code Chapter 23)
Fund 3440 FY 2000 Org 0322

1. Personal Services .......................... 001 $ 19,703,549
2. Annual Increment .......................... 004 379,553
3. Employee Benefits .......................... 010 6,835,737
4. Unclassified (R) .......................... 099 18,786,931
5. Employer Excess Liability Fund .......... 226 115,372
6. Total ........................................... $ 45,821,142

Any unexpended balance remaining in the appropriation for Unclassified (fund 3440, activity 099) and Contractual and Professional Services (fund 3440, activity 830) at the close of
the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

**BUREAU OF ENVIRONMENT**

189—**Solid Waste Management Board**

(WV Code Chapter 20)

Fund 3288 FY 2000 Org 0312

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$473,718</td>
</tr>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$3,200</td>
</tr>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$154,857</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$1,424,192</td>
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<tr>
<td>5</td>
<td>Business/Technical Assistance</td>
<td>828</td>
<td>$0</td>
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<td>Total</td>
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</table>

190—**Division of Environmental Protection**

*Special Reclamation Fund*

(WV Code Chapter 22A)

Fund 3321 FY 2000 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$191,491</td>
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<td>Annual Increment</td>
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<td>$6,900</td>
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<td>Employee Benefits</td>
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<td>$56,607</td>
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<td>4</td>
<td>Unclassified</td>
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</tbody>
</table>

191—**Division of Environmental Protection**

*Oil and Gas Reclamation Trust*

(WV Code Chapter 22B)

Fund 3322 FY 2000 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
<td>096</td>
<td>$465,000</td>
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</tbody>
</table>
### 192—Division of Environmental Protection

**Oil and Gas Operating Permits**

(WV Code Chapter 22B)

Fund 3323 FY 2000 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>211,264</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>2,025</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>65,830</td>
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<td>4</td>
<td>Unclassified</td>
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<td>477,082</td>
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<td>5</td>
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<td>756,201</td>
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</table>

### 193—Division of Environmental Protection

**Mines and Minerals Operations Fund**

(WV Code Chapter 22)

Fund 3324 FY 2000 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
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<td>Annual Increment</td>
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<td>35,200</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>713,709</td>
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<td>4</td>
<td>Unclassified</td>
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<tr>
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### 194—Division of Environmental Protection

**Underground Storage Tanks Administrative Fund**

(WV Code Chapter 20)

Fund 3325 FY 2000 Org 0313

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<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
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### 195—Division of Environmental Protection

**Hazardous Waste Emergency and Response Fund**

(WV Code Chapter 20)

**Fund 3331 FY 2000 Org 0313**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<td>Annual Increment</td>
<td>004</td>
<td>$7,175</td>
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<td>Employee Benefits</td>
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<td>$98,544</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$754,274</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$1,166,419</td>
</tr>
</tbody>
</table>

### 196—Division of Environmental Protection

**Solid Waste Reclamation and Environmental Response Fund**

(WV Code Chapter 20)

**Fund 3332 FY 2000 Org 0313**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$163,650</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$1,950</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$48,603</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$692,930</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>$907,133</td>
</tr>
</tbody>
</table>

### 197—Division of Environmental Protection

**Solid Waste Enforcement Fund**

(WV Code Chapter 20)

**Fund 3333 FY 2000 Org 0313**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,429,619</td>
</tr>
<tr>
<td>Chapter</td>
<td>Appropriation</td>
<td>Code</td>
</tr>
<tr>
<td>---------</td>
<td>---------------</td>
<td>------</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

198—Division of Environmental Protection

Fees and Operating Expenses

(WV Code Chapter 16)

Fund 3336 FY 2000 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>2,612,097</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>17,850</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>783,156</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>1,399,400</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>4,812,503</td>
</tr>
</tbody>
</table>

199—Division of Environmental Protection—

Environmental Laboratory Certification Fund

(WV Code Chapter 22)

Fund 3340 FY 2000 Org 0313

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>112,613</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>1,550</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>35,776</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>72,051</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>221,990</td>
</tr>
</tbody>
</table>

200—Division of Environmental Protection

Stream Restoration Fund

(WV Code Chapter 22)

Fund 3349 FY 2000 Org 0313
144 APPROPRIATIONS [Ch. 7

1 Unclassified—Total .................. 096 $ 2,000,000

201—Division of Environmental Protection
Mountaintop Removal Fund
(WV Code Chapter 22)
Fund 3490 FY 2000 Org 0313

1 Unclassified—Total .................. 096 $ 100,000

202—Oil and Gas Conservation Commission
(WV Code Chapter 22)
Fund 3371 FY 2000 Org 0315

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>152,915</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>1,500</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>29,466</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>47,462</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>231,343</td>
</tr>
</tbody>
</table>

MISCELLANEOUS BOARDS AND COMMISSIONS

203—Hospital Finance Authority
(WV Code Chapter 16)
Fund 5475 FY 2000 Org 0509

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>29,324</td>
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<td>Annual Increment</td>
<td>004</td>
<td>500</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>11,927</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>25,895</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>67,646</td>
</tr>
</tbody>
</table>

6 The total amount of this appropriation shall be paid from
7 the special revenue fund out of fees and collections as provided
8 by article twenty-nine-a, chapter sixteen of the code.
### 204—Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2000 Org 0706

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$155,774</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$2,500</td>
<td></td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$56,994</td>
<td></td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$76,728</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$291,996</td>
<td></td>
</tr>
</tbody>
</table>

### 205—WV State Board of Examiners

_for Licensed Practical Nurses_

(WV Code Chapter 30)

Fund 8517 FY 2000 Org 0906

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$339,709</td>
</tr>
</tbody>
</table>

### 206—WV Board of Examiners for

_Registered Professional Nurses_

(WV Code Chapter 30)

Fund 8520 FY 2000 Org 0907

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>096</td>
<td>$788,087</td>
</tr>
</tbody>
</table>

### 207—Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2000 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$6,711,769</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$120,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$2,067,008</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$3,252,000</td>
</tr>
<tr>
<td>Imaging System</td>
<td>400</td>
<td>$400,000</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from a special revenue fund out of collections for special license fees from public service corporations as provided by law. The Public Service Commission is authorized to spend up to $250,000, from surplus funds in this account, to meet the expected deficiencies in the Motor Carrier Division account due to passage of enrolled house bill no. 2715, regular session, 1997.

208—Public Service Commission—
Gas Pipeline Division
(WV Code Chapter 24B)
Fund 8624 FY 2000 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$139,488</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>5,556</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>42,159</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>98,500</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$285,703</td>
</tr>
</tbody>
</table>

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

209—Public Service Commission—
Motor Carrier Division
(WV Code Chapter 24A)
Fund 8625 FY 2000 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,494,805</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>34,723</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>474,677</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>670,500</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>2,674,705</td>
</tr>
</tbody>
</table>

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

#### 210—Public Service Commission—

**Consumer Advocate**

(WV Code Chapter 24)

Fund 8627 FY 2000 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>409,935</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,350</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>123,488</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>297,985</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>835,758</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the public service commission.

#### 211—Real Estate Commission

(WV Code Chapter 47)

Fund 8635 FY 2000 Org 0927

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>298,204</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>4,400</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>101,449</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>269,400</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>673,453</td>
</tr>
</tbody>
</table>
6 The total amount of this appropriation shall be paid out of collections of license fees as provided by law.

212—WV Board of Examiners for Speech-Language Pathology and Audiology
(WV Code Chapter 30)
Fund 8646 FY 2000 Org 0930

| 1 Uns. Total | 096 | $ 46,000 |

213—WV Board of Respiratory Care
(WV Code Chapter 30)
Fund 8676 FY 2000 Org 0935

| 1 Uns. Total | 096 | $ 113,908 |

214—WV Board of Licensed Dietitians
Fund 8680 FY 2000 Org 0936

| 1 Uns. Total | 096 | $ 20,000 |

215—Massage Therapy Licensure Board
(WV Code Chapter 30)
Fund 8671 FY 2000 Org 0938

| 1 Uns. Total | 096 | $ 31,000 |

216—Claims Against Other Funds

| 1 Claims Against the State | 319 | $ 0 |

2 Total TITLE II, Section 3—
3 Other Funds | $ 498,743,081 |

Sec. 4. Appropriations from lottery net profits.—Net profits of the lottery *, not to exceed one hundred sixteen million three hundred one thousand five hundred eighty-five dollars, * are to be deposited by the lottery director to the following accounts in the amounts indicated. The lottery director shall prorate each deposit of net profits * among fund numbers 2252, 3067, 3267, 3508, 3559, 3951, 3963, 4057 and

* Language deleted by the Governor
in the proportion the appropriation for each account bears to the total of the appropriations for the nine accounts.

217—Education, Arts, Sciences and Tourism

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2000 Org 0211

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service—Total</td>
<td>310 $10,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Debt Service—Total (fund 2252, activity 310) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000.

218—West Virginia Development Office—

Division of Tourism

(WV Code Chapter 5B)

Fund 3067 FY 2000 Org 0304

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourism—Telemarketing Center</td>
<td>463 $100,000</td>
</tr>
<tr>
<td>Tourism—Advertising (R)</td>
<td>618 3,040,000</td>
</tr>
<tr>
<td>State Parks and Recreation Advertising (R)</td>
<td>619 760,000</td>
</tr>
<tr>
<td>Tourism—Unclassified (R)</td>
<td>662 3,026,626</td>
</tr>
<tr>
<td>Tourism-Special Projects (R)</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Total</td>
<td>$7,926,626</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Tourism-Advertising (fund 3067, activity 618), State Parks and Recreation Advertising (fund 3067, activity 619), Tourism-Unclassified (fund 3067, activity 662), and Tourism—Unclassified—Lottery Surplus (fund 3067, activity 773) are hereby reappropriated for expenditure during the fiscal year 2000.

* Language deleted by the Governor
### 219—Division of Natural Resources
*(WV Code Chapter 20)*

**Fund 3267 FY 2000 Org 0310**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 2000</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pricketts Fort State Park</td>
<td>324</td>
<td>$120,000</td>
<td></td>
</tr>
<tr>
<td>Parks Operations—Unclassified (R)</td>
<td>645</td>
<td>$1,494,513</td>
<td></td>
</tr>
<tr>
<td>Canaan Valley—Land Acquisition (R)</td>
<td>710</td>
<td>$200,000</td>
<td></td>
</tr>
<tr>
<td>State Parks—Special Projects (R)</td>
<td></td>
<td>$5,000,000</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$6,814,513</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Parks Operations—Unclassified (fund 3267, activity 645), Capital Outlay—Parks (fund 3267, activity 288) and Canaan Valley—Land Acquisition (fund 3267, activity 710) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

### 220—State Department of Education
*(WV Code Chapters 18 and 18A)*

**Fund 3951 FY 2000 Org 0402**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 2000</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computer Basic Skills</td>
<td>145</td>
<td>$16,309,199</td>
<td></td>
</tr>
<tr>
<td>Technology Repair and Modernization</td>
<td>298</td>
<td>$1,000,000</td>
<td></td>
</tr>
<tr>
<td>Technology and Telecommunications Initiative (R)</td>
<td>596</td>
<td>$2,006,484</td>
<td></td>
</tr>
<tr>
<td>Technology Demonstration Project</td>
<td>639</td>
<td>$150,000</td>
<td></td>
</tr>
<tr>
<td>Educational Development</td>
<td>823</td>
<td>$1,500,000</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$20,965,683</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Computer Basic Skills—Total (fund 3951, activity 567) and Technology and Telecommunications Initiative (fund 3951, activity 596) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.
221—State Department of Education—
School Building Authority—Debt Service Fund
(WV Code Chapter 18)
Fund 3963 FY 2000 Org 0402
1 Debt Service—Total ............... 310 $ 18,000,000

222—Department of Education and the Arts—
Office of the Secretary
(WV Code Chapter 5F)
Fund 3505 FY 2000 Org 0431
1 Any unexpended balance remaining in the appropriation for
2 Capital Outlay and Improvements—Total (fund 3505, activity
3 762) at the close of the fiscal year 1999 is hereby
4 reappropriated for expenditure during the fiscal year 2000 and
5 transferred into fund 3508.

223—Department of Education and the Arts—
Office of the Secretary—
Lottery Education Fund
(WV Code Chapter 5F)
Fund 3507 FY 2000 Org 0431
1 Any unexpended balances remaining in the appropriations
2 for Unclassified (fund 3507, activity 096), Shepherd Col-
3 lege—Capital Improvements—Lottery Surplus (fund 3507,
4 activity 759), Shepherd College—Capital Improve-
5 ments—Total—Lottery Surplus (fund 3507, activity 764), West
6 Virginia Northern Community College—Capital Improve-
7 ments—Lottery Surplus (fund 3507, activity 760), Unclassified
8 (fund 3507, activity 099), Higher Education Grant Program
9 (fund 3507, activity 164), Capital Outlay and Improve-
10 ments—Total (fund 3507, activity 847) * and WV 2001 Project
11 (fund 3507, activity 836) * at the close of fiscal year 1999 are
12 hereby reappropriated for expenditure during the fiscal year
13 2000 into fund 4057.

* Language deleted by the Governor
Any unexpended balance remaining in the appropriation for Infomine Network—Library Commission (fund 3507, activity 696) at the close of fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000 into fund 3559.

Any unexpended balance remaining in the appropriation for WV 2001 Project (fund 3507, activity 836) at the close of the fiscal year 1999 is hereby reappropriated for expenditure during the fiscal year 2000 into fund 3508.

224—Department of Education and the Arts—

Office of the Secretary

Control Account—

Lottery Education Fund

(WV Code Chapter 5F)

Fund 3508 FY 2000 Org 0431

| 1   | Unclassified (R) ....................... 099 | $ 4,000,000 |
| 2   | WVU-University Affiliated Center for Developmental Disabilities ........... 157 | 80,000 |
| 3   | WV Humanities Council .................. 168 | 300,000 |
| 4   | WV2001 Project—Total .................. 230 | 0 |
| 5   | Arts Programs ......................... 500 | 40,000 |
| 6   | WV2001 Project ........................ 836 | 1,500,000 |
| 7   | Energy Express ....................... 425,000 |
| 8   | Challenger Learning Center ............ 60,000 |
| 9   | Jobs for West Virginia Graduates ..... 500,000 |
| 10  | Total .................................. $ 6,905,000 |

225—Division of Culture and History—

Lottery Education Fund

(WV Code Chapter 10)
### Fund 3534 FY 2000 Org 0432

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fairs and Festivals</td>
<td>122</td>
<td>$1,650,000</td>
</tr>
<tr>
<td>Mountain State Forest Festival</td>
<td></td>
<td>75,000</td>
</tr>
<tr>
<td>Historic Preservation Grants</td>
<td>311</td>
<td>101,889</td>
</tr>
<tr>
<td>West Virginia Public Theater</td>
<td>312</td>
<td>180,000</td>
</tr>
<tr>
<td>Theater Arts of West Virginia</td>
<td>464</td>
<td>360,000</td>
</tr>
<tr>
<td>Contemporary American Theater Festival</td>
<td>811</td>
<td>60,000</td>
</tr>
<tr>
<td>Independence Hall</td>
<td>812</td>
<td>50,000</td>
</tr>
<tr>
<td>Huntington Symphony</td>
<td>027</td>
<td>50,000</td>
</tr>
<tr>
<td>Project ACCESS</td>
<td></td>
<td>500,000</td>
</tr>
<tr>
<td>Capital Outlay, Repairs, and Equipment (R)</td>
<td>589</td>
<td>1,500,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$4,526,889</strong></td>
</tr>
</tbody>
</table>

#### 226—Educational Broadcasting Authority—

**Lottery Education Fund**

(WV Code Chapter 10)

**Fund 3587 FY 2000 Org 0439**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mountain Stage-Total</td>
<td></td>
<td><strong>$200,000</strong></td>
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</table>

#### 227—Library Commission—

**Lottery Education Fund**

(WV Code Chapter 10)

**Fund 3559 FY 2000 Org 0433**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Org</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Infomine Network</td>
<td>158</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Grants to Public Libraries</td>
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<td>7,198,884</td>
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<tr>
<td>Infomine Network—</td>
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<td></td>
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<tr>
<td>Library Commission—Total</td>
<td>231</td>
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<td><strong>Total</strong></td>
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<td><strong>$8,198,884</strong></td>
</tr>
<tr>
<td></td>
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<tr>
<td>1</td>
<td>Unclassified</td>
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<tr>
<td>2</td>
<td>Higher Education Grant Program (R)</td>
<td>164</td>
</tr>
<tr>
<td>3</td>
<td>HEAPS Grant Program (R)</td>
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</tr>
<tr>
<td>4</td>
<td>WV Engineering, Science, and Technology Scholarship Program (R)</td>
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<tr>
<td>6</td>
<td>Minority Doctoral Fellowship</td>
<td>166</td>
</tr>
<tr>
<td>7</td>
<td>Underwood-Smith Scholarship Program-Student Awards (R)</td>
<td>167</td>
</tr>
<tr>
<td>9</td>
<td>Health Sciences Scholarship Fund (R)</td>
<td>176</td>
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<tr>
<td>10</td>
<td>Health Sciences Career Opportunities Program (R)</td>
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<tr>
<td>12</td>
<td>MA Public Health Program and Health Science Technology</td>
<td>623</td>
</tr>
<tr>
<td>14</td>
<td>HSTA Program (R)</td>
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<td>15</td>
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<table>
<thead>
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<th></th>
<th>Description</th>
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<tr>
<td>1</td>
<td>Local Programs Service Delivery Costs</td>
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<td>$2,475,250</td>
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<td>2</td>
<td>Silver Haired Legislature</td>
<td>202</td>
<td>14,400</td>
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### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
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<tr>
<td>Foster Grandparents Stipends and Travel</td>
<td>205</td>
<td>57,734</td>
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<tr>
<td>In-Home Services for Senior Citizens</td>
<td>224</td>
<td>700,000</td>
</tr>
<tr>
<td>Senior Citizen Centers and Programs</td>
<td>462</td>
<td>3,750,000</td>
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<tr>
<td>Direct Services</td>
<td>481</td>
<td>2,800,000</td>
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<tr>
<td>Transfer to Division of Human Services for Health Care and Title XIX</td>
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</tr>
<tr>
<td>Waiver for Senior Citizens</td>
<td>539</td>
<td>11,000,000</td>
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<tr>
<td>Senior Services Medicaid Transfer</td>
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<td>6,500,000</td>
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<tr>
<td>World Aging Conference</td>
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<td>350,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$27,647,384</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Senior Citizens Centers and Programs—Lottery Surplus (fund 5405, activity 782), Holly Grove Mansion Restoration (fund 5405, activity 685) and Senior Citizens Centers, Maintenance and Repairs (fund 5405, activity 848) at the close of the fiscal year 1999 are hereby reappropriated for expenditure during the fiscal year 2000.

The above appropriation for Health Care and Title XIX Waiver for Senior Citizens along with the federal monies generated thereby shall be used for reimbursement for services provided under the program. Further, the program shall be preserved within the aggregate of these funds.

**Total TITLE II, Section 4—Lottery Funds** $130,617,386

---

Sec. 5. Appropriations of federal funds.—In accordance with article eleven, chapter four of the code, from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter five-a of the code the following amounts, as itemized, for expenditure during the fiscal year two thousand.

**LEGISLATIVE**

230—Crime Victims Compensation Fund
## APPROPRIATIONS

(WV Code Chapter 14)

Fund 8738 FY 2000 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
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### JUDICIAL

231—Supreme Court—

General Judicial

Fund 8805 FY 2000 Org 2400

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<th>Activity</th>
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<tbody>
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</tbody>
</table>

### EXECUTIVE

232—Governor's Office—

Governor's Cabinet on Children and Families

(WV Code Chapter 5)

Fund 8792 FY 2000 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
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</thead>
<tbody>
<tr>
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</tbody>
</table>

233—Governor's Office—

Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8797 FY 2000 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
</tbody>
</table>

234—Governor's Office—

Commission for National and Community Service

(WV Code Chapter 5)

Fund 8800 FY 2000 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
</tbody>
</table>
235—Auditor’s Office
(WV Code Chapter 12)
Fund 8807 FY 2000 Org 1200
1 Unclassified—Total ........................ 096 $ 9,742,000

236—Department of Agriculture
(WV Code Chapter 19)
Fund 8736 FY 2000 Org 1400
1 Unclassified—Total ........................ 096 $ 1,592,677

237—Department of Agriculture—
Meat Inspection
(WV Code Chapter 19)
Fund 8737 FY 2000 Org 1400
1 Unclassified—Total ........................ 096 $ 728,686

DEPARTMENT OF ADMINISTRATION
238—West Virginia Prosecuting Attorney’s Institute
(WV Code Chapter 7)
Fund 8834 FY 2000 Org 0028
1 Unclassified—Total ........................ 096 $ 70,000

DEPARTMENT OF EDUCATION
239—State Department of Education
(WV Code Chapters 18 and 18A)
Fund 8712 FY 2000 Org 0402
1 Unclassified—Total ........................ 096 $ 30,150,792

240—State Department of Education—
School Lunch Program
(WV Code Chapters 18 and 18A)
APPROPRIATIONS

Fund 8713 FY 2000 Org 0402
1 Unclassified—Total .................. 096 $ 75,001,160

241—State Board of Education—
   Vocational Division
   (WV Code Chapters 18 and 18A)
Fund 8714 FY 2000 Org 0402
1 Unclassified—Total .................. 096 $ 25,002,204

242—State Department of Education—
   Aid for Exceptional Children
   (WV Code Chapters 18 and 18A)
Fund 8715 FY 2000 Org 0402
1 Unclassified—Total .................. 096 $ 35,002,076

DEPARTMENT OF EDUCATION AND THE ARTS

243—Division of Culture and History
   (WV Code Chapter 29)
Fund 8718 FY 2000 Org 0432
1 Unclassified—Total .................. 096 $ 948,962

244—Library Commission
   (WV Code Chapter 10)
Fund 8720 FY 2000 Org 0433
1 Unclassified—Total .................. 096 $ 1,902,317

245—Educational Broadcasting Authority
   (WV Code Chapter 10)
Fund 8721 FY 2000 Org 0439
1 Unclassified—Total .................. 096 $ 2,955,000

246—State Board of Rehabilitation—
Division of Rehabilitation Services  
(WV Code Chapter 18)  
Fund 8734 FY 2000 Org 0932  
1 Unclassified—Total .................. 096 $45,959,645  

DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
247—Consolidated Medical Service Fund  
(WV Code Chapter 16)  
Fund 8723 FY 2000 Org 0506  
1 Unclassified—Total .................. 096 $2,802,308  

248—Division of Health—  
Central Office  
(WV Code Chapter 16)  
Fund 8802 FY 2000 Org 0506  
1 Unclassified—Total .................. 096 $52,381,987  

249—Division of Health—  
West Virginia Safe Drinking Water Treatment  
(WV Code Chapter 16)  
Fund 8824 FY 2000 Org 0506  
1 Unclassified—Total .................. 096 $16,000,000  

250—Human Rights Commission  
(WV Code Chapter 5)  
Fund 8725 FY 2000 Org 0510  
1 Unclassified—Total .................. 096 $213,299  

251—Division of Human Services  
(WV Code Chapters 9, 48 and 49)  
Fund 8722 FY 2000 Org 0511
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<th>Amount</th>
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<tr>
<td><strong>DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY</strong></td>
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<tr>
<td>252—Adjutant General—State Militia</td>
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<td>$1,221,702,033</td>
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<tr>
<td>(WV Code Chapter 15)</td>
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<tr>
<td>Fund 8726 FY 2000 Org 0603</td>
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<tr>
<td>253—Office of Emergency Services</td>
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<tr>
<td>254—West Virginia State Police</td>
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<td>(WV Code Chapter 15)</td>
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<tr>
<td>Fund 8741 FY 2000 Org 0612</td>
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<tr>
<td>255—Division of Veterans Affairs—Veterans Home</td>
<td>096</td>
<td>$4,125,103</td>
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<tr>
<td>(WV Code Chapter 9A)</td>
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<tr>
<td>Fund 8728 FY 2000 Org 0618</td>
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<td>256—Division of Criminal Justice Services</td>
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<tr>
<td>(Executive Order)</td>
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<td>Fund 8803 FY 2000 Org 0620</td>
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<td>257—Tax Division</td>
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<td>$20,634,281</td>
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DEPARTMENT OF TRANSPORTATION

258—State Rail Authority
(WV Code Chapter 29)
Fund 8733 FY 2000 Org 0804

1 Unclassified—Total .................. 096 $ 1,710,000

259—Division of Public Transit
(WV Code Chapter 17)
Fund 8745 FY 2000 Org 0805

1 Unclassified—Total .................. 096 $ 14,903,426

260—Division of Motor Vehicles
(WV Code Chapter 17B)
Fund 8787 FY 2000 Org 0802

1 Unclassified—Total .................. 096 $ 2,337,289

261—Public Port Authority
(WV Code Chapter 17)
Fund 8830 FY 2000 Org 0806

1 Unclassified—Total .................. 096 $ 2,070,000

262—Aeronautics Commission
(WV Code Chapter 29)
Fund 8831 FY 2000 Org 0807

1 Unclassified—Total .................. 096 $ 350,000

BUREAU OF COMMERCE

263—Division of Forestry
APPROPRIATIONS

(WV Code Chapter 19)
Fund 8703 FY 2000 Org 0305
1 Unclassified—Total .................. 096 $ 1,020,671
264—Geological and Economic Survey

(WV Code Chapter 29)
Fund 8704 FY 2000 Org 0306
1 Unclassified—Total .................. 096 $ 913,220
265—West Virginia Development Office

(WV Code Chapter 5B)
Fund 8705 FY 2000 Org 0307
1 Unclassified—Total .................. 096 $ 3,715,643
266—Division of Labor

(WV Code Chapters 21 and 47)
Fund 8706 FY 2000 Org 0308
1 Unclassified—Total .................. 096 $ 436,199
267—Division of Natural Resources

(WV Code Chapter 20)
Fund 8707 FY 2000 Org 0310
1 Unclassified—Total .................. 096 $ 7,867,188
268—Division of Miners' Health,
    Safety and Training

(WV Code Chapter 22)
Fund 8709 FY 2000 Org 0314
1 Unclassified—Total .................. 096 $ 576,338

BUREAU OF ENVIRONMENT
269—Division of Environmental Protection
BUREAU OF SENIOR SERVICES
270—Bureau of Senior Services
(WV Code Chapter 29)
Fund 8724 FY 2000 Org 0508
1 Unclassified—Total .................... 096 $12,098,690

BUREAU OF EMPLOYMENT PROGRAMS
271—Bureau of Employment Programs—
(WV Code Chapter 21A)
Fund 8835 FY 2000 Org 0323
1 Unclassified—Total .................... 096 $512,657

Pursuant to the requirements of 42 U.S.C. 1103, Section
903 of the Social Security Act, as amended, and the provisions
of section nine, article nine, chapter twenty-one-a of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, the above appropriation to Unclassified shall be used
by the bureau of employment programs for the specific purpose
of administration of the state’s unemployment insurance
program or job service activities, subject to each and every
restriction, limitation or obligation imposed on the use of the
funds by those federal and state statutes.

MISCELLANEOUS BOARDS AND COMMISSIONS
272—Public Service Commission—
Motor Carrier Division
(WV Code Chapter 24A)
Fund 8743 FY 2000 Org 0926
1 Unclassified—Total .................... 096 $911,953
273—Public Service Commission—
Gas Pipeline Division
(WV Code Chapter 24B)
Fund 8744 FY 2000 Org 0926

1 Unclassified—Total .......................... 096 $ 261,994

Sec. 6. Appropriations from federal block grants.—The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 2000.

274—Governor’s Office—
Office of Economic Opportunity
Fund 8799 FY 2000 Org 0100

1 Unclassified—Total .......................... 096 $ 7,147,164

275—West Virginia Development Office—
Community Development
Fund 8746 FY 2000 Org 0307

1 Unclassified—Total .......................... 096 $ 25,313,896

276—Bureau of Employment Programs—
Job Training Partnership Act
Fund 8749 FY 2000 Org 0323

1 Unclassified—Total .......................... 096 $ 57,603,147

277—State Department of Education—
Education Grant
Fund 8748 FY 2000 Org 0402

1 Unclassified—Total .......................... 096 $112,001,016
278—Division of Health—
Maternal and Child Health
Fund 8750 FY 2000 Org 0506
1 Unclassified—Total 096 $ 7,808,634

279—Division of Health—
Preventive Health
Fund 8753 FY 2000 Org 0506
1 Unclassified—Total 096 $ 2,222,654

280—Division of Health—
Substance Abuse Prevention and Treatment
Fund 8793 FY 2000 Org 0506
1 Unclassified—Total 096 $ 9,542,469

281—Division of Health—
Community Mental Health Services
Fund 8794 FY 2000 Org 0506
1 Unclassified—Total 096 $ 2,842,077

282—Division of Health—
Abstinence Education Program
Fund 8825 FY 2000 Org 0506
1 Unclassified—Total 096 $ 975,205

283—Division of Human Services—
Energy Assistance
Fund 8755 FY 2000 Org 0511
1 Unclassified—Total 096 $ 12,785,310

284—Division of Human Services—
Child Care and Development
<table>
<thead>
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<th>Fund</th>
<th>FY Year</th>
<th>Org</th>
<th>Item Description</th>
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<tbody>
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<td>0511</td>
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<td>8757</td>
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<td>0511</td>
<td>Unclassified—Total</td>
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<td>8806</td>
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<td>8816</td>
<td>2000</td>
<td>0511</td>
<td>Unclassified—Total</td>
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<td>2000</td>
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<td>2000</td>
<td>0620</td>
<td>Unclassified—Total</td>
<td>$ 3,000,041</td>
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<td>8832</td>
<td>2000</td>
<td>0620</td>
<td>Unclassified—Total</td>
<td>50,000</td>
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291—Division of Criminal Justice Services—

Local Law Enforcement

Fund 8833 FY 2000 Org 0620

1 Unclassified—Total .......................... 096  $  750,046

2 Total TITLE II, Section 6—
3 Federal Block Grants ........... $456,968,534

Sec. 7. Awards for claims against the state.—There are hereby appropriated for the remainder of the fiscal year 1998-1999 and to remain in effect until June 30, 2000, from the fund as designated, in the amounts as specified and for the claimants named in enrolled committee substitute for house bill no. 2682, regular session 1999, and enrolled senate bill no. 488, regular session 1999, general revenue funds of $3,160,289.52 for payment of claims against the state.

There are hereby appropriated for the remainder of the fiscal year 1998-1999 and to remain in effect until June 30, 2000, from the funds as designated, in the amounts as specified and for the claimants named in enrolled committee substitute for house bill no. 2682, regular session 1999, special revenue funds of $273,079.97 and state road funds of $154,263.06 for payment of claims against the state.

Sec. 8. Special revenue appropriations.—There are hereby appropriated for expenditure during the fiscal year two thousand appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of section two, article two, chapter twelve of the code: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve and article two, chapter five-a of the code, with due consideration to the digest of legislative intent of the budget bill prepared pursuant to article one, chapter four, unless the spending unit has filed with the director of the budget and the legislative auditor prior to the beginning of each fiscal year:
(a) An estimate of the amount and sources of all revenues accruing to such fund;

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

Sec. 9. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year two thousand, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

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

Sec. 10. Specific funds and collection accounts.—A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of article three, chapter twelve of the code.

Sec. 11. Appropriations for refunding erroneous payment.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his or her warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.
Sec. 12. Sinking fund deficiencies.—There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by section twenty-b, article eighteen, chapter thirty-one of the code, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.

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

Sec. 13. Appropriations for local governments.—There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

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

Sec. 14. Total appropriations.—Where only a total sum is appropriated to a spending unit, the total sum shall include personal services, annual increment, employee benefits, current expenses, repairs and alterations, equipment and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I—GENERAL PROVISIONS, Sec. 3.
Sec. 15. General school fund.—The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with section sixteen, article nine-a, chapter eighteen of the code.

TITLE III—ADMINISTRATION.

§1. Appropriations conditional.
§2. Constitutionality.

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

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

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

CHAPTER 8

(H. B. 3044 — By Delegates Ashley, Fielshauer, Pettit, Proudfoot, Facemyer, Hall and Leggett)

[Passed March 13, 1999; 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 moneys remaining as an
unappropriated surplus balance in the state fund, general revenue, to the governor’s office, fund 0101, fiscal year 1999, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 13, 1999, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1998, and further included the estimate of revenues for the fiscal year 1999, less net appropriation balances forwarded and regular appropriations for the fiscal year 1999; and

WHEREAS, It appears from the governor’s executive budget document there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; therefore

Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0101, fiscal year 1999, organization 0100, be supplemented and amended by increasing the total appropriation by eighty-one thousand dollars as follows:

   TITLE II—APPROPRIATIONS.

   Section 1. Appropriations from general revenue.

   EXECUTIVE

   5—Governor’s Office

   (WV Code Chapter 5)

   Fund 0101 FY 1999 Org 0100

   General
   Activity
   Revenue
   Fund

   5 Unclassified ......................... 099 $ 81,000
The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by adding eighty-one thousand dollars to unclassified for expenditure during the fiscal year one thousand nine hundred ninety-nine.

CHAPTER 9

(H. B. 3042 — By Delegates Ashley, Frederick, Jenkins, Pettit, Proudfoot, Facemyer and Miller)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, in the amount of six million nine hundred ninety-nine thousand nine hundred seventy-three dollars from the income tax refund reserve fund, fund 1313, organization 1300, and making supplementary appropriations of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to the department of agriculture, state soil conservation committee, fund 0132, fiscal year 1999, organization 1400; to the department of administration, division of information services and communications, fund 0583, fiscal year 1999, organization 0210; to the department of education and the arts, educational broadcasting authority, fund 0300, fiscal year 1999, organization 0439; to the board of trustees of the university system of West Virginia, university of West Virginia health sciences account, fund 0323, fiscal year 1999, organization 0478; to the department of military affairs and public safety, West Virginia Parole Board, fund 0440, fiscal year 1999, organization 0605; bureau of commerce, geological and economic survey, fund 0253, fiscal year 1999, organization 0306; and to the bureau of environment, division of environmental protection, fund 0273, fiscal year 1999, organiza-
tion 0313; all for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The Legislature finds that the balance in the income tax refund reserve fund exceeds that which is necessary for the purpose for which the fund was established; and

WHEREAS, By the provisions of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds in the income tax refund reserve fund, fund 1313, organization 1300, be decreased by expiring the amount of six million nine hundred ninety-nine thousand nine hundred seventy-three dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0132, fiscal year 1999, organization 1400, be supplemented and amended by increasing the total appropriation by two million five hundred thousand dollars as follows:

Title II—Appropriations.

Section 1. Appropriations from general revenue.

Executive

13—Department of Agriculture—

State Soil Conservation Committee

(WV Code Chapter 19)

Fund 0132 FY 1999 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soil Conservation Projects (R)</td>
<td>$2,500,000</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriation for Soil Conservation Projects (R) (fund 0132, activity 120) at the close of the fiscal year 1998-99 are hereby reappropriated for expenditure during the fiscal year 1999-2000.

That an appropriation for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, be made in a new fund designated fund 0583, fiscal year 1999, organization 0210, in the amount of two million five hundred thousand dollars in a new line item as follows:

**TITLE II—APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**DEPARTMENT OF ADMINISTRATION**

21a—Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 0583 FY 1999 Org 0210

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Asynchronous Transfer Mode (ATM) Program (R)</td>
<td>199 $ 2,500,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Asynchronous Transfer Mode (ATM) Program (fund 0583, activity 199) at the close of the fiscal year 1998-99 are hereby reappropriated for expenditure during the fiscal year 1999-2000.

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0300, fiscal year 1999, organization 0439, be supplemented and amended by increasing the total appropriation by three hundred thousand dollars in a new line item as follows:

**TITLE II—APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**
DEPARTMENT OF EDUCATION AND THE ARTS

43—Educational Broadcasting Authority—
(WV Code Chapter 10)

Fund 0300 FY 1999 Org 0439

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>4a Equipment (R)</td>
<td>$300,000</td>
</tr>
</tbody>
</table>

Any un expended balance remaining in the appropriation for Equipment (fund 0300, activity 070) at the close of the fiscal year 1998-99 are hereby reappropriated for expenditure during the fiscal year 1999-2000.

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0323, fiscal year 1999, organization 0478, be supplemented and amended by increasing the total appropriation by three hundred thousand dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

48—Board of Trustees of the University

System of West Virginia—
University of West Virginia
Health Sciences Account

(WV Code Chapter 18B)

Fund 0323 FY 1999 Org 0478

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 School of Osteopathic Medicine</td>
<td>$5,000</td>
</tr>
</tbody>
</table>
That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0440, fiscal year 1999, organization 0605, be supplemented and amended by increasing the total appropriation by eighty thousand dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

58—West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 1999 Org 0605

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>099</td>
<td>$80,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Unclassified (fund 0440, activity 099) at the close of the fiscal year 1998-99 are hereby reappropriated for expenditure during the fiscal year 1999-2000.

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0253, fiscal year 1999, organization 0306, be supplemented and amended by increasing the total appropriation by two hundred forty-four thousand nine hundred seventy-three dollars as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BUREAU OF COMMERCE
115 76—Geological and Economic Survey
116 (WV Code Chapter 29)
117 Fund 0253 FY 1999 Org 0306
118
119 7 Computer Upgrade (R) ............ 349 $ 244,973
120
121 Any unexpended balances remaining in the appropriation for Computer Upgrade (fund 0253, activity 349) at the close of the fiscal year 1998-99 are hereby reappropriated for expenditure during the fiscal year 1999-2000.
122
123 And that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0273, fiscal year 1999, organization 0313, be supplemented and amended by increasing the total appropriation by one million seventy-five thousand dollars in new line items as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BUREAU OF ENVIRONMENT

86—Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 1999 Org 0313

141 7 Office of Water Resources - Equipment (R) ............ XXX $ 975,000
142 8 Federal Settlement ............... 206 $ 100,000
143
144 Any unexpended balances remaining in the appropriation for Office of Water Resources - Equipment (fund 0273, activity
XXX) at the close of the fiscal year 1998-99 are hereby reappropriated for expenditure during the fiscal year 1999-2000.

The purpose of this bill is to expire the sum of six million nine hundred ninety-nine thousand nine hundred seventy-three dollars from the income tax refund reserve fund, fund 1313, organization 1300; to supplement the department of agriculture, state soil conservation committee, fund 0132, fiscal year 1999, organization 1400, by adding two million five hundred thousand dollars to the existing appropriation; to make an appropriation to department of administration, division of information services and communications, in a new fund designated fund 0583, fiscal year 1999, organization 0210, in the amount of two million five hundred thousand dollars; to supplement the department of education and the arts, educational broadcasting authority, fund 0300, fiscal year 1999, organization 0439 by adding three hundred thousand dollars to the existing appropriation; to supplement the board of trustees of the university system of West Virginia, university of West Virginia health sciences account, fund 0323, fiscal year 1999, organization 0478, by adding three hundred thousand dollars to the existing appropriation; to supplement the department of military affairs and public safety, West Virginia parole board, fund 0440, fiscal year 1999, organization 0605 by adding eighty thousand dollars to the existing appropriation; to supplement the bureau of commerce, geological and economic survey, fund 0253, fiscal year 1999, organization 0306, by adding two hundred forty-four thousand nine hundred seventy-three dollars to the existing appropriation; and to supplement the bureau of environment, division of environmental protection, fund 0273, fiscal year 1999, organization 0313 by adding one million seventy-five thousand dollars to the existing appropriation.
AN ACT making a supplementary appropriation in the state fund, general revenue, to the department of administration—West Virginia prosecuting attorneys' institute, fund 0557, fiscal year 1999, organization 0228, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 0557, fiscal year 1999, organization 0228, be supplemented and amended to read as follows:

```
<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Funds/Grants Match</td>
<td>749</td>
<td>$80,000</td>
</tr>
<tr>
<td>Forensic Medical Examinations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>681</td>
<td>201,346</td>
</tr>
<tr>
<td>Transfers</td>
<td>426</td>
<td>50,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$331,346</td>
</tr>
</tbody>
</table>
```
The above appropriation for transfers shall be transferred to fund 2252—gifts, grants and donations as provided by chapter seven of the code.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by reducing the appropriation for forensic medical examinations—total by fifty thousand dollars and by adding fifty thousand dollars to a new item of appropriation for transfers and by amending language with no new money being appropriated.

CHAPTER 11

(H. B. 3017 — By Delegates Ashley, Campbell, Compton, Frederick, Kelley, Laird and Leach)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to a new item of appropriation designated to the auditor’s office, purchasing card administration fund, fund 1234, fiscal year 1999, organization 1200, by supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor has established that there now remains an unappropriated balance in the auditor’s office, purchasing card administration fund, fund 1234, fiscal year 1999, organization 1200, available for expenditure during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; therefore

Be it enacted by the Legislature of West Virginia:

That chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the “Budget Bill”, be supplemented and amended by adding to Title II, section three thereof, the following:
TITLE II—APPROPRIATIONS.

Section 3. Appropriations of other funds.

EXECUTIVE

98a—Auditor's Office

(WV Code Chapter 12)

Fund 1234 FY 1999 Org 1200

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$ 65,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by providing for a new item of appropriation to be established therein to appropriate other funds in the amount of sixty-five thousand dollars to the Purchasing Card Administration Fund.

CHAPTER 12

(H. B. 3043 — By Delegates Campbell, Cann, Compton, Frederick, Kominar, Laird and Thompson)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the balance of the auditor's office, chief inspector's fund, fund 1235, fiscal year 2000, organization 1200, for the fiscal year ending the thirtieth day of June, two thousand, in the amount of five hundred thousand dollars from the auditor's office, securities regulation fund, fund 1225, fiscal year 2000, organization 1200.
WHEREAS, The Legislature finds that the account balance in the auditor's office, securities regulation fund, fund 1225, fiscal year 2000, organization 1200, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1. That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, to the auditor's office, securities regulation fund, fund 1225, fiscal year 2000, organization 1200, be decreased by expiring the amount of five hundred thousand dollars to the balance to the auditor's office, chief inspector's fund, fund 1235, fiscal year 2000, organization 1200, to be available for appropriation during the fiscal year two thousand.

The purpose of this bill is to expire the sum of five hundred thousand dollars from the auditor's office, securities regulation fund, fund 1225, fiscal year 2000, organization 1200, to the balance of the auditor's office, chief inspector's fund, fund 1235, fiscal year 2000, organization 1200, for the fiscal year ending the thirtieth day of June, two thousand, to be available for appropriation during the fiscal year two thousand.

CHAPTER 13

(S. B. 683 — By Senators Craigo, Anderson, Bailey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)

[Passed March 8, 1999; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, in the amount of two million one hundred fifty-nine thousand dollars from the board of risk and insurance management - premium tax savings fund, fund 2367, fiscal year 2000, organization 0218.
WHEREAS, The Legislature finds that the account balance in the board of risk and insurance management - premium tax savings fund, fund 2367, fiscal year 2000, organization 0218, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, to the board of risk and insurance management - premium tax savings fund, fund 2367, fiscal year 2000, organization 0218, be decreased by expiring the amount of two million one hundred fifty-nine thousand dollars to the unappropriated balance of the state fund, general revenue, to be available for appropriation during the fiscal year two thousand.

The purpose of this bill is to expire the sum of two million one hundred fifty-nine thousand dollars from the board of risk and insurance management - premium tax savings fund, fund 2367, fiscal year 2000, organization 0218, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, to be available for appropriation during the fiscal year two thousand.

CHAPTER 14

(H. B. 3045 — By Delegates Ashley, Compton, Fleischauer, Frederick, Kelley, Leach and Border)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, in the department of health and human resources, division of human services - medical services trust fund, fund 5185, fiscal year 1999,
organization 0511, all supplementing and amending the appro­priation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources, division of human services - medical services trust fund, fund 5185, fiscal year 1999, organization 0511, available for expendi­ture during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine; therefore

Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, fund 5185, fiscal year 1999, organization 0511, be supple­mented and amended by increasing the total appropriation by two million nine hundred forty-nine thousand seven hundred dollars in the line items as follows:

TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

135—Human Services—

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 1999 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Institutions DPSH Payments</td>
<td>$2,949,700</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this fund in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by adding two million nine hundred forty-nine thousand seven hundred dollars to the existing appropriation for State Institutions DPSH Payments for expenditure during fiscal year one thousand nine hundred ninety-nine.
AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, in the amount of five hundred thousand dollars from the insurance commission - examination revolving fund, fund 7150, fiscal year 2000, organization 0704.

WHEREAS, The Legislature finds that the account balance in the insurance commission - examination revolving fund, fund 7150, fiscal year 2000, organization 0704, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1. That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, to the insurance commission - examination revolving fund, fund 7150, fiscal year 2000, organization 0704, be decreased by expiring the amount of five hundred thousand dollars to the unappropriated balance of the state fund, general revenue, to be available for appropriation during the fiscal year two thousand.

8. The purpose of this bill is to expire the sum of five hundred thousand dollars from the insurance commission - examination revolving fund, fund 7150, fiscal year 2000, organization 0704, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, to be available for appropriation during the fiscal year two thousand.
CHAPTER 16

(S. B. 685 — By Senators Craigo, Anderson, Bailey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)

[Passed March 5, 1999; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, in the amount of one million five hundred thousand dollars from the insurance commission - insurance commission fund, fund 7152, fiscal year 2000, organization 0704.

Whereas, The Legislature finds that the account balance in the insurance commission - insurance commission fund, fund 7152, fiscal year 2000, organization 0704, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, to the insurance commission - insurance commission fund, fund 7152, fiscal year 2000, organization 0704, be decreased by expiring the amount of one million five hundred thousand dollars to the unappropriated balance of the state fund, general revenue, to be available for appropriation during the fiscal year two thousand.

The purpose of this bill is to expire the sum of one million five hundred thousand dollars from the insurance commission - insurance commission fund, fund 7152, fiscal year 2000, organization 0704, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, to be available for appropriation during the fiscal year two thousand.
AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, in the amount of two million dollars from the public service commission, fund 8623, fiscal year 2000, organization 0926.

WHEREAS, The Legislature finds that the account balance in the public service commission, fund 8623, fiscal year 2000, organization 0926, will exceed that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, two thousand, to the public service commission, fund 8623, fiscal year 2000, organization 0926, be decreased by expiring the amount of two million dollars to the unappropriated balance of the state fund, general revenue, to be available for appropriation during the fiscal year two thousand.

8 The purpose of this bill is to expire the sum of two million dollars from the public service commission, fund 8623, fiscal year 2000, organization 0926, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand, to be available for appropriation during the fiscal year two thousand.
AN ACT supplementing, amending and reducing items of the existing
appropriation to the public service commission, fund 8623, fiscal
year 1999, organization 0926, as originally appropriated by
chapter six, acts of the Legislature, regular session, one thousand
nine hundred ninety-eight, known as the budget bill.

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

That the items of the total appropriation to the public service
commission, fund 8623, fiscal year 1999, organization 0926, be
amended and reduced in the line item as follows:

1 **TITLE II—APPROPRIATIONS.**

2 **Sec. 3. Appropriations from other funds.**

3 **MISCELLANEOUS BOARDS AND COMMISSIONS**

4 **199—Public Service Commission**

5 (WV Code Chapter 24)

6 Fund 8623 FY 1999 Org 0926

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to
supplement, amend and reduce existing items in the aforesaid
account for the designated spending unit. The item for unclassified
is reduced by three hundred fifty-seven thousand dollars.
AN ACT supplementing, amending and reducing items of the existing appropriations to the public service commission - motor carrier division, fund 8625, fiscal year 1999, organization 0926, as originally appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to the public service commission - motor carrier division, fund 8625, fiscal year 1999, organization 0926, be amended and reduced in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 MISCELLANEOUS BOARDS AND COMMISSIONS

4 201—Public Service Commission—

5 Motor Carrier Division

6 (WV Code Chapter 24A)

7 Fund 8625 FY 1999 Org 0926

8 Activity Other Funds

9

10 4 Unclassified . . . . . . . . . . . . . . . . . . . . . . . . . 099 $ 114,240

The purpose of this supplementary appropriation bill is to supplement, amend and reduce existing items in the aforesaid
account for the designated spending unit. The item for unclassified is reduced by one hundred fourteen thousand two hundred forty dollars.

CHAPTER 20

(S. B. 587 — By Senators Cralgo, Anderson, Bailey, Bowman, Chafln, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)

[Passed March 2, 1999; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations to the department of education and the arts - state board of rehabilitation - division of rehabilitation services - West Virginia rehabilitation center - special account, fund 8664, fiscal year 1999, organization 0932, as originally appropriated by chapter six, acts of the Legislature, first regular session, one thousand nine hundred ninety-eight, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to the department of education and the arts - state board of rehabilitation - division of rehabilitation services - West Virginia rehabilitation center - special account, fund 8664, fiscal year 1999, organization 0932, be amended and reduced in the line item as follows:

1 TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF EDUCATION AND THE ARTS

124—State Board of Rehabilitation—
Division of Rehabilitation Services—
West Virginia Rehabilitation Center—
Special Account
8 (WV Code Chapter 19)
9 Fund 8664 FY 1999 Org 0932
10 Act- Other
11 ivity Funds
12 4 Medical Services Trust Fund—
13 5 Transfer ...................... 512 $ 2,000,000
14 And, that the items of the total appropriations to the
department of education and the arts - state board of rehabilita-
tion - division of rehabilitation services - West Virginia
rehabilitation center - special account, fund 8664, fiscal year
1999, organization 0932, be amended and increased in the line
items as follows:

TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF EDUCATION AND THE ARTS

124—State Board of Rehabilitation—
Division of Rehabilitation Services—
West Virginia Rehabilitation Center—
Special Account

Fund 8664 FY 1999 Org 0932

1 Unclassified ..................... 099 $ 2,000,000

The purpose of this supplementary appropriation bill is to
supplement, amend, reduce and increase existing items in the
aforesaid account for the designated spending unit. The item for
medical services trust fund - transfer is reduced by two million
dollars. The item for unclassified is increased by two million
dollars. The amounts as itemized for expenditure in the fiscal
year ending the thirtieth day of June, one thousand nine hundred
ninety-nine, shall be available for expenditure during fiscal year
one thousand nine hundred ninety-nine.
AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to the department of transportation - state rail authority, fund 8733, fiscal year 1999, organization 0804, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 8733, fiscal year 1999, organization 0804, be supplemented and amended by increasing the total appropriation by five hundred ninety-nine thousand four hundred nineteen dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.
2 Section 5. Appropriations of federal funds.
3 DEPARTMENT OF TRANSPORTATION
4 247—State Rail Authority
5 (WV Code Chapter 29)
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by adding five hundred ninety-nine thousand four hundred nineteen dollars to the existing appropriation for Unclassified—Total for expenditure during fiscal year one thousand nine hundred ninety-nine.

CHAPTER 22

(H. B. 3010 — By Delegates Michael, Doyle, Lesch, Campbell, Kominar, Border and Facemyer)

[Passed March 10, 1999; in effect from passage. Approved by the Governor]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to the West Virginia development office — community development, fund 8746, fiscal year 1999, organization 0307, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine-hundred ninety-nine, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

Fund 8733 FY 1999 Org 0804

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$599,419</td>
</tr>
</tbody>
</table>
That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 8746, fiscal year 1999, organization 0307, be supplemented and amended by increasing the total appropriation by five million dollars in the line item as follows:

1. TITLE II—APPROPRIATIONS.
2. Section 6. Appropriations of federal block grants.
3. 262—West Virginia Development Office—
4. Community Development
5. Fund 8746 FY 1999 Org 0307
6.  
7. Activity  Federal Funds
8. 1 Unclassified—Total ............... 096 $ 5,000,000
9. The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by adding five million dollars to the existing appropriation for Unclassified—Total for expenditure during fiscal year one thousand nine hundred ninety-nine.

CHAPTER 23

(H. B. 3014 — By Delegates Michael, Doyle, Pettit, Warner, Laird, Leggett and Evans)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to the department of
transportation - division of motor vehicles, fund 8787, fiscal year 1999, organization 0802, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 8787, fiscal year 1999, organization 0802, be supplemented and amended by increasing the total appropriation by three hundred fifty-five thousand dollars in the line item as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$ 355,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by adding three hundred fifty-five thousand dollars to the existing appropriation for Unclassified—Total for expenditure during fiscal year one thousand nine hundred ninety-nine.
AN ACT making a supplementary appropriation of federal funds out
of the treasury from the balance of federal moneys remaining
unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to the auditor's office, fund 8807, fiscal year 1999, organization 1200, by supplementing and amending the appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor has established the availability of federal funds for continuing programs that are now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to fund 8807, fiscal year 1999, organization 1200, be supplemented and amended by increasing the total appropriation by four million dollars in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 5. Appropriations of federal funds.

3 EXECUTIVE

4 223—Auditor's Office

5 (WV Code Chapter 12)

6 Fund 8807 FY 1999 Org 1200
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by adding four million to the existing appropriation for Unclassified—Total for expenditure during fiscal year one thousand nine hundred ninety-nine.

CHAPTER 25

(H. B. 3011 — By Delegates Michael, Doyle, Proudfoot, Jenkins, Fleischauer, Leggett and Evans)

[Passed March 10, 1999; in effect from passage.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to a new item of appropriation designated to the department of military affairs and public safety - division of corrections - correctional units, fund 8818, fiscal year 1999, organization 0608, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the “Budget Bill,” be
supplemented and amended by adding to Title II, section five thereof the following:

1 TITLE II—APPROPRIATIONS.
2 Section 5. Appropriations of federal funds.
3 DEPARTMENT OF MILITARY AFFAIRS
4 AND PUBLIC SAFETY
5 240a—Division of Corrections—
6 Correctional Units
7 (WV Code Chapters 25, 28, 49 and 62)
8 Fund 8818 FY 1999 Org 0608
9 Activity Federal Funds
10 1 Unclassified—Total ............... 096 $ 35,000
11 The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of thirty-five thousand dollars to Unclassified—Total for expenditure during fiscal year one thousand nine hundred ninety-nine.

CHAPTER 26

(H. B. 3015 — By Delegates Compton, Thompson, Leggett, Jenkins, Leach and Pettit)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June,
one thousand nine hundred ninety-nine, to a new item of appropriation designated to the department of administration—West Virginia prosecuting attorneys’ institute, fund 8834, fiscal year 1999, organization 0228, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor has established the availability of federal funds for continuing programs that are now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the “budget bill,” be supplemented and amended by adding to Title II, section five thereof the following:

TITLE II—APPROPRIATIONS.

Section 5. Appropriations of federal funds.

DEPARTMENT OF ADMINISTRATION

225a—West Virginia Prosecuting Attorneys' Institute

(WV Code Chapter 7)

Fund 8834 FY 1999 Org 0228

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>096</td>
</tr>
<tr>
<td></td>
<td>$35,960</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of thirty-five thousand nine hundred sixty dollars to Unclassified—Total for expenditure during fiscal year one thousand nine hundred ninety-nine.
AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to the bureau of employment programs, account no. fund 8835, fiscal year 1999, organization 0323, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the “Budget Bill”, be supplemented and amended by adding to Title II, section five thereof, the following:

1 TITLE II—APPROPRIATIONS.
2 Section 5. Appropriations of federal funds.
3 BUREAU OF EMPLOYMENT PROGRAMS
4 258a—Bureau of Employment Programs—
5 (WV Code Chapter 21A)
6 Account No.
Pursuant to the requirements of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and the provisions of section nine, article nine, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the above appropriation to Unclassified shall be used by the bureau of employment programs for the specific purpose of administration of the state's unemployment insurance program or job service activities, subject to each and every restriction, limitation or obligation imposed on the use of the funds by those federal and state statutes.

The purpose of this bill is to supplement the budget act for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, by providing for a new item of appropriation to be established therein to appropriate federal funds in the amount of five hundred twelve thousand six hundred fifty-six dollars and twenty-eight cents for unclassified for the administration of the state's unemployment insurance program or job service activities for expenditure during fiscal year one thousand nine hundred ninety-nine.

CHAPTER 28

(S. B. 400 — By Senators Craigo, Anderson, Bailey, Bowman, Chafln, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)

[Passed March 2, 1999; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state road fund, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, from the department of
transportation, division of motor vehicles, fund 9007, fiscal year 1997, organization 0802, activity 222.

WHEREAS, The Legislature finds that the account balance in the department of transportation, division of motor vehicles, fund 9007, fiscal year 1997, organization 0802, activity 222, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to the department of transportation, division of motor vehicles, fund 9007, fiscal year 1997, organization 0802, activity 222, be amended and decreased by expiring the amount of one million six hundred twenty-five thousand dollars to the unappropriated balance of the state road fund to be available for additional and further appropriation.

The purpose of this bill is to expire the sum of one million six hundred twenty-five thousand dollars from the department of transportation, division of motor vehicles, fund 9007, fiscal year 1997, organization 0802, activity 222 to the unappropriated balance of the state road fund to be available for additional and further appropriation.

CHAPTER 29

(S. B. 401 — By Senators Craigo, Anderson, Bailey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)

[Passed March 2, 1999; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated balance in the state road fund, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, from the department of transportation, division of motor vehicles, fund 9007, fiscal year 1998, organization 0802, activity 222.
WHEREAS, The Legislature finds that the account balance in the department of transportation, division of motor vehicles, fund 9007, fiscal year 1998, organization 0802, activity 222, exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, to the department of transportation, division of motor vehicles, fund 9007, fiscal year 1998, organization 0802, activity 222, be amended and decreased by expiring the amount of nine hundred eighty thousand dollars to the unappropriated balance of the state road fund to be available for additional and further appropriation.

The purpose of this bill is to expire the sum of nine hundred eighty thousand dollars from the department of transportation, division of motor vehicles, fund 9007, fiscal year 1998, organization 0802, activity 222 to the unappropriated balance of the state road fund to be available for additional and further appropriation.

CHAPTER 30

(S. B. 402 — By Senators Craigo, Anderson, Bailey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)

[Passed March 2, 1999; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and reducing items of the existing appropriation to the department of transportation, division of motor vehicles, fund 9007, fiscal year 1999, organization 0802, as originally appropriated by chapter six, acts of the Legislature, first regular session, one thousand nine hundred ninety-eight, known as the budget bill.
Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation to the department of transportation, division of motor vehicles, fund 9007, fiscal year 1999, organization 0802, be amended and reduced in the line item as follows:

TITLE II-APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

90-Division of Motor Vehicles

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

Fund 9007 FY 1999 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 Capital Outlay-Building</td>
<td>$ 980,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend and reduce existing items in the aforesaid account for the designated spending unit. The item for capital outlay-building is reduced by nine hundred eighty thousand dollars.

CHAPTER 31

(S. B. 690 — By Senators Craigo, Anderson, Bailey, Bowman, Chaflin, Edgell, Heimick, Jackson, Love, Plymale, Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9017, fiscal year 1999, organization 0803, as originally
appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the budget bill.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 13, 1999, which included the statement of the state road fund setting forth therein the cash balances and investments as of July 1, 1998, and further included the estimate of revenues for the fiscal year 1998-99, less net appropriation balances forwarded and regular appropriations for fiscal year 1998-99.

WHEREAS, It thus appears from the governor’s executive budget document there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, therefore

\textit{Be it enacted by the Legislature of West Virginia:}

That the items of the total appropriation from the state road fund to account 9017, fiscal year 1999, organization 0803, be amended and reduced in the line items as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$ 2,500,000</td>
</tr>
<tr>
<td>ARC Assessment</td>
<td>607,000</td>
</tr>
<tr>
<td>Appalachian Programs</td>
<td>5,750,000</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from the state road fund to account no. fund 9017, fiscal year 1999, organiza-
TITLE II—APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 1999 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance, State Local Service</td>
<td>271 $10,299,000</td>
</tr>
<tr>
<td>Maintenance, Contract Paving and</td>
<td></td>
</tr>
<tr>
<td>Secondary Road Maintenance</td>
<td>272 4,500,000</td>
</tr>
<tr>
<td>Inventory Revolving</td>
<td>275 750,000</td>
</tr>
<tr>
<td>Equipment Revolving</td>
<td>276 1,500,000</td>
</tr>
<tr>
<td>General Operations</td>
<td>277 2,700,000</td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>278 4,000,000</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>279 45,250,000</td>
</tr>
<tr>
<td>Nonfederal Aid Construction</td>
<td>281 3,500,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase existing items in the aforesaid account for the designated spending unit. The item for Debt Service is reduced by two million five hundred thousand dollars, ARC Assessment is reduced by six hundred seven thousand dollars, and Appalachian Programs is reduced by five million seven hundred fifty thousand dollars. The item for Maintenance, State Local Service is increased by ten million two hundred ninety-nine thousand dollars, Maintenance, Contract Paving and Secondary Road Maintenance is increased by four million five hundred thousand dollars, Inventory...
Revolving is increased by seven hundred fifty thousand dollars.
Equipment Revolving is increased by one million five hundred thousand dollars, General Operations is increased by two million seven hundred thousand dollars, Interstate Construction is increased by four million dollars, Other Federal Aid Programs is increased by forty-five million two hundred fifty thousand dollars, and Nonfederal Aid Construction is increased by three million five hundred thousand dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 32

(S. B. 689 — By Senators Craigo, Anderson, Bailey, Bowman, Chafin, Edgell, Helmick, Jackson, Love, Plymale, Prezioso, Sharpe, Unger, Walker, Sprouse, Boley and Minear)

[Passed March 8, 1999; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9018, fiscal year 1999, organization 0803, as originally appropriated by chapter six, acts of the Legislature, regular session, one thousand nine hundred ninety-eight, known as the budget bill.

WHEREAS, The governor submitted to the Legislature the executive budget document, dated January 13, 1999, which included the statement of the state road fund setting forth therein the cash balances and investments as of July 1, 1998, and further included the estimate of revenues for the fiscal year 1998-99, less net appropriation balances forwarded and regular appropriations for fiscal year 1998-99.

WHEREAS, It thus appears from the governor’s executive budget document there now remains an unappropriated balance in the state
treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine, therefore

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

That the items of the total appropriation from the state road fund to account 9018, fiscal year 1999, organization 0803, be amended and reduced in the line item as follows:

<table>
<thead>
<tr>
<th>TITLE</th>
<th>APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 2. Appropriations from state road fund.</td>
<td>DEPARTMENT OF TRANSPORTATION</td>
</tr>
<tr>
<td>92—Division of Highways—</td>
<td>Federal Aid Highway Matching Fund</td>
</tr>
<tr>
<td>(WV Code Chapters 17 and 17C)</td>
<td>Fund 9018 FY 1999 Org 0803</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Federal Aid Programs</td>
<td>279 $14,500,000</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriations from the state road fund to account no. fund 9018, fiscal year 1999, organization 0803, be amended and increased in the line items as follows:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 2. Appropriations from state road fund.</td>
</tr>
<tr>
<td>92—Division of Highways—</td>
</tr>
<tr>
<td>(WV Code Chapters 17 and 17C)</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase existing items in the aforesaid account for the designated spending unit. The item for Other Federal Aid Programs is reduced by fourteen million five hundred thousand dollars. The item for Interstate Construction is increased by eleven million seven hundred fifty thousand dollars and Appalachian Programs is increased by eleven million dollars. The amounts as itemized for expenditure in fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-nine shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 33

(H. B. 2397 — By Delegate Modesitt)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]
That sections one, six and twenty, article five-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-1. Creation of commission; members; officers; seal and rules.
§29-5A-6. Payment of official in charge.
§29-5A-20. Licenses for contestants, referees and managers.

§29-5A-1. Creation of commission; members; officers; seal and rules.

The state boxing commission, heretofore created, is hereby continued and renamed the state athletic commission. The commission shall consist of five persons appointed by the governor, by and with the consent of the Senate, no more than three of whom shall belong to the same political party and no two of whom shall be residents of the same county at the same time. The members shall serve without pay. The present members and terms of the members of the state boxing commission shall continue as the state athletic commission. At the expiration of the term of each member, his or her successor shall be appointed by the governor for a term of four years. In the event of a vacancy in said board, said vacancy shall likewise be filled by appointment by the governor and the governor shall likewise have the power to remove any commissioner at his or her pleasure. Any three members of the commission shall constitute a quorum for the exercise of the power or authority conferred upon it. The members of the commission shall at the first meeting after their appointment elect one of their number chairman of the commission, and another of their number secretary of the commission, shall adopt a seal for the commission, and shall make such rules for the administration of their office, not inconsistent herewith, as they may deem expedient; and they may hereafter amend or abrogate such rules. The concurrence of at least three commissioners shall be necessary to render a choice or decision of the commission.

§29-5A-6. Payment of official in charge.

The deputy, inspector or other officials designated by the commission to be in charge of a boxing event shall be paid by
the promoter at a rate of seventy-five dollars for each weigh-in ceremony and seventy-five dollars for each day of bouts. If a weigh-in occurs within three hours before the boxing bouts are scheduled to begin, the deputy, inspector or other officials will be paid only seventy-five dollars once for that particular night or day’s events. Judges, timekeepers and inspectors shall be paid by the promoter at a rate of fifty dollars per day. Referees shall be paid by the promoter at a rate of seventy-five dollars per day.

§29-5A-20. Licenses for contestants, referees and managers.

No professional contestant, trainer, inspector, referee or professional manager is permitted to take part in any boxing contest or exhibition unless holding a license from the state, said license to be issued by the commission upon payment of ten dollars a year. Such fees shall accompany the application and shall be in the form of a certified check or money order and shall be issued to the treasurer of the state of West Virginia to be deposited in the general fund. Should such license not be granted, the treasurer shall refund the full amount.

CHAPTER 34

(Com. Sub. for S. B. 635 — By Senators Craigo, Sharpe and Wooton)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven, all relating to transferring the powers, duties, assets and personnel of the chief inspector from the state tax commissioner to the state auditor; authorizing the state auditor to propose legislative rules; specifying an effective date; requiring an interagency agreement; and requiring a report to the Legislature.

Be it enacted by the Legislature of West Virginia:
That article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eleven, to read as follows:

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-11. Transfer of certain powers and duties of tax commissioner to state auditor; rules; interagency agreement; report to Legislature.

(a) Effective the first day of July, one thousand nine hundred ninety-nine, the state auditor shall be the chief inspector and supervisor of local government offices. For the purposes of this section and any section of this code relating to the chief inspector, "local government office" means any unit of local government within the state, including a county, county board of education, municipality, and any other authority, board, commission, district, office, public authority, public corporation or other instrumentality of a county, county board of education or municipality or any combination of two or more local governments. The state auditor shall assume and perform those duties previously vested in the tax commissioner under this section and any section of this code relating to the chief inspector, which sections are identified in subsection (d) of this section, pertaining to:

(1) Making annual or special financial and compliance examinations or audits of local government offices;

(2) Providing annual training to county officials pertaining to their work: Provided, That this annual training may not include matters directly or indirectly pertaining to determining the appraised or assessed value of property or equalization of assessed values of property for ad valorem property tax purposes;

(3) Reviewing and approving annual budgets and changes in budgets during the fiscal year; and

(4) Approving proposed levy rates, whether regular or special.
(b) Effective the first day of July, one thousand nine hundred ninety-nine, all records, property of whatever kind and character, including, but not limited to, current office space occupied by the chief inspector division of the tax division, all personnel in positions assigned to the chief inspector division and the fund established in section eight of this article shall be transferred to the state auditor.

(c) The state auditor shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this section and any section of this code relating to the chief inspector.

(d) Notwithstanding any provision of this code to the contrary, after the thirtieth day of June, one thousand nine hundred ninety-nine, whenever the words "tax commissioner" or "state tax commissioner" appear in the following subsections, sections or articles of this code, these words shall mean the "state auditor in his or her capacity as the chief inspector and supervisor of local government offices": Article nine, chapter six; section nine, article one, chapter seven; sections sixteen and eighteen, article five of chapter seven; sections two, three, four and seventeen, article seven of chapter seven; section twelve, article twelve of chapter seven; section nine, article thirteen of chapter seven; section seventeen, article seventeen of chapter seven; section sixteen, article eight of chapter eight; sections seven, eighteen, nineteen and twenty-three, article thirteen of chapter eight; section seven, article sixteen of chapter eight; section four, article twenty-three of chapter eight; section sixteen, article twenty-nine of chapter eight; section four, article twenty-nine-a of chapter eight; section two, article thirty-two of chapter eight; section eight, article thirty-three of chapter eight; section six, article one of chapter ten; sections six-b, six-c, seven, eight, ten, ten-a, eleven, twelve, twelve-a, thirteen, fourteen, fourteen-a, fifteen, eighteen, twenty, twenty-one, twenty-three, twenty-four, twenty-five-a, twenty-six-a and thirty, article eight of chapter eleven; subsections (i) and (j), section five-a and subsections (i) and (j), section six, article thirteen-a of chapter eleven; sections eight,
twelve and thirteen, article one of chapter eleven-a; section eleven, article two of chapter eleven-a; sections fourteen, thirty-two and sixty-four, article three of chapter eleven-a; section twenty, article three of chapter twelve; section five, article four of chapter twelve; section twenty, article one of chapter thirteen; section twenty-five, article two of chapter eighteen; section three-a, article nine of chapter eighteen; sections one, three, six, nine, twelve and thirteen, article nine-b of chapter eighteen; section five, article nine-d of chapter eighteen; section thirteen-b, article twenty-one-a of chapter nineteen; section eight, article two of chapter twenty-four; section nineteen, article twenty-one of chapter twenty-nine; section twenty, article one of chapter fifty-two; and section thirty, article one of chapter fifty-nine, all of this code.

(e) On or before the first day of July, one thousand nine hundred ninety-nine, the state auditor and the state tax commissioner shall file with the governor, the president of the Senate and the speaker of the House of Delegates, an interagency agreement clarifying transition procedures and respective powers of the auditor and tax commissioner. A copy of the interagency agreement shall be filed with the secretary of state, and shall be a public record.

(f) On or before the first day of December, one thousand nine hundred ninety-nine, the state auditor and the state tax commissioner shall jointly report to the Legislature as to any conflicts in this code created by the enactment of this section for which legislation is recommended for enactment during the regular session of the year two thousand.

CHAPTER 35

(Com. Sub. for H. B. 2481 — By Delegates Ennis, Davis, Stemple, Martin, Willis, Fletcher and Armstead)

[Passed March 12, 1999; in effect July 1, 1999. Approved by the Governor.]
AN ACT to amend and reenact section seven, article nine, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section one-a; and to amend and reenact section thirteen, article nine-b, chapter eighteen of said code, all relating to defining audit and review procedures as it pertains to supervision of public offices; annual examinations and compliance with the Single Audit Act; audits and reviews of local government agencies; allowing county boards of education to have its annual examination performed by a certified public accountant approved by the chief inspector; requiring the chief inspector to prepare a list of certified public accountants; requiring certified public accountants making examinations to follow procurement standards; requiring certified public accountants making examinations to comply with applicable requirements that include distribution of the audit or review report and recommendation to the chief inspector when the examination discloses misfeasance, malfeasance or nonfeasance; permitting offices with annual expenditures equal to or less than three hundred thousand dollars to satisfy financial examination requirements by review; requiring county board of education and other local offices to be audited at least one year out of every three years by the office of chief inspector; financial affairs of a local government that are not examined annually; filing of the certified report of each examination; bids taken by the chief inspector for local government that are not a county board of education; and examinations by a certified public accountant selected by the county board of education.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 9. SUPERVISION OF LOCAL GOVERNMENT OFFICES.

§6-9-1a. Definitions.

§6-9-7. Examinations into affairs of local public officers; penalties.

§6-9-1a. Definitions.

As used in this article:

(a) "Audit" means a systematic examination and collection of sufficient, competent evidential matter needed for an auditor to attest to the fairness of management's assertions in the financial statements and to evaluate whether management has sufficiently and effectively carried out its responsibilities and complied with applicable laws and regulations. An audit shall be conducted in accordance with generally accepted auditing standards, standards issued by the chief inspector, and, as applicable, the single audit requirement of OMB Circular A-133 Audits of States, Local Governments and Non-Profit Organizations as amended or revised from time to time, or any successor circular.

(b) "Examination" includes an audit or review as defined in this section.

(c) "Federal awards" means federal financial assistance and federal cost-reimbursement contracts that nonfederal entities receive directly from federal awarding agencies or indirectly from pass-through entities.

(d) "Federal financial assistance" means assistance that nonfederal entities receive or administer in the form of grants, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, or other assistance, but does not include amounts received as reimbursement for services rendered to individuals in accordance with guidance issued by the director of the federal office of management and budget.

(e) "Financial audit" includes financial statement audits and financial related audits, as defined by government auditing standards.
(f) "Government auditing standards" means the government auditing standards issued by the comptroller general of the United States, which are applicable to financial audits of government organizations, programs and activities.

(g) "Local government" means any unit of local government within the state, including a county, county board of education, municipality, and any other authority, board, commission, district, office, public authority, public corporation, or other instrumentality of a county, county board of education, or municipality or any combination of two or more local governments.

(h) "Nonfederal entity" means a state, local government, or nonprofit organization.

(i) "Office of management and budget (OMB)" means the executive office of the president of the United States, office of management and budget.

(j) "Review" means an inquiry or analytical procedures that provide the auditor with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

(k) "Single audit" means a financial and compliance audit as defined in the federal Single Audit Act of 1996, as amended, in section 7502(d), chapter 75, title 31 of the United States Code, of a nonfederal entity that includes the entity's financial statements and federal awards. Each single audit conducted for any fiscal year shall cover the operations of the entire nonfederal entity; or at the option of the nonfederal entity, the audit shall include a series of audits that cover departments, agencies, and other organizational units that expend or otherwise administer federal awards during the fiscal year being audited except that each such audit shall encompass the financial statements and schedule of expenditures of federal awards for each department, agency, and organizational unit, which shall be considered to be a nonfederal entity.
§6-9-7. Examinations into affairs of local public officers; penalties.

(a) The chief inspector has the power by himself or herself, or by any person appointed, designated or approved by the chief inspector to perform the service, to examine into all financial affairs of every local governmental office or political subdivision and all boards, commissions, authorities, agencies or other offices created under authority thereof. An examination shall be made annually, if required, to comply with the Single Audit Act and when otherwise required by law or contract. When that act does not apply, unless otherwise required by law or by contract the examination shall be made at least once a year, if practicable.

(b) When required for compliance with regulations for federal funds received or expended by county boards of education the chief inspector or his or her designee, including any certified public accountant approved by the chief inspector shall conduct and issue an audit report within the time specified in controlling federal regulations. Examinations of other local governments shall be conducted and audit or review reports issued in accordance with uniform procedures of the chief inspector.

(c) A county board of education may elect, by the first day of May of the fiscal year to be audited, to have its annual examination performed by a certified public accountant approved by the chief inspector to perform such examinations. When this election is made, a copy of the order of the board making the election shall be filed with the chief inspector and the state board of school finance. The county board of education is allowed to contract with any certified public accountant on the chief inspector's then current list of approved certified public accountants, unless the state board of school finance or the prosecuting attorney of the county in which the board is located timely submits to the chief inspector a written request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation exists: Provided,
36 That no less than once every three-year period the audit of a
37 county board of education shall be performed by the office of
38 chief inspector. The school board shall follow the audit bid
39 procurement procedures established by the chief inspector in
40 obtaining such audit.

41 (d) The chief inspector shall, at least annually, prepare a list
42 of certified public accountants approved by the chief inspector
43 to perform examinations of local governments. Names shall be
44 added to or deleted from that list in accordance with uniform
45 procedures of the chief inspector. When each list or updated list
46 is issued, the chief inspector shall promptly file a copy of the
47 list in the state register and send a copy to the state board of
48 education, the state board of school finance and to local
49 governments who request a copy.

50 (e) A county board of education, when procuring the
51 services of a certified public accountant on the chief inspector’s
52 list, shall follow the procurement standards prescribed by the
53 grants management common rule, OMB Circular A-102
54 “Grants and Cooperative Agreements with State and Local
55 Governments” in effect for the fiscal year being examined, or
56 in any replacement circular or regulation of the office of
57 management and budget and in addition shall follow those
58 standards as determined by the office of chief inspector.

59 (f) The approved independent certified public accountant
60 making examinations under this section shall comply with
61 requirements of this section applicable to examinations per-
62 formed by the chief inspector, including applicable require-
63 ments of the federal government and uniform procedures of the
64 chief inspector applicable to examinations of county boards of
65 education.

66 (1) Upon completion of the certified public accountant’s
67 examination and audit or review report, the certified public
68 accountant shall promptly send two copies of the certified
69 report to the county board of education who shall file one copy
70 with the federal audit clearing house. The certified public
71 accountant shall send one copy of the certified report to the
72 state board of school finance, and one copy to the chief inspec-
73 tor.
(2) If any examination discloses misfeasance, malfeasance or nonfeasance in office on the part of any public officer or employee, the certified public accountant shall submit his or her recommendation to the chief inspector regarding the legal action the approved certified public accountant considers appropriate, including, but not limited to, whether criminal prosecution or civil action to effect restitution is appropriate, and three additional copies of the certified audit report. After review of the recommendations and the audit report, the chief inspector shall proceed as provided in subsection (n) of this section. For purposes of this section and section thirteen, article nine-b, chapter eighteen of this code, a certified audit report of an approved certified public accountant shall be treated in the same manner as a report of the chief inspector.

(g) On every examination, inquiry shall be made as to the financial conditions and resources of the agency having jurisdiction over the appropriations and levies disbursed by the office and whether the requirements of the constitution and statutory laws of the state and the ordinances and orders of the agency have been properly complied with and also inquire into the methods and accuracy of the accounts and such other matters of audit and accounting as the chief inspector may prescribe.

(h) A local government office that is subject to separate examination under this section by the chief inspector may elect to have a review performed to satisfy the annual examination requirement if it is not subject to a single audit requirement under federal regulations or if it is not otherwise required by law or contract to undergo an annual audit and its expenditures from all sources are less than three hundred thousand dollars during the fiscal year for which the election is made: Provided, That an audit must be performed at least once every three years by the chief inspector and shall be performed whenever during the course of a review the chief inspector determines that special or unusual circumstances warrant making an audit.

(i) When not required to have an audit by then existing federal regulations or by any law or contract provision and the financial affairs of a local government are not examined
annually but are examined on a biennial or other periodic basis, the chief inspector or his or her designee may, in his or her discretion, after making an audit of one of the fiscal years, make a review of the years remaining to be examined.

(j) The chief inspector or any authorized assistant may issue subpoenas and compulsory process, direct the service thereof by any sheriff, compel the attendance of witnesses and the production of books and papers at any designated time and place, selected in their respective county, and administer oaths.

(k) If any person refuses to appear before the chief inspector or his or her authorized assistant when required to do so, refuses to testify on any matter or refuses to produce any books or papers in his or her possession or under his or her control, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars and imprisoned in the county jail not more than six months.

(l) A person convicted of willful false swearing in an examination is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars and imprisoned in the county jail not more than six months.

(m) Except as otherwise provided in this section, a copy of the certified report of each examination shall be filed in the office of the commissioner, chief inspector with the governing body of the local government and with other offices as prescribed in uniform procedures of the chief inspector.

(n) If any examination discloses misfeasance, malfeasance or nonfeasance in office on the part of any public officer or employee, a certified copy of the report shall be filed by the chief inspector with the proper legal authority of the agency, the prosecuting attorney of the county wherein the agency is located and with the attorney general for such legal action as is proper. At the time the certified audit report is filed, the chief inspector shall notify the proper legal authority of the agency, the prosecuting attorney and the attorney general in writing of his or her recommendation as to the legal action that the chief inspector considers proper, whether criminal prosecution or civil action to effect restitution, or both.
(o) If the proper legal authority or prosecuting attorney, within nine months of receipt of the certified audit report and recommendations, refuses, neglects or fails to take efficient legal action by a civil suit to effect restitution or by prosecuting criminal proceedings to a final conclusion, in accordance with the recommendations, the chief inspector may institute the necessary proceedings or participate therein and prosecute the proceedings in any court of the state to a final conclusion.

(p) A local government that is not a county board of education, may elect, by the first day of May of the fiscal year to be audited, to have its annual examination performed by a certified public accountant approved by the chief inspector to perform such examinations. When this election is made, a copy of the order of the governing body making the election shall be filed with the chief inspector. An electing local government is allowed to contract with any certified public accountant on the chief inspector's then current list of approved certified public accountants, unless the prosecuting attorney of the county in which the local government is located timely submits to the chief inspector a written request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation exists: Provided, That no less than once every three-year period the audit of a local government shall be performed by the office of chief inspector. The local government shall follow the audit bid procurement procedures established by the chief inspector in obtaining such audit: Provided, however, That the chief inspector may elect to conduct the audit of a local unit of government with one or more members of his or her audit staff where, in the opinion of the chief inspector, a special or unusual situation exists.

CHAPTER 18. EDUCATION.

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

§18-9B-13. Inspection and audit of school finance administration.

The board of finance may, through its duly authorized representatives, make inspections and examinations of the fiscal administration of a county school district. The inspection and
examination may extend to any matter or practice subject to
regulation by the state board. Regular and special examinations
may be made by a certified public accountant approved
pursuant to section seven, article nine, chapter six of this code
selected by the county board of education in accordance with
nonemergency regulations submitted by the chief inspector, or
by the chief inspector himself or herself: Provided, That at least
once every three years, or more often if deemed necessary by
the office of chief inspector, a county board of education shall
undergo a performance and compliance audit by the office of
chief inspector. All examinations shall be made as provided in
section seven, article six of this code. The board may make
selective audits to determine the accuracy of statements and
reports made by a county board or superintendent.

The report of the examination shall be certified to the
county board of education, which should include the identifica-
tion of procedures and practices found to not be in accordance
with the requirements of the state board. The county board shall
comply with the instructions forthwith.

The state board, through its duly authorized representatives,
shall have full access to all books, records, papers and docu-
ments of the county board of education.

CHAPTER 36
(S. B. 663 — By Senator Mitchell)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two-a, chapter
thirty-one-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to exempting grand jury
subpoenas served upon financial institutions from statutory
provisions requiring notice to the customer or a judicial waiver.

Be it enacted by the Legislature of West Virginia:
That section six, article two-a, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. MAXWELL GOVERNMENTAL ACCESS TO FINANCIAL RECORDS ACT.


(a) Notwithstanding the provisions of section five of this article, a financial institution may disclose or produce financial records upon being served with a subpoena issued under authority of a grand jury without notice or service upon the customer.

(b) Financial records obtained pursuant to a subpoena issued under the authority of a grand jury:

(1) Shall be returned and actually presented to the grand jury;

(2) Shall be used only: (A) For the purpose of considering whether to issue an indictment or presentment by that grand jury; (B) for the purpose of prosecuting a crime for which that indictment or presentment is issued; or (C) for any other purpose authorized by the West Virginia rules of criminal procedure; and

(3) Shall be destroyed or returned to the financial institution if not used for one of the purposes specified in subdivision (2) of this subsection.

(c) Financial records obtained pursuant to a subpoena issued under the authority of a grand jury and any descriptions of the contents of such financial records must be maintained in sealed records of the grand jury unless such financial records or descriptions thereof have been used in the prosecution of a crime for which the grand jury issued an indictment or presentment or for any other purpose authorized by the West Virginia rules of criminal procedure.
AN ACT to amend and reenact section one, article three, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the board of banking and financial institutions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-1. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel; continuation.

1 (a) There is hereby created the West Virginia board of banking and financial institutions which shall consist of six members and the commissioner, who shall be chairman. The six members shall be appointed by the governor by and with the advice and consent of the Senate. Three of the members shall be executive officers of state banking institutions, of whom one shall be truly representative of such state banking institutions having assets not greater than seventy-five million dollars, one shall be truly representative of such state banking institutions having total assets greater than seventy-five million dollars but
not greater than two hundred million dollars, and one shall be truly representative of such banking institutions having total assets greater than two hundred million dollars. One member shall be an executive officer of a financial institution other than a banking institution. Two members shall represent the public, neither of whom shall be an employee, officer, trustee, director or stockholder of any financial institution. No member shall hold any other office, employment or position with the United States, any state, county, municipality or other governmental entity, any instrumentality or agency of any of the foregoing or with any political party.

(b) The members of the board shall be appointed for overlapping terms of six years, except that of the original appointments, two members shall be appointed for a term of two years, two members shall be appointed for a term of four years and two members shall be appointed for a term of six years, and in every instance until their respective successors have been appointed and qualified. Any member appointed for a full six-year term may not be reappointed until two years after the expiration of such term. Any member appointed for less than a full six-year term shall be eligible for reappointment for a full term. Before entering upon the performance of his duties, each member shall take and subscribe to the oath required by section five, article IV of the constitution of this state. The governor shall, within sixty days following the occurrence of a vacancy on the board, fill the same by appointing a person for the unexpired term of, and meeting the same requirements for membership as, the person vacating said office. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) A majority of the members of the board shall constitute a quorum. The board shall meet at least once in each calendar quarter on a date fixed by the board. The commissioner may, upon his own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least twenty-four hours' notice. No member shall participate in a proceeding before the board to which a corporation, partnership or unincorporated association is a party, and of
which he is, or was at any time in the preceding twelve months,
a director, officer, owner, partner, employee, member or
stockholder. A member may disqualify himself from participa-
tion in a proceeding for any other cause deemed by him to be
sufficient. Each member shall receive fifty dollars for each day
or portion thereof spent in attending meetings of the board and
shall be reimbursed for all reasonable and necessary expenses
incurred incident to his duties as a member of the board.

(d) The board shall keep an accurate record of all its
proceedings and make certificates thereupon as may be required
by law. The commissioner shall make available necessary
office space and secretarial and other assistance as the board
may reasonably require.

Pursuant to the provisions of section four, article ten,
chapter four of this code, and following a preliminary perform-
ance audit review conducted through the joint committee on
government operations, the West Virginia board of banking and
financial institutions shall continue to exist until the first day of
July, two thousand five.

CHAPTER 38

(Com. Sub. for H. B. 2281 — By Delegates H. White,
Douglas, Collins, Varner, Stalnaker and Willison)

[Passed March 4, 1999; in effect ninety days from passage. Approved by the Governor.]
adversely affected by an order of the commissioner issued under section twelve-d, article eight, chapter thirty-one-a; reducing the examination and investigation fee of applicants for a branch bank and authorizing the commissioner to require examinations of financial institutions that are merged into a state-chartered bank; providing new standards for an applicant state-chartered banking institution to qualify for branch banking; providing an alternative procedure for a banking institution to establish a branch bank by de novo construction or lease; and procedures for interstate branching by West Virginia state banks.

Be it enacted by the Legislature of West Virginia:

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

Article

3. Board of Banking and Financial Institutions.
8. Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.
8E. Interstate Branching by De Novo Entry and Acquisition of Branches.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

(a) In addition to other powers conferred by this chapter, the board has the power to:

(1) Regulate its own procedure and practice;

(2) Promulgate reasonable rules to implement any provision of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(3) Advise the commissioner in all matters within his or her jurisdiction;

(4) Study the organization, programs and services of financial institutions and the laws relating thereto in this state
and in other jurisdictions, and to report and recommend to the
governor and the Legislature all such changes and amendments
in laws, policies and procedures relating thereto as it considers
proper;

(5) Grant permission and authority to a financial institution:

(A) To participate in a public agency hereafter created
under the laws of this state or of the United States, the purpose
of which is to afford advantages or safeguards to financial
institutions or to depositors therein, and to comply with all
lawful requirements and conditions imposed upon those
participants;

(B) To engage in any financial institution activity, services,
procedures and practices in which financial institutions of the
same type subject to the jurisdiction of the federal government
may hereafter be authorized by federal laws, rules or regula-
tions to engage, notwithstanding any contrary provision of this
code; and

(C) To pay interest on demand deposits of the United States
or any agency thereof, if the payment of interest is permitted
under any applicable federal law, rule or regulation.

Any permission and authority granted by the board pursuant
to this subdivision shall terminate upon the adjournment of the
next regular session of the Legislature, unless the Legislature
enacts legislation authorizing the financial institution partici-
patation, activity, services and procedures or payment of interest
with respect to which such permission and authority were
granted, in which event the permission and authority shall
continue in effect until the effective date of the legislation; and

(6) Seek judicial enforcement to compel compliance with
any of its orders and to seek and obtain civil penalties as set
forth under this chapter.

(b) The board also has the power, by entering appropriate
orders, to:

(1) Restrict the withdrawal of deposits from any financial
institution when, in the judgment of the board, extraordinary
circumstances make the restrictions necessary for the protection of creditors of and depositors in the affected institution;

(2) Compel the holder of shares in any corporate financial institution to refrain from voting the shares on any matter when, in the judgment of the board, the order is necessary to protect the institution against reckless, incompetent or careless management, to safeguard funds of depositors in the institution or to prevent willful violation of any applicable law or of any rule and regulation or order issued thereunder. In such a case the shares of the holder may not be counted in determining the existence of a quorum or a percentage of the outstanding shares necessary to take any corporate action;

(3) Approve or disapprove applications to incorporate and organize state banking institutions in accordance with the provisions of sections six and seven, article four of this chapter;

(4) Approve or disapprove applications to incorporate and organize state-chartered bankers' banks in accordance with the provisions of sections six and seven, article four of this chapter;

(5) Exempt a bankers' bank from any provision of this chapter if the board finds that the provision is inconsistent with the purpose for which a bankers' bank is incorporated and organized and that the welfare of the public or any banking institution or other financial institution would not be jeopardized thereby;

(6) Revoke the certificate of authority, permit, certificate or license of any state banking institution to engage in business in this state if that institution fails or refuses to comply with any order of the commissioner entered pursuant to the provisions of paragraph (A) or (B), subdivision (15), subsection (c), section four, article two of this chapter, or at the board's election to direct the commissioner to apply to any court having jurisdiction for a prohibitory or mandatory injunction or other appropriate remedy to compel obedience to such order;

(7) Suspend or remove a director, officer or employee of any financial institution who is or becomes ineligible to hold that position under any provision of law or rule and regulation
or order, or who willfully disregards or fails to comply with any
order of the board or commissioner made and entered in
accordance with the provisions of this chapter or who is
dishonest or grossly incompetent in the conduct of financial
institution business;

(8) To receive from state banking institutions applications
to establish branch banks by the purchase of the business and
assets and assumption of the liabilities of, or merger or consoli-
dation with, another banking institution, or by the construction,
lease or acquisition of branch bank facilities in an unbanked
area; examine and investigate such applications, to hold
hearings thereon, and to approve or disapprove such applica-
tions, all in accordance with section twelve, article eight of this
chapter;

(9) Approve or disapprove the application of any state bank
to purchase the business and assets and assume the liabilities of,
or merge or consolidate with, another state banking institution
in accordance with the provisions of section seven, article seven
of this chapter;

(10) Approve or disapprove the application of any state
bank to purchase the business and assets and assume the
liabilities of a national banking association, or merge or
consolidate with a national banking association to form a
resulting state bank in accordance with the provisions of section
seven, article seven of this chapter; and

(11) In addition to any authority granted pursuant to section
twelve, article eight of this chapter, incident to the approval of
an application pursuant to subdivisions (7) or (8) of this
subsection, permit the bank the application of which is so
approved to operate its banking business under its name from
the premises of the bank the business and assets of which have
been purchased and the liabilities of which have been assumed
by such applicant bank or with which the applicant bank has
merged or consolidated: Provided, That this permission may be
granted only if the board has made the findings required by
subsection (f), section three of this article and such applicant
bank has no common directors or officers nor common owner-
ship of stock exceeding ten percent of total outstanding voting
stock with the bank whose business and assets are being
purchased and liabilities assumed, or with whom the applicant
bank is being merged; and

(12) To receive an appeal from any party who is adversely
affected by an order of the commissioner issued pursuant to
section twelve-d, article eight of this chapter, and hold hearings
in accordance with the provisions of article five, chapter
twenty-nine-a of this code.

(c) A provision of this section may not be construed to
alter, reduce or modify the rights of shareholders, or obligations
of a banking institution in regard to its shareholders, as set forth
in section one hundred seventeen, article one, chapter thirty-one
of this code and section seven, article seven of this chapter, and
other applicable provisions of this code.

(d) Any order entered by the West Virginia board of
banking and financial institutions pursuant to this section is a
matter of public record.

ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL
REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12. Procedure for authorization of branch banks; temporary offices at
colleges and universities; limitations and restrictions; examinations
and hearings; standards of review; penalties for violation of section.

§31A-8-12d. Expedited procedure for authorization of de novo branch banks.

§31A-8-12. Procedure for authorization of branch banks; tempo­
rary offices at colleges and universities; limitations
and restrictions; examinations and hearings;
standards of review; penalties for violation of
section.

(a) A banking institution may not engage in business in this
state at any place other than at its principal office in this state,
at a branch bank in this state, at a customer bank communica-
tion terminal permitted by section twelve-b of this article or at
any loan origination office permitted by section twelve-c of this
article:
(1) Acceptance of a deposit or allowing a withdrawal at the banking offices of any subsidiary affiliate, as defined in section one, article eight-a of this chapter, for credit or debit to the customer's account at any other subsidiary of the same bank holding company is permissible and does not constitute branch banking. In addition, the conduct of activity at branch offices as an agent for any bank subsidiary of the same bank holding company shall be permitted to the same extent allowed by federal law for national banks pursuant to 12 U.S.C. §1828, and does not constitute branch banking; nor does this activity constitute a violation of section forty-two, article four of this chapter: Provided, That a banking institution may not utilize that agency relationship to evade state consumer protection laws, including usury laws, or any other applicable laws of this state, or to conduct any activity that is not financially-related, as that term is defined by section two, article eight-c of this chapter;

(2) A banking institution located in a county where there is also a higher educational institution as defined in section two, article one, chapter eighteen-b of this code, may establish a temporary business office on the campus of any educational institution located in the county for the limited purposes of opening accounts and accepting deposits for a period not in excess of four business days per semester, trimester or quarter: Provided, That prior to opening any temporary office, a banking institution must first obtain written permission from the institution of higher education. The term “business days”, for the purpose of this subsection, means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code;

(3) Any banking institution which on the first day of January, one thousand nine hundred eighty-four, was authorized to operate an off-premises walk-in or drive-in facility, pursuant to the law then in effect, may, as of the seventh day of June, one thousand nine hundred eighty-four, operate such facility as a branch bank and it is not necessary, for the continued operation of the branch bank, to obtain additional approvals, notwithstanding the provisions of subsection (d) of this section and
subdivision (6), subsection (b), section two, article three of this chapter.

(b) Except for a bank holding company, it is unlawful for any individual, partnership, society, association, firm, institution, trust, syndicate, public or private corporation, or any other legal entity, or combination of entities acting in concert, to directly or indirectly own, control or hold with power to vote, twenty-five percent or more of the voting shares of each of two or more banks, or to control in any manner the election of a majority of the directors of two or more banks.

(c) A banking institution may establish branch banks either by:

(1) The construction, lease or acquisition of branch bank facilities within any county of this state; or

(2) The purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with, another banking institution.

(d) Subject to and in furtherance of the board's authority under the provisions of subdivision (6), subsection (b), section two, article three of this chapter, and subsection (g) of this section, the board, by order, may approve or disapprove the application of any state banking institution to establish a branch bank.

(e) The main office or a branch of a West Virginia state banking institution may not be relocated without the approval by order of the commissioner.

(f) Any banking institution which is authorized to establish branch banks pursuant to this section may provide the same banking services and exercise the same powers at each such branch bank as may be provided and exercised at its principal banking house.

(g) The board shall, upon receipt of any application to establish a branch bank under the provisions of this section, provide notice of the application to all banking institutions. A banking institution may, within ten days after receipt of the
notice, file a petition to intervene and shall, if it files a petition, thereupon become a party to any hearing relating thereto before the board.

(h) The commissioner shall prescribe the form of the application for a branch bank under the provisions of this section and shall collect an examination and investigation fee of five hundred dollars for each filed application for a branch bank that is to be established by the construction, lease or acquisition of a branch bank facility, and five hundred dollars for a branch bank that is to be established by the purchase of the business and assets and assumption of the liabilities of, or merger or consolidation with another banking institution. Notwithstanding the above, if the merger or consolidation is between an existing banking institution and a bank newly incorporated solely for the purpose of facilitating the acquisition of the existing banking institution, the commissioner shall collect an examination and investigation fee of one hundred dollars. The commissioner may require an examination of a financial institution or an office of a financial institution that is being merged into a state-chartered bank. If an examination is required, the applicant is responsible for paying the examination costs at a rate of fifty dollars per examiner hour. The board shall complete the examination and investigation within ninety days from the date on which the application and fee are received, unless the board requests in writing additional information and disclosures concerning the proposed branch bank from the applicant banking institution. If the board makes that request, the ninety-day period shall be extended for an additional period of thirty days plus the number of days between the date of the request and the date the additional information and disclosures are received.

(i) Upon completion of the examination and investigation with respect to the application, the board shall, if a hearing be required pursuant to subsection (j) of this section, forthwith give notice and hold a hearing pursuant to the following provisions:

(1) Notice of hearing must be given to the banking institution with respect to which the hearing is to be conducted in
accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code, and the hearing and the administrative procedures in connection therewith are governed by all of the provisions of article five, chapter twenty-nine-a of this code, and must be held at a time and place set by the board but may not be less than ten nor more than thirty days after the notice is given;

(2) At the hearing a party may represent himself or herself or be represented by an attorney at law admitted to practice before any circuit court of this state;

(3) After the hearing and consideration of all the testimony and evidence, the board shall make and enter an order approving or disapproving the application, which order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of the order and accompanying findings and conclusions shall be served upon all parties to the hearing, and their attorneys of record, if any.

(j) A state banking institution may not establish a branch bank until the board, following an examination, investigation, notice and hearing, enters an order approving an application for that branch bank: Provided, That a hearing is not required with respect to any application to establish a branch bank which is approved by the board unless a banking institution has timely filed a petition to intervene pursuant to subsection (g) of this section. The order shall be accompanied by findings of fact that:

(1) The applicant state-chartered banking institution satisfies such reasonable and appropriate requirements as to sound financial condition as the commissioner or board may from time to time establish;

(2) The establishment of the proposed branch bank would not result in a monopoly, nor be in furtherance of any combination or conspiracy to monopolize the business of banking in any section of this state;

(3) The establishment of the proposed branch bank would not have the effect in any section of the state of substantially
lessening competition, nor tend to create a monopoly or in any
other manner be in restraint of trade, unless the anticompetitive
effects of the establishment of that proposed branch bank are
clearly outweighed in the public interest by the probable effect
of the establishment of the proposed branch bank in meeting the
convenience and needs of the community to be served by that
proposed branch bank;

(4) The applicant state-chartered banking institution meets
a satisfactory standard of compliance with federal and state
community reinvestment act requirements as evidenced by its
most recent state or federal examination;

(5) The applicant state-chartered banking institution meets
a satisfactory standard of compliance with federal and state
consumer compliance law and regulations as evidenced by its
most recent state or federal regulatory examination; and

(6) The applicant state-chartered banking institution meets
acceptable standards for investment in premises and fixed
assets as permitted by section thirteen, article four of this
chapter.

(k) Any party who is adversely affected by the order of the
board is entitled to judicial review thereof in the manner
provided in section four, article five, chapter twenty-nine-a of
this code. Any such party adversely affected by a final judg-
ment of a circuit court following judicial review as provided in
the foregoing sentence may seek review thereof by appeal to the
supreme court of appeals in the manner provided in article six,
chapter twenty-nine-a of this code.

(l) Pursuant to the resolution of its board of directors and
with the prior written approval of the commissioner, a state
banking institution may discontinue the operation of a branch
bank upon at least thirty days prior public notice given in such
form and manner as the commissioner prescribes.

(m) Any violation of any provision of this section is a
misdemeanor offense punishable by applicable penalties as
provided in section fifteen of this article.
§31A-8-12d. Expedited procedure for authorization of de novo branch banks.

(a) As an alternative to using the procedures established in subdivisions (g) through (j) of section twelve of this article, a banking institution desiring to establish a branch bank by de novo construction or lease may file a notice, containing information as prescribed by the commissioner, of its intent which must be received by the commissioner at least thirty-five days prior to the date on which the proposed branch will be established accompanied by a fee of two hundred fifty dollars. The commissioner must provide written notice of his or her acceptance or rejection of the branch notice prior to the expiration of the thirty-five day period. However, if the commissioner requests additional information from the branching institution, the period for the commissioner’s consideration of the notice shall be extended an additional fifteen days from the time the information requested is received by the commissioner.

(b) A state banking institution may not establish a branch bank under this section until the commissioner provides written approval of the notice for that branch bank. The commissioner’s approval or rejection of the notice must be accompanied by findings of fact on whether the applicant bank:

(1) Satisfies such reasonable and appropriate requirements as to sound financial condition as the commissioner or board, from time to time, may establish;

(2) Meets a satisfactory standard of compliance with federal and state community reinvestment act requirements as evidenced by its most recent state or federal examination;

(3) Meets a satisfactory standard of compliance with federal and state consumer compliance law and regulations as evidenced by its most recent state or federal regulatory examination; and
(4) Meets the acceptable standards for investment in premises and fixed assets as permitted by section thirteen, article four of this chapter.

(c) Any party who is adversely affected by an action of the commissioner taken pursuant to the criteria established by subsection (b) of this section may appeal within ten business days of the commissioner's decision to the board of banking and financial institutions which must, after holding a hearing pursuant to the provisions of subdivision (12), subsection (b), section two, article three of this chapter, affirm, reverse or modify the order of the commissioner. Any party who is adversely affected by an order of the board of banking and financial institutions issued pursuant to the provisions of this subsection is entitled to judicial review in the same manner as provided by the provisions of subsection (k), section twelve of this article.

ARTICLE 8E. INTERSTATE BRANCHING BY DE NOVO ENTRY AND ACQUISITION OF BRANCHES.

§31A-8E-3. Interstate branching by West Virginia state banks through de novo establishment or acquisition of branches in other states.

(a) Beginning on the thirty-first day of May, one thousand nine hundred ninety-seven, and pursuant to the procedures and standards established in either section twelve or section twelve-d, article eight of this chapter, any West Virginia state bank may establish and maintain a de novo branch or acquire a branch in a state other than West Virginia, if the new branch is in conformity with, and would be permitted under the laws of the state where the branch is to be located.

(b) A West Virginia state bank desiring to establish and maintain a branch in another state under this section shall file a notice on a form prescribed by the commissioner and pay the branch notice fee set forth in subsection (a), section twelve-d, article eight of this chapter.
CHAPTER 39

(S. B. 211 — By Senators Helmick, Ross, Minard, Fanning, Sharpe, Schoonover and Sprouse)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article six, chapter seven of said code; and to amend and reenact section four, article one, chapter twelve of said code, all relating to the inclusion of letters of credit issued by federal land banks, or federal loan banks, or such letters of credit approved by the state treasurer as permissible collateral security for bonds to be given by depositories of public funds.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers And Authority of The Governor, Secretary of State And Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

7. County Commissions and Officers.


CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.
ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-5. Deposit and disbursement of funds of commission; security for deposits; audits.

Except as provided in sections five-a and eleven-a of this article, all moneys of the commission from whatever source derived shall be paid to the treasurer of the state of West Virginia who shall not commingle the moneys, but shall deposit them to a special revenue fund to be known as the "state building commission fund". The moneys in the account shall be impressed with and subject to the lien or liens on the moneys in favor of the bondholders provided in the proceedings for issuance of bonds pursuant to this article. The moneys in the account shall be paid out on check of the treasurer on requisition of the chairman of the commission, or of such other person as the commission may authorize to make the requisition. All deposits of the moneys shall, if required by the treasurer or the commission, be secured by obligations of the United States, of the state of West Virginia, or of the commission, of a market value equal at all times to the amount of the deposit, or letters of credit of the federal land banks, or federal home loan banks, or other letters of credit approved by the treasurer, and all banking institutions are authorized to give such security for the deposits. The legislative auditor and his or her legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the commission, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other matters relating to its financial standing.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-2. Bond of depositories.

No such designation shall be binding on any county, nor shall any public money be deposited thereunder, until the banking institution designated shall execute bond with good and sufficient sureties, to be accepted and approved by the county commission, payable to the state of West Virginia, in a sum as
the county commission shall direct, and which shall not be less
than the maximum sum that shall be deposited in the depository
at any one time. The bond shall be executed by at least four
resident freeholders as sureties owning in the aggregate
unencumbered real estate having an assessed valuation thereon
equal to the penalty of the bond, or by a fidelity or indemnity
company authorized to do business within the state, satisfactory
to, and acceptable by the county commission, and having not
less than six hundred thousand dollars capital; and the bond
shall be conditioned for the receipt, safekeeping and payment
over of all money which may be deposited in or come under the
custody of the banking institution designated a county deposi-
tory under the provisions hereof, together with the interest
thereon at the rate specified by this article; and the bond shall
be further conditioned for the faithful performance, by the
banking institution so designated, of all the duties imposed by
this article upon a depository of public moneys: Provided, That
the clerk of the county commission shall keep a record of each
surety on all personal bonds given as hereinbefore provided for
and the clerk shall notify the county commission of every
recorded conveyance of real estate made by any surety on said
personal bond.

An action shall lie on the bond at the instance of the county
commission, or the sheriff, for the recovery of any money
deposited in the depository, upon failure or default of the
depository to fully and faithfully account for and pay over any
and all public moneys deposited by the sheriff and of all
interests earned and accrued thereon as required by this article.
A bond shall not be accepted by the county commission until it
shall have been submitted to the prosecuting attorney, and
certified by him or her to be in due and legal form, and con-
formable to the provisions of this article, which certificate shall
be indorsed thereon: Provided, That the county commission
may, in lieu of the bond provided for hereinbefore, accept as
security for money deposited as aforesaid, interest-bearing
securities of the United States, or of a state, county, district or
municipal corporation, or of the federal land banks, or indorsed
county and district warrants of the county in which the deposi-
tory is located, or letters of credit of the federal land banks, or federal home loan banks, or such other letters of credit approved by the treasurer; the face value of which securities shall not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which the securities are accepted; or the county commission may accept the securities as partial security to the extent of their face value for the money so deposited, and require bond for the remainder of the full amount hereinbefore specified, to be named in the bond, and in the bond so required, the acceptance of securities as partial security, and the extent thereof, shall be set forth. The hypothecation of the securities shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as depository as aforesaid. All the securities shall be delivered to or deposited for the account of the county commission, and withdrawal or substitution thereof may be permitted from time to time upon approval by the county commission by order of record, but the collateral security shall be released only by order of record of the county commission when satisfied that full and faithful accounting and payment of all the moneys has been made under the provisions hereof. In the event actual possession of the hypothecated securities are delivered to the county commission, it shall make ample provision for the safekeeping thereof and the interest thereon when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid. The county commission may permit the deposit under proper receipt of the securities with one or more banking institutions within or without the state of West Virginia and may contract with any institution for safekeeping and exchange of any hypothecated securities, and may prescribe the rules for handling and protecting the same.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§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 an
agency of the federal government, the state treasurer shall
require the depository to give a collaterally secured bond, in the
amount of not less than ten thousand dollars, payable to the
state of West Virginia, conditioned upon the prompt payment,
whenever lawfully required, of any state money, or part thereof,
that may be deposited with that depository, or of any accrued
interest on deposits. The bond shall be a continuous bond but
may be increased or decreased in amount or replaced by a new
bond with the approval of the state treasurer. The collateral
security for the bond shall consist of bonds of the United States,
or bonds or letters of credit of the federal land banks, of the
federal home loan banks, or bonds of the state of West Virginia
or of any county, district or municipality of this state, or other
bonds, letters of credit, or securities approved by the treasurer.
All bonds so secured are here designated as collaterally secured
bonds. Withdrawal or substitution of any collateral pledged as
security for the performance of the conditions of the bond may
be permitted with the approval in writing of the treasurer. All
depository bonds shall be recorded by the treasurer in a book
kept in his or her office for the purpose, and a copy of the
record, certified by the treasurer, shall be prima facie evidence
of the execution and contents of the bond in any suit or legal
proceeding. All collateral securities shall be delivered to or
deposited for the account of the treasurer of the state of West
Virginia and in the event said securities are delivered to the
treasurer, he or she shall furnish a receipt therefor to the owner
thereof. The treasurer and his or her bondsmen shall be liable
to any person for any loss by reason of the embezzlement or
misapplication of the securities by the treasurer or any of his or
her employees, and for the loss thereof due to his or her
negligence or the negligence of his or her employees; and the
securities shall be delivered to the owner thereof when liability
under the bond which they are pledged to secure has terminated.
The treasurer may permit the deposit under proper receipt of the
securities with one or more banking institutions within or
outside the state of West Virginia and may contract with any
institution for safekeeping and exchange of any collateral
securities and may prescribe the rules for handling and protect-
ing the collateral securities.
AN ACT to amend article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to requiring that all new buildings that are built and maintained with public funds to have sloped roofs in accordance with the current state building code.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-16. Sloped roofs required.

1 Notwithstanding any other provision of this code to the contrary, after the first day of June, one thousand nine hundred ninety-nine, any new building, which includes a roof, designed, constructed and maintained with public funds of the state, a county or a municipality shall have a roof of sufficient slope so that water will not accumulate into a pool on any area of the roof, in accordance with the current state building code as it relates to roofs and roof structures.
CHAPTER 41

(S. B. 521 — By Senators Prezioso and Edgell)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-h, relating to authorizing the adjutant general to establish morale, welfare and recreation facilities at Camp Dawson; authorizing the establishment of an enterprise; exempting sales of goods at the facilities from the consumer sales tax; authorizing the promulgation of regulations; limiting the use of the facilities to specific groups; and limiting the use of proceeds to Camp Dawson improvements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1H. MORALE, WELFARE AND RECREATION FACILITIES.

§15-1H-1. Definitions.

As used in this article:

1 (1) “Camp Dawson” means the state military reservation located near Kingwood, Preston County, West Virginia, and any training areas, ranges or facilities located on or about the reservation used for military purposes.
(2) "Morale, welfare and recreation facility" means any post exchange, canteen, barber shop, fitness center, snack bar, transient housing, billeting operation, laundry or similar facility, the purpose of which is to enhance the morale and welfare of military personnel.

(3) "Nonappropriated fund instrumentality" means an enterprise operated exclusively with funds derived from sales or user fees, which receives no legislative appropriations for its operations.

(4) "Nonappropriated fund employee" means an employee of a nonappropriated fund instrumentality, who is not an employee of the state.

§15-1H-2. Morale, welfare and recreation facilities upon Camp Dawson; nonappropriated fund instrumentalities.

(a) The adjutant general is authorized to establish morale, welfare and recreation facilities upon Camp Dawson as in his or her judgment may be necessary and proper for military purposes.

(b) Notwithstanding any other provision of this code to the contrary, the adjutant general is authorized to establish a nonappropriated fund instrumentality for the purpose of operating the morale, welfare and recreation facilities.

(c) A nonappropriated fund instrumentality established under this section may:

(1) Contract for goods and services;

(2) Hire employees under terms and conditions as it may negotiate, subject only to applicable state and federal labor laws; and

(3) Establish a system of bookkeeping, accounting and auditing procedures for the proper handling of funds derived from its operations.

(d) A nonappropriated fund instrumentality established under this section is solely responsible for its operations. No
§15-1H-3. Regulations.

The adjutant general shall promulgate regulations for the operation of morale, welfare and recreation facilities and any nonappropriated fund instrumentality established under this article.

§15-1H-4. Use of funds.

All proceeds derived from the operation of the morale, welfare and recreation facilities on Camp Dawson shall, after the payment of operating expenses, notwithstanding any provision of this code to the contrary, be used exclusively for the improvement of Camp Dawson.

§15-1H-5. Sales to be tax exempt.

Any sales of goods made by a canteen or snack bar facility on a state reservation or state training facility under the jurisdiction of the adjutant general are exempt from the payment of state consumers sales taxes pursuant to the provisions of article fifteen, chapter eleven of this code.

§15-1H-6. Limitation on sales.

Use of the morale, welfare and recreation facilities provided for in this article are limited to:

(1) Active and reserve component members of the armed forces of the United States;
(2) Persons retired from the armed forces of the United States;
(3) Dependents of service members or retirees;
(4) Civilian employees of the department of defense; and
(5) Employees of the adjutant general’s department.
AN ACT to amend and reenact article two-d, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article ten of said chapter, all relating to providing safety and security at the capitol complex and other state facilities; setting forth legislative findings; establishing division of protective services; purpose and continuation of the division; providing for a director of the division and establishing qualifications therefor; establishing powers and duties of director and members; legislative rules; interagency agreement; status report; oath of office; applicability of article; and authorizing division to cooperate with other law-enforcement agencies.

Be it enacted by the Legislature of West Virginia:

That article two-d, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article ten of said chapter be amended and reenacted, all to read as follows:

Article

2D. Division of Protective Services.


ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-1. Legislative findings.

§15-2D-2. Division established; purpose; continuation; appointment and qualifications of director.

§15-2D-3. Duties and powers of the director and members.

§15-2D-4. Oath of office.

§15-2D-5. Application of article.

§15-2D-1. Legislative findings.
The Legislature finds and declares that citizens, state employees and visitors who park, attend functions, conduct business or work at the capitol complex and other state facilities should be safe and secure. The Legislature further finds and declares that it is in the public interest to establish a division within the department of military affairs and public safety for the purpose of providing safety and security to individuals who visit, conduct business or work at the capitol complex and other state facilities.

§15-2D-2. Division established; purpose; continuation; appointment and qualifications of director.

(a) The state facilities protection division within the department of military affairs and public safety shall hereafter be designated the division of protective services. The purpose of the division is to provide safety and security at the capitol complex and other state facilities. Pursuant to the provisions of article ten, chapter four of this code, the division shall continue to exist until the first day of July, two thousand two.

(b) The governor shall appoint, with the advice and consent of the Senate, the director of the division whose qualifications shall include at least ten years of service as a law-enforcement officer with at least three years in a supervisory law-enforcement position, the successful completion of supervisory and management training, and the professional training required for police officers at the West Virginia state police academy or an equivalent professional law-enforcement training at another state, federal or United States military institution.

§15-2D-3. Duties and powers of the director and members.

(a) The director is responsible for the control and supervision of the division. The director and any member of the division specified by the director may carry designated weapons and have the same powers of arrest and law enforcement in Kanawha county as members of the West Virginia state police as set forth in subsections (b) and (d), section twelve, article two of this chapter.

(b) The director may:

(1) Employ necessary personnel, all of whom shall be
(2) Contract for security and other services;

(3) Purchase equipment as necessary to maintain security at the capitol complex and other state facilities as may be determined by the secretary of the department of military affairs and public safety;

(4) Establish and provide standard uniforms, arms, weapons and other enforcement equipment authorized for use by members of the division and shall provide for the periodic inspection of the uniforms and equipment. All uniforms, arms, weapons and other property furnished to members of the division by the state of West Virginia is and remains the property of the state;

(5) Appoint security officers to provide security on premises owned or leased by the state of West Virginia;

(6) Upon request by the superintendent of the West Virginia state police, provide security for the speaker of the West Virginia House of Delegates, the president of the West Virginia Senate, the governor, or a justice of the West Virginia supreme court of appeals;

(7) Gather information from a broad base of employees at and visitors to the capitol complex to determine their security needs and develop a comprehensive plan to maintain and improve security at the capitol complex based upon those needs; and

(8) Assess safety and security needs and make recommendations for safety and security at any proposed or existing state facility as determined by the secretary of the department of military affairs and public safety, upon request of the secretary of the department to which the facility is or will be assigned.

(c) The director shall:
(1) On or before the first day of July, one thousand nine hundred ninety-nine, propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code. The rules shall, at a minimum:

(A) Establish qualification, training and certification requirements for members of the division, which shall include the basic academy training standards established by the governor's committee on crime, delinquency and prevention;

(B) Establish ranks and the duties of officers within the membership of the division; and

(C) Establish a personnel policy and grievance procedure.

(2) On or before the first day of July, one thousand nine hundred ninety-nine, enter into an interagency agreement with the secretary of the department of military affairs and public safety and the secretary of the department of administration, which delineates their respective rights and authorities under any contracts or subcontracts for security personnel. A copy of the interagency agreement shall be delivered to the governor, the president of the West Virginia Senate and the speaker of the West Virginia House of Delegates, and a copy shall be filed in the office of the secretary of state and shall be a public record.

(3) Deliver a monthly status report to the speaker of the West Virginia House of Delegates and the president of the West Virginia Senate.

§15-2D-4. Oath of office.

(a) The director and each member of the division shall take and subscribe to an oath of office in conformity with article four, section five of the Constitution of the state of West Virginia.

(b) Any member serving on the effective date of this article shall take and subscribe to the oath within thirty days of the effective date of this section. Any member hired subsequent to the effective date of this section shall take and subscribe to the oath before entering upon the discharge of his or her duties. All oaths shall be filed and preserved in the office of the division of protective services.
§15-2D-5. Application of article.

(a) The provisions of this article shall not apply to the West Virginia Senate, the West Virginia House of Delegates, the West Virginia Legislature or the West Virginia supreme court of appeals, or to any part of the capitol complex under the supervision or control of the West Virginia Senate, the West Virginia House of Delegates, the West Virginia Legislature or the West Virginia supreme court of appeals, unless agreed to by the president of the West Virginia Senate, the speaker of the West Virginia House of Delegates, or jointly by the president of the West Virginia Senate and speaker of the West Virginia House of Delegates, or by order of the West Virginia supreme court of appeals, and then only to the extent that the president of the West Virginia Senate, the speaker of the West Virginia House of Delegates or the West Virginia supreme court of appeals agrees to such application, and then only to that part of the capitol complex under the supervision or control of the respective houses of the Legislature, individually or jointly, or of the court.

(b) The provisions of this article shall not limit or eliminate the jurisdiction of law-enforcement agencies at any state facility or the duty of law-enforcement agencies to respond to calls at any state facility.

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-3. Definitions.

In this article, unless a different meaning plainly is required:

(1) "Criminal justice enforcement personnel" means those persons within the state criminal justice system who are actually employed as members of the division of public safety, members of the division of protective services, state conservation officers, chiefs of police and police of incorporated municipalities, and county sheriffs and their deputies, and whose primary duties are the investigation of crime and the apprehension of criminals.
“Head of a law-enforcement agency” means the superintendent of the division of public safety, the director of the division of protective services, the chief conservation officer of the division of natural resources, a chief of police of an incorporated municipality or a county sheriff.

CHAPTER 43

(Com. Sub. for H. B. 2004 — By Delegate Amores, Spencer, Capito and Ashley)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections seven and eight; to amend and reenact section five, article five-b of said chapter; and to further amend said article by adding thereto a new section, designated section nineteen, all relating to cemetery contracts generally; itemization of costs and services in a cemetery contract; and abandoned interment rights.

Be it enacted by the Legislature of West Virginia:

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

Article
5. Cemeteries.
5B. Preneed Cemetery Company Property, Goods and Services; Related Contracts.

ARTICLE 5. CEMETERIES.

§35-5-7. Requirements for cemetery company contracts.
§35-5-8. Abandoned interment rights.
§35-5-7. Requirements for cemetery company contracts.

(a) Any cemetery company contract shall:

1. Be written in clear understandable language and printed in easy-to-read type, size and style;

2. Include the name and address of the seller, the contract buyer and the person for whom the contract is bought if other than the contract buyer;

3. Contain a complete description of the property, goods or services bought, including an itemization of the retail price of the property, goods or services bought and, specifically, the retail price of the monument, marker, installation, foundation, the opening and closing of the grave site and any other charges. Failure to provide this information is a violation of subsection (f), section one hundred two, article six, chapter forty-six-a of this code, relating to unfair methods of competition and unfair or deceptive acts or practices;

4. Clearly disclose whether the retail price of the property, goods or services bought is guaranteed;

5. Provide that when the particular property, goods or services specified in the contract are unavailable at the time of delivery, the seller shall furnish property, goods or services similar in size, style and equal in quality of material and workmanship, and that the representative of the deceased has the right to reasonably choose the property, goods or services to be substituted; and

6. Be executed in duplicate and a signed copy given to the buyer.

(b) For purposes of this article, the following words and phrases have the following meanings:

1. “Cemetery company” or “seller” means any person, partnership, firm or corporation engaged in the business of operating a cemetery or selling property, goods or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being.
(2) "Cemetery company contract" means a contract for the
sale of real and personal property, goods or services used in
connection with interring or disposing of the remains or
commemorating the memory of a deceased human being.

§35-5-8. Abandoned interment rights.

(a) A cemetery company contract may include a provision
whereby interment rights that are not used for a period of
seventy-five years or more shall be deemed abandoned if
unclaimed and shall revert to the cemetery company if the
procedures in subsection (b) are followed.

(b) (1) Prior to deeming an owner's interment rights
abandoned, a cemetery company shall send notice of such intent
to the owner of record, his or her heirs or assigns or any next of
kin, by a registered letter, return receipt requested, at the
owner's last known address requesting the owner's current
address or the names and addresses of the heirs or assigns of the
owner of record. If a written response is received, then the
records of the cemetery company shall be amended accordingly
and the interment rights shall be maintained for seventy-five
years from the date the written response was received by the
cemetery company.

(2) If the registered letter is undeliverable or if no response
is received within thirty days after the registered letter was sent,
then the cemetery company shall advertise a notice of its intent
to declare the interment rights abandoned in a newspaper of
general circulation in the county where the cemetery is located
and also in the county of the last known address of the owner of
record, which notice shall contain the name and business
address of the cemetery and the name of the last owner of
record. If no response to the newspaper notice is made on
behalf of the owner of record or his or her heirs or assigns
within one hundred twenty days, then the interment rights shall
be deemed abandoned and shall revert to the cemetery com-
pany. Upon the reversion of interment rights to the cemetery
company, the cemetery company shall amend its records
accordingly and maintain these records for thirty years. If a
written response is received, then the records of the cemetery company shall be amended accordingly and the interment rights shall be maintained for seventy-five years from the date the written response was received by the cemetery company.

(c) If, within thirty years after the interment rights have been declared abandoned, the owner of record or his or her heirs or assigns can prove to a cemetery company or a court of competent jurisdiction that he or she would be entitled to the interment rights of the owner of record if those rights had not reverted to the cemetery company as provided for by this section, then the cemetery company shall, at no cost, provide a right of interment similar to the one that was deemed abandoned.

(d) The provisions of this section shall take effect on the first day of July, one thousand nine hundred ninety-nine, and shall not be construed to apply retroactively.

ARTICLE 5B. PRENEED CEMETERY COMPANY PROPERTY, GOODS AND SERVICES; RELATED CONTRACTS.

§35-5B-5. Requirements for preneed cemetery company contracts.

§35-5B-19. Abandoned interment rights.

§35-5B-5. Requirements for preneed cemetery company contracts.

1 A preneed cemetery company contract shall:

2 (1) Be written in clear understandable language and printed in easy-to-read type, size and style;

3 (2) Include the name and address of the seller, the contract buyer and the person for whom the contract is bought if other than the contract buyer;

4 (3) Contain a complete description of the property, goods or services bought, including an itemization of the retail price of the property, goods or services bought and, specifically, the retail price of the monument, marker, installation, foundation, opening and closing of the grave site, and any other charges.

5 Failure to provide this information is a violation of subsection (f), section one hundred two, article six, chapter forty-six-a of
this code, relating to unfair methods of competition and unfair
or deceptive acts or practices;
(4) Clearly disclose whether the price of the property, goods
or services bought is guaranteed;
(5) Provide that if the particular property, goods or services
specified in the contract are unavailable at the time of delivery,
the seller shall furnish property, goods or services similar in
size and style and equal in quality of material and workmanship,
and that the representative of the deceased has the right to
reasonably choose the property, goods or services to be
substituted; and
(6) Be executed in duplicate and a signed copy given to the
buyer.
§35-5B-19. Abandoned interment rights.
(a) A preneed cemetery company contract may include a
provision whereby interment rights that are not used for a
period of seventy-five years or more shall be deemed aban-
doned if unclaimed and shall revert to the cemetery company if
the procedures in subsection (b) are followed.
(b) (1) Prior to deeming an owner’s interment rights
abandoned, a cemetery company shall send notice of such intent
to the owner of record, his or her heirs or assigns or any next of
kin, by registered letter, return receipt requested, at the owner’s
last known address requesting the owner’s current address or
the names and addresses of the heirs or assigns of the owner of
record. If a written response is received, then the records of the
cemetery company shall be amended accordingly and the
interment rights shall be maintained for seventy-five years from
the date the written response was received by the cemetery
company.
(2) If the registered letter is undeliverable or if no response
is received within thirty days after the registered letter was sent,
then the cemetery company shall advertise a notice of its intent
to declare the interment rights abandoned in a newspaper of
general circulation in the county where the cemetery is located.
and also in the county of the last known address of the owner of record, which notice shall contain the name and business address of the cemetery and the name of the last owner of record. If no response to the newspaper notice is made on behalf of the owner of record or his or her heirs or assigns within one hundred twenty days, then the interment rights shall be deemed abandoned and shall revert to the cemetery company. Upon the reversion of the interment rights to the cemetery company, the cemetery company shall amend its records accordingly and maintain these records for thirty years. If a written response is received, then the records of the cemetery company shall be amended accordingly and the interment rights shall be maintained for seventy-five years from the date the written response was received by the cemetery company.

(c) If, within thirty years after the interment rights have been declared abandoned, the owner of record or his or her heirs or assigns can prove to a cemetery company or a court of competent jurisdiction that he or she would be entitled to the interment rights of the owner of record if those rights had not reverted to the cemetery company as provided for by this section, then the cemetery company shall, at no cost, provide a right of interment similar to the one that was deemed abandoned.

(d) The provisions of this section shall take effect on the first day of July, one thousand nine hundred ninety-nine, and shall not be construed to apply retroactively.

CHAPTER 44

(Com. Sub. for S. B. 600 — By Senator Plymale)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]
thirty-one, as amended, relating to recognizing the right of a child born out of wedlock to inherit from his or her mother and father; means of establishing paternity; and exempting situations where the child has been adopted by another male or where the putative father has expressly disinherited the child.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DESCENT.

§42-1-5. From whom children born out of wedlock inherit.

1 (a) Children born out of wedlock shall be capable of inheriting and transmitting inheritance on the part of their mother and father.

2 (b) Prior to the death of the father, paternity shall be established by:

3 (1) Acknowledgment that he is the child's father;

4 (2) Adjudication on the merits pursuant to the provisions of section four, article six, chapter forty-eight-a of this code; or

5 (3) By order of a court of competent jurisdiction issued in another state.

6 (c) After the death of the father, paternity shall be established if, after a hearing on the merits, the court shall find, by clear and convincing evidence that the man is the father of the child. The civil action shall be filed in the circuit court of the county where the administration of the decedent's estate has been filed or could be filed:

7 (1) Within six months of the date of the final order of the county commission admitting the decedent's will to probate or commencing intestate administration of the estate; or

8 (2) If none of the above apply, within six months from the date of decedent's death.
(d) Any putative child who at the time of the decedent’s
death is under the age of eighteen years, a convict or a mentally
incapacitated person may file such civil action within six
months after he or she becomes of age or the disability ceases.

(e) The provisions of this section do not apply where the
putative child has been lawfully adopted by another man and
stands to inherit property or assets through his adopted father.

(f) The provisions of this section do not apply where the
father or putative father has expressly disinherited the child in
a provision of his will.

CHAPTER 45
(Com. Sub. for S. B. 678 — By Senator Love)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter
forty-nine of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to child welfare services;
and redefining the term “legal guardianship” for purposes of
abuse and neglect proceedings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-3. Definitions relating to abuse and neglect.

1 (a) “Abused child” means a child whose health or welfare
is harmed or threatened by:

3 (1) A parent, guardian or custodian who knowingly or
intentionally inflicts, attempts to inflict or knowingly allows
another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home; or

(2) Sexual abuse or sexual exploitation; or

(3) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section sixteen, article four, chapter forty-eight of this code.

In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(b) “Abusing parent” means a parent, guardian or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.

(c) “Child abuse and neglect” or “child abuse or neglect” means physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment or maltreatment of a child by a parent, guardian or custodian who is responsible for the child’s welfare, under circumstances which harm or threaten the health and welfare of the child.

(d) “Child abuse and neglect services” means social services which are directed toward:

(1) Protecting and promoting the welfare of children who are abused or neglected;

(2) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(3) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(4) In cases where children have been removed from their families, providing services to the children and the families so as to reunify such children with their families;
(5) Placing children in suitable adoptive homes when reunifying the children with their families is not possible or appropriate; and

(6) Assuring the adequate care of children who have been placed in the custody of the department or third parties.

(e) "Imminent danger to the physical well-being of the child" means an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:

(1) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;

(2) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;

(3) Nutritional deprivation;

(4) Abandonment by the parent, guardian or custodian;

(5) Inadequate treatment of serious illness or disease;

(6) Substantial emotional injury inflicted by a parent, guardian or custodian; or

(7) Sale or attempted sale of the child by the parent, guardian or custodian.

(f) "Legal guardianship" means the permanent relationship between a child and caretaker, established by order of the circuit court having jurisdiction over the child, pursuant to the provisions of chapters forty-eight and forty-nine of this code.

(g) "Multidisciplinary team" means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to,
medical, educational, child care and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children. "Community team" means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and may consist of several multidisciplinary teams with different functions.

(h) (1) "Neglected child" means a child:

(A) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(B) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;

(2) "Neglected child" does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

(i) "Parenting skills" means a parent's competencies in providing physical care, protection, supervision and psychological support appropriate to a child's age and state of development.

(j) "Sexual abuse" means:

(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:
(i) Sexual intercourse;
(ii) Sexual intrusion; or
(iii) Sexual contact;

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;
(ii) Sexual intrusion; or
(iii) Sexual contact;

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.

(k) "Sexual contact" means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(l) "Sexual exploitation" means an act whereby:

(1) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code;

(2) A parent, guardian or custodian persuades, induces, entices or coerces a child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her sex organs under circumstances in which the parent, guardian or custodian knows such display is likely to be observed by others who would be affronted or alarmed.
(m) "Sexual intercourse" means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(n) "Sexual intrusion" means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(o) "Parental rights" means any and all rights and duties regarding a parent to a minor child, including, but not limited to, custodial rights and visitational rights and rights to participate in the decisions affecting a minor child.

(p) "Placement" means any temporary or permanent placement of a child who is in the custody of the state in any foster home, group home or other facility or residence.

(q) "Serious physical abuse" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(r) "Siblings" means children who have at least one biological parent in common or who have been legally adopted by the same parents or parent.

(s) "Time-limited reunification services" means individual, group, and family counseling, inpatient, residential or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care and therapeutic services for families, including crisis nurseries and transportation to or from any such services, provided during fifteen of the most recent twenty-two months a child has been in foster care, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is sixty days after the child is removed from home.
CHAPTER 46

(Com. Sub. for S. B. 479 — By Senators Walker, Bailey, Fanning and Kessler)

[Passed March 10, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five, relating to limiting judicial imposition to require acceptance of children by child welfare agencies in excess of the facility's licensed capacity; authorizing facilities to refuse a child under certain circumstances; and authorizing facilities to decline to make accommodations when at capacity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-5. Limitation on out of home placement.

1 Before any child may be directed for placement in a particular facility or for services of a child welfare agency licensed by the department, a court shall make inquiry into the bed space of the facility available to accommodate additional children and the ability of the child welfare agency to meet the particular needs of the child. A court shall not order the placement of a child in a particular facility if it has reached its licensed capacity. Further, a child welfare agency is not required to accept placement of a child at a particular facility if the facility remains at licensed capacity or is unable to meet the particular needs of the child. A child welfare agency is not
required to make special dispensation or accommodation, reorganize existing child placement, or initiate early release of children in placement to reduce actual occupancy at the facility.

CHAPTER 47

(Com. Sub. for H. B. 2765 — By Delegates Warner and Pettit)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions from the classified service and additions to the classified service; removing county road supervisors from positions exempted from coverage under the classified service and exempting present county road supervisors from testing and providing for retention of their positions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-4. Classified-exempt service; additions to classified service; exemptions.

1 (a) The classified-exempt service includes all positions included in the classified-exempt service on the effective date of this article.

4 (b) Except for the period commencing on the first day of July, one thousand nine hundred ninety-two, and ending on the first Monday after the second Wednesday of the following January and except for the same periods commencing in the year one thousand nine hundred ninety-six, and in each fourth
9 year thereafter, the governor may, by executive order, with the
10 written consent of the state personnel board and the appointing
11 authority concerned, add to the list of positions in the classified
12 service, but such additions shall not include any positions
13 specifically exempted from coverage as provided in this
14 section.
15
16 (c) The following offices and positions are exempt from
17 coverage under the classified service:
18
19 (1) All judges, officers and employees of the judiciary;
20
21 (2) All members, officers and employees of the Legislature;
22
23 (3) All officers elected by popular vote and employees of
24 the officer;
25
26 (4) All secretaries of departments and employees within the
27 office of a secretary;
28
29 (5) Members of boards and commissions and heads of
30 departments appointed by the governor or such heads of
31 departments selected by commissions or boards when expressly
32 exempt by law or board order;
33
34 (6) Excluding the policy-making positions in an agency,
35 one principal assistant or deputy and one private secretary for
36 each board or commission or head of a department elected or
37 appointed by the governor or Legislature;
38
39 (7) All policy-making positions;
40
41 (8) Patients or inmates employed in state institutions;
42
43 (9) Persons employed in a professional or scientific
44 capacity to make or conduct a temporary and special inquiry,
45 investigation or examination on behalf of the Legislature or a
46 committee thereof, an executive department or by authority of
47 the governor;
48
49 (10) All employees of the office of the governor, including
50 all employees assigned to the executive mansion;
51
52 (11) Part-time professional personnel engaged in profes-
53 sional services without administrative duties and personnel
54 employed for ninety days or less during a working year;
(12) Members and employees of the board of trustees and board of directors or their successor agencies;

(13) Uniformed personnel of the state police; and

(14) Seasonal employees in the state forests, parks, and recreational areas working less than 1,733 hours per calendar year: Provided, That notwithstanding any provision of law to the contrary, seasonal employees shall not be considered full-time employees.

(d) The Legislature finds that the holding of political beliefs and party commitments consistent or compatible with those of the governor contributes in an essential way to the effective performance of and is an appropriate requirement for occupying certain offices or positions in state government, such as the secretaries of departments and the employees within their offices, the heads of agencies appointed by the governor and, for each such head of agency, a private secretary and one principal assistant or deputy, all employees of the office of the governor including all employees assigned to the executive mansion, as well as any persons appointed by the governor to fill policy-making positions, in that such offices or positions are confidential in character and require their holders to act as advisors to the governor or the governor's appointees, to formulate and implement the policies and goals of the governor or the governor's appointees, or to help the governor or the governor's appointees communicate with and explain their policies and views to the public, the Legislature and the press.

(e) All county road supervisor positions shall be covered under the classified service effective the first day of July, one thousand nine hundred ninety-nine: Provided, That any person employed as a county road supervisor on the effective date of this section, shall not be required to take or pass a qualifying or competitive examination upon or as a condition of becoming a classified service employee. All county road supervisors who become classified service employees pursuant to this subsection who are severed, removed or terminated in his or her employment must be severed, removed or terminated as if the person was a classified service employee.
CHAPTER 48

(Com. Sub. for H. B. 2262 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certain employee rights; qualifications for certain promotions; and payment of severance pay.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE COMMISSION.

§29-6-10. Rules of division.

1 The board shall have the authority to promulgate, amend or repeal rules, according to chapter twenty-nine-a of this code, to implement the provisions of this article:

2 (1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service and a position classification plan for all positions in the classified-exempt service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. Except for persons employed by the governing boards of higher education, all persons receiving compensation as a wage or salary, funded either in part or in whole by the state, are included in either the position classification plan for
classified service or classified-exempt service. After each such
classification plan has been approved by the board, the director
shall allocate the position of every employee in the classified
service to one of the classes in the classified plan and the
position of every employee in the classified-exempt service to
one of the positions in the classified-exempt plan. Any em-
ployee affected by the allocation of a position to a class shall,
after filing with the director of personnel a written request for
reconsideration thereof in such manner and form as the director
may prescribe, be given a reasonable opportunity to be heard
thereon by the director. The interested appointing authority
shall be given like opportunity to be heard.

(2) For a pay plan for all employees in the classified
service, after consultation with appointing authorities and the
state fiscal officers, and after a public hearing held by the
board. Such pay plan shall become effective only after it has
been approved by the governor after submission to him by the
board. Amendments to the pay plan may be made in the same
manner. Each employee shall be paid at one of the rates set
forth in the pay plan for the class of position in which he is
employed. The principle of equal pay for equal work in the
several agencies of the state government shall be followed in
the pay plan as established hereby.

(3) For open competitive examinations to test the relative
fitness of applicants for the respective positions in the classified
service. Such examinations need not be held until after the rules
have been adopted, the service classified and a pay plan
established, but shall be held not later than one year after this
article takes effect. Such examinations shall be announced
publicly at least fifteen days in advance of the date fixed for the
filing of applications therefor, and may be advertised through
the press, radio and other media. The director may, however, in
his or her discretion, continue to receive applications and
examine candidates long enough to assure a sufficient number
of eligibles to meet the needs of the service and may add the
names of successful candidates to existing eligible lists in
accordance with their respective ratings.
An additional five points shall be awarded to the score of any examination successfully completed by a veteran. A disabled veteran shall be entitled to an additional ten points, rather than five points as aforesaid, upon successful completion of any examination.

(4) For promotions within the classified service which shall give appropriate consideration to the applicant’s qualifications, record of performance, seniority and his or her score on a written examination, when such examination is practicable. An advancement in rank or grade or an increase in salary beyond the maximum fixed for the class shall constitute a promotion. When any benefit such as a promotion, wage increase or transfer is to be awarded, or when a withdrawal of a benefit such as a reduction in pay, a layoff or job termination is to be made, and a choice is required between two or more employees in the classified service as to who will receive the benefit or have the benefit withdrawn, and if some or all of the eligible employees have substantially equal or similar qualifications, consideration shall be given to the level of seniority of each of the respective employees as a factor in determining which of the employees will receive the benefit or have the benefit withdrawn, as the case may be. When an employee classified in a secretarial or clerical position has, irrespective of job classification, actual job experience related to the qualifications for a managerial or supervisory position, the division shall consider the experience as qualifying experience for the position. The division in its classification plan may, for designated classifications, permit substitution of qualifying experience for specific educational or training requirements at a rate determined by the division.

(5) For layoffs by classification for reason of lack of funds or work, or abolition of a position, or material changes in duties or organization, or any loss of position because of the provisions of this subdivision and for recall of employees so laid off, consideration shall be given to an employee’s seniority as measured by permanent employment in the classified service or a state agency. In the event that the agency wishes to lay off a more senior employee, the agency must demonstrate that the
90 senior employee cannot perform any other job duties held by
91 less senior employees within that agency in the job class or any
92 other equivalent or lower job class for which the senior em-
93 ployee is qualified: Provided, That if an employee refuses to
94 accept a position in a lower job class, such employee shall
95 retain all rights of recall as hereinafter provided.

96 (6) For recall of employees, recall shall be by reverse order
97 of layoff to any job class that the employee has previously held
98 or a lower class in the series within the agency as that job class
99 becomes vacant. An employee will retain his or her place on the
100 recall list for the same period of time as his or her seniority on
101 the date of his or her layoff or for a period of two years,
whichever is less. No new employees shall be hired for any
102 vacancy in his or her job class or in a lower job class in the
103 series until all eligible employees on layoff are given the
104 opportunity to refuse that job class. An employee shall be
105 recalled onto jobs within the county wherein his or her last
106 place of employment is located or within a county contiguous
107 thereto. Any laid-off employee who is eligible for a vacant
109 position shall be notified by certified mail of the vacancy. It
110 shall be the responsibility of the employee to notify the agency
111 of any change in his or her address.

112 Notwithstanding any other provision of the code to the
113 contrary, except for the provisions of section seven, article two,
114 chapter five-b of this code, when filling vacancies at state
115 agencies the directors of state agencies shall, for a period of
116 twelve months after the layoff of a permanent classified
117 employee in another agency, give preference to qualified
118 permanent classified employees based on seniority and fitness
119 over all but existing employees of the agency or its facilities:
120 Provided, That employment of these persons who are qualified
121 and who were permanently employed immediately prior to their
122 layoff shall not supersede the recall rights of employees who
123 have been laid off in such agency or facility.

124 (7) For the establishment of eligible lists for appointment
125 and promotion within the classified service, upon which lists
126 shall be placed the names of successful candidates in the order
of their relative excellence in the respective examinations. Eligibility for appointment from any such list shall continue not longer than three years. An appointing authority shall make his selection from the top ten names on the appropriate lists of eligibles, or may choose any person scoring at or above the ninetieth percentile on the examination.

For the establishment of eligible lists for preference as provided in subdivision (6) of this section, a list shall be provided according to seniority. An appointed authority shall make the selection of the most senior qualified person: Provided, That eligibility for appointment from any such list shall continue not longer than one year and shall cease immediately upon appointment to a classified position.

(8) For the rejection of candidates or eligibles within the classified service who fail to comply with reasonable requirements in regard to such factors as age, physical condition, character, training and experience who are addicted to alcohol or narcotics or who have attempted any deception or fraud in connection with an examination.

(9) For a period of probation not to exceed one year before appointment or promotion may be made complete within the classified service.

(10) For provisional employment without competitive examination within the classified service when there is no appropriate eligible list available. No such provisional employment may continue longer than six months, nor shall successive provisional appointments be allowed, except during the first year after the effective date of this article, in order to avoid stoppage of orderly conduct of the business of the state.

(11) For keeping records of performance of all employees in the classified service, which service records may be considered in determining salary increases and decreases provided in the pay plan; as a factor in promotion tests; as a factor in determining the order of layoffs because of lack of funds or work and in reinstatement; and as a factor in demotions, discharges and transfers.
(12) For discharge or reduction in rank or grade only for cause of employees in the classified service. Discharge or reduction of these employees shall take place only after the person to be discharged or reduced has been presented with the reasons for such discharge or reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the appointing authority or his or her deputy: Provided, That upon an involuntary discharge for cause, the employer may require immediate separation from the workplace, or the employee may elect immediate separation. If separation is required by the employer in lieu of any advance notice of discharge, or if immediate separation is elected by an employee who receives notice of an involuntary discharge for cause, the employee is entitled to receive severance pay attributable to time the employee otherwise would have worked, up to a maximum of fifteen calendar days following separation. Receipt of severance pay does not affect any other right to which the employee is entitled with respect to the discharge. The statement of reasons and the reply shall be filed as a public record with the director. Notwithstanding the foregoing provisions of this subdivision, no permanent employee shall be discharged from the classified service for absenteeism upon using all entitlement to annual leave and sick leave when such use has been due to illness or injury as verified by a physician's certification or for other extenuating circumstances beyond the employee's control unless his or her disability is of such a nature as to permanently incapacitate him or her from the performance of the duties of his or her position. Upon exhaustion of annual leave and sick leave credits for the reasons specified herein and with certification by a physician that the employee is unable to perform his or her duties, a permanent employee shall be granted a leave of absence without pay for a period not to exceed six months if such employee is not permanently unable to satisfactorily perform the duties of his or her position.

(13) For such other rules and administrative regulations, not inconsistent with this article, as may be proper and necessary for its enforcement.
(14) The board shall review and approve by rules the establishment of all classified-exempt positions to assure consistent interpretation of the provisions of this article.

The provisions of this section are subject to any modifications contained in chapter five-f of this code. The board may include in the rules provided for in this article such provisions as are necessary to conform to regulations and standards of any federal agency governing the receipt and use of federal grants-in-aid by any state agency, anything in this article to the contrary notwithstanding. The board and the director shall see that rules and practices meeting such standards are in effect continuously after the effective date of this article.

CHAPTER 49

(Com. Sub. for H. B. 2682 — By Delegates Kelley, Beane, Evans, Compton and Hall)

[Passed March 12, 1999; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the adjutant general; board of directors of the state college system; board of trustees of the university system of West Virginia; department of agriculture; department of health and human resources; division of corrections; division of environmental protection; division of highways; division of juvenile services; division of labor; division of motor vehicles; division of natural resources; public service commission; regional jail and correctional facility authority; state rail authority; supreme court of appeals; and West Virginia racing commission to be moral obligations of the state and directing payment thereof.
The Legislature has considered the findings of fact and recommendations reported to it by the court of claims concerning various claims against the state and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Adjutant General:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Steven Charles Adkins ........... $ 510.00
(2) Bernard T. Corley ................ $ 1,400.00
(3) James B. Ramsey .................. $ 1,400.00

(b) Claim against the Board of Directors of the State College System:

(TO BE PAID FROM SPECIAL REVENUE FUND-ACCOUNT NO. 4423)

(1) Louis I. Bonasso, dba Colonial Village $ 14,935.99

(c) Claim against the Board of Trustees of the University System of WV:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Nick Hunter ......................... $ 200.00

(d) Claim against the Department of Agriculture:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) US Department of Agriculture ........ $ 17,453.78

(e) Claims against the Department of Health and Human Resources:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Laboratory Corporation of America Holdings ...................... $ 129,900.00
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<tr>
<th>Claim Number</th>
<th>Name of Party</th>
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<td>35</td>
<td>(3) Olympic Center - Preston, Inc.</td>
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<td>37</td>
<td>(f) <strong>Claims against the Division of Corrections:</strong></td>
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<td>39</td>
<td>(1) Alloy Welding Centre Limited</td>
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<td><em>(g) Claim against the Division of Environmental Protection:</em></td>
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<td><em>(h) Claims against the Division of Highways:</em></td>
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<td>(10) Tama Dimmick</td>
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<td>Charles and Crystal Meade</td>
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<td>113</td>
<td>(37) Roger K. and Geraldine S. Ross</td>
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<td>(39) Sheri L. Sayre</td>
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<td>(46) Cindy Terry</td>
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<td>(47) James R. Toothman</td>
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<td>(48) Geraldine Whitman</td>
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<td>(49) John G. and Carol L. Wolfe</td>
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<td>(50) Karen Sue Wymer</td>
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<td>127</td>
<td>(51) Randy E. Yost</td>
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<td>128</td>
<td>(52) David N. Dickens and</td>
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<tr>
<td>129</td>
<td>Jennifer L. Dickens</td>
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<td>(TO BE PAID FROM INDUSTRIAL ACCESS ROAD FUND-</td>
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<td>130</td>
<td>ACCOUNT NO. 9040 0803 1999 099 025)</td>
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<td>132</td>
<td>(53) WV Development Office</td>
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(i) **Claims against the Division of Juvenile Services:**

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<td>135</td>
<td>(1) Benwood Medical Clinic</td>
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<tr>
<td>136</td>
<td>(2) Bluefield Regional Medical Center</td>
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<td>(3) Camden Clark Memorial Hospital</td>
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<td>(4) City Hospital, Inc.</td>
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<td>(5) Fred J. Krieg and Associates</td>
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<td>Claimant</td>
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<tr>
<td>140</td>
<td>(6) J.D. Hissem, DDS</td>
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<td>141</td>
<td>(7) Kanawha Valley Radiologists, Inc.</td>
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<tr>
<td>142</td>
<td>(8) Martinsburg Internal Medicine Associates, Inc.</td>
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<td>(9) Martinsburg Radiology Associates</td>
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<td>(10) Parkersburg Radiology Services, Inc.</td>
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<td>145</td>
<td>(11) Pitney Bowes</td>
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<td>146</td>
<td>(12) Superior Medical Equipment</td>
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<td>147</td>
<td>(13) Brian L. Vampelt, M.D.</td>
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(j) **Claims against the Division of Labor:**

(TO BE PAID FROM GENERAL REVENUE FUND)

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<td>151</td>
<td>(1) Bell Atlantic-West Virginia, Inc.</td>
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<td>152</td>
<td>(2) Charleston Foto 1, Inc.</td>
<td>$ 5.18</td>
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(k) **Claims against the Division of Motor Vehicles:**

(TO BE PAID FROM STATE ROAD FUND)

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<td>155</td>
<td>(1) Bernard C. Gantzer</td>
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<td>156</td>
<td>(2) David M. Starkey</td>
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<td>157</td>
<td>(3) William Waybright dba Franklin Motors</td>
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(l) **Claim against the Division of Natural Resources:**

(TO BE PAID FROM SPECIAL REVENUE FUND-
ACCOUNT NO. 3200)

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<td>(1) University of Georgia Research Foundation, Inc.</td>
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(m) **Claims against the Public Service Commission:**

(TO BE PAID FROM SPECIAL REVENUE FUND-
ACCOUNT NO. 8623)

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<td>(1) Commonwealth Associates, Inc.</td>
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<td>(2) Connie D. DeMuth &amp; Associates</td>
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<td>(3) John Skidmore Development, Inc.</td>
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<td>169</td>
<td>(4) Kimball Intern'l, Inc., dba National Office Furniture</td>
<td>381.60</td>
</tr>
<tr>
<td>170</td>
<td></td>
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<tr>
<td>171</td>
<td>(5) Parkersburg Sentinel Company</td>
<td>99.94</td>
</tr>
<tr>
<td>172</td>
<td>(TO BE PAID FROM SPECIAL REVENUE FUND-ACCOUNT NO. 8625)</td>
<td></td>
</tr>
<tr>
<td>174</td>
<td>(6) Goodyear Tire &amp; Rubber Company, Inc.</td>
<td>527.24</td>
</tr>
<tr>
<td>175</td>
<td>(n) Claims against Regional Jail and Correctional Facility Authority:</td>
<td></td>
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<tr>
<td>177</td>
<td>(TO BE PAID FROM SPECIAL REVENUE FUND)</td>
<td></td>
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<tr>
<td>178</td>
<td>(1) Dave Hinkle Electric, Inc.</td>
<td>100,000.00</td>
</tr>
<tr>
<td>179</td>
<td>(2) William Estes Harris, III</td>
<td>50.00</td>
</tr>
<tr>
<td>180</td>
<td>(3) Earl Saxton</td>
<td>2,000.00</td>
</tr>
<tr>
<td>181</td>
<td>(o) Claims against the State Rail Authority:</td>
<td></td>
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<tr>
<td>182</td>
<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
<td></td>
</tr>
<tr>
<td>183</td>
<td>(1) Gary W. Cosner, Sr.</td>
<td>500.00</td>
</tr>
<tr>
<td>184</td>
<td>(2) Lindsey Poling</td>
<td>585.00</td>
</tr>
<tr>
<td>185</td>
<td>(p) Claims against the Supreme Court of Appeals:</td>
<td></td>
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<tr>
<td>186</td>
<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
<td></td>
</tr>
<tr>
<td>187</td>
<td>(1) Sue Hedstrom</td>
<td>595.22</td>
</tr>
<tr>
<td>188</td>
<td>(2) Lisa F. White</td>
<td>2,401.94</td>
</tr>
<tr>
<td>189</td>
<td>(q) Claim against the WV Racing Commission:</td>
<td></td>
</tr>
<tr>
<td>190</td>
<td>(TO BE PAID FROM SPECIAL REVENUE FUND)</td>
<td></td>
</tr>
<tr>
<td>191</td>
<td>(1) Bell Atlantic-West Virginia, Inc.</td>
<td>405.18</td>
</tr>
</tbody>
</table>

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants, and that prior to the payments to any claimant provided for in this bill, the court of claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The court of claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.
CHAPTER 50

(S. B. 488 — By Senators Love, Helmick, Sharpe, Edgell and Minear)

[Passed March 8, 1999; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of education; division of corrections; and division of labor; to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agencies thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of such state spending units, such claims having been previously considered by the court of claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the court of claims on the purely statutory grounds that to allow such claims would be condoning illegal acts contrary to the laws of the state. The Legislature pursuant to its findings of fact and also by the adoption of the findings of fact by the court of claims as its own, and, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below, and directs the auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required...
by section ten, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) **Claim against the Department of Education:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Elizabeth Jane Burger .................. $ 408.00

(b) **Claims against the Division of Corrections:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Alderman's Pharmacy .................. $ 1,716.64
(2) Anthony Creek Rescue Squad ........ $ 478.00
(3) Associated Emergency Physicians .. $ 110.00
(4) Baird Physical Therapy ................. $ 405.00
(5) Camden Clark Memorial Hospital .... $ 9,377.15
(6) Charleston Area Medical Center, Inc. $ 209,516.21
(7) Correctional Medical Services, Inc. . $ 274,304.58
(8) G. Y. Dagher, M.D. ..................... $ 303.00
(9) Haven N. Wall, Jr., M.D., Inc. ...... $ 258.00
(10) C. Stephen High, M.D. ................. $ 478.00
(11) Jan Care Ambulance Service, Inc. .. $ 9,008.00
(12) Mammen Kovoor, M.D. ................. $ 200.00
(13) Laboratory Corporation of America Holdings .................. $ 424.75
(14) Medbrook Medical Associates, Inc. . $ 130.00
(15) Midtown Dental Lab, Inc. .............. $ 9,295.27
(16) F. G. Powderly, M.D. .................. $ 387.00
(17) Radiological Physicians Associates . $ 966.00
(18) Robert Rose, M.D. ..................... $ 1,450.00
AN ACT to repeal section forty-six-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to Class M nonresident commercial shooting preserve licenses.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section relating to Class M nonresident commercial shooting preserve licenses.

Section forty-six-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.
CHAPTER 52

(H. B. 2307 — By Mr. Speaker, Mr. Kiss, and Delegates Douglas and Michael)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections seventeen-a and seventeen-b, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the apprenticeship program for state employees.

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

§ 1. Repeal of the sections relating to establishment of the apprenticeship program and its advisory board.

1 Sections seventeen-a and seventeen-b, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed.

CHAPTER 53

(Com. Sub. for H. B. 2996 — By Delegates Spencer and Mahan)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing access to information contained in the Legislature’s computer system.

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

That section five, article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-5. Computer subscriber system.

(a) The joint committee on government and finance is authorized to provide information from portions of the Legislature's computer data to persons through the internet, or through other means approved by the committee, for noncommercial use, with or without charge. The committee may charge and collect fees for providing or licensing portions of the data maintained in the Legislature's computer databases to persons requesting the data.

(b) The joint committee on government and finance shall, prior to the twelfth day of January, two thousand, consider how best to provide, through the internet or other means, free public access to appropriate information maintained in the Legislature's computer databases. The committee shall consider providing free public access through the internet, or other appropriate means, to bill status information, the text of pending bills, the daily journals of the House of Delegates and the Senate, the West Virginia Code, and any other information determined appropriate by the committee, all as maintained by the Legislature in its computer databases. In determining what information to which to provide free access, the committee shall consider how the access may affect the integrity, security and functionality of the Legislature's computer system and its primary use of supporting its legislative functions.

(c) No part of the information contained in the Legislature's computer system databases in its magnetic or electronic form is a public record as that term is defined in section two, article one, chapter twenty-nine-b of this code. Notwithstanding any provisions of section three, article one, chapter twenty-nine-b of this code to the contrary, the Legislature may not be required or compelled to allow access to all or a portion of its databases for inspection and copying and may not be required to make available copies of all or a portion of its databases on magnetic or electronic media.
AN ACT to amend chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-b, relating to the powers and duties of the state auditor; legislative findings; the continued use by public schools, juvenile detention centers, and municipal and county public safety offices of certain computers, telecommunications devices and other technological equipment following their use by the state auditor's office; creation of the computer donation program; program administration; and legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4B. COMPUTER DONATION PROGRAM.

§12-4B-1. Legislative findings.
§12-4B-2. Computer donation program created.
§12-4B-3. Legislative rules.
§12-4B-4. Severability.

§12-4B-1. Legislative findings.

1 The Legislature finds that:

2 (a) Public schools, juvenile detention centers, and municipal and county public safety offices are always in need of computers, telecommunications devices and other technological equipment, while the acquisition of such is a costly enterprise;

3 (b) The state auditor must frequently purchase such computers, telecommunications devices and other technological
equipment as is necessary for their interaction with national and international financial services industries;

(c) The purchase by the state auditor of modern computers, telecommunications devices and other technological equipment frequently results in the surplus of such existing equipment;

(d) Surplus equipment is generally obsolete and as such may no longer be used effectively by agency employees;

(e) Although the computers, telecommunications devices or other technological equipment is no longer useful in interacting with the financial services industry, they may still be useful items for a less complex and less high-speed dependent use;

(f) Heretofore, the state auditor has stripped the equipment for spare parts for other machines, and that this continued practice does not necessarily result in the equipment’s highest and best remaining use; and

(g) Rather than break down the equipment for spare parts or send obsolete machines to the surplus property unit of the state purchasing division where they may languish with lack of use, it would be in the best interest of the state that any obsolete computers, telecommunications devices or technological equipment be donated by the state auditor’s office to public schools, juvenile detention centers, and municipal and county public safety offices.

§12-4B-2. Computer donation program created.

(a) Notwithstanding any other provision of this code to the contrary, the state auditor is hereby authorized within his or her agency to create a computer donation program for public schools, juvenile detention centers, and municipal and county public safety offices in this state. This program authorizes the state auditor’s office to donate equipment to those entities which would otherwise be transferred to the surplus property unit of the purchasing division.

(b) The program shall be administered by a director as appointed or employed by the state auditor. The auditor may
either appoint the director from existing staff from his or her office, or may employ a director from existing funds.

(c) The director shall keep records and accounts that indicate the equipment donated, the age of the equipment, the reasons for declaring it obsolete, and to which public school, juvenile detention center, or municipal or county public safety office the equipment was donated.

§12-4B-3. Legislative rules.

The state auditor shall propose legislative rules in accordance with the provisions of article three-a, chapter twenty-nine-a of this code which shall detail the regulations for the public notice of the program, the method of receiving requests for participation in the program, any compliance and reporting information required of participants in the program, and the method of selecting recipients of equipment. The rules shall provide for fair and impartial selection of equipment recipients. The rules shall be presented for approval to the legislative oversight commission on education accountability by the first day of July, one thousand nine hundred ninety-nine.

§12-4B-4. Severability.

If any provision or application of this article is held invalid, the invalidity does not affect any other provision or application of this article which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

CHAPTER 55

(H. B. 2293 — By Delegates Jenkins, Hubbard, Campbell, J. Smith, Williams, Hall and Harrison)

[Passed February 16, 1999; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact section three, article ten-d, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the number which constitutes a quorum for the consolidated retirement board.

Be it enacted by the Legislature of West Virginia:

That section three, article ten-d, 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 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§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. Seven 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.

CHAPTER 56

(H. B. 2358 — By Delegate Thompson)

[Passed February 18, 1999; in effect ninety days from passage. Approved by the Governor.]
nine hundred thirty-one, as amended, relating to prohibited conduct of regulated consumer lenders.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-110a. Prohibited conduct.

1. (1) A regulated consumer lender shall not:

   (a) Accept or receive deposits or sell or offer for sale its secured or unsecured evidences or certificates of indebtedness;

   (b) Pay any fees, bonuses, commissions, rewards or other consideration to any person, firm or corporation for the privilege of using any plan of operation, scheme or device for the organization or carrying on of business under this article, or the use of any name, trademark or copyright to be so used: Provided, That nothing herein prevents a regulated consumer lender from agreeing in connection with a loan to pay a broker fee, finders fee or dealer participation fee, or to split the origination fee or points paid: Provided, however, That the fee or fee split is disclosed to the borrower and where proper is included in the finance charge; or

   (c) Fail to disclose the amount of a payoff of an existing loan within three business days of receiving a request for such information from either the borrower or an agent acting on behalf of the borrower.

2. (2) Unless preempted by federal law, no consumer loan by a regulated consumer lender may contain any scheduled balloon payment as set forth in this chapter. Nor may any regulated consumer lender loan contain terms of repayment which result in negative amortization: Provided, That nothing herein prevents unequal payment schedules resulting from a variable rate loan or a revolving line of credit.

3. (3) A regulated consumer lender may not make revolving loans for the retail purchase of consumer goods and services by use of a lender credit card.
AN ACT to amend chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-h, relating to companies that purchase the right to receive a person's future payments from an annuity, court settlement, lottery payoff, sweepstakes payoff or other similar payment arrangement; defining terms; setting forth disclosure requirements; establishing a threshold amount for the applicability of the article; requiring court approval for certain transfers; prohibiting transfers that are otherwise prohibited by law; restricting transfers where the structured settlement contains a provision limiting the right to assign or transfer; providing for a right to recision; establishing operative date and remedies; prohibiting waiver; limiting liability to consumer; and requiring companies to register with the secretary of state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6H. TRANSFERS OF RIGHT TO RECEIVE FUTURE PAYMENTS.

§46A-6H-1. Definitions.
§46A-6H-2. Disclosure requirements prior to transfer.
§46A-6H-3. Requirement of court approval for certain structured settlement transfers.
§46A-6H-4. Prohibiting transfer agreements of worker's compensation claims and other transfer agreements that contravene law.
§46A-6H-5. Right of recision.
§46A-6H-6. Remedies; effective date; nonwaiver.
§46A-6H-7. Protection from liability to consumer.
§46A-6H-8. Registration with the secretary of state.
§46A-6H-1. Definitions.

For the purposes of this article:

1. “Closing date” means the date the transfer agreement is executed by the consumer and the transferee, and shall be at least fourteen days after the requisite disclosures have been provided to the consumer and interested parties.

2. “Consumer” means any person entitled to receive periodic future payments from an annuity issuer, settlement obligor or any other party as the result of an annuity, settlement, lottery winnings, sweepstakes payoff or other future payment arrangement.

3. “Discounted present value” means the fair present value of future payments, as determined by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

4. “Favorable tax determination” means, with respect to a proposed transfer of structured settlement payment rights, any of the following authorities that are applicable to the parties to such transfer and on the parties to the structured settlement agreement and any qualified assignment agreement and establish that the federal income tax treatment of the structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement, other than the consumer, will not be adversely affected by such transfer:

   (i) A United States Treasury regulation;

   (ii) A published ruling by the United States Internal Revenue Service;

   (iii) A private letter ruling by the United States Internal Revenue Service with respect to such transfer; or

   (iv) Other applicable legal authority that is binding on the United States Internal Revenue Service.

5. “Interested party” means an insurance company, an annuity issuer, a structured settlement obligor, a lottery, a
beneficiary irrevocably designated in an agreement to receive future payments following the consumer’s death or other entity obligated to pay to a consumer any future payments or any other party that has continuing rights or obligations under the structured settlement agreement.

(6) “Qualified assignment agreement” means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time.

(7) “Structured settlement” means an arrangement whereby a settlement obligor, an annuity issuer or other person agrees to make future payments to a consumer in resolution of a personal injury or other claim.

(8) “Structured settlement payment rights” means the right to receive periodic payments, including lump sum payments, under a structured settlement from a settlement obligor, annuity issuer, or other person.

(9) “Transfer” means any sale, assignment or other conveyance of future payment rights by a consumer to a transferee for consideration.

(10) “Transfer agreement” means an agreement providing for the transfer of future payment rights from a consumer to a transferee.

(11) “Transferee” means any person or entity that becomes entitled to receive a consumer’s future payments as a result of a transfer agreement and includes companies in the business of purchasing future payments.

§46A-6H-2. Disclosure requirements prior to transfer.

(a) In order for any transfer by a consumer to a transferee to be effective, the transferee shall provide the following disclosures in writing, in bold, twelve point type, to the consumer at least fourteen days prior to the earlier of the closing date or the hearing on the transfer when court approval is required by the provisions of this article:
(1) The amount of each future payment to be transferred by
the consumer and the date such payments were due to the
consumer;

(2) The aggregate amount of the future payments to be
transferred by the consumer;

(3) The discounted present value of the future payments to
be transferred by the consumer and the discount rate used in the
calculation, as determined by discounting the payments to the
present using the most recently published applicable federal
rate for determining the present value of an annuity as issued by
the United States Internal Revenue Service;

(4) The discount rate used in subdivision (3) of this section
stated in terms of an annual percentage rate;

(5) The lump sum payable to the consumer in exchange for
transferring the future payments;

(6) A good faith estimate of all commissions, fees, rebates,
service charges, application fees, processing fees, closing costs,
filing fees, administrative charges and other commissions, fees,
costs, expenses and charges to be paid by the consumer or
deducted from the lump sum in connection with the transfer;

(7) The net amount payable to the consumer after the
deduction of all commissions, fees, costs, expenses and charges
described in subdivision (6) of this section; and

(8) A statement that there may be adverse tax consequences
affecting the consumer as a result of the transfer and that the
consumer is advised to seek the advice of an attorney or
accountant.

(b) The transferee shall also provide written notice to all
interested parties at least fourteen days prior to the earlier of the
closing date of the transfer or the hearing when court approval
is required including:

(1) The closing date of the transfer, or the date, time and
place of the hearing;

(2) A copy of the disclosure statement required by subsec-
tion (a) of this section; and
(3) The name, address and taxpayer identification number of the transferee.

(c) If the transfer requires court approval pursuant to section three of this article, then the transferee shall also provide the disclosure statement required by subsection (a) of this section to the court and the guardian ad litem, if one is named by the court.

§46A-6H-3. Requirement of court approval for certain structured settlement transfers.

(a) In addition to the requirements of this article, the transfer agreement shall be approved by the circuit court of the county wherein the consumer resides or where the structured settlement agreement was executed when:

(1) The structured settlement payment rights belong to an infant or an incompetent person; or

(2) The structured settlement payment rights arise from a personal injury or other claim and:

(i) The aggregate of the structured settlement payment rights exceeds forty thousand dollars; or

(ii) The structured settlement agreement contains a provision restricting the right of the consumer to assign or transfer the consumer's future payment rights.

(b) The transferee shall commence the action by filing a petition with the court seeking approval of the transfer, and providing to the court the disclosure statement required by subsection (a), section two of this article.

(c) The circuit court shall set a time and date for a hearing on the matter within twenty-one days of the date of the filing of the petition. The transferee shall notify the consumer and all interested parties of the date and time of the hearing and provide them with a copy of the petition.

(d) The court shall appoint a guardian ad litem in cases where the structured settlement payment rights belong to an infant, an incompetent person or a ward of the court. The
guardian ad litem shall review the requisite disclosures and make an independent inquiry to determine whether the proposed transfer is fair, reasonable and in the best interests of the consumer. Such information shall be reported to the court during the hearing on the matter.

(e) An interested party has the right to appear and contest the proposed transfer at the time of the hearing. If, after proper notice, the interested party does not make an appearance, then the interested party shall be bound by the court’s ruling.

(f) After a hearing or upon its own motion, the court may approve the transfer if the court finds that:

(1) The consumer has demonstrated that: (A) He or she, or his or her family, is facing a financial hardship and that the transfer would not subject the consumer or the consumer’s family to undue financial hardship in the future; or (B) the transfer is in the best interest of the consumer: Provided, That the judge shall disclose the possible adverse tax consequence to the consumer;

(2) The transferee is in compliance with the provisions of section two of this article; and

(3) The transfer agreement does not contravene the terms of the structured settlement agreement, including any restrictions on the right of the consumer to transfer his or her structured settlement payment rights, unless the annuity issuer and structured settlement obligor have consented to the transfer. However, the approval of the annuity issuer and the structured settlement obligor shall not be required if, at the time the consumer and the transferee entered into the transfer agreement, a favorable tax determination was in effect.

(g) The court shall award the guardian ad litem reasonable fees for representing the consumer. Such fees shall be paid by the transferee.

(h) A consumer may request court approval for a transfer that does not mandate court approval under this section. Such voluntary petition by the consumer shall then become subject
to the provisions of this section. The transferee shall be responsible for filing the action pursuant to subsection (b) of this section, and the consumer shall be responsible for attorney’s fees or guardian ad litem fees.

§46A-6H-4. Prohibiting transfer agreements of workers’ compensation claims and other transfer agreements that contravene law.

Any agreement to transfer future payments arising under a workers’ compensation claim is prohibited as is any other agreement to transfer future payments that would contravene existing law.

§46A-6H-5. Right of rescission.

(a) Any consumer who enters into a transfer agreement shall have an absolute, nonwaiveable right of rescission for five business days following the closing date of the transfer. During the five-day rescission period, the consumer may rescind the transfer agreement by phone, mail or facsimile, effective upon receipt, without penalty or further obligation to the transferee, except that any amounts advanced by the transferee to the consumer in contemplation of the transfer shall be immediately refunded to the transferee.

(b) When a transfer requires court approval, the consumer may rescind without penalty until the court order is entered appointing a guardian ad litem. When the consumer dismisses the action after the appointment of a guardian ad litem or rescinds the transfer agreement within five business days of court approval of the transfer, the consumer shall be responsible for the filing fee and any guardian ad litem fees.

(c) Notice of the right of rescission shall be provided to the consumer in writing by the transferee prior to the time of closing.

§46A-6H-6. Remedies; effective date; nonwaiver.

(a) This article shall apply to transfer agreements of future payment rights executed after the effective date of this article. Nothing in this article shall be construed to impair, limit, affect
or otherwise apply to any transfer agreement executed prior to
the effective date of this article.

(b) A violation of a provision of this article by the trans-
feree is an unfair or deceptive act or practice in the conduct of
commerce pursuant to the provisions of article six, section one
hundred four of this chapter. The remedy provided for in this
section is in addition to other remedies provided for by law.

(c) The provisions of this article may not be waived.

§46A-6H-7. Protection from liability to consumer.

When an interested party makes payments to the transferee
pursuant to a court order of approval or a transfer agreement
executed in accordance with the provisions of this article, the
interested party and the transferee are not liable to the consumer
or other interested party for the transfer of the consumer’s
future payments.

§46A-6H-8. Registration with the secretary of state.

(a) A transferee or other person in the business of soliciting
or purchasing future payments shall file a registration statement
with the secretary of state before advertising or arranging
transfers of consumer’s future payment rights in this state. The
registration statement shall contain:

(1) The name and address of the transferee;

(2) The name and address of the transferee’s agent for
service of process within the state, or if the company does not
have one within the state, a statement that the secretary of state
will serve as the agent for service of process; and

(3) A full and complete disclosure of any prior or pending
litigation involving alleged violations of this article’s provi-
sions or consumer complaints filed with the attorney general’s
office of this state that allege violations of this article’s provi-
sions, or a notarized statement that there has been no such
litigation or unresolved complaint relating to the operations of
the transferee.

(b) The transferee shall update the statement within thirty
days after a change of information occurs.
(c) Each transferee registering pursuant to the provisions of this section shall maintain a copy of the registration statement. The transferee shall allow a consumer, interested party or court to inspect the registration statement on request.

(d) The secretary of state may charge each transferee that files a registration statement with the secretary of state a reasonable fee not to exceed one hundred dollars to cover the cost of filing.

CHAPTER 58

(H. B. 2689 — By Delegates Amores, Doyle, Manuel, Ashley and Rowe)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred eleven, article seven, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for a civil penalty of not more than five thousand dollars for each violation of chapter forty-six-a involving consumer fraud.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ADMINISTRATION.

§46A-7-111. Civil actions by attorney general.

(1) After demand, the attorney general may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this chapter. If it is found that an excess charge has been made, the court shall order the respondent to refund to the consumer the amount of the excess charge. If a creditor has made an excess charge in a deliberate violation
of or in reckless disregard for this chapter, or if a creditor has
refused to refund an excess charge within a reasonable time
after demand by the consumer or the attorney general, the court
may also order the respondent to pay to the consumer a civil
penalty in an amount determined by the court not in excess of
the greater of either the amount of the sales finance charge or
loan finance charge or ten times the amount of the excess
charge. Refunds and penalties to which the consumer is entitled
pursuant to this subsection may be set off against the con-
sumer’s obligation. If a consumer brings an action against a
creditor to recover an excess charge or civil penalty, an action
by the attorney general to recover for the same excess charge
shall be stayed while the consumer’s action is pending and shall
be dismissed if the consumer’s action is dismissed with
prejudice or results in a final judgment granting or denying the
consumer’s claim. With respect to excess charges arising from
consumer credit sales made pursuant to revolving charge
accounts or from consumer loans made pursuant to revolving
loan accounts, no action pursuant to this subsection may be
brought more than four years after the time the excess charge
was made. With respect to excess charges arising from other
c consumer credit sales or consumer loans, no action pursuant to
this subsection may be brought more than one year after the due
date of the last scheduled payment of the agreement pursuant to
which the charge was made. If the creditor establishes by a
preponderance of evidence that a violation is unintentional or
the result of a bona fide error, no liability to pay a penalty shall
be imposed under this subsection.

(2) The attorney general may bring a civil action against a
creditor or other person to recover a civil penalty for willfully
violating this chapter, and if the court finds that the defendant
has engaged in a course of repeated and willful violations of
this chapter, it may assess a civil penalty of no more than five
thousand dollars for each violation of this chapter. No civil
penalty pursuant to this subsection may be imposed for viola-
tions of this chapter occurring more than four years before the
action is brought.
AN ACT to amend and reenact section eleven, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring state law-enforcement and corrections agencies to deliver persons who signed a waiver of extradition prior to their release and who have violated the terms of their probation, parole, bail or other conditional release to the demanding state without the requirement of a governor’s warrant; setting forth the documentation required of the demanding state before the person is delivered to the demanding state; and clarifying the governor’s authority to refuse a demand at his or her instance where a waiver has been executed.

Be it enacted by the Legislature of West Virginia:

That section eleven, article one, 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 1. THE GOVERNOR.

§5-1-11. Immunity from service of civil process; waiver of extradition proceedings; nonwaiver of rights of state; trial on other charges after return.

1 (a) A person brought into this state by, or after waiver of, extradition based on a criminal charge, shall not be subject to service of personal process in civil actions until he has been convicted in the criminal proceedings, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.
(b) Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in subsections (a) and (d), section eight of this article, and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record, within this state a writing which states that he consents to return to the demanding state: Provided, That before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights with respect to the issuance and service of a warrant of extradition and with respect to obtaining a writ of habeas corpus as provided for in subsection (a), section nine of this article.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and be filed by him in the office of the secretary of state. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent: Provided, That nothing in this subdivision shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

(c) Prior Waiver of Extradition. Notwithstanding any other provision of this code, a law-enforcement or correction agency in the state of West Virginia holding a person who is charged by another jurisdiction with a violation of his or her terms of probation, parole, bail or other form of conditional release in another jurisdiction which is demanding the return of such person shall immediately deliver the person to the duly authorized agent of the demanding state, and without the requirement of a governor’s warrant, if such person has previously executed a waiver of extradition as a condition of his or her current terms
of probation, parole, bail or other form of conditional release in
the demanding state and upon receipt of the following docu-
mentation from the demanding state:

(1) A certified copy of the previously executed waiver of
extradition being held by the officials in the demanding state or
an electronically or electromagnetically transmitted facsimile
thereof;

(2) A certified copy of an order or warrant from the
demanding state seeking the return of the person or an electron-
ically or electromagnetically transmitted facsimile thereof; and

(3) A photograph, fingerprints or other evidence which
identifies the person held by the law-enforcement or correction
agency as the person who signed the waiver of extradition and
who is named in the order or warrant, or an electronically or
 electromagnetically transmitted facsimile thereof.

(d) Nothing in this article contained shall be deemed to
constitute a waiver by this state of its right, power or privilege
to try such demanded person for an offense committed within
this state, or of its right, power or privilege to regain custody of
such person by extradition proceedings or otherwise for the
purpose of trial, sentence or punishment for any offense
committed within this state, nor shall any proceedings had
under this article which result in, or fail to result in, extradition,
be deemed a waiver by this state of any of its rights, privileges
or jurisdiction in any way whatsoever.

(e) After a person has been brought back to this state by, or
after waiver of, extradition proceedings, he may be tried in this
state for any offense which he may be charged with having
committed here as well as that specified in the requisition for
his extradition.

(f) Nothing in this section shall be construed to limit the
authority of the governor, at his or her own instance, to refuse
to honor an extradition demand from another jurisdiction.
AN ACT to repeal section four, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section six of said article, relating to authority over state institutions; authorizing the commissioner of the West Virginia division of corrections to lease the West Virginia penitentiary in Moundsville.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-6. Title to property of state institutions; custody of deeds and other muniments of title; authority of commissioner.

The title to all property constituting or belonging to the several institutions named in section three of this article is vested in the state. The commissioner of corrections is custodian of all deeds and other muniments of title and shall cause such as are susceptible of recordation to be recorded in the proper offices. The commissioner is authorized, as lessor, to lease the West Virginia penitentiary in Moundsville, title to which is vested in the state by prior enactment of this article, for a term of not more than twenty-five years.
AN ACT to repeal sections three, four and five, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section six, article thirteen, chapter sixty-two of said code; to amend and reenact section eleven, article one, chapter twenty-five of said code; and to further amend said article by adding thereto four new sections, designated sections eleven-a, eleven-b, eleven-c and eleven-d, all relating to the administration and personnel of the division of corrections; requiring preemployment drug testing; allowing designated employees to carry concealed deadly weapons; and allowing the commissioner to designate employees as correctional peace officers.

Be it enacted by the Legislature of West Virginia:

That sections three, four and five, article five, chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section six, article thirteen, chapter sixty-two of said code be repealed; that section eleven, article one, chapter twenty-five of said code be amended and reenacted; and that said article be further amended by adding thereto four new sections, designated sections eleven-a, eleven-b, eleven-c and eleven-d, all to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-11. Officers and employees of corrections institutions.
§25-1-11a. Duties of wardens and administrators; bond; residence.
§25-1-11b. Appointment of deputy warden; duties; bond.
§25-1-11c. Hiring of other assistants and employees; duties of correctional employees; right to carry weapons; powers of correctional peace officers.
§25-1-11d. Compensation of employees approved by commissioner; traveling and other expenses; payment of salaries.
§25-1-11. Officers and employees of corrections institutions.

1 The commissioner of corrections shall appoint a warden for each institution under the control of the division of corrections. The commissioner of corrections, or his or her designee, has the authority to manage and administer the finances, business, operations, security and personnel affairs of correctional units under the jurisdiction of the division of corrections. All persons employed at a state-operated correctional institution or correctional unit are subject to the supervision and approval of the chief executive officer and the authority of the commissioner of corrections, or his or her designee, except those persons employed by the state board of education, pursuant to section thirteen-f, article two, chapter eighteen of this code.

2 The warden or administrator of each institution or correctional unit has the power to hire all assistants and employees required for the management of the institution in his or her charge; but the number of the assistants and employees, and their compensation, shall first be approved by the state commissioner of corrections. All prospective correctional employees shall pass a preemployment drug screening prior to being hired. It is the duty of the commissioner of corrections to investigate any complaint made against the warden or administrator of any institution, and also against any other officer or employee thereof, if the same has not been investigated.

§25-1-11a. Duties of wardens and administrators; bond; residence.

1 The warden or administrator is the chief executive officer of his or her assigned correctional institution and has the responsibility for the overall management of all operations within his or her assigned institution. He or she is in charge of its internal police and management, and shall provide for feeding, clothing, working and taking care of the inmates, subject to the control of the state commissioner of corrections. The warden or administrator shall promptly enforce all orders and rules made by the commissioner. He or she shall protect and preserve the property of the state and may for that purpose punish the inmates in the manner authorized by the commis-
The warden or administrator shall have the custody and control of all the real and personal property at the correctional institution, subject to the orders of the commissioner of corrections. The warden or administrator shall be bonded by the board of risk and insurance management. The warden shall reside in the warden's residence at the correctional institution or in another residence approved by the commissioner of corrections.

§25-1-11b. Appointment of deputy warden; duties; bond.

The warden of a correctional institution, with the approval of the commissioner, shall hire a deputy warden. The deputy warden's duties shall be fixed by the warden, as approved by the commissioner. In the absence of the warden the deputy warden shall perform all the duties required of the warden. The deputy warden shall be bonded by the board of risk and insurance management.

§25-1-11c. Hiring of other assistants and employees; duties of correctional employees; right to carry weapons; powers of correctional peace officers.

(a) The warden or administrator of the correctional institutions or units shall, in the manner provided in section eleven of this article, hire all assistants and employees required for the management of the correctional institutions or units, including a sufficient number of correctional employees to preserve order and enforce discipline among the inmates, to prevent escapes and to remove all persons convicted and sentenced to the custody of the division of corrections, from the place confined to a correctional institution, all of whom shall be under the control of the warden. The commissioner may issue a certificate authorizing any correctional employee who has successfully completed the division's training program for firearms certification, which shall be the equivalent of that required of deputy sheriffs, to carry firearms and concealed weapons while on duty. Any correctional employee authorized by the commissioner has the right, without a state license, to carry firearms and concealed weapons while on duty. Each correctional employee, authorized by the commissioner, shall carry with him
or her a certificate, authorizing him or her to carry a firearm or
collapsed weapon when performing his or her official duties as
a correctional employee, bearing the official signature of the
commissioner and warden or administrator. The right is
extended to a correctional employee during the time the
employee travels from place to place within the state for the
purpose of removing prisoners from jails to a correctional
institution of the division of corrections, and during the time the
employee is pursuing and apprehending escaped inmates, and
during any other time the employee is performing official duties
as a correctional employee. No correctional employee shall
have the right to carry a firearm or concealed weapon for any
other purpose or during any other time, including when
carrying to and from the employee’s residence and a correc-
tional institution, unless the employee has obtained a state
license in the manner prescribed in article seven, chapter sixty-
one of this code.

(b) The commissioner of corrections may designate
correctional employees as correctional peace officers who have
the following powers:

(1) To enforce rules and laws necessary for the control and
management of correctional units and the maintenance of public
safety that is within the scope of responsibilities of the division
of corrections;

(2) To detain persons for violations of state law committed
on the property of any state correctional institution;

(3) To conduct investigations, pursue and apprehend
escapees from the custody of the commissioner or any state
correctional institution; and

(4) To execute criminal process on persons in the custody
of the commissioner, or who surrender themselves at any state
 correctional institution.

§25-1-11d. Compensation of employees approved by commis-
sioner; traveling and other expenses; payment of
salaries.
The commissioner of corrections shall approve the salaries of all employees of the division of corrections. Salaries shall be commensurate with their duties and responsibilities, but no meals or other emoluments of any kind shall be furnished, given or paid to the employee as all or part of their salary. The employees may be provided meals, household facilities and supplies as may be necessary for them to perform their duties, if the employees agree to pay the reasonable cost as established by the commissioner of corrections. In the event of an emergency, such as a riot or other disturbance, the commissioner may authorize meals be provided to employees at no cost. Additionally, the commissioner may establish a procedure to reimburse employees reasonable costs in the event the employee’s personal property is stolen or damaged by an inmate. All persons employed under this article are entitled to be reimbursed for necessary traveling and other expenses. The salaries, expenses and appropriations provided for the employees under the commissioner’s jurisdiction shall be paid in the same manner as are those of other state employees and agencies and on a payment schedule set forth by the state auditor.

CHAPTER 62

(S. B. 171 — By Senators Wooton, Ball, Dittmar, Fanning, Hunter, Kessler, Minard, Redd, Ross, Schoonover, Snyder and McKenzie)

[Passed March 1, 1999; in effect ninety days from passage. Approved by the Governor.]
tions that justify monitoring of an inmate’s outgoing mail; authorizing the disclosure of the contents of mail under certain circumstances; requiring that an inmate’s outgoing mail be properly identified; excepting attorney-client correspondence; and requiring that the commissioner of corrections propose legislative rules setting forth procedures to effectuate the provisions of these sections.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eighteen, all to read as follows:

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

§25-1-18. Monitoring inmate mail; procedures and restrictions identifying mail from a state correctional institution; mail to or from attorneys excepted.

§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

(a) The commissioner of corrections or his or her designee is authorized to monitor, intercept, record and disclose telephone calls to or from adult inmates of state correctional institutions in accordance with the following provisions:

(1) All adult inmates of state correctional institutions shall be notified in writing that their telephone conversations may be monitored, intercepted, recorded and disclosed;

(2) Only the commissioner and his or her designee shall have access to recordings of inmates’ telephone calls unless disclosed pursuant to subdivision (4) of this subsection;

(3) Notice shall be prominently placed on or immediately near every telephone that may be monitored;

(4) The contents of inmates’ telephone calls may be disclosed to the appropriate law-enforcement agency only if the disclosure is:
(A) Necessary to safeguard the orderly operation of the correctional institution;

(B) Necessary for the investigation of a crime;

(C) Necessary for the prevention of a crime;

(D) Necessary for the prosecution of a crime;

(E) Required by an order of a court of competent jurisdiction; or

(F) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All recordings of telephone calls must be destroyed within twelve months unless disclosed pursuant to subdivision (4) of this subsection; and

(6) To safeguard the sanctity of the attorney-client privilege, a telephone line that is not monitored shall be made available for telephone calls to or from an attorney. Such calls shall not be monitored, intercepted, recorded or disclosed in any matter.

(b) The commissioner shall propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this section.

(c) The provisions of this section shall apply only to those persons serving a sentence of incarceration in the custody of the commissioner of corrections.

§25-1-18. Monitoring inmate mail; procedures and restrictions identifying mail from a state correctional institution; mail to or from attorneys excepted.

(a) The commissioner of corrections or his or her designee is authorized to monitor, open, review, copy and disclose mail to adult inmates of state correctional institutions in accordance with the following provisions:

(1) All adult inmates of state correctional institutions shall be notified in writing that their mail may be monitored, opened, reviewed, copied and disclosed;
(2) Only the commissioner and his or her designee shall have access to copies of inmates’ mail unless disclosed pursuant to subdivision (4) of this subsection;

(3) Notice that the mail may be monitored shall be prominently placed on or immediately near every mail receptacle or other designated area for the collection or delivery of mail;

(4) The contents of inmates’ mail may be disclosed to appropriate law-enforcement authorities only if the disclosure is:

   (A) Necessary to safeguard the orderly operation of the correctional institution;
   
   (B) Necessary for the investigation of a crime;
   
   (C) Necessary for the prevention of a crime;
   
   (D) Necessary for the prosecution of a crime;
   
   (E) Required by an order of a court of competent jurisdiction; or
   
   (F) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All copies of mail must be destroyed within twelve months unless disclosed pursuant to subdivision (4) of this subsection;

(6) The inmate whose mail has been copied and disclosed under this section shall be given a copy of all such mail.

(b) To safeguard the sanctity of the attorney-client privilege, mail to or from an inmate’s attorney shall not be monitored, reviewed, copied or disclosed in any manner unless required by an order of a court of competent jurisdiction. However, such mail may be checked for weapons, drugs and other contraband provided it is done in the presence of the inmate and there is a reasonable basis to believe that any weapon, drug or other contraband exists in the mail.

(c) All inmate’s outgoing mail must be clearly identified as being sent from an inmate at a state correctional institution.
and must include on the face of the envelope the name and full
address of the institution.

(d) The commissioner of corrections or his or her designee
is authorized to open, monitor, review, copy and disclose an
inmate’s outgoing mail in accordance with the following
provisions:

(1) The inmate has previously sent mail that was threaten-
ing to the recipient or that would facilitate physical violence or
other criminal activity; and

(2) Such correspondence has come to the attention of the
commissioner of corrections or the warden or administrator of
the correctional institution;

(3) The contents of any inmate’s outgoing mail may be
copied and disclosed to appropriate law-enforcement authorities
where the commissioner or his or her designee has reasonable
cause to believe that it is necessary for the prevention, investi-
gation, or prosecution of a crime or where necessary to protect
persons from physical harm or the threat of physical harm;

(4) Only the commissioner and his or her designee shall
have access to copies of inmate’s outgoing mail unless dis-
closed pursuant to subdivision (3) of this subsection;

(5) All copies of mail must be destroyed within twelve
months unless disclosed pursuant to subdivision (3) of this
subsection;

(6) The inmate whose mail has been copied and disclosed
under this section shall be given a copy of all such mail; and

(7) The provisions of this subsection do not apply to mail
that an inmate sends to his or her attorney. Such mail may only
be monitored or checked according to subsection (b).

(e) The commissioner shall propose legislative rules in
accordance with the provisions of article three, chapter twenty-
nine-a of this code to effectuate the provisions of this section.

(f) The provisions of this section shall apply only to those
persons serving a sentence of incarceration in the custody of the
commissioner of corrections.
CHAPTER 63

(Com. Sub. for S. B. 466 — By Senators Love, Helmick, Schoonover, Hunter, Ross and Snyder)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-two, relating to providing a criminal penalty for a division of corrections employee or contractor to engage in sexual intercourse or sexual intrusion with an incarcerated person; providing a criminal penalty for an incarcerated individual to engage in sexual intercourse or sexual intrusion with a division of corrections employee or contractor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-22. Imposition of sexual intercourse or sexual intrusion on inmate; penalty.

(a) Any person employed by the division of corrections or any person working at a correctional facility managed by the commissioner of corrections pursuant to contract, who engages in sexual intercourse or sexual intrusion with a person who is incarcerated in this state shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not more than twelve months or fined not more than five hundred dollars, or both.
(b) Any individual incarcerated in this state who voluntarily engages in sexual intercourse or sexual intrusion with any person employed by the division of corrections or any person working at a correctional facility managed by the commissioner of corrections pursuant to contract shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not more than twelve months or fined not more than five hundred dollars, or both.

(c) As used in this section, the terms "sexual intercourse" and "sexual intrusion" shall have the same meaning as ascribed to those terms by the provisions of section one, article eight-b, chapter sixty-one of this code.

CHAPTER 64

(S. B. 606 — By Senators Love, Schoonover, Helmick and Ross)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section five, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three, four, six, seven, eight, nine and ten of said article, all relating to the operation of centers for housing young adult offenders.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. CENTERS FOR HOUSING YOUNG ADULT OFFENDERS.

§25-4-1. Purpose of article.
§25-4-2. Establishment of centers.
§25-4-3. Authority of commissioner of corrections.

§25-4-4. Warden.

§25-4-6. Assignment of offenders to center; period of center confinement; return to court; sentence or probation; revocation of probation.

§25-4-7. Physical, educational and psychological examinations; transfer and placement.

§25-4-8. Labor, study or activities may be required.

§25-4-9. Wages of offenders.

§25-4-10. Authority to arrest inmates.

§25-4-1. Purpose of article.

The purpose of this article is to provide appropriate facilities for the housing of young adult offenders convicted of or pleading guilty to violation of law before courts with original jurisdiction, who are amenable to discipline other than in close confinement, and to give better opportunity to young adult offenders for reformation and encouragement of self-discipline.

§25-4-2. Establishment of centers.

The West Virginia commissioner of corrections is authorized to establish, operate and maintain centers to be operated in connection with the state correctional system as provided in this article.

§25-4-3. Authority of commissioner of corrections.

The West Virginia commissioner of corrections has the authority to acquire land and other property by purchase, grant, gift or otherwise in connection with the establishment of centers and to construct buildings, fences and other facilities, and to acquire personal property necessary for the maintenance and operation of the centers; to direct all needed improvements and repairs necessary for the proper upkeep of the centers, and to provide for the necessary food, medical treatment and safekeeping of persons confined in the centers; and to employ personnel to operate the centers and to provide the necessary work and other programs for the offenders assigned to the centers.

§25-4-4. Warden.

Each center shall be under the direction of a warden, who shall have the minimum qualification of a college degree with
a major in criminal justice or a related field. The warden shall be paid an annual salary to be fixed by the commissioner of corrections. The warden, subject to the authority of the commissioner, has the responsibility for the overall operation of the center.

At each center the warden shall administer programming which shall include the following components: (1) A work program; (2) an educational program in accordance with section thirteen-f, article two, chapter eighteen of this code; (3) a recreational program; and (4) a counseling program with an emphasis on substance abuse and life skills.

§25-4-6. Assignment of offenders to center; period of center confinement; return to court; sentence or probation; revocation of probation.

The judge of any court with original criminal jurisdiction may suspend the imposition of sentence of any young adult, as defined in this section, convicted of or pleading guilty to a criminal offense, other than an offense punishable by life imprisonment, who has attained his or her eighteenth birthday but has not reached his or her twenty-first birthday at the time of the commission of the crime, and commit the young adult to the custody of the West Virginia commissioner of corrections to be assigned to a center. Young adult offenders who have previously been committed to a young adult offender center are not eligible for commitment to this program. The period of confinement in the center shall be for a period of not less than six months, or longer if it is deemed advisable by the center warden, but in any event the period of confinement may not exceed two years. The court shall provide the warden with a copy of the presentence investigation report, along with the commitment order.

If, in the opinion of the warden, the young adult offender proves to be an unfit person to remain in the center, the offender shall be returned to the committing court to be dealt with further according to law. In that event, the court may sentence the offender for the crime for which the offender was
convicted. In his or her discretion, the judge may allow the
defendant credit on the sentence for time the offender spent in
the center.

A young adult offender shall be returned to the jurisdiction
of the court which originally committed the offender when, in
the opinion of the warden, the young adult offender has
satisfactorily completed the center training program. The
offender is then eligible for probation for the offense with
which the offender is charged, and the judge of the court shall
immediately place the offender on probation. In the event the
offender’s probation is subsequently revoked, the judge shall
impose the sentence the young adult offender would have
originally received had the offender not been committed to the
center and subsequently placed on probation. The court shall,
however, give the offender credit on his or her sentence for the
time spent in the center.

§25-4-7. Physical, educational and psychological examinations;
transfer and placement.

Every young adult offender committed under this article
shall be given complete physical, educational and psychological
examinations in the same manner and under the same
protections and requirements of subsections (b) and (c), section
two, article one, chapter twenty-eight of this code. In addition
to those requirements, all admission, transfer and placement
requirements and authority provided to the commissioner in
subsections (d) and (e), section two, article one, chapter twenty-
eight of this code are applicable.

§25-4-8. Labor, study or activities may be required.

Offenders assigned to centers may be required to labor on
the buildings and grounds of the center, in the making of forest
roads, for fire prevention and fire fighting, on forestation and
reforestation of public lands, on the making of fire trails and
firebreaks, on fire suppression, on building or improving public
parks or lands, or engage in any studies or activities prescribed
or permitted by the warden, subject to the approval of the
commissioner of corrections.
§25-4-9. Wages of offenders.

The West Virginia commissioner of corrections may provide for the payment of wages to the offenders assigned to centers for the work they perform.

§25-4-10. Authority to arrest inmates.

All officers and employees of a center have the power of peace officers so far as necessary to take into custody center inmates.

CHAPTER 65

(Com. Sub. for H. B. 2703 — By Delegates Givens and Ennis)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article eleven-b, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to home incarceration; permitting home incarceration to be ordered by a magistrate when the offender is convicted of a crime of violence except when the victim of the crime resides in the same home.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-6. Circumstances under which home incarceration may not be ordered.

(a) A circuit court or magistrate may not order home incarceration for an offender unless the offender agrees to abide by all of the requirements set forth in the court’s order issued under this article.
(b) A circuit court or magistrate may not order home incarceration for an offender who is being held under a detainer, warrant or process issued by a court of another jurisdiction.

(c) A magistrate may order home incarceration for an offender only with electronic monitoring and only if the county of the offender’s home has an established program of electronic monitoring that is equipped, operated and staffed by the county supervisor or sheriff for the purpose of supervising participants in a home incarceration program: Provided, That electronic monitoring may not be required in a specific case if a circuit court upon petition thereto finds by order that electronic monitoring is not necessary.

(d) A magistrate may order home incarceration for an offender convicted of a crime of violence against the person: Provided, That the offender does not occupy the same home as the victim of the crime.

(e) Home incarceration shall not be available as a sentence if the language of a criminal statute expressly prohibits its application.

CHAPTER 66

(Com. Sub. for S. B. 539 — By Senators Love, Helmick, Schoonover, Hunter, Ross and Ball)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. CORRECTIONS MANAGEMENT.


1 All adult persons sentenced by a court to serve a sentence of incarceration in a penitentiary, prison or a correctional institution under the jurisdiction of the commissioner of corrections shall be deemed to be sentenced to the custody of the commissioner of the division of corrections. The commissioner, or his or her designee, has the authority to and may order the transfer of any such adult to any appropriate institution within the division of corrections or within the department of military affairs and public safety. The commissioner has full discretionary authority to contract with any county jail, regional jail or other appropriate facility or institution for the incarceration and care of adult inmates.

13 The commissioner, or his or her designee, may transfer any adult prisoner or inmate who is mentally disturbed and who would more appropriately be treated in an institution under the jurisdiction of the division of health, to the division, subject to the approval of the director of health; and may transfer any adult prisoner or inmate to an appropriate mental facility for specialized medical treatment.

CHAPTER 67

(Com. Sub. for H. B. 2468 — By Delegates Manuel, Michael, Pino and Leach)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]  

AN ACT to amend article eight, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section thirteen, relating to imposing a processing fee on persons committed to county or regional jails.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. JAIL AND JAILER.

§7-8-13. Jail processing fee.

(a) A person committed to be housed in a regional or county jail by order of magistrate, circuit judge or by temporary commitment order shall, at the time of booking into the jail, pay a processing fee of twenty dollars. If the person is unable to pay at the time of booking, the fee shall be deducted, at a rate of fifty percent, from any new deposits made into the person’s jail trust account until the jail processing fee is paid in full. The fee shall be credited, as appropriate, to the regional jail authority’s or county jail’s operating budget.

(b) A refund of a fee collected under this section shall be made to a person who has paid the fee if the person is not convicted of the offense for which the person was booked. In the case of multiple offenses, if the person is convicted of any of the offenses the fee may not be refunded. If the person is convicted of a lesser included offense or a related offense, no refund may be made.

CHAPTER 68

(Com. Sub. for H. B. 2744 — By Delegates Trump and Faircloth)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten and seventeen, article fifteen, chapter seven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, all relating to the powers and duties of emergency ambulance service authorities; and special emergency ambulance service fees imposed by county commissions and the ability of ambulance authorities and companies to transport nonemergency users.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. EMERGENCY AMBULANCE SERVICE ACT OF 1975.


Each authority is hereby given the power:

(a) To sue and be sued, implead and be impleaded;

(b) To have and use a seal and alter the same at pleasure;

(c) To make and adopt all rules and regulations and bylaws as may be necessary or desirable to enable it to exercise the powers and perform the duties conferred or imposed upon it by the provisions of this article;

(d) To provide emergency ambulance service, maintain and operate such service, and employ, in its discretion, planning consultants, attorneys, accountants, superintendents, managers and such other employees and agents as may be necessary in its judgment and fix their compensation;

(e) To acquire by grant, purchase, gift, devise or lease and to hold, use, sell, lease or otherwise dispose of real and personal property of every kind and nature whatsoever, licenses, franchises, rights and interests necessary for the full exercise of its powers pursuant to the provisions of this article or which may be convenient or useful for the carrying out of such powers;
(f) To enter into contracts and agreements which are necessary, convenient or useful to carry out the purposes of this article with any person, public corporation, state or any agency or political subdivision thereof and the federal government and any department or agency thereof, including, without limitation, contracts and agreements for the joint use of any property and rights by the authority and any person or authority operating any system, whether within or without the service area of the authority, and contracts and agreements with any person or authority for the maintenance, servicing, storage, operation or use of any system or part thereof, facility or equipment on such basis as shall seem proper to its board;

(g) To enter into contracts and agreements for superintendence and management services with any person, who has executive personnel with experience and skill applicable to the superintendence and management of any system, for the furnishing of its services and the services of experienced and qualified personnel for the superintendence and management of any system or any part thereof, including, without limitation, superintendence over personnel, purchases, properties and operations and all matters relating thereto, and any revenue bond trust indenture may require such contract or agreement, but the personnel whose services are to be so furnished under any such contract or agreement shall not include any member of the board, any member of the immediate family of a member of the board or any agents or employees of the authority;

(h) To execute security agreements, contracts, leases, equipment trust certificates and any other forms of contract or agreement, granting or creating a lien, security interest, encumbrance or other security in, on or to facilities and equipment, containing such terms and provisions as the board considers necessary;

(i) To apply for, receive and use grants, grants-in-aid, donations and contributions from any source or sources, including, but not limited to, the federal government and any agency or department thereof, and a state government whose constitution does not prohibit such grants, grants-in-aid, donations and contributions, and any agency or department
thereof, and to accept and use bequests, devises, gifts and donations from any person;

(j) To encumber or mortgage all or any part of its facilities and equipment;

(k) To render all services permitted pursuant to article four-c, chapter sixteen of this code, including, but not limited to, emergency and nonemergency transportation; and

(l) To do any and all things necessary or convenient to carry out the powers given in this article unless otherwise forbidden by law.

§7-15-17. Imposition and collection of special emergency ambulance service fee by county commission.

A county commission may, by ordinance, impose upon and collect from the users of emergency ambulance service within the county a special service fee, which shall be known as the "special emergency ambulance service fee." The proceeds from the imposition and collection of any special service fee shall be deposited in a special fund and used only to pay reasonable and necessary expenses actually incurred and the cost of buildings and equipment used in providing emergency ambulance service to residents of the county. The proceeds may be used to pay for, in whole or in part, the establishment, maintenance and operation of an authority, as provided for in this article: Provided, That an ambulance company or authority receiving funds from the special emergency ambulance fees collected pursuant to this section may not be precluded from making nonemergency transports.

CHAPTER 69

(H. B. 2312 — By Delegates Hunt, Ashley, Rowe, J. Smith, Staton, Faircloth and Kelley)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section ten, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the size designation of legal paper to eight and one-half inches by fourteen inches.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-10. Fees to be charged by clerk of county commission.

1 For the purpose of this section, the word "page" is defined as being a paper writing of not more than legal size, 8 ½" x 14".

3 The clerk of the county commission shall charge and collect the following fees:

5 When a writing is admitted to record, for receiving proof of acknowledgment thereof, entering an order in connection therewith, endorsing clerk’s certificate of recordation thereon and indexing in a proper index, where the writing is a deed of conveyance, trust deed, lease, or power of attorney concerning real estate ................. $ 2.00

12 If such writing contains more than two pages, for each additional page, in counties where recording is done by photograph, fifty cents; and in counties where recording is done by typewriter, and such writing contains more than one thousand words, three cents for each additional twenty words.

19 For recording a plat accompanying a deed or other writing ...................... 2.00

21 If such plat contains more than one hundred twenty square inches, for each additional square inch ... .010

23 For recording and indexing a map to be placed in map book ......................... 3.00
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>25</td>
<td>If such map contains more than one hundred twenty square inches, for each additional square inch</td>
<td>.010</td>
</tr>
<tr>
<td>26</td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>For recording and indexing assignment</td>
<td>2.00</td>
</tr>
<tr>
<td>28</td>
<td>If such assignment contains more than one reference to the record of property assigned, for each reference</td>
<td>1.00</td>
</tr>
<tr>
<td>29</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td></td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>If such assignment does not give the reference to the record of property assigned, for search of record to determine such book and page</td>
<td>.50</td>
</tr>
<tr>
<td>32</td>
<td></td>
<td></td>
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<tr>
<td>33</td>
<td></td>
<td></td>
</tr>
<tr>
<td>34</td>
<td>If such assignment contains more than two pages, for each additional page</td>
<td>1.00</td>
</tr>
<tr>
<td>35</td>
<td></td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>For recording and indexing and noting release of lien</td>
<td>2.00</td>
</tr>
<tr>
<td>37</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>If such release contains more than one reference to lien released, for each lien released thereby</td>
<td>2.00</td>
</tr>
<tr>
<td>39</td>
<td></td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>If book and page reference to lien released is omitted, for search of record to determine such book and page</td>
<td>.50</td>
</tr>
<tr>
<td>41</td>
<td></td>
<td></td>
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<tr>
<td>42</td>
<td></td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>For filing or refiling and entering conditional sales contract</td>
<td>2.00</td>
</tr>
<tr>
<td>44</td>
<td></td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>For recording and indexing a satisfaction of a conditional sales contract</td>
<td>2.00</td>
</tr>
<tr>
<td>46</td>
<td></td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>For filing each financing, continuation or termination statement or other statement or writing permitted to be filed under chapter forty-six of the code</td>
<td>2.00</td>
</tr>
<tr>
<td>48</td>
<td></td>
<td></td>
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<tr>
<td>49</td>
<td></td>
<td></td>
</tr>
<tr>
<td>50</td>
<td>For filing, preserving and indexing a security agreement filed under chapter forty-six of the code</td>
<td>3.00</td>
</tr>
<tr>
<td>51</td>
<td></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>For recording and indexing a certificate of incorporation</td>
<td>2.00</td>
</tr>
<tr>
<td>53</td>
<td></td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>If such certificate contains more than two pages, for each additional page</td>
<td>1.00</td>
</tr>
<tr>
<td>55</td>
<td></td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>For filing and indexing a certificate showing the name or names of a person or persons conducting business under an assumed name</td>
<td>2.00</td>
</tr>
</tbody>
</table>
For certifying to the assessor a transfer of real estate under section eight, article four, chapter eleven of the code .................................................. 1.00

For swearing the witnesses and entering in the order or minute book, all orders in relation to the proof of a will which is admitted to record without contest, and copying such order on the will or on a paper annexed thereto, when fully proved and but one order ........................................................... 3.00

If the will be but partially proved on one day, for the order and entering the same on the will or paper annixed thereto ......................................................... 1.00

For each subsequent order and entering the same on the will or paper annexed thereto .................. 1.00

For the same services where there is a contest ............. 8.00

For preparing notices in connection with contest, or any hearing, each notice ................................. 1.00

For recording a will and the matter recorded therewith in the will book .................................. 2.00

If will and matter recorded therewith contains more than two pages, for each additional page ........... 1.00

For entering orders and transmitting papers in case of appeal ......................................................... 3.00

If such order and transmittal contains more than five pages, for each additional page ..................... 1.00

If any personal representative or guardian qualify for administering necessary oaths, notating the bond, entering and copying on the will, order granting probate or administration, making out copy of such order for personal representative or guardian, entering and copying orders of appraisement .................................................. 2.00

For each additional copy of qualification order ........... 1.00
If several personal representatives qualify on the same estate at the same time or term the same fee shall be charged as if one had qualified, to wit ... 2.00

For entering and copying an order granting a license under provisions of article twelve, chapter eleven of the code ................................. 1.00

For certificate for a license or endorsing assignment thereof .................................. 1.00

For issuance of marriage license, for preparing the application and administering the oath, for registering and recording the license, for mailing acknowledgment of minister’s return to one of licensees, for notifying one of licensees after sixty days of the nonreceipt of the minister’s return ........................................ 8.00

One dollar of the latter fee shall be paid by the county clerk into the state treasury as a state registration fee, in the same manner that license taxes are paid into the treasury under article twelve, chapter eleven of the code.

For search of anything in his or her office of over a year’s standing, unless otherwise required by statute .............................................. .50

For recording certificates and posting a copy thereof under the provisions of section two, article one, chapter thirty-four of the code ......................... 1.50

For docketing or redocketing under article three, chapter thirty-eight of the code, a judgment, decree, bond or recognizance ................................. 1.00

If such writing contains more than one page, for each additional page ........................................ 1.00

For recording and indexing an execution noting the date of issuance and the date of filing of same upon the judgment record ................................. 1.50
For making out a transcript of the record and proceedings in any case in due form so that the same may be used in appellate court, such fee shall be the same as specified herein for recording.

For making out, in any other manner than copying, any paper to go out of the office which is not otherwise provided for ............ 1.50

If such paper contains more than two pages, for each additional page .................... 1.00

For any copy, if it be not otherwise provided for .... 1.50

If such copy contains more than two pages, for each additional page .................... 1.00

For annexing the seal of the court to any paper, writing certificates of clerk accompanying it .... 1.00

For writing a certificate of the president of the court or judge, when the clerk be required to do so ... 1.00

For recording and indexing an inventory or sale bill .. 1.50

If such writing contains more than two pages, for each additional page .................... 1.00

For entering an order confirming the report of a fiduciary .................... 1.00

For recording and indexing such report and matter recorded therewith .................... 3.00

If such report contains more than four pages, for each additional page .................... 1.00

For recording and indexing any bond required by law to be recorded, including the certificate or other evidence of its execution .................... 1.50

If such bond and certificate contains more than two pages, for each additional page .................... 1.00

For recording and indexing a notice of mechanic's lien .................... 1.50
If such notice contains more than two pages, for each additional page $1.00$

For recording contract limiting liability of owner and bond of contractor to be filed therewith, as prescribed in article two, chapter thirty-eight of the code $2.00$

If such contract and bond contains more than two pages, for each additional page $1.00$

For recording and indexing a notice of lis pendens $1.50$

If such notice contains more than two pages, for each additional page $1.00$

For recording a certificate of real estate claimed as a homestead $1.00$

For administering an oath not herein provided for, and writing a certificate thereof where the case requires one $1.00$

For recording a writing containing pages in excess of legal size, 8 ½” x 14”, additional fee for each page, where recording is by photograph $0.50$

For recording and indexing instruments not specifically provided for herein $1.50$

If such instrument contains more than two pages, for each additional page $1.00$

For recording anew any will, deed or other paper, the same fees herein provided for the original recording.

For any service other than recording and indexing not specifically provided for, the same fee as a clerk of the circuit court for similar services.

All acts or parts of acts in conflict herewith are hereby repealed.
AN ACT to amend and reenact section eight, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the per diem compensation and expenses of judges of the court of claims.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CLAIMS AGAINST THE STATE.


1 Each judge of the court shall receive one hundred sixty dollars for each day actually served and expenses incurred in the performance of his or her duties paid at the same per diem rate as members of the Legislature. In addition to the expense per diem, each judge may, when using his or her own vehicle, be reimbursed for mileage at the mileage rate equal to the amount paid by the travel management office of the department of administration. The number of days served by each judge shall not exceed one hundred in any fiscal year, except by authority of the joint committee on government and finance:

Provided, That in computing the number of days served, days utilized solely for the exercise of duties assigned to judges and commissioners by the provisions of article two-a of this chapter shall be disregarded. For the purpose of this section, time served shall include time spent in the hearing of claims, in the consideration of the record, in the preparation of opinions and in necessary travel.
AN ACT to amend and reenact section seventeen, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to duties of director of supreme court of appeals; and eliminating time reporting requirements for circuit judges.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. SUPREME COURT OF APPEALS.


The director shall, when authorized by the supreme court of appeals, be the administrative officer of said court and shall have charge, under the supervision and direction of the supreme court of appeals, of:

(a) All administrative matters relating to the offices of the clerks of the circuit and intermediary courts and of the offices of justice of the peace and all other clerical and administrative personnel of said courts; but nothing contained in this act shall be construed as affecting the authority of the courts to appoint their administrative or clerical personnel;

(b) Examining the state of the dockets of the various courts and securing information as to their needs for assistance, if any, and the preparation of statistical data and reports of the business transacted by the courts;
(c) The preparation of a proper budget to secure the appropriation of moneys for the maintenance, support and operation of the courts;

(d) The purchase, exchange, transfer and distribution of equipment and supplies, as may be needful or desirable;

(e) Such other matters as may be assigned to him by the supreme court of appeals. The clerks of the circuit courts, intermediate courts and courts of the justices of the peace shall comply with any and all requests made by the director or his assistants for information and statistical data bearing on the state of the dockets of such courts, or such other information as may reflect the business transacted by them;

(f) Annual report of activities and estimates of expenditures. — The director, when required to do so by the supreme court of appeals, shall submit annually to the court a report of the activities of the administrative office and of the state of business of the courts, together with the statistical data compiled by him, with his recommendations;

(g) Serve as the chair of the court security board created under the provisions of section fifteen, article three of this chapter.

CHAPTER 72

(Com. Sub. for H. B. 2324 — By Delegates Johnson, Fleischauer, Hutchins, Riggs and Trump)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of judicial circuits; realigning certain circuits; clarifying terms of offices; addressing judge residency in certain circumstances; and making certain technical revisions.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

(a) The state shall be divided into the following judicial circuits with the following number of judges:

The counties of Brooke, Hancock and Ohio shall constitute the first circuit and shall have four judges; the counties of Marshall, Tyler and Wetzel shall constitute the second circuit and shall have two judges; the counties of Doddridge, Pleasants and Ritchie shall constitute the third circuit and shall have one judge; the counties of Wood and Wirt shall constitute the fourth circuit and shall have three judges; the counties of Calhoun, Jackson, Mason and Roane shall constitute the fifth circuit and shall have two judges; the county of Cabell shall constitute the sixth circuit and shall have four judges; the county of Logan shall constitute the seventh circuit and shall have two judges; the county of McDowell shall constitute the eighth circuit and shall have two judges; the county of Mercer shall constitute the ninth circuit and shall have two judges; the county of Raleigh shall constitute the tenth circuit and shall have three judges; the counties of Greenbrier and Pocahontas shall constitute the eleventh circuit and shall have two judges; the county of Fayette shall constitute the twelfth circuit and shall have two judges; the county of Kanawha shall constitute the thirteenth circuit and shall have seven judges; the counties of Braxton, Clay, Gilmer and Webster shall constitute the fourteenth circuit and shall have two judges; the county of Harrison shall constitute the fifteenth circuit and shall have three judges; the county of Marion shall constitute the sixteenth circuit and shall have two judges; the county of Monongalia shall constitute the seventeenth circuit and shall have two judges; the county of Preston shall constitute the eighteenth circuit and shall have one judge; the counties of Barbour and Taylor shall constitute the
nineteenth circuit and shall have one judge; the county of Randolph shall constitute the twentieth circuit and shall have one judge; the counties of Grant, Mineral and Tucker shall constitute the twenty-first circuit and shall have two judges; the counties of Hampshire, Hardy and Pendleton shall constitute the twenty-second circuit and shall have one judge; the counties of Berkeley, Jefferson and Morgan shall constitute the twenty-third circuit and shall have four judges; the county of Wayne shall constitute the twenty-fourth circuit and shall have one judge; the counties of Lincoln and Boone shall constitute the twenty-fifth circuit and shall have two judges; the counties of Lewis and Upshur shall constitute the twenty-sixth circuit and shall have one judge; the county of Wyoming shall constitute the twenty-seventh circuit and shall have one judge; the county of Nicholas shall constitute the twenty-eighth circuit and shall have one judge; the county of Putnam shall constitute the twenty-ninth circuit and shall have two judges; the county of Mingo shall constitute the thirtieth circuit and shall have one judge; and the counties of Monroe and Summers shall constitute the thirty-first circuit and shall have one judge: Provided, That the Kanawha County circuit court shall be a court of concurrent jurisdiction with each single judge circuit where the sitting judge in such single judge circuit is unavailable by reason of sickness, vacation or other reason.

(b) Any judge in office on the effective date of the reenactment of this section shall continue as a judge of the circuit as constituted under prior enactments of this section, unless sooner removed or retired as provided by law, until the thirty-first day of December, two thousand.

(c) The term of office of all circuit court judges shall be for eight years. The term of office for all circuit court judges elected during the general election conducted in the year two thousand shall commence on the first day of January, two thousand one and end on the thirty-first day of December, two thousand eight.

(d) Beginning with the primary and general elections to be conducted in the year one thousand nine hundred ninety-two, in
all judicial circuits having two or more judges there shall be, for
election purposes, numbered divisions corresponding to the
number of circuit judges in each circuit. Each judge shall be
elected at large from the entire circuit. In each numbered
division of a judicial circuit, the candidates for nomination or
election shall be voted upon and the votes cast for the candi-
dates in each division shall be tallied separately from the votes
cast for candidates in other numbered divisions within the
circuit. The candidate receiving the highest number of the votes
cast within a numbered division shall be nominated or elected,
as the case may be: Provided, That beginning with the primary
and general elections to be conducted in the year two thousand,
judges serving a judicial circuit comprised of four or more
counties with two or more judges, shall not be residents of the
same county.

(e) The supreme court shall, by rule, establish the terms of
court of circuit judges.

CHAPTER 73

(Com. Sub. for S. B. 507 — By Senators McCabe, Mitchell, Walker, Sprouse,
Kessler, Redd, Deem, Oliverio, Hunter, Sharpe, Ross, Schoonover, Ball,
McKenzie, Unger, Anderson, Bowman, Plymale and Prezioso)

[Passed March 8, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten-b, article two, chapter
sixty-one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to criminal assault and
battery on certain classes of public employees; adding assault on
employees of urban mass transportation systems to listed off-
fenses; and penalties therefor.

Be it enacted by the Legislature of West Virginia:

That section ten-b, article two, chapter sixty-one of the code of
West Virginia, one thousand nine hundred thirty-one, as amended, be
amended and reenacted to read as follows:
ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, humane officers, emergency medical service personnel, firefighters, fire marshal and county or state correctional employees; penalties.

1. (a) Malicious assault. — Any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in his or her official capacity and the person committing the malicious assault knows or has reason to know that the victim is a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in his or her official capacity, is guilty of a felony and, upon conviction, shall be confined in a correctional facility for not less than three nor more than fifteen years.

2. (b) Unlawful assault. — Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in his or her official capacity, bodily injury with intent to maim, disfigure, disable or kill said person and the person committing the unlawful assault knows or has reason to know that the victim is a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in his or her official capacity, is guilty of a felony and, upon conviction, shall be confined in
(c) Battery. — Any person who unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in his or her official capacity, or unlawfully and intentionally causes physical harm to a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in such capacity, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one month nor more than twelve months, fined the sum of five hundred dollars, or both. If any person commits a second such offense, he or she is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than three years or fined the sum of one thousand dollars or both fined and confined. Any person who commits a third violation of this subsection is guilty of a felony and, upon conviction, shall be confined in a correctional facility not less than two years nor more than five years or fined not more than two thousand dollars or both fined and confined.

(d) Assault. — Any person who unlawfully attempts to commit a violent injury to the person of a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in his or her official capacity, or unlawfully commits an act which places a police officer, conservation officer, humane officer, emergency medical service personnel, firefighter, county correctional employee, state correctional employee, employee of an urban mass transportation system acting in his or her
official capacity in reasonable apprehension of immediately receiving a violent injury, is guilty of a misdemeanor and, upon conviction, shall be confined in the county or regional jail for not less than twenty-four hours nor more than six months, fined not more than two hundred dollars, or both fined and imprisoned.

(e) For purposes of this section:

(1) “Police officer” means any person employed by the state police, any person employed by the state to perform law-enforcement duties, any person employed by a political subdivision of this state who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this state or employed as a special police officer as such is defined in section forty-one, article three, chapter sixty-one of this code.

(2) “Employee of an urban mass transportation system” means any person employed by an urban mass transportation system as such is defined in section three, article twenty-seven, chapter eight of this code or by a system that receives federal transit administration funding under 49 U. S. C. §§ 5307 or 5311.

CHAPTER 74

(Com. Sub. for H. B. 2348 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to holding a person hostage; defining terms; establishing penalties; and relating to the applicability of the statute under certain circumstances involving a family member who kidnaps or holds his or her child hostage
for nonmonetary reasons believing he or she is acting in the child’s interest; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14a. Penalty for enticing away, kidnapping or holding hostage any person.

(a) Any person who, by force, threat, duress, fraud or enticement take, confine, conceal, or decoy, inveigle or entice away, or transport into or out of this state or within this state, or otherwise kidnap any other person, or hold hostage any other person for the purpose or with the intent of taking, receiving, demanding or extorting from such person, or from any other person or persons, any ransom, money or other thing, or any concession or advantage of any sort, or for the purpose or with the intent of shielding or protecting himself, herself or others from bodily harm or of evading capture or arrest after he or she or they have committed a crime shall be guilty of a felony and, upon conviction, shall be punished by confinement by the division of corrections for life, and, notwithstanding the provisions of article twelve, chapter sixty-two of this code, shall not be eligible for parole: Provided, That the following exceptions shall apply: (1) A jury may, in their discretion, recommend mercy, and if such recommendation is added to their verdict, such person shall be eligible for parole in accordance with the provisions of said article twelve; (2) if such person pleads guilty, the court may, in its discretion, provide that such person shall be eligible for parole in accordance with the provisions of said article twelve, and, if the court so provides, such person shall be eligible for parole in accordance with the provisions of said article twelve in the same manner and with like effect as if such person had been found guilty by the verdict of a jury and the jury had recommended mercy; (3) in all cases where the person against whom the offense is committed is
returned, or is permitted to return, alive, without bodily harm
having been inflicted upon him, but after ransom, money or
other thing, or any concession or advantage of any sort has been
paid or yielded, the punishment shall be confinement by the
division of corrections for a definite term of years not less than
twenty nor more than fifty; (4) in all cases where the person
against whom the offense is committed is returned, or is
permitted to return, alive, without bodily harm having been
inflicted upon him or her, but without ransom, money or other
thing, or any concession or advantage of any sort having been
paid or yielded, the punishment shall be confinement by the
division of corrections for a definite term of years not less than
ten nor more than thirty.

(b) For purposes of this section, the terms “to hold hostage”
means to seize or detain and threaten to kill or injure another in
order to compel, a third person or a governmental organization
to do or abstain from doing any legal act as an explicit or
implicit condition for the release of the person detained.

(c) Notwithstanding any other provision of this section, if
a violation of this section is committed by a family member of
a minor abducted or held hostage and he or she is not motivated
by monetary purposes, but rather intends to conceal, take,
remove the child or refuse to return the child to his or her
lawful guardian in the belief, mistaken or not, that it is in the
child’s interest to do so, he or she shall be guilty of a felony
and, upon conviction thereof, be confined in a correctional
facility for not less than one or more than five years or fined not
more than one thousand dollars, or both.

(d) Notwithstanding any provision of this code to the
contrary, where a law-enforcement agency of this state or a
political subdivision thereof receives a complaint that a
violation of the provisions of this section has occurred, the
receiving law-enforcement agency shall notify any other law-
enforcement agency with jurisdiction over the offense, includ-
ing, but not limited to, the state police and each agency so
notified, shall cooperate in the investigation forthwith.
CHAPTER 75

(Com. Sub. for H. B. 2475 — By Delegates C. White, Hubbard, Dempsey and Davis)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assault or battery of a school employee; and adding assault or battery of an off duty school employee when the motive for the assault or battery is retaliation for an action taken by the employee to supervise or discipline one or more pupils.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-15. Assault, battery on school employees; penalties.

1 (a) If any person commits an assault: (1) By unlawfully attempting to commit a violent injury to the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to sections one or one-a, article five, chapter eighteen-a of this code; or (2) by unlawfully committing an act which places a school employee in reasonable apprehension of immediately receiving a violent injury while the employee is engaged in the performance of his or her
duties, is commuting to or from his or her place of employment or if the motive for the assault is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to sections one or one-a, article five, chapter eighteen-a of this code, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not less than five days nor more than six months and fined not less than fifty dollars nor more than one hundred dollars.

(b) If any person commits a battery: (1) By unlawfully and intentionally making physical contact of an insulting or provoking nature with the person of a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to sections one or one-a, article five, chapter eighteen-a of this code; or (2) by unlawfully and intentionally causing physical harm to a school employee while he or she is engaged in the performance of his or her duties, is commuting to or from his or her place of employment or if the motive for the battery is retaliation for some action taken by the employee to supervise or discipline one or more pupils pursuant to sections one or one-a, article five, chapter eighteen-a of this code, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not less than ten days nor more than twelve months and fined not less than one hundred dollars nor more than five hundred dollars.

(c) For the purposes of this section, “school employee” means a person employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. For the purposes of this section, a “school employee” includes a student teacher.
AN ACT to amend and reenact section seventeen, article six, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to false reports concerning bombs or other explosive devices; creating offense of false reports concerning bombs creating serious bodily injury; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-17. False reports concerning bombs or other explosive devices; penalties.

(a) Any person who shall impart or convey or cause to be imparted or conveyed any false information, knowing or having reasonable cause to believe such information to be false, concerning the presence of any bomb or other explosive device in, at, on, near, under or against any dwelling house, structure, improvement, building, bridge, motor vehicle, vessel, boat, railroad car, airplane or other place, or concerning an attempt or alleged attempt being made or to be made to so place or explode any such bomb or other explosive device, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by confinement in the county jail for not more than one year, or both.
(b) Any person violating any provision of subsection (a) of this section shall, for the second or any subsequent offense under this section, be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the state penitentiary for not less than one year nor more than five years, or both, or, in the discretion of the court, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars and by confinement in the county jail for not more than one year.

(c) Notwithstanding any provision of this section to the contrary, any person violating the provisions of subsection (a) of this section whose violation of the subsection results in another suffering serious bodily injury shall be guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one nor more than five years or fined not more than ten thousand dollars, or both. Each such injury covered by a violation of subsection (a) shall constitute a separate offense.

CHAPTER 77

(Com. Sub. for H. B. 2084 — By Mr. Speaker, Mr. Kiss, and Delegates Amores, Capito, Evans and Flanigan)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen, relating to providing for the felony offense of wearing body armor while committing a violent crime; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by
ARTICLE 7. DANGEROUS WEAPONS.

§61-7-15. Persons prohibited from committing violent crime while wearing body armor; penalties.

(a) A person who wears or is otherwise equipped with body armor while committing a felony offense, an element of which is force, the threat of force, physical harm to another or the use or presentment of a firearm or other deadly weapon, is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than two nor more than ten years or fined not more than ten thousand dollars, or both.

(b) As used in this section, "body armor" means a jacket, vest, or other similar apparel or device constructed to provide ballistic resistance to penetration and deformation and intended to protect the human torso against gunfire. The term may include, but is not limited to, apparel that incorporates inserts, or variations in construction of the ballistic panel over small areas of the torso, for the purpose of increasing the basic level of protection of the armor (whether ballistic or blunt trauma) on localized areas. Body armor may be constructed of Kevlar or other similar fabric and may be reinforced with other materials. Body armor may incorporate "threat" or "trauma" plates (which are inserts that fit into the vest that will stop more powerful rounds) or may, as "threat armor", incorporate hard panels.

CHAPTER 78
(Com. Sub. for S. B. 82 — By Senator Wooton)

[Passed February 23, 1999; in effect ninety days from passage. Approved by the Governor.]
relating to criminal child abuse; prohibiting the practice of female genital mutilation; and penalties.

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

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

**ARTICLE 8D. CHILD ABUSE.**

§61-8D-3a. Female genital mutilation; penalties; definitions.

(a) Except as otherwise provided in subsection (b) of this section, any person who circumcises, excises or infibulates, in whole or in part, the labia majora, labia minora or clitoris of a female under the age of eighteen, or any parent, guardian or custodian of a female under the age of eighteen who allows the circumcision, excision or infibulation, in whole or in part, of such female's labia majora, labia minora or clitoris, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than ten years and fined not less than one thousand dollars nor more than five thousand dollars.

(b) A surgical procedure is not a violation of this section if the procedure:

1. Is necessary to preserve the health of the child on whom it is performed and is performed by a licensed medical professional authorized to practice medicine in this state; or

2. The procedure is performed on a child who is in labor or has just given birth and is performed for legitimate medical purposes connected with that labor or birth by a licensed medical professional authorized to practice medicine in this state.

(c) A person's belief that the conduct described in subsection (a) of this section (i) is required as a matter of custom, ritual or standard practice or (ii) was consented to by the female on which the circumcision, excision or infibulation was performed shall not constitute a defense to criminal prosecution under subsection (a) of this section.
AN ACT to amend and reenact sections three, four and twenty, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to crime victims compensation; defining terms; providing that a lost scholarship is included as an economic loss; modifying budgetary and payment process; eliminating economic loss claim payment fund and transferring funds to crime victims fund; submission of anticipated budget by legislative auditor; requiring governor to include amounts submitted in proposed budget bill and revenue estimates; and providing auditor may only review claims for sufficiency of funds.

Be it enacted by the Legislature of West Virginia:

That sections three, four and twenty, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.


1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:

3 (1) A victim: Provided, That the term victim does not include a nonresident of this state where the criminally injurious act did not occur in this state;
(2) A dependent, spouse or minor child of a deceased victim; or in the event that the deceased victim is a minor, the parents, legal guardians and siblings of the victim;

(3) A third person other than a collateral source who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim; and

(4) A person who is authorized to act on behalf of a victim, dependent or a third person who is not a collateral source; and, in the event that the victim, dependent or third person who is not a collateral source is a minor or other legally incompetent person, the duly qualified fiduciary of the minor.

(b) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received, or that is readily available to him, from any of the following sources:

(1) The offender, including any restitution received from the offender pursuant to an order by a court of law sentencing the offender or placing him on probation following a conviction in a criminal case arising from the criminally injurious act for which a claim for compensation is made;

(2) The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states;

(3) Social security, medicare and medicaid;

(4) State-required, temporary, nonoccupational disability insurance; other disability insurance;

(5) Workers' compensation;

(6) Wage continuation programs of any employer;

(7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;
(8) A contract providing prepaid hospital and other health care services or benefits for disability; and

(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim which exceeds twenty-five thousand dollars.

c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state or in any state not having a victim compensation program which by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct also includes an act of terrorism, as defined in 18 U.S.C. §2331, committed outside of the United States against a resident of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except when the person engaging in the conduct intended to cause personal injury or death, or except when the person engaging in the conduct committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, or reckless driving.

d) "Dependent" means an individual who received over half of his or her support from the victim. For the purpose of determining whether an individual received over half of his or her support from the victim, there shall be taken into account the amount of support received from the victim as compared to the entire amount of support which the individual received from all sources, including support which the individual himself or herself supplied. The term "support" includes, but is not limited to, food, shelter, clothing, medical and dental care and education. The term "dependent" includes a child of the victim born after his or her death.

e) "Economic loss" means economic detriment consisting only of allowable expense, work loss and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent’s economic loss and a dependent’s
replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment. For purposes of this article, the term “economic loss” includes a lost scholarship as defined in this section.

(f) “Allowable expense” means reasonable charges incurred or to be incurred for reasonably needed products, services and accommodations, including those for medical care, prosthetic devices, eye glasses, dentures, rehabilitation and other remedial treatment and care.

Allowable expense includes a total charge not in excess of four thousand dollars for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(g) “Work loss” means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have performed for income, reduced by any income from substitute work actually performed or to be performed by him or her, or by income he or she would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake.

(h) “Replacement services loss” means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or herself or his or her family, if he or she had not been injured.

(i) “Dependent’s economic loss” means loss after a victim’s death of contributions or things of economic value to his or her dependents, not including services they would have received
from the victim if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim’s death.

(j) “Dependent’s replacement service loss” means loss reasonably incurred or to be incurred by dependents after a victim’s death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim’s death and not subtracted in calculating dependent’s economic loss.

(k) “Victim” means a person who suffers personal injury or death as a result of any one of the following: (1) Criminally injurious conduct; (2) the good faith effort of the person to prevent criminally injurious conduct; or (3) the good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct, or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension.

(l) “Contributory misconduct” means any conduct of the claimant, or of the victim through whom the claimant claims an award, that is unlawful or intentionally tortious and that, without regard to the conduct’s proximity in time or space to the criminally injurious conduct, has causal relationship to the criminally injurious conduct that is the basis of the claim and shall also include the voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any controlled substance when the intoxication has a causal connection or relationship to the injury sustained. The voluntary intoxication of a victim is not a defense against the estate of a deceased victim.

(m) “Lost scholarship” means a scholarship, academic award, stipend or other monetary scholastic assistance which had been awarded or conferred upon a victim in conjunction with a postsecondary school educational program and, which the victim is unable to receive or use, in whole or in part, due to injuries received from criminally injurious conduct.

(a) Every person within the state who is convicted of or pleads guilty to a misdemeanor offense, other than a traffic offense that is not a moving violation, in any magistrate court or circuit court, shall pay the sum of ten dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. Every person within the state who is convicted of or pleads guilty to a misdemeanor offense, other than a traffic offense that is not a moving violation, in any municipal court, shall pay the sum of eight dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. In addition to any other costs previously specified, every person within the state who is convicted of or pleads guilty to a violation of section two, article five, chapter seventeen-c of this code, shall pay a fee in the amount of twenty percent of any fine imposed under that section. This is in addition to any other court costs required by this section or which may be required by law.

(b) The clerk of the circuit court, magistrate court or municipal court where the additional costs are imposed under the provisions of subsection (a) of this section shall, on or before the last day of each month, transmit all costs received under this article to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the "Crime Victims Compensation Fund". All moneys collected and received under this article and paid into the state treasury and credited to the crime victims compensation fund in the manner prescribed in section two, article two, chapter twelve of this code, shall be kept and maintained for the specific purposes of this article, and may not be treated by the auditor and treasurer as part of the general revenue of the state.

(c) Expenditure of moneys in the crime victims compensation fund is authorized from collections.

(d) Moneys in the crime victims compensation fund may be expended for:
(1) The payment of the costs of administration of this article;
(2) The payment of economic loss awards approved by the court; and
(3) The payment of attorney and witness fees, allowed pursuant to section nineteen of this article.

(e) The services of the office of the attorney general, as may be required or authorized by any of the provisions of this article, shall be rendered without charge to the fund.

(f) Any moneys in the crime victims compensation fund may be invested as provided in article six, chapter twelve of this code, with the interest income credited to the crime victims compensation fund.

(g) All funds in the special economic loss claim payment fund created under the provisions of section twenty of this article prior to the amendments made in that section enacted in the year one thousand nine hundred ninety-nine shall be transferred to the crime victims compensation fund within a reasonable time from the effective date of the amendments.

(h) All gifts that are received to be used for the purposes of this article shall be deposited into the crime victims compensation fund.

(a) The legislative auditor shall submit to the department of administration, on or before the twentieth day of November of each year, an anticipated budget for the crime victims compensation program provided in this article for the next fiscal year, which shall include:

(1) An estimate of the balance and receipts anticipated in the crime victims compensation fund;

(2) Amounts anticipated to be sufficient for the payment of all administrative expenses necessary for the administration of this article; and
(3) Amounts anticipated to be sufficient for the payment of awards, attorney fees, witness fees and other authorized fees, costs or expenses that may arise under this article during the next fiscal year.

(b) The governor shall include in his or her proposed budget bill and revenue estimates the amounts submitted by the legislative auditor under subsection (a) of this section.

(c) The clerk shall certify each authorized award and the amount of the award and make requisition upon the crime victims compensation fund to the auditor. Notwithstanding any provision of chapter twelve of this code to the contrary, the auditor shall issue a warrant to the treasurer without further examination or review of the claim if there is a sufficient unexpended balance in the crime victims compensation fund.

(d) The court may provide that payment be made to a claimant or to a third party for economic losses of the claimant and the order may provide an award for the payment for actual economic losses which are prospective as well as those which have already been incurred.

CHAPTER 80

(Com. Sub. for H. B. 2777 — By Delegates Amores, Hunt, Rowe, Hutchins, Tillis, Smirl and Schadler)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article eleven-b, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the home incarceration services fund; and authorizing county commissions to expend surplus amounts in the home incarceration service fund to defray the cost of housing county inmates.

Be it enacted by the Legislature of West Virginia:
That section seven, article eleven-b, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 11B. HOME INCARCERATION ACT.


All home incarceration fees ordered by the circuit court shall be paid to the circuit clerk, who shall monthly remit the fees to the sheriff. All home incarceration fees ordered by a magistrate shall be paid to the magistrate court clerk, who shall monthly remit the fees to the county sheriff. The county sheriff shall establish a special fund designated the home incarceration services fund, in which the sheriff shall deposit all home incarceration fees remitted by the clerks. The county commission shall appropriate money from the fund to administer a home incarceration program, including the purchase of electronic monitoring devices and other supervision expenses, and may as necessary supplement the fund with additional appropriations. The county commission may also appropriate any excess money from the fund to defray the costs of housing county inmates, if the sheriff or other person designated to administer the fund certifies in writing to the county commission that a surplus exists in the fund at the end of the fiscal year.

CHAPTER 81

(Com. Sub. for H. B. 2263 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]  

AN ACT to amend and reenact section thirteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to parole; and authorizing the video conferencing of parole hearings before a majority of the board or videotaping of a hearing before a single board member for subsequent review by two other board members.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

(a) The board of parole, whenever it is of the opinion that the best interests of the state and of the inmate will be served, and subject to the limitations hereinafter provided, shall release any inmate on parole for terms and upon conditions as are provided by this article.

(b) Any inmate of a state correctional center, is eligible for parole if he or she:

(1) (A) Has served the minimum term of his or her indeterminate sentence, or has served one fourth of his or her definite term sentence, as the case may be, except that in no case is any person who committed, or attempted to commit a felony with the use, presentment or brandishing of a firearm, eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: Provided, That any person who committed, or attempted to commit, any violation of section twelve, article two, chapter sixty-one of this code, with the use, presentment or brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater.

Nothing in this section applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm. No person is ineligible for parole under the provisions of this subdivision because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm unless such fact is clearly stated and included.
in the indictment or presentment by which the person was charged and was either: (i) Found by the court at the time of trial upon a plea of guilty or nolo contendere; or (ii) found by the jury, upon submitting to the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found by the court, if the matter was tried by the court without a jury.

For the purpose of this section, the term “firearm” means any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder or any other similar means.

(B) The amendments to this subsection adopted in the year one thousand nine hundred eighty-one:

(i) Apply to all applicable offenses occurring on or after the first day of August of that year;

(ii) Apply with respect to the contents of any indictment or presentment returned on or after the first day of August of that year irrespective of when the offense occurred;

(iii) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after the first day of August of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: Provided, That the state gives notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which the finding will be sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried; and

(iv) Does not apply with respect to cases not affected by the amendments and in such cases the prior provisions of this section apply and are construed without reference to the amendments.

Insofar as the amendments relate to mandatory sentences restricting the eligibility for parole, all matters requiring a
mandatory sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(2) Is not in punitive segregation or administrative segregation as a result of disciplinary action;

(3) Has maintained a record of good conduct in prison for a period of at least three months immediately preceding the date of his or her release on parole;

(4) Has submitted to the board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and postrelease counseling and treatment, the parole release plan having been approved by the commissioner of corrections or his or her authorized representative; and

(5) Has satisfied the board that if released on parole he or she will not constitute a danger to the community.

(c) Except in the case of a person serving a life sentence, no person who has been previously twice convicted of a felony may be released on parole until he or she has served the minimum term provided by law for the crime for which he or she was convicted. No person sentenced for life may be paroled until he or she has served ten years, and no person sentenced for life who has been previously twice convicted of a felony may be paroled until he or she has served fifteen years: Provided, That no person convicted of first degree murder for an offense committed on or after the tenth day of June, one thousand nine hundred ninety-four, is eligible for parole until he or she has served fifteen years.

(d) In the case of a person sentenced to any state correctional center, it is the duty of the board, as soon as a person becomes eligible, to consider the advisability of his or her release on parole.

(e) If, upon consideration, parole is denied, the board shall promptly notify the inmate of the denial. The board shall, at the time of denial, notify the person of the month and year he or she may apply for reconsideration and review. The board shall at least once a year reconsider and review the case of every inmate.
who was denied parole and is still eligible: Provided, That the
board may reconsider and review parole eligibility any time
within three years following the denial of parole of a person
serving a life sentence.

(f) Any person serving a sentence on a felony conviction
who becomes eligible for parole consideration prior to being
transferred to a state correctional center may make written
application for parole. The terms and conditions for parole
consideration established by this article apply to such inmates.

(g) The board shall, with the approval of the governor,
adopt rules governing the procedure in the granting of parole.
No provision of this article and none of the rules adopted
hereunder are intended or may be construed to contravene, limit
or otherwise interfere with or affect the authority of the
governor to grant pardons and reprieves, commute sentences,
remit fines or otherwise exercise his or her constitutional
powers of executive clemency.

(h) The department of corrections is charged with the duty
of supervising all probationers and parolees whose supervision
may have been undertaken by this state by reason of any
interstate compact entered into pursuant to the uniform act for
out-of-state parolee supervision.

(i)(1) When considering an inmate of a state correctional
center for release on parole, the parole board is to have before
it an authentic copy of or report on the inmate’s current
criminal record as provided through the West Virginia state
police, the United States department of justice or other reliable
criminal information sources and written reports of the warden
or superintendent of the state correctional center to which such
inmate is sentenced:

(i) On the inmate’s conduct record while in custody,
including a detailed statement showing any and all infractions
of disciplinary rules by the inmate and the nature and extent of
discipline administered therefor;

(ii) On improvement or other changes noted in the inmate’s
mental and moral condition while in custody, including a
statement expressive of the inmate’s current attitude toward
society in general, toward the judge who sentenced him or her,
toward the prosecuting attorney who prosecuted him or her,
toward the policeman or other officer who arrested the inmate
and toward the crime for which he or she is under sentence and
his or her previous criminal record;

(iii) On the inmate’s industrial record while in custody
which shall include: The nature of his or her work, occupation
or education, the average number of hours per day he or she has
been employed or in class while in custody and a recommenda-
tion as to the nature and kinds of employment which he or she
is best fitted to perform and in which the inmate is most likely
to succeed when he or she leaves prison;

(iv) On physical, mental and psychiatric examinations of
the inmate conducted, insofar as practicable, within the two
months next preceding parole consideration by the board.

(2) The board may waive the requirement of any report
when not available or not applicable as to any inmate consid-
ered for parole but, in every such case, shall enter in the record
thereof its reason for the waiver: Provided, That in the case of
an inmate who is incarcerated because the inmate has been
found guilty of, or has pleaded guilty to a felony under the
provisions of section twelve, article eight, chapter sixty-one of
this code or under the provisions of article eight-b or eight-c,
chapter sixty-one of this code, the board may not waive the
report required by this subsection and the report is to include a
study and diagnosis including an on-going treatment plan
requiring active participation in sexual abuse counseling at an
approved mental health facility or through some other approved
program: Provided, however, That nothing disclosed by the
person during the study or diagnosis may be made available to
any law-enforcement agency, or other party without that
person’s consent, or admissible in any court of this state, unless
the information disclosed indicates the intention or plans of the
parolee to do harm to any person, animal, institution or to
property. Progress reports of outpatient treatment are to be
made at least every six months to the parole officer supervising
the person. In addition, in such cases, the parole board shall
inform the prosecuting attorney of the county in which the
person was convicted of the parole hearing and shall request
that the prosecuting attorney inform the parole board of the
circumstances surrounding a conviction or plea of guilty, plea
bargaining and other background information that might be
useful in its deliberations.

(j) Before releasing any inmate on parole, the board of
parole shall arrange for the inmate to appear in person, before
at least three members of the board and the board may examine
and interrogate him or her on any matters pertaining to his or
her parole, including reports before the board made pursuant to
the provisions hereof: Provided, That an inmate may appear by
video teleconference if the members of the parole board
conducting the examination are able to contemporaneously see
the inmate and hear all of his or her remarks and if the inmate
is able to contemporaneously see each of the members of the
parole board conducting the examination and hear all of the
members' remarks. The board shall reach its own written
conclusions as to the desirability of releasing the inmate on
parole and the majority of the board members considering the
release shall concur in the decision. The warden or superinten-
dent shall furnish all necessary assistance and cooperate to the
fullest extent with the parole board. All information, records
and reports received by the board are to be kept on permanent
file.

(k) The board and its designated agents are at all times to
have access to inmates imprisoned in any state correctional
center or in any city, county or regional jail in this state, and
shall have the power to obtain any information or aid necessary
to the performance of its duties from other departments and
agencies of the state or from any political subdivision thereof.

(l) The board shall, if so requested by the governor,
investigate and consider all applications for pardon, reprieve or
commutation and shall make recommendation thereon to the
governor.

(m) Prior to making a recommendation for pardon, reprieve
or commutation and prior to releasing any inmate on parole, the
board shall notify the sentencing judge and prosecuting attorney at least ten days before the recommendation or parole.

(n) Any person released on parole shall participate as a condition of parole in the litter control program of the county to the extent directed by the board, unless the board specifically finds that this alternative service would be inappropriate.

CHAPTER 82

(Com. Sub. for S. B. 178 — Senators Ball, Dittmar, Redd, Oliverio, Love and Anderson)

[Passed March 1, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four, relating to requiring an inmate to make written motion to support a request for a continuance of a parole hearing; designation of person to whom motion given; notice requirements; promulgation of rules for exception; waiver of hearing for one year for noncompliance; and discretion of board to set hearings where waiver has occurred.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-24. Request to continue for good cause and timely notice required.

(a) Any inmate scheduled for a parole interview shall, if he or she desires to continue the interview, file with the institutional parole officer a written waiver of his or her right to an
interview on the date set on a form provided by the commis-
ioner of corrections at least thirty days prior to the interview
date. A copy of the waiver shall be supplied to the board of
parole.

(b) The board shall propose for promulgation a legislative
rule pursuant to article thirty, chapter twenty-nine-a of this
code, setting forth criteria constituting emergency circum-
stances where a waiver of interview filed less than thirty days
prior to the scheduled interview shall constitute good cause for
a continuance.

(c) Any inmate failing to appear for his or her scheduled
parole interview who has not waived his or her interview
pursuant to subsection (a) or (b) of this section shall be deemed
to have waived his or her right to a parole interview for a period
of twelve months from the date of the interview at which he or
she failed to appear. The board of parole shall have discretion
to reset the interview with notice to the inmate and any other
person or persons entitled by law to notice, prior to the expira-
tion of the twelve-month waiver period.

CHAPTER 83

(S. B. 149 — By Senators Wooton, Ball,
Dittmar, Kessler, Mitchell, Ross and Snyder)

[Passed February 25, 1999; in effect ninety days from passage. Approved by the Governor.]
cause; restricting the consideration of an expunged record in applications for educational institutions or professional organizations; and limiting the eligibility of those who may petition for an order of expungement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. THE GOVERNOR.

§5-1-16a. Expungement of criminal record upon full and unconditional pardon.

1 (a) Any person who has received a full and unconditional pardon from the governor, pursuant to the provisions of section eleven, article VII of the constitution of West Virginia and section sixteen of this article, may petition the circuit court in the county where the conviction was had to have the record of such conviction expunged. The petition shall be served upon the prosecuting attorney of the county where the petition was filed. Any person petitioning the court for an order of expungement shall publish a notice of the time and place that such petition will be made, which notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where the petition is filed. The circuit court, upon verification of the act of pardon and after a hearing to determine that good cause exists, may enter an order directing that all public record of the petitioner’s conviction be expunged.

(b) The record expunged pursuant to the provisions of this section may not be considered in an application to any educational institution in this state or an application for any licensure required by any professional organization in this state.

(c) No person shall be eligible for expungement pursuant to this section until two years after having been pardoned.
(d) No person shall be eligible for expungement pursuant to this section until twenty years after the discharge of his or her sentence upon the conviction for which he or she was pardoned.

(e) No person shall be eligible for expungement of a record of conviction of first degree murder, as defined in section one, article two, chapter sixty-one of this code; treason, as defined in section one, article one of said chapter; kidnaping, as defined in section fourteen-a, article two of said chapter; or any felony defined in article eight-b of said chapter.

CHAPTER 84

(S. B. 369 — By Senators Helmick, Minard, Dittmar and Ross)

[Passed February 22, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, twenty-four and twenty-five, article two, chapter thirty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the licensing of currency transporters; adding exemptions to licensing requirements; clarifying confidentiality provisions; and allowing the commissioner to appoint a hearing examiner in contested cases suspending or revoking a license.

Be it enacted by the Legislature of West Virginia:

That sections three, twenty-four and twenty-five, article two, chapter thirty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

§32A-2-25. Hearing on suspension or revocation of license.

(a) The following are exempt from the provisions of this article:

(1) Banks, trust companies, foreign bank agencies, credit unions, savings banks and savings and loan associations authorized to do business in the state or which qualify as federally insured depository institutions, whether organized under the laws of this state, any other state or the United States;

(2) The United States and any department or agency of the United States;

(3) The United States post office;

(4) This state and any political subdivision of this state;

(5) The provision of electronic transfer of government benefits for any federal, state or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for and on behalf of the United States or any department, agency or instrumentality of the United States or any state or any political subdivisions of a state;

(6) Persons engaged solely in the business of currency transportation who operate an armored car service in this state pursuant to licensure under article eighteen, chapter thirty of this code: Provided, That the net worth of the licensee exceeds five million dollars. The term “armored car service” as used in this article means a service provided by a person transporting or offering to transport, under armed security guard, currency or other things of value in a motor vehicle specially equipped to offer a high degree of security. Persons seeking to claim this exemption shall notify the commissioner of their intent to do so and demonstrate that they qualify for its use. Persons seeking an exemption under this subdivision are not exempt from the provisions of this article if they also engage in currency exchange or currency transmission;

(7) Persons engaged in the business of currency transportation whose activities are limited exclusively to providing services to federally insured depository institutions, or to any federal, state or local governmental entities; and
(8) Persons engaged solely in the business of removing currency from vending machines providing goods or services, if the machines are not used for gambling purposes or to convey any gambling ticket, token or other device used in a game of chance.

(b) Any person who holds and maintains a valid license under this article may engage in the business of money transmission or currency exchange at one or more locations in this state through or by means of an authorized delegate or delegates as set forth in section twenty-seven of this article, as the licensee may designate and appoint from time to time, and no such authorized delegate is required to obtain a separate license under this article.

(c) The issuance and sale of stored value cards which are intended to purchase items only from the issuer or seller of the stored value card is exempt from the provisions of this article.

(d) Any person who is required and properly obtains a license under this article to transport currency is exempt from the requirements of article eighteen, chapter thirty of this code.


(a) Reports of investigation and examination, together with related documents and financial information not normally available to the public that is submitted in confidence by a person regulated under this article, including, but not limited to, that person's evaluation of the expected outcome of pending litigation, are confidential and may not be disclosed to the public by the commissioner or employees of the division of banking, and are not subject to the state's freedom of information act. The commissioner may release information if:

(1) The commissioner finds that immediate and irreparable harm is threatened to the licensee's customers or potential customers or the general public;

(2) The licensee consents before the release;

(3) The commissioner finds that release of the information is required in connection with a hearing under this article, in
which event information may be related to the parties of that hearing; or

(4) The commissioner finds that the release is reasonably necessary for the protection of the public and in the interest of justice, in which event information may be distributed to representatives of an agency, department or instrumentality of this state, any other state or the federal government.

(b) Nothing in this section prevents release to the public of any list of licensees or aggregated financial data for the licensees, prevents disclosure of information the presiding officer considers relevant to the proper adjudication or administration of justice at public administrative or judicial hearings, or prevents disclosure of information relevant to supporting the issuance of any administrative or judicial order.

§32A-2-25. Hearing on suspension or revocation of license.

(a) A license may not be revoked or suspended except after notice and opportunity for hearing on that action. The commissioner may issue to a person licensed under this article an order to show cause why the license should not be revoked, or should not be suspended for a period not in excess of six months. The order shall state the place for a hearing and set a time for the hearing that is no less than ten days from the date of the order. The hearing shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. The commissioner may appoint a hearing examiner to preside at the hearing and make a recommended decision. After the hearing the commissioner shall revoke or suspend the license if he or she finds that:

(1) The licensee has knowingly or repeatedly violated this chapter or any rule or order lawfully made or issued pursuant to this article;

(2) The licensee has failed to remit its required renewal fees;

(3) Facts or conditions exist which would clearly have justified the commissioner in refusing to grant a license had
these facts or conditions been known to exist at the time the
application for the license was made;

(4) The licensee does not have available the net worth
required by the provisions of section eight of this article, and
after ten days' written notice from the commissioner, fails to
take steps that the commissioner determines are necessary to
remedy the deficiency; or

(5) The licensee has failed or refused to keep the bond or
other security required by section ten of this article in full force
and effect.

(b) No revocation or suspension of a license under this
article is lawful unless prior to institution of proceedings by the
commissioner notice is given to the licensee of the facts or
conduct which warrant the intended action and the licensee is
given an opportunity to show compliance with all lawful
requirements for retention of the license.

(c) If the commissioner finds that probable cause for
revocation of a license exists and that enforcement of this
article to prevent imminent harm to public welfare requires
immediate suspension of the license pending investigation, the
commissioner may, after a hearing upon five days' written
notice, enter an order suspending the license for not more than
thirty days.

(d) Nothing in this section limits the authority of the
commissioner to take action against a licensee or person under
other sections of this article.

(e) Whenever the commissioner revokes or suspends a
license, an order to that effect shall be entered and the commis-
sioner shall forthwith notify the licensee of the revocation or
suspension. Within five days after the entry of the order the
commissioner shall mail by registered or certified mail, or shall
provide for personal delivery to the licensee, a copy of the order
and the findings supporting the order.

(f) Any person holding a license under this article may
relinquish the license by notifying the commissioner in writing
of its relinquishment, but any relinquishment does not affect a
person's liability for acts previously committed.

(g) No revocation, suspension or relinquishment of a
license impairs or affects the obligation of any preexisting
lawful contract between the licensee and any person.

(h) The commissioner may reinstate a license, terminate a
suspension or grant a new license to a person whose license has
been revoked or suspended if no fact or condition then exists
which clearly would have justified the commissioner in refusing
to grant a license.

CHAPTER 85

(H. B. 3021 — By Delegates Douglas, Collins, Varner,
Stalnaker, Wilson, Flanigan and Perdue)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fourteen, chapter
five of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to the West Virginia commission
for the deaf and hard-of-hearing; establishing authority over the
commission to the department of health and human resources.

Be it enacted by the Legislature of West Virginia:

That section three, article fourteen, 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 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND
HARD-OF-HEARING.

§5-14-3. Continuation of commission; membership.

The West Virginia commission for the deaf and hard-of-
hearing is hereby continued within the department of health and
human resources consisting of fifteen persons, eight of whom
shall serve ex officio. The remaining members are appointed by
the governor by and with the advice and consent of the Senate.
The commission shall meet no less than four times annually.
All meetings and activities held by the commission shall be
attended by at least two qualified interpreters who shall be hired
at the commission’s expense or provided free of charge by
agencies, organizations or individuals willing to volunteer
qualified interpreters. The members are:

(1) The secretary, or his or her designee, of the department
of health and human resources; the commissioner, or his or her
designee, of the division of labor; the director, or his or her
designee, of the division of health; the state superintendent of
schools, or his or her designee, of the state board of education;
the director, or his or her designee, of the division of rehabilita-
tion; the director, or his or her designee, of the division of
handicapped children’s services in the division of human
services; the chairman, or his or her designee, of the advisory
council for the education of exceptional children; and the
superintendent, or his or her designee, of the West Virginia
School for the Deaf and Blind, all of whom serve ex officio;
and

(2) Seven persons appointed by the governor, at least three
of whom are deaf or hard-of-hearing, one of whom is the parent
of a deaf child, one of whom is a certified teacher of the
hearing-impaired, one audiologist and one otolaryngologist. Of
the three deaf people, at least two shall be selected from a list
of four people recommended by the board of the West Virginia
association of the deaf.

CHAPTER 86

(H. B. 2477 — By Delegates Douglas, Collins,
Prunty, H. White, Hatfield and Stalnaker)

[Passed March 2, 1999; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact section twelve, article fourteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia commission for the deaf and hard-of-hearing.

Be it enacted by the Legislature of West Virginia:

That section twelve, article fourteen, 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 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND HARD-OF-HEARING.

§5-14-12. Termination of the West Virginia commission for the deaf and hard-of-hearing.

1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia commission for the deaf and hard-of-hearing shall continue to exist until the first day of July, two thousand.

CHAPTER 87

(Com. Sub. for H. B. 2730 — By Delegates Staton, Michael, Douglas, Varner and Beane)

[Passed March 13, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; and to amend and reenact section twenty-two of said article, all relating to awarding state agency and legislative contracts; providing that no contract may be awarded or renewed where a vendor has a delinquency regarding any state debts; setting forth definitions; setting forth exceptions; and requiring self-reporting affidavit.

Be it enacted by the Legislature of the State of West Virginia:
That article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by thereto a new section, designated section ten-a; and that section twenty-two of said article be amended and reenacted, all to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the state.

§5A-3-22. Legislative printing.

§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the state.

(a) Unless the context clearly requires a different meaning, for the purposes of this section the terms:

(1) “Debt” means any assessment, penalty, fine, tax or other amount of money owed to the state because of a judgment, fine, permit violation, license assessment, penalty or other assessment presently due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon;

(2) “Debtor” means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions;

(3) “Related party” means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor, so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

(b) No contract or renewal of any contract may be awarded under this article to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor as defined in this section and the
debt owed is an amount greater than five thousand dollars in the aggregate.

(c) The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment, and the matter has not become final, or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

(d) All bids submitted under this article shall include an affidavit that the bidder and all related parties do not owe any debts or, if a debt is owed, that the provisions of subsection (c) of this section apply.

§5A-3-22. Legislative printing.

Notwithstanding any other provision of this article, the letting of all contracts for legislative printing shall be subject only to the provisions of this section.

Upon request of the Legislature, or either house thereof, all contracts for legislative printing shall be let on competitive bids by the director to the lowest responsible bidder. No vendor, or prospective vendor, may be deemed eligible for any contract under this section if the vendor owes a debt to the state as provided for in section ten-a of this article. Each such contract shall be subject to the approval of the governor, and in case of his disapproval the contract shall be relet on competitive bids submitted in the same manner as the original bids on the contract that was disapproved. Each bid on every such contract shall be within the maximum limits that may be fixed from time to time by concurrent resolution of the Legislature. The clerk of the Senate and the clerk of the House of Delegates shall have exclusive control of all printing authorized by their respective legislative bodies, and shall approve the specifications included in any contract before an invitation for bids is released by the director of purchasing. Before presenting for payment any bill for such legislative printing, the printer shall have the same approved by the purchasing division as correct and according to contract specifications. A copy of all bills for legislative
printing shall be furnished the clerk of the house for which such
printing was done. When properly approved bills are presented
to the clerk of the Senate, or to the clerk of the House of
Delegates, he shall draw his requisition upon the auditor in the
amount of the bill, payable from the legislative printing fund,
and the auditor shall honor the requisition and issue to the
printer a state draft therefor.

CHAPTER 88

(S. B. 677 — By Senators Snyder, Craigo, Unger, Kessler, Bailey and Edgell)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter five-a of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto two new sections, designated sections fifty-five
and fifty-five-a, all relating to intrastate air transportation services
for state employees, legislators, members of various state boards
and commissions and members of the general public; limiting the
authority to contract to one year; directing the solicitation of bids
to provide the same; outlining minimum bid specifications;
authorizing the limited underwriting of the cost of the same; and
making certain findings in relation thereto.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-55. Legislative findings.
§5A-3-55a. Director to solicit competitive bids to provide partially underwritten
intrastate passenger air service at the lowest underwriting costs.

§5A-3-55. Legislative findings.

1 The Legislature hereby finds that the absence of regularly
2 scheduled intrastate commercial passenger air service in the
state inhibits participation on state boards and commissions by citizens living in distant areas of the state; results in the loss of productivity by state employees and legislators traveling to and from distant communities; and hampers economic development. The Legislature further finds that it would well serve the state's interests to partially underwrite the cost of providing air service by soliciting competitive bids from responsible bidders in the private sector to provide air service to the state.

§5A-3-55a. Director to solicit competitive bids to provide partially underwritten intrastate passenger air service at the lowest underwriting costs.

(a) The director may exercise the authority provided in this article to solicit, from responsible bidders, bids to provide, for a twelve-month period, partially underwritten, reliable, regularly scheduled public passenger air service to state employees, legislators, members of various state boards and commissions, and members of the general public between and among communities in the state: Provided, That the director's authority to contract for services is limited to one twelve-month contract.

(b) To be eligible to respond to the solicitation, a bidder shall offer to provide at a minimum: (1) Round trip prices per passenger which do not exceed three hundred dollars; (2) a flight departure and arrival schedule which is determined by the director to be efficient and appropriate to achieve optimum cost-benefit in light of the official duties, responsibilities and work schedules of the passengers using the service; (3) aircraft which seats at least six passengers, and which meets other safety and comfort specifications determined by the director; and (4) other requirements and specifications determined by the director.

(c) At the conclusion of the bidding process, the director may, pursuant to the procedures provided in this article, award a contract to the lowest bidder, taking into consideration the qualities of the articles to be supplied, their conformity to the specifications, their suitability to the requirements of government and the delivery terms. Any or all bids may be rejected. The director may accept a bid and enter into a contract in which the guarantee amount shall not exceed the amount that the
Legislature appropriated to the director for the air service for that fiscal year: Provided, That the contract shall provide that the administration of the air service to be rendered pursuant to the contract shall be in accordance with the emergency rules as promulgated by the director in accordance with section fifteen, article three, chapter twenty-nine-a of this code.

CHAPTER 89

(H. B. 3030 — By Delegates Kelley, Laird, Jenkins, Hall, Fleischauer, Facemyer and Miller)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four, relating to the pay equity salary adjustment for employees of the department of health and human resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4. Department of health and human resources pay equity salary adjustment.

The Legislature hereby directs that a pay equity salary adjustment be provided for employees of the various agencies of the department of health and human resources. This salary adjustment shall be provided from the funding appropriated to the department in the fiscal year two thousand and may not be construed to require additional appropriations from the Legislature. In the event any provision of this section conflicts with any rule, policy or provision of this code, the provisions of this
section shall control. In determining the pay equity salary adjustments, the department may give consideration to employee tenure, relevant average salaries and such other factors as may be determined relevant by the secretary. Due to the limits of funding, the results of the pay equity salary adjustments shall not be subject to the provisions of article six-a, chapter twenty-nine of this code. The provisions of this section are rehabilitative in nature and it is the specific intent of the Legislature that no private cause of action, either express or implied, shall arise pursuant to the provisions or implementation of this section.

CHAPTER 90

(S. B. 682 — By Senators Plymale, Jackson, Edgell and Sprouse)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four and five, article ten-c, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to including the deputy sheriff retirement system in the government employees retirement plans for purposes of deferring contributions to the deputy sheriff retirement system under the internal revenue code of 1986.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10C. GOVERNMENT EMPLOYEES RETIREMENT PLANS.

§5-10C-3. Definitions.
§5-10C-4. Pick-up of members' contributions by participating public employers.
§5-10C-5. Savings clause.

§5-10C-3. Definitions.
The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) "Accumulated contributions" means the sum of all amounts credited to a member’s individual account in the members’ deposit fund and includes both contributions deducted from the compensation of a member and contributions of a member picked up and paid by the member’s participating public employer, plus applicable interest thereon.

(2) "Board of trustees" means, as appropriate: The board of trustees of the West Virginia public employees retirement system created in article ten, chapter five of this code; the retirement board of the West Virginia department of public safety death, disability and retirement fund created in section twenty-six, article two, chapter fifteen of this code; the retirement board of the state teachers and board of regents retirement system created in article seven-a, chapter eighteen of this code; the governing board of the board of regents supplemental and additional retirement plans created in section four-a, article twenty-three, chapter eighteen of this code; the retirement board of the judges’ retirement system created in article nine, chapter fifty-one of this code; or the board of trustees of the firemen’s and policemen’s pension and relief funds created in article twenty-two, chapter eight of this code.

(3) "Employee" means any person, whether appointed, elected, or under contract, providing services for a public employer, for which compensation is paid and who is a member of the applicable retirement system.

(4) "Member" means any employee who is included in a retirement system.

(5) "Member contributions" means, as appropriate: The contributions required by section twenty-nine, article ten, chapter five of this code, from employees who are members of the West Virginia public employees retirement system; the contributions required by section twenty-six, article two, chapter fifteen of this code, from employees who are members
of the West Virginia department of public safety death, disability and retirement fund; the contributions required by section seven, article fourteen-d, chapter seven of this code, from employees who are members of the deputy sheriff retirement system; the contributions required by section fourteen, article seven-a, chapter eighteen of this code, from employees who are members of the state teachers retirement system; the contributions authorized by section fourteen-a, article seven-a, chapter eighteen or by section four-a, article twenty-three, chapter eighteen, from employees who are members of the West Virginia board of regents retirement plans; the contributions required by section four, article nine, chapter fifty-one of this code, from employees who are members of the judges' retirement system; or the contributions required by section sixteen, article twenty-two, chapter eight of this code, from employees who are members of the firemen's and policemen's pension and relief funds.

(6) "Participating public employer" means the state of West Virginia, any board, commission, department, institution or spending unit, and shall include any agency with full-time employees, created by rule of the supreme court of appeals, which for the purpose of this article shall be considered a department of state government, and county boards of education with respect to teachers employed by them; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia public employees retirement system; any political subdivision in the state which has elected to cover its employees, as defined in this article, under the deputy sheriff retirement system; and any political subdivision in this state which is subject to the provisions of article twenty-two, chapter eight of this code.

(7) "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation
charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns, any agency or organization established by, or approved by the department of health for the provision of community health or mental retardation services, and which is supported in part by state, county or municipal funds.

(8) "Retirement system" means, as appropriate: The West Virginia public employees retirement system created in article ten, chapter five of this code; the West Virginia department of public safety death, disability and retirement fund created in sections twenty-six through thirty-eight, article two, chapter fifteen of this code; the West Virginia deputy sheriff retirement system created in article fourteen-d, chapter seven of this code; the state teachers retirement system created in article seven-a, chapter eighteen of this code; the West Virginia board of regents retirement plans created in section fourteen-a, article seven-a, chapter eighteen and section four-a, article twenty-three, chapter eighteen of this code; the judges' retirement system created in article nine, chapter fifty-one of this code; or the firemen's or policemen's pension and relief fund created in section sixteen, article twenty-two, chapter eight of this code.

(9) "Teacher" has the meaning ascribed to it in section three, article seven-a, chapter eighteen of this code.

§5-10C-4. Pick-up of members' contributions by participating public employers.

(a) The state of West Virginia for its public employees and county boards of education for its teachers shall pick-up and pay the contributions which such employees are required by law to make to the retirement system in which they are a member for all compensation earned by its member employees after the thirtieth day of June, one thousand nine hundred eighty-six. Any political subdivision that is a participating public employer in the West Virginia public employees retirement system shall pick-up and pay the contributions which such employees are required by law to make to the retirement system in which they are members for all compensation earned by its member employees after the first day of January, one thousand nine
hundred ninety-five. Counties shall pick-up and pay the
contributions which such employees are required by law to
make to the deputy sheriff retirement system in which they are
members for all compensation earned by its member employees
after the thirtieth day of June, one thousand nine hundred
ninety-eight. Any election made by a political subdivision to
pick-up and pay employee contributions prior to the first day of
January, one thousand nine hundred ninety-five, remains in
effect and is not altered or amended by the amendments made
to this section during the regular legislative session, one
thousand nine hundred ninety-five.

(b) When the participating public employer picks up and
pays the contributions of its member employees, the contribu-
tions shall be treated as employer contributions in determining
the tax treatment thereof under article twenty-one, chapter
eleven of this code, and the federal Internal Revenue Code of
1986, as amended, and the contributions shall not be included
in the gross income of the employee in determining his or her
tax treatment under those provisions until they are distributed
or made available to the employee or his or her beneficiary. The
participating public employer shall pay these employee
contributions from the same source of funds used in paying
compensation to the employee, by effecting an equal cash
reduction in the gross salary of the employee, or by an off-set
against future salary increases, or by a combination of reduction
in gross salary and off-set against future salary increases.

(c) When employee contributions are picked up and paid by
the participating public employer, they shall be treated by the
board of trustees in the same manner and to the same extent as
employee contributions made prior to the date on which
employee contributions are picked up by the participating
public employer.

(d) The amount of employee contributions picked up by the
participating public employer shall be paid to the retirement
system in the manner and form, and in the frequency required
by the board of trustees and shall be accompanied by supporting
data that the board of trustees may prescribe. When paid to the
50 retirement system, each of these amounts shall be credited to
51 the deposit fund account of the member for whom the contribu-
52 tion was picked up and paid by the participating public em-
53 ployer.

§5-10C-5. Savings clause.

1 In enacting this article, it is the intent of the Legislature that
2 the retirement plan created pursuant to this article and those
3 created pursuant to article ten, chapter five; article fourteen-d,
4 chapter seven; article two, chapter fifteen; article seven-a,
5 chapter eighteen and article nine, chapter fifty-one of this code
6 qualify under section 401 of the Internal Revenue Code of
7 1954, as amended, and that the member contributions picked up
8 by the participating public employer qualify under subsection
9 (h), section 414 of the Internal Revenue Code of 1954, as
10 amended. Should the United States Internal Revenue Service
11 not approve of certain sections or phraseology of certain
12 sections of this article as being in compliance with the statutes
13 or rules governing the Internal Revenue Service, the respective
14 boards of trustees, in the adoption of the deferred compensation
15 plan, shall adopt such terminology with respect to those
16 sections as will comply therewith.

CHAPTER 91

(Com. Sub. for H. B. 2815 — By Mr. Speaker, Mr. Kiss, and
Delegates Martin, Jenkins, Douglass, Varner, Pettit and Staton)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, five, seven, eight, nine,
eleven, seventeen, twenty-one, twenty-four and twenty-nine,
article fourteen-d, chapter seven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, all relating to
technical corrections to the “Deputy Sheriff Retirement Act”;
expanding the definition of “covered employment” to include
additional employment which may be covered by another state retirement plan; clarifying that a deputy sheriff who elects membership in the deputy sheriff retirement system may not also accrue benefits in any other plan administered by the consolidated public retirement board while that deputy sheriff is an active member of the deputy sheriff plan; clarifying the assets to be transferred from the public employees retirement system to the deputy sheriff retirement system; allowing transferring deputy sheriffs until the first day of January, two thousand, to pay all amounts into the deputy sheriff retirement system; clarifying that any deputy sheriff who became totally disabled as a result of duty related injury or illness which occurred prior to the inception of the deputy sheriff retirement plan may become a member of the deputy sheriff retirement system unless he or she is receiving, or would receive, in addition to the deputy sheriff retirement system benefit, a retirement or disability benefit from another state retirement system; clarifying retirement benefits; clarifying adjustment of benefits where early retirement is elected; specifying starting dates for annuities; providing additional time periods in which a deputy sheriff may elect to transfer into the deputy sheriff plan from the public employees retirement system; specifying the credit to be given to those deputy sheriffs who transfer to the deputy sheriff retirement system from the public employees retirement system for certain service in addition to that as a deputy sheriff; providing for transfer of credited service under the public employees retirement system for individuals who meet certain requirements; and providing for promulgation of a rule by the director of the public employees insurance agency to govern the funding of insurance coverage for certain retirees of the deputy sheriff's retirement system.

Be it enacted by the Legislature of West Virginia:

That sections two, five, seven, eight, nine, eleven, seventeen, twenty-one, twenty-four and twenty-nine, article fourteen-d, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 14D. WEST VIRGINIA DEPUTY SHERIFF RETIREMENT SYSTEM ACT.
§7-14D-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and one-quarter percent of the member's final average salary multiplied by the member's years of credited service. A member's accrued benefit may not exceed the limits of section 415 of the Internal Revenue Code.

(b) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member, or paid on his or her behalf pursuant to article ten-c, chapter five of this code, either pursuant to section seven of this article or section twenty-nine, article ten, chapter five of this code as a result of covered employment together with regular interest on the deducted amounts.

(c) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the national guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board on other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as the consolidated public retirement board may adopt from time to time.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of
section 3401(a) of the Internal Revenue Code but determined
without regard to any rules that limit the remuneration included
in wages based upon the nature or location of employment or
services performed during the plan year plus amounts excluded
under section 414(h)(2) of the Internal Revenue Code and less
reimbursements or other expense allowances, cash or noncash
fringe benefits or both, deferred compensation and welfare
benefits. Annual compensation for determining benefits during
any determination period may not exceed one hundred fifty
thousand dollars as adjusted for cost of living in accordance
with section 401(a)(17)(B) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the first
period for which an amount is received as an annuity by reason
of retirement.

(h) "Base salary" means a member's cash compensation
exclusive of overtime from covered employment during the last
twelve months of employment. Until a member has worked
twelve months, annualized base salary is used as base salary.

(i) "Board" means the consolidated public retirement board
created pursuant to article ten-d, chapter five of this code.

(j) "County commission" has the meaning ascribed to it in
section one, article one, chapter seven of this code.

(k) "Covered employment" means either: (1) Employment
as a deputy sheriff and the active performance of the duties
required of a deputy sheriff; (2) the period of time which active
duties are not performed but disability benefits are received
under section thirteen or fourteen of this article; or (3) concurrent
employment by a deputy sheriff in a job or jobs in addition
to his or her employment as a deputy sheriff where such
secondary employment requires the deputy sheriff to be a
member of another retirement system which is administered by
the consolidated public retirement board pursuant to article ten-
d of chapter five of this code: Provided, That the deputy sheriff
contribute to the fund created in section six of this article the
amount specified as the deputy sheriff's contribution in section
seven of this article.
(l) "Credited service" means the sum of a member’s years of service, active military duty, disability service and annual leave service.

(m) "Deputy sheriff" means an individual employed as a county law-enforcement deputy sheriff in this state and as defined by section two, article fourteen, chapter seven of this code.

(n) "Dependent child" means:

1. An unmarried person under age eighteen who is either:
   A. A natural child of the member;
   B. A legally adopted child of the member;
   C. A child who at the time of the member’s death was living with the member while the member was an adopting parent during any period of probation; or
   D. A stepchild of the member residing in the member’s household at the time of the member’s death.

2. Any unmarried child under age twenty-three: (A) Who is enrolled as a full-time student in an accredited college or university; (B) who was claimed as a dependent by the member for federal income tax purposes at the time of member’s death; and (C) whose relationship with the member is described in subparagraph (A), (B) or (C), paragraph (1) of this subdivision.

(o) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member’s death.

(p) "Disability service" means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under section thirteen or fourteen of this article.

(q) "Early retirement age" means age forty or over and completion of twenty years of service.

(r) "Effective date" means the first day of July, one thousand nine hundred ninety-eight.
(s) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last ten years of service. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under section thirteen or fourteen of this article then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under section seventeen of this article multiplied by twelve.

(t) "Fund" means the West Virginia deputy sheriff retirement fund created pursuant to section six of this article.

(u) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof, and without regard to whether the employment relationship has terminated. Hours under this paragraph shall be calculated and credited pursuant to West Virginia department of labor regulations. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under section fourteen or fifteen of this article; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission, irrespective of mitigation of damages. The same hours of service shall not be credited both under paragraph (1) or (2) of this subdivision, and under this paragraph. Hours under this paragraph shall be credited to the member for the plan year or
years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(v) "Member" means a person first hired as a deputy sheriff after the effective date of this article, as defined in subsection (r) of this section, or a deputy sheriff first hired prior to the effective date and who elects to become a member pursuant to section five or section seventeen of this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(w) "Monthly salary" means the portion of a member's annual compensation which is paid to him or her per month.

(x) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(y) "Normal retirement age" means the first to occur of the following:

(1) Attainment of age fifty years and the completion of twenty or more years of service;

(2) While still in covered employment, attainment of at least age fifty years, and when the sum of current age plus years of service equals or exceeds seventy years;

(3) While still in covered employment, attainment of at least age sixty years, and completion of five years of service; or

(4) Attainment of age sixty-two years and completion of five or more years of service.

(z) "Partially disabled" means a member's inability to engage in the duties of deputy sheriff by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected
to last for a continuous period of not less than twelve months.

A member may be determined partially disabled for the purposes of this article and maintain the ability to engage in other gainful employment which exists within the state but which ability would not enable him or her to earn an amount at least equal to two thirds of the annual compensation earned by all active members of this plan during the plan year ending as of the most recent thirtieth day of June, as of which plan data has been assembled and used for the actuarial valuation of the plan.

(aa) "Public employees retirement system" means the West Virginia public employees' retirement system created by article ten, chapter five of this code.

(bb) "Plan" means the West Virginia deputy sheriff death, disability and retirement plan established by this article.

(cc) "Plan year" means the twelve-month period commencing on the first day of July and ending the following thirtieth day of June of any designated year.

(dd) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board shall from time to time adopt.

(ee) "Retirement income payments" means the annual retirement income payments payable under the plan.

(ff) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(gg) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(hh) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months.

For purposes of this subdivision:
(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as a deputy sheriff but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological, or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

A member’s receipt of social security disability benefits creates a rebuttable presumption that the member is totally disabled for purposes of this plan. Substantial gainful employment rebuts the presumption of total disability.

(ii) “Year of service”. A member shall, except in his or her first and last years of covered employment, be credited with year of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

<table>
<thead>
<tr>
<th>Hours of Service</th>
<th>Year of Service Credited</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 500</td>
<td>0</td>
</tr>
<tr>
<td>500 to 999</td>
<td>1/3</td>
</tr>
<tr>
<td>1,000 to 1,499</td>
<td>2/3</td>
</tr>
<tr>
<td>1,500 or more</td>
<td>1</td>
</tr>
</tbody>
</table>

During a member’s first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under section fourteen or fifteen of this article. Except as specifically excluded, years of service include covered employment prior to the effective date.
Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to section thirteen of this article or section thirty, article ten, chapter five of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section twelve of this article or had prior to the effective date made the repayment pursuant to section eighteen, article ten, chapter five of this code.

§7-14D-5. Members.

(a) Any deputy sheriff first employed by a county in covered employment after the effective date of this article shall be a member of this retirement system and plan and does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment.

(b) Any deputy sheriff employed in covered employment on the effective date of this article shall within six months of that effective date notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan: Provided, That this time period is extended to the thirtieth day of January, one thousand nine hundred ninety-nine, in accordance with the decision of the supreme court of appeals in West Virginia Deputy Sheriffs' Association, et al v. James L. Simms, et al, No. 25212: Provided, however, That any deputy sheriff employed in covered employment on the effective date of this article has an additional time period consisting of the ten-day period following the day after which the amended provisions of this section become law to notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan. Any deputy sheriff who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the deputy sheriff remains employed in covered employment in this
Provided further, That any deputy sheriff who elects during the time period from July one, one thousand nine hundred ninety-eight, to January thirtieth, one thousand nine hundred ninety-nine, or who so elects during the ten-day time period occurring immediately following the day after the day the amendments made during the one thousand nine hundred ninety-nine legislative session become law, to transfer from the public employees retirement system to the plan created in this article shall contribute to the plan created in this article at the rate set forth in section seven of this article retroactive to the first day of July, one thousand nine hundred ninety-eight. Any deputy sheriff who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is from time to time offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any deputy sheriff who was employed as a deputy sheriff prior to the effective date, but was not employed on the effective date of this article, shall become a member upon rehire as a deputy sheriff. For purposes of this section, the member's years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless: (1) The deputy sheriff has not received the return of his or her accumulated contributions in the public employees retirement fund system pursuant to section thirty, article ten, chapter five of this code; or (2) the accumulated contributions returned to the member from the public employees retirement system have been repaid pursuant to section twelve of this article. If the conditions of subdivision (1) or (2) of this subsection are met, all years of the deputy sheriff's covered employment shall be counted as years of service for the purposes of this article. Each transferring deputy sheriff shall be given credited service for the purposes of this article for all covered employment transferred from the public employees retirement system regardless of whether such credited service (as that term is defined in section two, article ten, chapter five of this code) was earned as a deputy sheriff. All service in the public employees retirement system accrued by a transferring
deputy sheriff shall be transferred into the plan created by this article and the transferring deputy sheriff shall be given the same credit for the purposes of this article for all such covered service which is transferred from the public employees retirement system as that transferring deputy sheriff would have received from the public employees retirement system if such transfer had not occurred. In connection with each deputy sheriff receiving credit for prior employment provided in this subsection, a transfer from public employees retirement system to this plan shall be made pursuant to the procedures described in section eight of this article.

(d) Once made, the election made under this section is irrevocable. All deputy sheriffs first employed after the effective date and deputy sheriffs electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by section seven of this article.

§7-14D-7. Members' contributions; employer contributions.

There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to eight and one-half percent of his or her monthly salary. Any active member who has concurrent employment in an additional job or jobs and such additional employment requires the deputy sheriff to be a member of another retirement system which is administered by the consolidated public retirement board pursuant to article ten-d, chapter five of this code shall contribute to the fund the sum of eight and one-half percent of his or her monthly salary earned as a deputy sheriff as well as the sum of eight and one-half percent of his or her monthly salary earned from any additional employment which additional employment requires the deputy sheriff to be a member of another retirement which is administered by the consolidated public retirement board pursuant to article ten-d, chapter five of this code. An additional nine and one-half percent of the monthly salary of each member shall be paid to the fund by the county commission of the county in which the member is employed in covered employment. If the board finds that the
benefits provided by this article can be actually funded with a lesser contribution, then the board shall reduce the required member and employer contributions proportionally.

§7-14D-8. Transfer from public employees retirement system.

(a) The consolidated retirement board shall, within ninety days of the effective date of the transfer of a deputy sheriff from the public employees retirement system to the plan, transfer assets from the public employees retirement system trust fund into the West Virginia deputy sheriff trust fund.

(b) The amount of assets to be transferred for each transferring deputy sheriff shall be computed as of the first day of July, one thousand nine hundred ninety-eight, using the actuarial valuation assumptions in effect for the first day of July, one thousand nine hundred ninety-eight, actuarial valuation of public employees retirement system, and updated with seven and one-half percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring deputy sheriff in the public employees retirement system shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

(1) Compute the market value of the public employees retirement system assets;

(2) Compute the accrued liability for all public employees retirement system retirees, beneficiaries, disabled retirees and terminated inactive members;

(3) Reduce the market value of public employees retirement system assets by the accrued liability determined in subdivision (2) of this subsection;

(4) Compute the entry age method accrued liability for all active public employees retirement system members;

(5) Compute the share of accrued liability as determined pursuant to subdivision (4) of this subsection, that is attributable to those deputy sheriffs in public employees retirement system who have elected to transfer to the plan;
(6) Compute the percentage of active’s accrued liability computed to the deputy sheriffs by dividing subdivision (5) by subdivision (4) of this subsection;

(7) Determine the asset share to be transferred from public employees retirement system to the plan by multiplying subdivision (3) times subdivision (6) of this subsection.

(c) Once a deputy sheriff has elected to transfer from the public employees retirement system, transfer of that amount as calculated in accordance with the provisions of subsection (b) of this section by the public employees retirement system shall operate as a complete bar to any further liability to the transferring from the public employees retirement system, and constitutes an agreement whereby the transferring deputy sheriff forever indemnifies and holds harmless the public employees retirement system from providing him or her any form of retirement benefit whatsoever until such time as that deputy sheriff obtains other employment which would make him or her eligible to re-enter the public employees retirement system with no credit whatsoever for the amounts transferred to the deputy sheriff’s retirement system.

(d) The board shall cause a judicial determination to be made regarding the transfer of assets from the public employees retirement system to the deputy sheriff’s retirement system by causing a suit to be filed in the supreme court of this state seeking a writ of mandamus on or before the thirty-first day of July, one thousand nine hundred ninety-eight.

(e) Any deputy sheriff who elected, on or before the thirtieth day of January, one thousand nine hundred ninety-nine, to transfer to the plan created by this article, has until the first day of January, two thousand, to pay any amounts required by section seven of this article as a result of the deputy sheriff’s transfer to the deputy sheriff retirement fund.

§7-14D-9. Retirement; commencement of benefits.

A member may retire and commence to receive retirement income payments on the first day of the calendar month coincident with or next following the later of the date the
member ceases employment and the date the member attains early or normal retirement age, in an amount as provided under section eleven of this article, by filing with the board his or her voluntary petition in writing for retirement: Provided, That retirement income payments shall commence no later than the first day of April following the member's seventy and one-half year birthday or the cessation of covered employment, whichever later occurs. Upon receipt of the petition, the board shall promptly provide the member with an explanation of his or her optional forms of retirement benefits and upon receipt of properly executed forms from the member, the board shall process member's request for and commence payments as soon as administratively feasible.


This section provides for the adjustment of a member's accrued benefit to reflect the difference in age, in years and months, between the member's annuity starting date and the date the member attains normal retirement age. This age adjustment shall be made based upon the normal form of benefit and shall be the actuarial equivalent of the accrued benefit at the member's normal retirement age. The member shall receive the age adjusted retirement income in the normal form or in an actuarial equivalent amount in an optional form as provided under section twelve of this chapter. The first day of the calendar month of birth shall be used in lieu of any birth date that does not fall on the first day of a calendar month.

(a) Normal retirement. — A member whose annuity starting date is the date the member attains normal retirement age, is entitled to his or her accrued benefit without adjustment for age at commencement. To the extent that a member's starting date is later than his or her normal retirement age, the amount of that member's retirement income benefit shall be adjusted as provided in subsection (c) of this section.

(b) Early retirement. — A member who ceases covered employment and has attained early retirement age while in covered employment may elect to receive retirement income payments commencing on the first day of the month coincident
with or following the date the member ceases covered employment. "Normal retirement age" for such a member is the first day of the calendar month coincident with or next following the month in which the member attains the age of fifty years. If the member's annuity starting date is prior to the date the member attains normal retirement age, his or her accrued benefit is reduced to the actuarial equivalent benefit amount based on the years and months by which his or her annuity starting date precedes the date he or she attains normal retirement age. If the member's annuity starting date is later than the date the member attains the age of fifty years, the accrued benefit is adjusted as provided in subsection (c) of this section.

(c) Late retirement. — A member whose annuity starting date is later than the date the member attains normal retirement age shall receive retirement income payments in the normal form which is the actuarial equivalent of the benefit to which he or she would have been entitled had the retirement income payments commenced at the member's normal retirement age.

(d) Retirement benefits shall be paid monthly in an amount equal to one twelfth of the retirement income payments elected and at those times established by the board. Notwithstanding any other provision of the plan, a member who is married on the annuity starting date will receive his or her retirement income payments in the form of a sixty-six and two-thirds percent joint and survivor annuity with his or her spouse unless prior to the annuity starting date the spouse waives the form of benefit.

§7-14D-17. Prior disability.

Any deputy sheriff who became totally disabled as a result of illness or injury incurred in the line of duty prior to the effective date of this article may be a member of the plan at his or her election and is entitled to disability, death and retirement benefits under this article in lieu of any other disability, death or retirement benefits provided solely in conjunction with a retirement system of this state or his or her county of employment: Provided, That the deputy sheriff would have been eligible for disability under section fourteen of this article had
that section been in effect at the time of the disability. The
amounts of the benefits shall be determined as if the disability
first commenced after the effective date of this article with
monthly compensation equal to that average monthly compen-
sation which the member was receiving in the plan year prior to
the initial disability. For the purposes of this section, benefits
paid pursuant to chapter twenty-three of this code are not death
or retirement benefits provided solely in conjunction with a
retirement system of this state or county of this state.


Any member who dies as a result of any service related
illness or injury after the effective date is entitled to a lump sum
burial benefit of five thousand dollars. If the member is
married, the burial benefit will be paid to the member’s spouse.
If the member is not married, the burial benefit will be paid to
the member’s estate for the purposes of paying burial expenses,
settling the member’s final affairs, or both. Any unspent
balance shall be distributed as a part of the member’s estate. If
the member is not entitled to a death benefit under sections
eighteen and nineteen of this article, then if greater, the amount
payable to the member’s estate shall be his or her accumulated
contributions.

§7-14D-24. Service as sheriff.

(a) Any member who after the effective date of this article
is elected sheriff of a county in West Virginia may elect to
continue as a member in this plan by paying the amounts
required by section seven of this article. Upon the election,
service as a sheriff shall be treated as covered employment and
the sheriff is not entitled to any credit for that service under any
other retirement system of the state.

(b) Any person, who before the effective date of this article
was elected sheriff of a county in West Virginia, and who,
immediately prior to being so elected sheriff, was a deputy
sheriff with at least twenty years of credited service under the
public employees retirement system, with at least sixteen of
those twenty years having been earned as a deputy sheriff, may
elect to become a member of this plan by paying the amounts required by section seven of this article. Upon such election, service shall be transferred from the public employees retirement system pursuant to section eight of this article: Provided, That any service as a sheriff shall be treated as covered employment under this article and the sheriff is not entitled to any credit for that service as a sheriff or the prior service as a deputy sheriff under any other retirement system of the state. Persons making the election provided for in this subsection shall do so within ten days of taking office as sheriff or within ten days of the effective date of this provision.

§7-14D-29. Effective date; report to joint committee on government and finance; special starting date for benefits.

(a) The provisions of this article become effective the first day of July, one thousand nine hundred ninety-eight: Provided, That no payout of any benefits may be made to any person prior to the first day of January, two thousand: Provided, however, That members who retired due to a disability may begin receiving the benefits at the rate and in the amount specified in either section fourteen or section fifteen of this article, as the case may be, from this fund after the thirtieth day of June, one thousand nine hundred ninety-nine: Provided further, That until the thirtieth day of June, one thousand nine hundred ninety-nine, those members who retired due to a disability may draw benefits from this fund at the rate and in the amount set forth in section twenty-five, article ten, chapter five of this code.

(b) During the eighteen-month period before the payout of benefits begins, the joint committee on government and finance shall cause an interim study or studies to be conducted on potential effects of the implementation of this retirement system, including, but not limited to, potential funding mechanisms to provide health insurance coverage for retirees in the fifty to fifty-five age group: Provided, That after the effective date of this provision, the director of the public employees insurance agency shall promulgate a rule governing the funding of health insurance coverage for retirees under the plan provided for in this article who are in the fifty to fifty-five year age
group, which rule may be filed as an emergency rule: Provided, however, That any rule filed as an emergency rule pursuant to this subsection shall be refiled at the earliest opportunity as a legislative rule for review and promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 92

(Com. Sub. for S. B. 666 — By Senator Bowman)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two-a, all relating to the West Virginia design-build procurement act; short title; applications; definitions; public policy; conditions for contract; design-build board and members; appointments; meetings; authority to promulgate rules; duties of the board; design-build regulations; design-builder qualifications; rights and powers; development of performance criteria; scope of project; solicitation of proposals; proposals; acceptance of design-build proposal; construction and final certification; withdrawal of proposals; termination provision; and severability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22A. DESIGN-BUILD PROCUREMENT ACT.

§5-22A-1. Short title; applicability of article.
§5-22A-3. Public policy; conditions for contract.
§5-22A-4. Design-build board and members; appointments; meetings; authority to promulgate rules.
§5-22A-1. Short title; applicability of article.

This article shall be known and may be cited as the "West Virginia Design-Build Procurement Act."

The provisions of this article must be used to select design-builders for authorized projects that are constructed and owned, potentially owned, or ultimately owned by any agency.


For the purpose of this article:

"Agency" means all state departments, agencies, authorities, quasi-public corporations and all political subdivisions, including cities, counties, boards of education and public service districts and the individual representatives of the agency appointed to oversee or supervise the project.

"Board" means the review board established pursuant to section four of this article to determine whether a public project can be constructed under the design-build method of construction.

"Design-build" is defined as providing responsibility within a single contract for design, construction or alteration of a building or buildings, together with incidental approaches, structures and facilities to be constructed, where services within the scope of the practice of professional engineering or architecture, as defined by the laws of the state of West Virginia, are performed by an engineer or architect duly registered in the state of West Virginia and where services within the scope of
construction contracting, as defined by the laws of the state of West Virginia, are performed by a contractor qualified and licensed under the applicable statutes. The design-build method of construction may not be used for any other construction projects, such as highway, water or sewer projects.

"Design-build contract" means the contract between an agency and a design-builder to furnish the architecture, engineering, and related services as required, for a given public project, and to furnish the labor, materials and other construction of services for the same public project. A design-build contract may be conditional upon subsequent refinements in scope and price, and may permit the agency to make changes in the scope of the project without invalidating the design-build contract.

"Design-builder" means the entity, whether natural person, partnership, joint venture, corporation, professional corporation, business association, or other legal entity, that proposes to design and construct any public project governed by the procedures of article six, section seven of this chapter and this article.

"Firm" means any individual, firm, partnership, corporation, limited liability company, limited liability partnership, association, joint venture, or other legal entity permitted by law to practice engineering, architecture or construction contracting in the state of West Virginia.

"Performance criteria" means the requirements for the public project, including as appropriate, aesthetics, capacity, durability, production standard, ingress and egress requirements or other criteria for the intended use of the public project, expressed in performance-oriented drawings and specifications suitable to allow the design-builder to make a proposal.

"Performance criteria developer" means an architect or engineer duly registered in accordance with the laws of this state and if applicable, the architect's or engineer's employer, company, partners, joint venturers, affiliates or subcontractors retained by the agency to develop performance criteria.
“Project” means that project described in the public announcement.

“Proposal” means an offer to enter into a design-build contract, as further defined in this article.

“Request for proposals” means the document or publication whereby an agency solicits proposals for a design-build contract.

“Substantial completion” means the stage in the progress of the work when the work or designated portion thereof is sufficiently complete in accordance with the design-build contract so the agency can occupy or utilize the work for its intended use.

“Work” means the construction and services required by the design-build contract, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the design-builder to fulfill the design-builder’s obligations. The work may constitute the whole or a part of the project.

§5-22A-3. Public policy; conditions for contract.

Recognizing that the design-bid-build method provides a viable delivery method for public projects, it is also the public policy of this state to permit an agency to enter into design-build contracts for public projects.

An agency may not enter into a design-build contract for public project unless:

1. The department of administration or appropriate governing body, prior to issuing requests for proposals, promulgates and publishes rules consistent with this article for the solicitation and award of design-build contracts and shall adhere to this article and those rules;

2. The agency, for each public project or projects procured pursuant to this article, must determine that it is in the best interest of the public to enter into a design-build contract to complete the public project or projects; and
(3) The board established pursuant to section four of this article determines that the public project is appropriate as a design-build project utilizing the mandatory criteria as provided for in section five of this article.

§5-22A-4. Design-build board and members; appointments; meetings; authority to promulgate rules.

(a) There is hereby created the design-build board and shall be composed of the following nine members who are to be appointed by the governor with the advice and consent of the Senate: Two contractors licensed in the state of West Virginia; one architect licensed in the state of West Virginia and one professional engineer licensed in the state of West Virginia; the secretary of the department of administration, ex officio; one representative from labor and three other members of the public at large. Members of the board are not entitled to compensation for services performed as members. Each member of the board must take and subscribe to the oath or affirmation required pursuant to section five, article IV of the Constitution of West Virginia.

(b) Within thirty days of the effective date of this section, the governor shall make the initial appointments to the design-build board. Of the initial appointments to the board, four will be for a term ending two years after the effective date of this section and four for a term ending three years after the effective date of this section. Thereafter, terms of office are for three years, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member will hold office from the date of his or her appointment or until his or her successor qualifies for office. When a vacancy occurs as a result of death, resignation or removal in the membership of the board, it must be filled by an appointment within thirty days of the vacancy for the unexpired portion of the term in the same manner as original appointments.

(c) The board must meet within thirty days of the initial appointments to the board at a time and place to be determined by the governor, who must designate a member to preside at that meeting until a chairman is elected. At its first meeting, the
board shall elect a chairman and such other officers as are necessary. The board shall within ninety days after its first meeting adopt rules for its procedures. Five members of the board constitute a quorum. Except as may otherwise be provided in this section, a majority of the total membership is necessary to act at all times. Meetings of the board shall be upon the call of the secretary of the department of administration.

(d) The board shall promulgate rules to carry out the purposes of this article. Any rules adopted by the board prior to the first day of October, one thousand nine hundred ninety-nine, are exempt from the provisions of article three, chapter twenty-nine-a of this code: Provided, That the board shall file a copy of any rule so exempted from the provisions of chapter twenty-nine-a of this code with the legislative rule-making review committee created pursuant to section eleven, article three of said chapter prior to the thirtieth day of November, one thousand nine hundred ninety-nine.

§5-22A-5. Duties of board.

Prior to allowing an agency to enter into design-build contracts for public projects, the board must determine that the public project is appropriate as a design-build project in accordance with all of the following:

(1) The agency requires a project design and construction time line that is faster than the traditional design-bid-build process would allow;

(2) The project requires close coordination of design and construction expertise or an extreme amount of coordination; and

(3) The agency requires early cost commitments.

§5-22A-6. Design-build regulations.

The department of administration shall adopt rules consistent with this article for the award of design-build contracts. Any rules so adopted by the department of administration prior to the first day of October, one thousand nine hundred ninety-nine-
nine, are exempt from the provisions of article three, chapter twenty-nine-a of this code: Provided, That the department of administration shall file a copy of any rule so exempted from the provisions of chapter twenty-nine-a of this code with the legislative rule-making review committee created pursuant to section eleven, article three of said chapter prior to the thirtieth day of November, one thousand nine hundred ninety-nine. The rules must consist of, but not be limited to:

(1) The procedures to select or designate a performance criteria developer and prepare performance criteria;
(2) The procedures for the preparation and contents of requests for proposals;
(3) The procedures for preparing and submitting proposals;
(4) The procedures for evaluating proposals;
(5) The procedures for negotiations between the agency and those submitting proposals prior to the acceptance of a proposal, if any such negotiations are contemplated;
(6) The procedures for awarding and executing design-build contracts;
(7) The procedures for awarding design-build contracts in the event of public emergencies as defined in the applicable statutes; and
(8) The procedures for acting on formal protests relating to the solicitation or award of design-build contracts.

§5-22A-7. Design-builder qualifications; rights and powers.

Each design-builder must be duly licensed and registered to do business in this state and be a licensed architect or engineer or a general contractor.

Each design-builder must have the following rights and powers:

(1) The design-builder must assign or sublet the responsibility for professional design services to a firm duly licensed and registered to provide professional design services in this
The firm must carry, at all times, professional design liability insurance in an appropriate amount as designated by the agency. This professional may be a full or part-time employee of the design-builder.

(2) The design-builder must assign or sublet responsibility for construction or other services requiring a contractor's license to persons or entities duly registered, licensed or otherwise qualified to provide those services in this state.

(3) The design-builder may contract with the agency to provide professional services or construction services that the design-builder is not itself licensed, registered or otherwise authorized to provide so long as those services are assigned or sublet to a firm that is a member of the design-build team and is registered, licensed and qualified to provide those services.


(a) Each request for proposal must contain performance criteria prepared by an architect or engineer duly registered in accordance with the laws of this state, referred to as the "performance criteria developer." If the performance criteria developer is not an employee of the agency, then the performance criteria developer and his or her employer, company, partners, joint venturers, affiliates or consultants are disqualified from submitting a proposal to enter into the design-build contract and the design-builder will not be permitted to delegate services under the design-build contract to the performance criteria developer or its consultants. The performance criteria developer must be retained by the agency through final completion of the project to monitor adherence to the performance criteria.

(b) The performance criteria developer may be an employee of the agency, and to the extent allowed by law may delegate the development of specific aspects of the design criteria to an architect or engineer duly registered with this state and his or her employer, company, partners, joint venturers, affiliates or other consultants. If the performance criteria developer is not an employee of the agency, the performance criteria developer
shall be selected in accordance with the requirements of article one, chapter five-g of this code.

§5-22A-9. Scope of project.

(a) The agency, in consultation with the performance criteria developer, shall determine the scope and level of detail required for the performance criteria. The performance criteria must be detailed enough to permit qualified persons to submit proposals in accordance with the request for proposals, given the nature of the public project and the level of design to be provided in the proposal.

(b) The performance criteria developer shall review the program furnished by the agency to ascertain the requirements of the project and shall arrive at a mutual understanding of such requirements with the agency.

(c) Based on the mutually agreed-upon program, schedule and construction budget requirements, the performance criteria developer shall prepare for approval by the agency documents indicating the scale and relationship of project components.

§5-22A-10. Solicitation of proposals.

Proposals must be solicited from not less than three design-builders. A request for proposal must be prepared for each design-build contract and shall consist of, but not be limited to:

(1) The identity of the agency which will award the design-build contract;

(2) The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, and the procedures for making awards, including a reference to the requirements of this article, the rules promulgated herein and any regulations pertaining to the agency;

(3) The proposed terms and conditions for the design-build contract;

(4) The performance criteria;

(5) The description of the drawings, specifications or other submittals to be submitted with the proposal, with guidance as
to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;

(6) A schedule for planned commencement and completion of the design-build contract;

(7) Budget limits for the design-build contract, if any;

(8) Design-builder qualifications; and

(9) Requirements for performance bonds, payment bonds and insurance.

The request for proposals may include any other information that the agency, at its discretion, chooses to supply, including, but not limited to, surveys, soils reports, drawings or models of existing structures, environmental studies, photographs or references to public records.

Notice of requests for proposals must be advertised as prescribed by the procedures utilized by the purchasing division pursuant to article three, chapter five-a of this code.


Proposals must be sealed and may not be opened until expiration of the time established for making proposals as set forth in the request for proposals. Requests for proposals must require and be accompanied by a bid bond not to exceed five percent of the maximum cost of the design-build contract, as established by the proposal. In the event the proposal is accepted and the design-builder fails to execute the design-build contract, the bid bond will be forfeited.

To the extent required, the request for proposal must identify each firm to whom the design-builder proposes to sublet obligations under the design-build contract. At a minimum, each proposal must identify each firm responsible for the design and primary construction and their affiliation to the design-builder. Proposals must establish a cost of the design-build contract that will not be exceeded if the proposal is accepted without change. After award of the proposal, the maximum cost of the proposal may be converted to fixed prices
by negotiated agreement between the agency and the design-builder.

Prior to the award of the design-build contract, all drawings, specifications and other information submitted in the proposal shall remain the property of the design-builder submitting the proposal. Additionally, prior to the award of the design-build contract, the agency shall maintain the secrecy and confidentiality of all information contained in the proposal. Once a proposal is accepted, the disclosure of the proposal and the information in the proposal, and the ownership of the drawings, specifications and information therein, shall be determined in accordance with existing law and the terms of the design-build contract.

Proposals may not be amended during the review process.

At the discretion of the agency, a stipend may be paid to the design-builders not ultimately selected.


Proposals must be submitted to the purchasing division or agency, as applicable. Clarifications may be required to ensure conformance of proposals with the performance criteria. In seeking clarifications, the performance criteria developer may not reveal any aspect of any proposal to any other design-builder. The performance criteria developer must certify each proposal in regard to compliance with the performance criteria. No proposal or design-build contract may be accepted unless the purchasing division or agency, as applicable, determines that there was adequate competition for the contract.

After receiving and evaluating all proposals submitted based upon the criteria and procedures set forward in the request for proposals, the purchasing division or agency, as applicable, must accept the proposal that receives the best score, as set forth in the rules provided for in section six of this article.

Acceptance of a proposal shall be by written notice to the design-builder which submitted the accepted proposal. At the
same time notice of acceptance is delivered, the purchasing
division or agency, as applicable, shall also inform, in writing,
the nonsuccessful design-builders that their proposals were not
accepted. When a design-builder receives notification that its
proposal was not accepted, the design-builder may, within three
days after receipt of such notification, request in writing a copy
of the best score and all other factors used or considered in the
selection process.


The performance criteria developer must visit the site at
intervals appropriate to the stage of construction to become
generally familiar with the progress and quality of the work
completed and to determine in general if the work is being
performed in a manner indicating that work, when completed,
will be in accordance with the design-build contract. On the
basis of such on-site observations the performance criteria
developer shall keep the agency informed of the progress of the
work on the project and shall endeavor to guard the agency
against defects and deficiencies in such work.

The performance criteria developer shall assist the agency
in determining whether the agency shall reject work which does
not conform to the design-build contract.

The performance criteria developer shall assist the agency
in conducting inspections, to determine the date or dates of
substantial completion and of final completion, and shall review
and approve, or take other appropriate action regarding the
contractor’s list of items to be completed or corrected, and shall
forward the list to the agency for final disposition. The perfor-
mance criteria developer shall issue to the agency a final
certification in writing with respect to final acceptance of the
project.


At the option of the design-builder, proposals may be
withdrawn for any reason at any time prior to their opening
without forfeiture of the security. Once opened, a proposal may
be withdrawn for any reason prior to acceptance with forfeiture
of the bid bond.

1 Pursuant to the provisions of article ten, chapter four of this code, the design-build board shall continue to exist until the first day of July, two thousand four.


1 The provisions of subsection (cc), section ten, article two, chapter two of this code shall apply to the provisions of this chapter to the same extent as if the same were set forth in extension herein.

CHAPTER 93

(S. B. 138 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 2, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six-a, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to removing the requirement that the division of vocational rehabilitation transfer disproportionate share hospital funds received by the division to the medical services trust fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. REHABILITATION SERVICES.

§18-10A-6a. West Virginia rehabilitation services special account; expenditures.

1 (a) There is hereby established in the state treasury a separate account which shall be designated the “West Virginia
rehabilitation services special account". The director of
rehabilitation services shall deposit promptly into the account
all fees received for services provided by the West Virginia
rehabilitation center from whatever source, including the
federal government, state government or from other third-party
payers or personal payments.

(b) A five-year West Virginia rehabilitation services long-
range plan shall be developed by the director and shall be
adopted by the secretary of education and the arts. The West
Virginia rehabilitation services’ long-range plan shall be
updated and revised at least every two years.

(c) The director is authorized to expend the moneys
deposited in the West Virginia rehabilitation services special
account in accordance with federal laws and regulations and
with the laws of this state as is necessary for the development
of the five-year long-range plan and subsequent revisions.

(d) The director is authorized to expend the moneys
deposited in the West Virginia rehabilitation services special
account as provided in the long-range plan at such times and in
such amounts as the director determines to be necessary for the
purpose of maintaining or improving the delivery of rehabilita-
tion services: Provided, That during the budget preparation
period which occurs prior to the convening of the Legislature,
the director shall submit for inclusion in the executive budget
document and budget bill his recommended capital expendi-
tures, recommended priorities, estimated costs and request for
appropriations for maintaining or improving the delivery of
vocational rehabilitation services.

(e) The director shall make an annual report to the Legisla-
ture on the status of the West Virginia rehabilitation services
special account, including the previous year’s expenditures and
projected expenditures for the next year.
CHAPTER 94

(S.B. 705 — By Senators Wooton, Ball, Dittmar, Hunter, McCabe, Minard, Mitchell, Oliverio, Redd, Ross, Snyder, Deem and McKenzie)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-c, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-c, relating to creating a special revenue fund, designated the "domestic violence legal services fund"; authorizing receipt of certain moneys; and prohibiting state appropriations for two years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. DOMESTIC VIOLENCE ACT.

§48-2C-4c. Domestic violence legal services fund.

There is hereby established in the state treasury a special revenue account, designated as the "domestic violence legal services fund", which shall be an appropriated fund for receipt of grants, gifts, fees, or federal or state funds designated for legal services for domestic violence victims: Provided, That state funds may not be appropriated prior to fiscal year two thousand two. Expenditures from the fund shall be limited to attorneys employed by domestic violence shelters, or employed by nonprofit agencies which establish a collaborative relationship with a domestic violence shelter, that provide civil legal services to victims of domestic violence.
AN ACT to amend and reenact section twelve-a, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter eighteen-c of said code by adding thereto a new article, designated article seven, all relating to student scholarships, aid and the prepaid tuition trust; clarifying the income tax modification; establishing the “West Virginia providing real opportunities for maximizing in-state student excellence scholarship program”; setting forth findings and purpose; defining terms; appointment of board; setting forth the powers of the board; authorizing the board to promulgate rules; setting forth the minimum requirements for the scholarship; creating the scholarship fund; and creating the scholarship program supplemental fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter
11. Taxation.
18C. Student Loans; Scholarships and State Aids

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

*§11-21-12a. Additional modification reducing federal adjusted gross income.

* Clerk’s Note: This section was also amended by HB 2693 (Chapter 274), which passed prior to this act.
In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, any payment made under a prepaid tuition contract as provided under section seven, article thirty, chapter eighteen of this code, is also an authorized modification reducing federal adjusted gross income, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer’s federal adjusted gross income for the taxable year in which the payment is made. This modification is available regardless of the type of return form filed. The taxpayer may also elect to carry forward the modification over a period not to exceed five taxable years, beginning in the taxable year in which the payment was made.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR MAXIMIZING IN-STATE STUDENT EXCELLENCE SCHOLARSHIP PROGRAM.

§18C-7-1. Title.
§18C-7-2. Legislative findings and purpose.
§18C-7-3. Definitions.
§18C-7-4. Appointment of board of the PROMISE scholarship program; compensation; proceedings generally.
§18C-7-5. Powers of the board.
§18C-7-6. Requirements for rules promulgated by the board.
§18C-7-7. West Virginia PROMISE scholarship fund created.
§18C-7-8. PROMISE scholarship supplemental fund created; promulgation of rules.

§18C-7-1. Title.

1 This article shall be known and may be cited as the “West Virginia providing real opportunities for maximizing in-state student excellence (PROMISE) scholarship program”.

§18C-7-2. Legislative findings and purpose.

1 The Legislature hereby finds and declares that:

(a) The state’s college-going rate does not compare favorably with the member states of the southern regional education board average, nor with the national average;

(b) West Virginia must have an educated work force in order to attract and retain the high wage, high skill jobs of the next century;
(c) The percentage of West Virginia's adult population over the age of twenty-five with at least a bachelor's degree is only fourteen percent and does not compare favorably with the member states of the southern regional education board average or with the national average;

(d) Increases in the level of education increases the income earned by an individual which enhances his or her quality of life;

(e) During the year one thousand nine hundred ninety-seven, an individual holding a bachelor's degree had an average earned income which was one hundred seventy-seven percent of the average income earned by a high school graduate;

(f) Students at all levels should have an incentive to perform at a high academic level;

(g) There is a need to provide parents with all tools possible to aid them in helping their children understand the importance of high achievement in high school and college;

(h) There is a financial need for many students who wish to attend state institutions of higher education within the state;

(i) The West Virginia higher education grant program is a vitally important source of financial assistance for needy residents of the state and should continue to receive strong financial support; and

(j) It is the intent of this article to establish a West Virginia PROMISE scholarship program to deal effectively with the findings set forth in this section.

§18C-7-3. Definitions.

(a) "Eligible institution" means:

(1) A state institution of higher education as is defined in section two, article one, chapter eighteen-b of this code;

(2) Alderson-Broaddus College, Appalachian Bible College, Bethany College, the College of West Virginia, Davis and Elkins College, Ohio Valley College, Salem-Teikyo
University, the University of Charleston, West Virginia Wesleyan College and Wheeling Jesuit University, all in West Virginia: Provided, That if any institution listed in this subdivision is not regionally accredited, it shall not be included as an eligible institution; or

(3) Any other regionally accredited institution in this state, public or private, approved by the board.

(b) "Board" means the board of the West Virginia PROMISE scholarship program as provided for in section four of this article.

c) "Tuition" means the quarter, semester or term charges imposed by a state institution of higher education and all mandatory fees required as a condition of enrollment by all students.

§18C-7-4. Appointment of board of the PROMISE scholarship program; compensation; proceedings generally.

(a) The board of the PROMISE scholarship program consists of thirteen members and shall include the chancellor of the university of West Virginia board of trustees; the chancellor of the board of directors of the state college system; the state superintendent of schools or his or her designee; the secretary of education and the arts; the state treasurer or his or her designee; the chair of the Senate committee on finance or his or her designee who is a member of the committee; the chair of the House of Delegates committee on finance or his or her designee who is a member of the committee; the chair of the committee on education or his or her designee who is a member of the committee; the chair of the committee on education or his or her designee who is a member of the committee; and four other appointed members with knowledge, skill and experience in an academic, business or financial field. At least three of the four appointed members shall be residents of the state. The four appointed members shall be appointed by the governor with the advice and consent of the Senate. No more than two of the four appointed members may be from the same party. No more than two of the four appointed members may be from the same congressional district.
(b) Appointed members shall serve a term of four years and may be reappointed at the expiration of their terms. In the event of a vacancy among appointed members, the governor shall appoint a person representing the same interests to fill the unexpired term. A person appointed to fill a vacancy shall be appointed only for the remainder of that term and is eligible for reappointment. Unless a vacancy occurs due to death, resignation or removal pursuant to subsection (e) of this section, an appointed member of the board shall continue to serve until a successor has been appointed and qualified as provided for in subsection (a) of this section. Of the initial appointments, the governor shall appoint one member to a one-year term, one member to a two-year term, one member to a three-year term and one member to a four-year term. Thereafter, all terms shall be for four years.

(c) Members of the board shall serve without compensation, but shall be reimbursed by the office of the secretary of education and the arts for expenses, including travel expenses, actually incurred by a member in the official conduct of the business of the board at the same rate as is paid the employees of the state.

(d) The secretary of education and the arts is the chairman and presiding officer of the board. A majority of the members of the board constitute a quorum for the transaction of the board’s business.

(e) The members appointed by the governor may be removed by the governor for official misconduct, incompetence, neglect of duty or gross immorality, and then only in the manner prescribed by law for the removal by the governor of the state elective officers in accordance with section five, article six, chapter six of this code.

§18C-7-5. Powers of the board.

In addition to the powers granted by any other provision of this article, the board has the powers necessary or convenient to carry out the purposes and provisions of this article and the powers delegated by any other law of the state or any executive
order of the state including, but not limited to, the following express powers:

(a) To adopt and amend bylaws;

(b) To propose legislative rules for promulgation in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to effectuate the purposes of this article: Provided, That the board shall not promulgate emergency rules;

(c) To invest any of its funds at the board's discretion, with the West Virginia investment management board in accordance with the provisions of article six, chapter twelve of this code. Any investments made under this article shall be made with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Fiduciaries shall diversify plan investments to the extent permitted by law so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;

(d) To execute contracts and other necessary instruments;

(e) To impose reasonable requirements for residency for students applying for the PROMISE scholarship. However, nothing in this subdivision may be construed to establish residency requirements for matriculation or fee payment purposes at state institutions of higher education;

(f) To contract for necessary goods and services, to employ necessary personnel and to engage the services of private persons for administrative and technical assistance in carrying out the responsibilities of the scholarship program;

(g) To solicit and accept gifts, including bequests or other testamentary gifts made by will, trust or other disposition, grants, loans and other aids from any source or to participate in any other way in any federal, state or local governmental programs in carrying out the purposes of this article;
(h) To define the terms and conditions under which scholarships shall be awarded with the minimum requirements being set forth in section six of this article; and

(i) To establish other policies, procedures and criteria necessary to implement and administer the provisions of this article.

§18C-7-6. Requirements for rules promulgated by the board.

(a) The board shall propose rules which shall include at least the following:

(1) A requirement that a scholarship will not pay an amount that exceeds the cost of tuition at state institutions of higher education and may include an allowance for books and supplies;

(2) A requirement that a scholarship in combination with aid from all other sources shall not exceed the cost of education at the institution the recipient is attending;

(3) Minimum requirements for eligibility for the scholarship which include:

(A) A provision that a student is only eligible to apply for a scholarship within two years of the time he or she graduates from high school: Provided, That if a student has entered the United States armed services within two years after he or she graduates from high school, the student is eligible to apply for a scholarship within seven years of the time he or she enters military service: Provided, however, That once discharged from the military, the student is only eligible to apply for one year from the date of discharge;

(B) For individuals with zero to fifteen credits from an institution of higher education, that the individual attain at least a "B" average at the secondary level as defined by the board;

(C) For individuals with more than fifteen credits from an institution of higher education, that the individual attain and maintain at least a "B" average at the undergraduate education level as defined by the board; and
(D) For all individuals, additional objective standards as the board considers necessary to promote academic excellence and to maintain the financial stability of the fund;

(4) A provision requiring the student to be enrolled in or in the process of enrolling in an eligible institution as defined in section three of this article;

(5) Provisions for making the highest and best use of the PROMISE scholarship program in conjunction with the West Virginia prepaid tuition trust act set forth in article thirty, chapter eighteen of this code;

(6) A determination of whether to require scholarship recipients to repay the amount of their scholarship, in whole or in part, if they choose to work outside the state after graduation;

(7) A determination of whether to set aside a portion of the scholarship funds for targeted scholarships for applicants accepted or enrolled in an engineering program, science program, technology program or other designated programs;

(8) A determination whether to require persons to file federal financial aid forms before they may receive a PROMISE scholarship; and

(9) A determination of what other sources of funding for higher education, if any, should be deducted from the PROMISE scholarship award.

(b) The board shall use the services of the senior administrator and any employees of the senior administrator in drafting the rules. The rules shall be submitted to the legislative oversight commission on education accountability on or before the first day of December, one thousand nine hundred ninety-nine.

§18C-7-7. West Virginia PROMISE scholarship fund created.

(a) There is hereby created a special revenue fund in the state treasury which shall be designated and known as the "PROMISE scholarship fund". The fund shall consist of all appropriations to the fund from the West Virginia lottery, video lottery, taxes on amusement devices, and any other legislative
appropriations, and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund.

(b) The board may expend the moneys in the fund to implement the provisions of this article.

§18C-7-8. PROMISE scholarship supplemental fund created; promulgation of rules.

(a) The Legislature recognizes that the PROMISE scholarship program may lead to an increased number of individuals attending the state institutions of higher education, and therefore, it may contribute to increases in expenses greater than the additional tuition income generated by increased enrollment. Therefore, there is hereby created a special revenue fund in the state treasury which shall be designated and known as the "PROMISE scholarship supplemental fund". The fund shall consist of all appropriations to the fund and all interest earned from the investment of the fund and any gifts, grants or contributions received by the fund. The board shall expend the moneys in this fund to implement the provisions of this article and may only expend the moneys for state institutions of higher education.

(b) The board shall promulgate rules for administering the fund in accordance with article three-a, chapter twenty-nine-a of this code: Provided, That the board shall not promulgate emergency rules. The rules shall include the following:

(1) Provisions for distributing the moneys from the fund to state institutions of higher education: Provided, That the distribution of the moneys from the fund shall be completely independent of the distributions in accordance with the resource allocation model and the resource allocation policies: Provided, however, That the funds shall be divided among the state institutions of higher education in a reasonable manner to reflect the actual distribution of PROMISE scholarship students among the institutions; and

(2) A procedure for submitting a budget request to the governor: Provided, That nothing in this article shall require any appropriation by the Legislature.
AN ACT to amend and reenact section six, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article two-e of said chapter by adding thereto four new sections, designated sections eight-a, eight-b, eight-c and eight-d; and to amend and reenact section one-e, article one, chapter eighteen-b of said code, all relating to voiding provisions for development of an electronic portfolio by the state board of education and their future effect; legislative findings; requiring state board to direct a review of policy requirements for new courses, assist counties in meeting the requirements; requiring state board to direct state superintendent to organize department to better communicate, provide technical assistance and support for schools and school systems in certain areas; requiring plan for repair, maintenance and upgrade of technology in public schools; providing legislative intent to work with state board to continue improving education and ensure a thorough and efficient education; allowing students who complete two successful semesters in vocational agriculture to receive one required science unit toward high school graduation; and further expressing the legislative intent with respect to the Jobs Through Education Act.

Be it enacted by the Legislature of West Virginia:

That section six, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article two-e of said chapter be amended by adding thereto four new sections, designated sections eight-a, eight-b, eight-c and eight-d; and that section one-e, article one, chapter eighteen-b of said code be amended and reenacted, all to read as follows:
Chapter 18. Education.
18B. Higher Education.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.
2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Classification and standardization of schools; standards for degrees and diploma; certificates of proficiency; establishment of alternative education programs.

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-one—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. The certificate of proficiency shall include the program of study major completed by the student only for those students who have completed the required major courses, or higher level courses, advanced placement courses, college courses or other more rigorous substitutes related to the major, and recommended electives.

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 diplo-
The state board also may establish policies and procedures for the approval of alternative education programs for disruptive students who are at risk of not succeeding in the traditional school structure. These policies and procedures may provide for the waiver of other policies of the state board, the establishment and delivery of a nontraditional curriculum, establishment of licensure requirements for alternative education program teachers, and the establishment of performance measures for school accreditation.

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-8a. Electronic portfolio repealed.
§18-2E-8b. Audit of state board policies; legislative findings; report to legislative oversight commission; required plan of improvement; exemptions from determination of accreditation status.
§18-2E-8c. The “Robert C. Beach” Vocational Agriculture Credit.
§18-2E-8d. Further expressions of legislative intent with respect to this article; parental consent for substitute classes.

§18-2E-8a. Electronic portfolio repealed.

Notwithstanding the provisions of subsections (i) and (j), section eight of this article, information on student attainment of special skills, honors, advanced education, exceptional performance and other outstanding accomplishments shall be included on the certificate of proficiency granted to eligible high school graduates along with the diploma pursuant to section six, article two of this chapter. All provisions for development of an electronic portfolio by the state board are hereby null and void and without future effect.

§18-2E-8b. Audit of state board policies; legislative findings; report to legislative oversight commission; required plan of improvement; exemptions from determination of accreditation status.

(a) The Legislature finds that, pursuant to its constitutional responsibility to provide for a thorough and efficient system of schools, a process for improving education was enacted and set forth in section five of this article, a process that was endorsed
by the West Virginia board of education in a resolution that was
adopted. The Legislature finds that the process for improving
education includes four primary elements, those being stan-
dards, assessments, accountability and capacity building. The
Legislature finds that as the constitutional body charged with
the general supervision of schools, as provided by general law,
the West Virginia board of education has the authority and
responsibility to establish policies, which are not subject to
approval by the Legislature, to assess performance against the
standards, to hold schools and school systems accountable for
meeting the standards and to assist schools and school systems
to build their capacity to meet the standards, including, when
necessary, seeking additional resources in consultation with the
Legislature and the governor. The Legislature finds that in
fulfilling its constitutional responsibility to provide for a
thorough and efficient system of schools, the Legislature has
been diligent in not mandating the delivery of programs that are
beyond the capacity of schools and school systems without
providing the necessary additional resources. The Legislature
further finds, however, that concerns exist with respect to the
capacity of school systems to meet certain mandates and
expenses which arise either from state board policy or the need
for better communication, technical assistance and support by
the state board and state department of education. The Legisla-
ture finds that it is imperative that these concerns be addressed
so as not to adversely affect the progress West Virginia has
made toward improving its system of education or negate the
excellent work of dedicated personnel at local schools and
school systems to more thoroughly prepare their students for
college, other post-secondary education and employment.
Therefore, it is the intent of this section to engage the state
board and the state department in the spirit of cooperation and
collaboration intended in the process for improving education
to examine the impact of their policies and the efforts being
made by the state board and the state department of education
to assist schools and school systems to meet them.

(b) The state board shall:
Direct the office of education performance audits to include in its review of county boards and schools a determination of whether the county boards and schools have the capacity to meet the requirements within the policies of the state board for school systems to provide additional new courses and determine the capacity of school systems to deliver these new courses, if any. If it is determined that a county does not have the capacity to meet these requirements, the state board shall direct the department to develop and implement a plan to assist the counties in meeting the requirements.

(2) Review the organization of the state department of education to ensure that it is able to provide the best communication, technical assistance and support for schools and school systems in a number of areas, including, but not limited to:

(i) The advantages and disadvantages of various methods of scheduling and how they can be modified to best meet the needs of students;

(ii) Establishing policies which allow advanced students to test out of required courses for which they already possess the required academic skills; and

(iii) Subject to the provision of section eight-d of this article, establishing policies which allow students, whether they are preparing for college, other post-secondary education or work, to take a higher level course, advanced placement course, college course or other more rigorous substitute in place of a required major course as set forth in the applicable program of study.

(3) Prepare and report annually to the legislative oversight committee on educational accountability by the first day of December a plan for the repair, maintenance and upgrade of technology in the public schools.

(c) It is further the intent of the Legislature to regularly consult with the state board, examine the progress it is making with respect to these issues, and consider alternative measures to ensure that all students continue receiving the thorough and efficient education to which they are entitled.
§18-2E-8c. The "Robert C. Beach" vocational agriculture credit.

(a) The Legislature finds that vocational agriculture curriculum plays a vital role in the development of science education for those students enrolled in the program. The Legislature further finds that as a former member of the West Virginia House of Delegates, Robert C. Beach was a strong supporter of the vocational agriculture program.

(b) Students completing two successful semesters in vocational agriculture classes, as defined by state board policy on the first day October, one thousand nine hundred ninety-nine, shall receive no more than one of the three required units towards high school graduation for science.

§18-2E-8d. Further expressions of legislative intent with respect to this article; parental consent for substitute classes.

(a) The Legislature finds that many school systems are improving the quality of education for their students through implementation of the goals and policies set forth in this article. The Legislature finds that local school systems have had and should continue to have substantial flexibility for implementing these improvements. The Legislature further finds that certain of the goals address legally recognized elements within the definition of a thorough and efficient education among which is the development in every child his or her capacity and knowledge to intelligently pursue his or her options. The purpose of this section is to further this progress through a greater expression of the legislative intent with respect to eliminating the general track curriculum and to insure that all students perform at high levels of academic achievement.

(b) The intent of the Legislature is to provide in an economical manner for a thorough and efficient education that:

(1) Provides information to parents and students which clearly identifies the courses a student should take to prepare fully for continuing their education in college, other post-secondary education or employment so they can intelligently choose among the many options available to them;
(2) Encourages the involvement of parents in their child’s education by providing parents and students with information and opportunities to help students explore their interests and plan a program of study while they are still in high school and have greater options and flexibility;

(3) Ensures that the quality, content, and alignment of the curriculum is sufficient to prepare students fully for the transition to college, other post-secondary education or employment in areas in which they have an interest following graduation from high school; and

(4) Improves student learning by increasing the rigor of the curriculum, making it more relevant to students, and reinforcing academic instruction through applications to real life problem solving so that whatever options a student pursues following graduation from high school, the student has acquired a foundation of knowledge, skills and abilities that prepares him or her fully for success.

(c) Notwithstanding the courses specified as required major courses within a high school program of study, a student in consultation with his or her parents and school advisor, and with the written consent of his or her parents, may take a higher level course, advanced placement course, college course or other more rigorous substitute. The parental consent form shall include a certification signed by the school advisor that the parents were advised of the impact of the substitute course on the student’s preparation for college, other post-secondary education or employment in the student’s major field of study and that the student’s certificate of proficiency will not indicate that the student completed a program of study major unless such substitute courses are related to the major field of study selected by the student.

(d) Notwithstanding the courses specified as recommended electives within a high school program of study, a student in consultation with his or her parents and school advisor, and with the written consent of his or her parents, may substitute other elective courses in place of those recommended to prepare
the student fully for continuing his or her education in college, other post-secondary education or employment. The parental consent form shall include a certification signed by the school advisor that the parents were advised of the impact of the substitute course on the student’s preparation for college, other post-secondary education or employment in the student’s major field of study and that the student’s certificate of proficiency will not indicate that the student completed a program of study major unless such substitute courses are related to the major field of study selected by the student.

(e) On or before the first day of July, one thousand nine hundred ninety-nine, the state board shall establish a uniform parental consent form to be maintained in the student’s permanent record for the purposes of subsections (c) and (d) of this section which shall contain:

(1) A statement to be signed and dated by the parents to consent to their child’s substitution of another course for a required major course as provided in subsection (c) of this section and the course titles of the required major course and the substitute course;

(2) A statement to be signed and dated by the parents to consent to their child’s substitution of another course for a recommended elective course as provided in subsection (d) of this section and the course titles of the recommended elective course and the substitute course; and

(3) A statement to be signed and dated by the school advisor certifying that the school advisor advised the parents of the impact of the substitute course on the student’s preparation for college, other post-secondary education or employment in the student’s major field of study and the student’s certificate of proficiency.

(f) Nothing in this section shall prohibit a county board from establishing high school graduation requirements which exceed the minimum high school graduation requirements established by the state board.
§18B-1-1e. Public education and higher education collaboration for the preparation of students for college and other post-secondary education.

(a) Purpose. — The purpose of this section is as follows:

1. To assist students in the planning and preparation for success in college and other post-secondary education if their education major interests require such formal education after high school;

2. To establish the minimum expected level of knowledge, skill and competency a student must possess to be prepared fully for college and other post-secondary education at state institutions of higher education;

3. To implement a method for communicating the minimum level of knowledge, skill and competency to students, parents, educators and counselors in the public schools, and admissions officers, advisors and faculty in the higher education institutions; and

4. To assure that the teacher preparation programs in state institutions of higher education prepare educators to, at a minimum, deliver instruction necessary to prepare students fully for college and other post-secondary education or gainful employment consistent with the provisions of section eight, article two-e, chapter eighteen of this code.

(b) Joint rule. — On or before the first day of October, one thousand nine hundred ninety-six, the higher education governing boards shall promulgate a joint rule to achieve the purposes of subsection (a) of this section. In the development of such rule, the governing boards shall consult with the state board and the jobs through education employer panel, established pursuant to section eight, article two-e, chapter eighteen of this code, and shall collaborate with the state board in the establishment of compatible practices within their separate systems.
(c) Assessment of student readiness. — To provide continuous assessment and program improvement in the preparation of high school students for success in college or other post-secondary education, the higher education governing boards shall communicate to the state board and the legislative oversight commission on education accountability by the first day of December in each year, beginning in December, one thousand nine hundred ninety-seven, the number of graduates from the public schools in the state by high schools who were accepted in the last calendar year for enrollment at each of the state institutions of higher education within one year of graduation, and whose knowledge, skill and competency were below the minimum expected levels for full preparation as defined by the governing boards. The governing boards also shall report the areas in which the knowledge, skill and competency of the students were below the minimum expected level. The state board shall provide information to each of the high schools of the state for graduates from the high school.

CHAPTER 97

(S. B. 588 — Originating in the Committee on Education.)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-three, relating to requiring the state board to promulgate antihazing rules for public school-sponsored student organizations.

Be it enacted by the Legislature of West Virginia:

That article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirty-three to read as follows:
ARTICLE 2. STATE BOARD OF EDUCATION.


(a) The Legislature hereby finds that hazing has become a problem in a limited number of public school-sponsored student organizations and that legal liability has already resulted from some of those activities. It is the intent of this section that problems with hazing in public school-sponsored student organizations be addressed.

(b) The state board shall promulgate legislative rules in accordance with article three-b, chapter twenty-nine-a of this code that addresses hazing in the public school system. The rules shall include at least the following:

1. A definition of hazing;
2. A definition of a public school-sponsored student organization that includes both cocurricular and extracurricular activities;
3. A method to advise students and employees of the problems associated with hazing;
4. Appropriate penalties or procedures for establishing penalties for students who haze while engaged in the activities of a public school-sponsored student organization; and
5. Methods to prevent hazing in public school-sponsored organizations.

(c) The state board shall consider the antihazing law set forth in article sixteen, chapter eighteen in drafting the rules required by this section.

(d) Nothing in this section or in the policy promulgated in accordance with this section may be construed to prevent a suspension or expulsion executed in accordance with section one-a, article five, chapter eighteen-a of this code.
AN ACT to amend article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-d, relating to establishment of a competitive grant “Mathematic Achievement Through Help” program; providing legislative intent and purposes; specifying priorities for grant awards; and providing procedures for grant application and selection.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-3d. Summer school MATH grant program created; legislative findings and purpose of section.

(a) The Legislature hereby finds and acknowledges that, if remediation is necessary, it should be provided when students are younger and before patterns of failure are established. The Legislature further acknowledges that the people of West Virginia would be better served if the state acted to ensure that all public school students were able to execute mathematical skills at or above grade level upon exiting grade four, that county boards are in the best position to determine if remediation is necessary for students in kindergarten through grade four and that the counties should have the option of providing summer school for students and may consider student attendance as a factor in determining whether a child is eligible to be promoted to the next grade.
The Legislature further finds that not all students are financially able to pay for summer school, nor do all county schools hold summer school. It is, therefore, the purpose of this section to help the county boards to provide, either individually or cooperatively, free summer school and summer school transportation for those students in kindergarten through grade four who did not perform at grade level during the regular school year. It also is the purpose of this section to help students in kindergarten through grade four who are identified as being in danger of failing to execute mathematical skills at grade level by the end of the school year to receive intensive mathematics instruction during their regularly scheduled mathematics time throughout the regular school year.

(b) Subject to appropriation by the Legislature therefor, the state board shall establish a competitive grant program as set forth in this section to provide mathematics programs for students in kindergarten through grade four who are not performing at grade level. The program shall be designated and known as the "Mathematic Achievement Through Help" program and, along with such designation, may be referred to as "West Virginia MATH".

Priorities for awarding the grants shall include, but are not limited to:

(1) Schools that have math test scores below the state standards; or

(2) Schools that receive federal funds for the improvement of mathematics.

Competitive grant applications must be submitted by the county boards, or by a community collaborative with the county board as a partner with leadership responsibility, and shall describe how the program will:

(1) Employ strategies, proven methods and innovative techniques for student learning, teaching and school management that are based on reliable research and effective practices, and can be replicated in other schools to improve the mathematical skills of students;
(2) Contain measurable goals for the improvement of student mathematical skills and benchmarks for meeting those goals;

(3) Include a plan for the evaluation of student progress toward achieving the state's high standards;

(4) Identify how other federal, state, local and private resources, including volunteers, will be utilized to further the intent of this section;

(5) Link summer improvement programs for mathematics with mathematical instruction and remediation throughout the school year;

(6) Determine the feasibility of collaborating with colleges of education for the purpose of providing educational experiences for prospective teachers;

(7) Identify the use of technology, including computers and calculators, and demonstrate how technology will be integrated into the program; and

(8) Accomplish other objectives as deemed necessary by the state board.

Any county receiving a grant should encourage students in kindergarten through grade four who did not perform at grade level during the regular school year to attend summer school and may consider summer school attendance as a factor in determining whether a child is eligible to be promoted to the next grade. The county board shall provide intensive mathematics instruction during regularly scheduled mathematics time throughout the regular school year to students in kindergarten through grade four who are identified by the classroom teacher as being in danger of failing to execute mathematical skills at grade level by the end of the school year. Nothing in this section shall prohibit county boards from permitting students to participate in mathematics programs on a student fee basis.

The state board shall approve procedures for the implementation of this section. To assist the state board in
developing procedures for the implementation of this section, including the grant application and the grant review and selection process, the state board shall appoint an advisory board consisting of the mathematics education coordinator and the Title I mathematics coordinator/specialist, both from the state department of education, a college or university professor of mathematics, a county mathematics curriculum specialist, an elementary teacher with a mathematics certification, an elementary principal with a mathematics certification, a mathematics teacher with a certificate issued by the national board of professional teaching standards, a representative from the West Virginia council of teachers of mathematics and two or more representatives from local school systems that are certified in mathematics education, or representatives of like successor organizations should these named organizations cease to exist. The procedures shall provide for:

(1) The appointment of a grant review and selection panel by the state board consisting of persons with expertise and practical experience in delivering programs to increase the mathematical skills of young students, not more than one half of whom may be employees of the state department of education, or the state board may designate the advisory board as the grant review and selection panel;

(2) Notice to all schools of the grant competition and the availability of applications on or before the thirtieth day of September, in each fiscal year for which grant funds are available;

(3) A grant application deadline postmarked on or before the fifteenth day of December, in each fiscal year for which grant funds are available;

(4) Notice of grant awards on or before the first day of March, in each fiscal year for which grant funds are available; and

(5) Other such requirements as deemed necessary by the state board.

(e) The state board may fund, from any other funds available for such purposes, the programs required by this
section for students in kindergarten through grade four and any programs required by state board rules such as, but not limited to, the following:
(1) Tutoring;
(2) Summer school educational services;
(3) Additional certified personnel to provide intensive instruction in mathematics throughout the school year;
(4) Staff development for teachers; and
(5) Hot meal programs.
(f) Nothing in this section shall supersede the individualized education program (IEP) of any student.
(g) Nothing in this section may be construed to require any specific level of funding by the Legislature.

CHAPTER 99

(H. B. 3025 — By Delegates Houston, Susman, Willis, Sparks, Armstead, Harrison and Fletcher)

[Passed March 12, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-c; and to amend and reenact section four, article five of said chapter, all relating to increasing compensation for county school board members; allowing county boards of education to establish certain personal leave banks; definition of care giver; and rules adopted by the county board.

Be it enacted by the Legislature of West Virginia:

That section four, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be
amended and reenacted; and that article four, chapter eighteen-a be amended by adding thereto a new section, designated section ten-c, to read as follows:

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

The board shall meet on the first Monday of January, except that in the year one thousand nine hundred eighty-two, and every year thereafter, the board shall meet on the first Monday of July, and upon the dates provided by law for the laying of levies, and at such other times as the board may fix upon its records. At any meeting as authorized above and in compliance with the provisions of article four of this chapter, the board may employ such qualified teachers, or those who will qualify by the time of entering upon their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. At a meeting of the board, on or before the first Monday of May, the superintendent shall furnish in writing to the board a list of those teachers to be considered for transfer and subsequent assignment for the next ensuing school year; all other teachers not so listed shall be considered as reassigned to the positions held at the time of this meeting. Such list of those recommended for transfer shall be included in the minute record and the teachers so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to such teachers' last-known addresses within ten days following said board meeting, of their having been so recommended for transfer and subsequent assignment.

Special meetings may be called by the president or any three members, but no business shall be transacted other than that designated in the call.
In addition, a public hearing shall be held concerning the preliminary operating budget for the next fiscal year not less than ten days after such budget has been made available to the public for inspection and within a reasonable time prior to the submission of said budget to the state board for approval and at such hearing reasonable time shall be granted to any person or persons who wish to speak regarding parts or all of such budget. Notice of such hearing shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.

A majority of the members shall constitute the quorum necessary for the transaction of official business.

Board members may receive compensation at a rate not to exceed one hundred dollars per meeting attended. But they shall not receive pay for more than sixty meetings in any one fiscal year.

Members shall also be paid, upon the presentation of an itemized sworn statement, for all necessary traveling expenses, including all authorized meetings, incurred on official business, at the order of the board.

When, by a majority vote of its members, a county board deems it a matter of public interest, such board may join the West Virginia school board association and the national school board association, and may pay such dues as may be prescribed by said associations and approved by action of the respective county boards. Membership dues and actual traveling expenses of board members for attending meetings of the West Virginia school board association may be paid by their respective county boards out of funds available to meet actual expenses of the members, but no allowance shall be made except upon sworn itemized statements.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-10c. Personal leave banks for care givers.

(a) For the purposes of this section, "care giver" means any employee of a county board of education who is a spouse, child
or parent of any employee who meets the following qualifications:

1. He or she is an employee of the same county board of education as the care giver; and
2. He or she currently is eligible to receive benefits from the personal leave bank established in section ten of this article.

(b) A county board of education may establish a personal leave bank for care givers which is separate from any personal leave bank as defined in section ten of this article. The personal leave bank shall be operated pursuant to rules adopted by the county board which shall include, but not be limited to, the following:

1. An employee may contribute no more than two days of personal leave per school year;
2. The bank shall be established either jointly or separately for both professional personnel and school service personnel and shall be available to all school personnel;
3. The rules may limit the maximum number of days used by a care giver;
4. The rules shall require that leave bank days be used only by a care giver who is absent from work during the same time period as the absent employee for whom care is being provided; and
5. The rules shall require that the care giver is an active employee with less than five days accumulated personal leave.

(c) The use of such days by the care giver for the extension of insurance coverage pursuant to section twelve, article sixteen, chapter five of this code is prohibited.

(d) Contributions shall reduce, to the extent of the contribution, the number of personal leave days to which a contributing employee is entitled by section ten of this article: Provided, That the employee's contribution may not reduce the number of entitled personal leave days without cause.

(e) No employee may be compelled to contribute to a personal leave bank.
CHAPTER 100

(Com. Sub. for H. B. 2402 — By Delegates Davis, Stemple, Ennis, Williams, Houston, Stalnaker and Armstead)

[Passed March 13, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact sections five-a and seven, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eight-a, article four, chapter eighteen-a of said code, all relating to funding of public education; increasing the maximum ratio of service personnel per one thousand students in net enrollment from forty-three and one-half to forty-three and six-tenths for low density counties and to forty-four and one-half for high density counties; changing the percent of the replacement value of bus fleets included in the calculation of the allowance in the foundation school program for transportation; and increasing the monthly pay of service personnel for college or comparable credit.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§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:

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<th>School Year</th>
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<th>Maximum Service Personnel per 1000 Net Enrollment</th>
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(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.


The allowance in the foundation school program for each county for transportation shall be the sum of the following computations:
(1) Eighty-five percent of the transportation cost within each high density county and ninety percent of the transportation cost within each low density county for maintenance, operation and related costs, exclusive of all salaries: Provided, That for the school year beginning the first day of July, one thousand nine hundred ninety-eight, and thereafter, in the event a county uses an alternative fuel such as compressed natural gas or other acceptable alternative fuel for the operation of all or any portion of its school bus system, then the allowance in the foundation school program for each such county for that portion of its school bus system shall be ninety-five percent of the transportation cost for maintenance, operation and related costs, exclusive of all salaries, incurred by the use of the alternatively fueled school buses: Provided, however, That any county using an alternative fuel and qualifying for the additional allowance shall submit a plan regarding the intended future use of alternatively fueled school buses;

(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation: Provided, That such premiums were procured through competitive bidding;

(3) For the school year beginning the first day of July, one thousand nine hundred ninety-nine, and thereafter, an amount equal to eight and one-third percent of the current replacement value of the bus fleet within each county as determined by the state board, such amount to be used only for the replacement of buses. Buses purchased after the first day of July, one thousand nine hundred ninety-nine that are driven one hundred eighty thousand miles regardless of year model will be subject to the replacement value of eight and one-third percent as determined by the state board. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus. The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district's net enrollment history and transportation needs: Provided, That the superintendent shall not consider any
application which fails to document that the county has applied
for federal funding for additional buses. If the state superinten-
dent finds that a need exists, a request for funding shall be
included in the budget request submitted by the state board for
the upcoming fiscal year;

(4) Eighty-five percent of the cost of contracted transporta-
tion services and public utility transportation within each high
density county and ninety percent of the cost of contracted
transportation services and public utility transportation within
each low density county;

(5) Aid in lieu of transportation equal to the state average
amount per pupil for each pupil receiving such aid within each
county; and

(6) Ninety-five percent of the transportation cost for
maintenance, operation and related costs, exclusive of all
salaries, for transporting students to and from classes at a
multicounty vocational center.

The total state share for this purpose shall be the sum of the
county shares: Provided, That no county shall receive an
allowance which is greater than one-third above the computed
state average allowance per transportation mile multiplied by
the total transportation mileage in the county: Provided,
however, That one half of one percent of the transportation
allowance distributed to each county shall be for the purpose of
trips related to academic classroom curriculum and not related
to any extracurricular activity: Provided further, That any
remaining funds credited to a county for the purpose of trips
related to academic classroom curriculum during the fiscal year
shall be carried over for use in the same manner the next fiscal
year and shall be separate and apart from, and in addition to, the
appropriation for the next fiscal year: And provided further,
That the state board may request a county to document the use
of funds for trips related to academic classroom curriculum if
the board deems it necessary.

The state department of education shall cause a comprehen-
sive study to be made relating to student transportation. The
study shall examine, but is not limited to, the issues of funding,
timeliness of data used for formula distribution, service personnel needed, inter-county service, regionalization of services, bus routes, amount of time students spend on buses, maintenance, safety training, and alternative transportation systems. The state department of education shall submit a report of the study to the legislative oversight commission on education accountability by the fifteenth day of January, one thousand nine hundred ninety-nine.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8a. Service personnel minimum monthly salaries.

(1) The minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "state minimum pay scale pay grade I" and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the "state minimum pay scale pay grade I" set forth in this section.

STATE MINIMUM PAY SCALE PAY GRADE I

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Subject to a recommendation by the governor for a pay raise through the delivery of an executive message to the Legislature and an appropriation by the Legislature for a pay raise, effective the first day of July, one thousand nine hundred ninety-nine and thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "state minimum pay scale pay grade II" and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the "state minimum pay scale pay grade II" set forth in this section.
### STATE MINIMUM PAY SCALE PAY GRADE II

#### Years of Employment

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If “state minimum pay scale pay grade II” becomes effective on the first day of July, one thousand nine hundred ninety-nine, and the governor recommends a pay raise through the delivery of an executive message to the Legislature and the Legislature appropriates money for a pay raise, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the “state minimum pay scale pay grade III” and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the “state minimum pay scale pay grade III” set forth in this section.

STATE MINIMUM PAY SCALE PAY GRADE III

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(2) An additional ten dollars per month shall be added to the minimum monthly pay of each service employee who holds a high school diploma or its equivalent.

(3) An additional ten dollars per month also shall be added to the minimum monthly pay of each service employee for each of the following:

(A) A service employee who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board;
(B) A service employee who holds twenty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(C) A service employee who holds thirty-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board; and

(D) A service employee who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(4) When any part of a school service employee's daily shift of work is performed between the hours of six o'clock p.m. and five o'clock a.m. the following day, the employee shall be paid no less than an additional ten dollars per month and one half of the pay shall be paid with local funds.

(5) Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times the employee's usual hourly rate.

(6) 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 the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(7) No service employee may have his or her daily work schedule changed during the school year without the employee's written consent, and the employee's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(8) The minimum hourly rate of pay for extra duty assignments as defined in section eight-b of this article shall be no less than one seventh of the employee's daily total salary for each hour the employee is involved in performing the assignment and paid entirely from local funds: Provided, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment
may be utilized if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time employees within that classification category of employment within that county: *Provided, however,* That the vote shall be by secret ballot if so requested by a service personnel employee within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment shall be prorated accordingly. When performing extra duty assignments, employees who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the employee were employed on a full-day salary basis.

(9) The minimum pay for any service personnel employees engaged in the removal of asbestos material or related duties required for asbestos removal shall be their regular total daily rate of pay and no less than an additional three dollars per hour or no less than five dollars per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos related duties outside of the employee’s regular employment county, the daily rate of pay shall be no less than the minimum amount as established in the employee’s regular employment county for asbestos removal and an additional thirty dollars per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel employees may be utilized in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.
(10) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide shall be considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of certificated professional personnel within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever supervision is required. For purposes of this section, "under the direct supervision of certificated professional personnel" means that certificated professional personnel is present, with and accompanying the aide.

CHAPTER 101

(S. B. 589 — Originating in the Committee on Education.)

[Passed March 21, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact section twenty-one, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty-six; and to amend and reenact section one-a, article two, chapter twenty-three of said code, all relating to requiring that all moneys appropriated for alternative education programs be distributed in accordance with net enrollment; and providing workers’ compensation coverage for work-based learning.

Be it enacted by the Legislature of West Virginia:

That section twenty-one, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-six; and that section one-a, article two, chapter twenty-three of said code be amended and reenacted, all to read as follows:
CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


1 (a) An appropriation may be made to the state department to be distributed to county boards for the operation of alternative education programs established in accordance with policies and procedures adopted by the state board under section six, article two of this chapter: Provided, That nothing in this section shall be construed to require any specific level of funding by the Legislature: Provided, however, That ninety percent of any appropriation which may be made for the purposes set forth in this section shall be distributed to county boards on the basis of net enrollment and ten percent of this appropriation shall be distributed on a competitive basis to county boards for the operation of pilot or innovative alternative education programs: Provided further, That for the fiscal year beginning the first day of July, two thousand, the total appropriation which may be made for the purposes set forth in this section shall be distributed to the county boards on the basis of net enrollment.

18 (b) Each county board shall apply to the state superintendent for receipt of its share of the distribution in the manner set forth by the state superintendent which is consistent with the policies and procedures adopted by the state board for the establishment and maintenance of alternative education programs.


1 (a) The workers' compensation division shall create a classification and calculate a base premium tax rate for students participating in an unpaid work-based learning experience off
school premises as a part of the school curriculum with employ-
ers other than the county board of education. The workers’
compensation division shall report to the state department of
education:

(1) The amount of the base premium tax rate for the class;

and

(2) The amount of wages per student to be used to provide
the minimum weekly benefits required by section six, article
four, chapter twenty-three of this code.

(b) The state department of education shall communicate
the amount of the premium to the governor and Legislature by
the first day of December of each year, beginning the first day
of December, one thousand nine hundred ninety-nine.

(c) The base premium tax rate reported to the state depart-
ment of education shall be that which was published by the
workers’ compensation division prior to the first day of the
immediately preceding July. That premium tax rate, however,
shall not be implemented by the workers’ compensation
division until the first day of January and shall remain in effect
through the last day of the next December. The workers’
compensation division shall make no merit rate adjustment, as
otherwise provided for in paragraph (A), subdivision (1),
subsection (a), section four, article two, chapter twenty-three of
this code, for the members of the class required to be created by
subsection (a) of this section.

(d) Notwithstanding anything to the contrary in any rules
adopted to implement the provisions of section four, article two,
chapter twenty-three of this code and for the sole purposes of
this section, the workers’ compensation division shall permit
any county board of education affected by this section to be
classified in accordance with this section and to be also
classified as otherwise required by any rules adopted to
implement the provisions of section four, article two, chapter
twenty-three of this code.

(e) Subject to an appropriation by the Legislature, funds
shall be provided to the department of education to distribute to
40 the county boards. If the appropriation is less than the total
41 premium calculated, the county boards, individually, shall
42 either reduce the number of students participating in work-
43 based learning experiences off school premises or the county
44 boards shall pay the difference between the amount of the
45 premium calculated by the workers’ compensation division and
46 the amount allocated to the county board by the department of
47 education.

CHAPTER 23. WORKERS’ COMPENSATION.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER;
EXTRATERRITORIAL COVERAGE.

§23-2-la. Employees subject to chapter.

(a) Employees subject to this chapter are all persons in the
service of employers and employed by them for the purpose of
carrying on the industry, business, service or work in which
they are engaged, including, but not limited to:

(1) Persons regularly employed in the state whose duties
necessitate employment of a temporary or transitory nature by
the same employer without the state;

(2) Every person in the service of the state or of any
political subdivision or agency thereof, under any contract of
hire, express or implied, and every appointed official or officer
thereof while performing his or her official duties;

(3) Checkweighmen employed according to law;

(4) All members of rescue teams assisting in mine accidents
with the consent of the owner who, in such case, shall be
deemed the employer, or at the direction of the director of the
department of mines;

(5) All forest firefighters who, under the supervision of the
director of the department of natural resources or his or her
designated representative, assist in the prevention, confinement
and suppression of any forest fire; and

(6) Students while participating in a work-based learning
experience with an employer approved as a part of the curricu-
23 lum by the county board. The county board shall be the employer of record of students while participating in unpaid work-based experiences off school premises with employers other than the county board. Students in unpaid work-based learning experiences shall be considered to be paid the amount of wages so as to provide the minimum workers' compensation weekly benefits required by section six, article four of this chapter.

(b) The right to receive compensation under this chapter shall not be affected by the fact that a minor is employed or is permitted to be employed in violation of the laws of this state relating to the employment of minors, or that he or she obtained his or her employment by misrepresenting his or her age.

CHAPTER 102

(Com. Sub. for H. B. 2401 — By Delegates Williams, Manuel, C. White, Sparks, Houston, Webb and Stemple)

[Passed March 11, 1999; in effect from passage. Approved by the Governor]

AN ACT to amend and reenact section three, article nine-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections four and five, all relating to preconstruction and post-construction site testing for radon; requiring the state board to promulgate rules that minimize the use of carpeting; requiring the state board to promulgate rules that address the employment of heating, ventilating and air-conditioning technicians; requiring the state board to promulgate rules that would set forth a procedure for investigating and addressing indoor air quality complaints; and provisions for enforcement.

Be it enacted by the Legislature of West Virginia:
That section three, article nine-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections four and five, all to read as follows:

ARTICLE 9E. AIR QUALITY IN NEW SCHOOLS ACT.

§18-9E-3. Air quality in new schools.
§18-9E-5. Investigation of indoor air quality complaints in existing schools and schools subsequently constructed.

§18-9E-3. Air quality in new schools.

1. (a) In an effort to create well ventilated school environments, and notwithstanding any other provision of this code to the contrary, any new school building designed and constructed in the state by a county board after the first day of July, one thousand nine hundred ninety-eight, regardless of the funding source, shall be designed and constructed in compliance with the current standards of the American society of heating, refrigerating and air conditioning engineers handbook (ASHRAE), the national fire protection association code (NFPA) and the code of the building officials and code administrators (BOCA).

2. (b) Upon notice from the school building authority that a new public school building is occupied, the division of health shall perform radon testing in the school within the first year after occupancy and at least every five years thereafter. The county school board shall provide such reasonable assistance to the division of health as may be necessary to perform the radon testing. The radon testing shall include all major student occupied areas at or below grade level. If it is determined that radon is present in amounts greater than the amount determined to be acceptable by the rules promulgated by the school building authority, pursuant to subsection (d) of this section, any industry accepted mitigation technique shall be utilized to reduce the radon level to the level or below the level determined acceptable by the school building authority.
(c) If the school building authority determines that it is feasible to test for radon prior to the construction of a school building, the school building authority may cause preconstruction site testing for radon to be performed.

(d) The school building authority shall promulgate rules pursuant to article three-a, chapter twenty-nine-a of this code to assure that any new school building designed after the effective date of this article is designed and constructed in accordance with the current ASHRAE, NFPA and BOCA standards. The school building authority shall promulgate rules, pursuant to article three-a, chapter twenty-nine-a of this code that establish standards for safe levels of radon for public school buildings. The school building authority shall submit the rules for approval to the legislative oversight commission on education accountability on or before the first day of July, one thousand nine hundred ninety-nine. The rules shall include the requirement that county boards submit all new school designs to the school building authority for review and approval for compliance with current education standards and design efficiencies prior to preparation of final bid documents.

(e) The state board shall promulgate rules, pursuant to article three-b, chapter twenty-nine-a of this code, in consultation with the division of health, that minimize the use of carpeting in public school buildings based on user needs and performance specifications of the carpeting. The state board shall submit the rules to the legislative oversight commission on education accountability on or before the first day of July, one thousand nine hundred ninety-nine.


(a) Subject to appropriation by the Legislature therefor, the state board, in consultation with the division of health, shall promulgate rules pursuant to article three-b, chapter twenty-nine-a of this code that will address servicing public school buildings by heating, ventilation and air-conditioning (HVAC) technicians. The rules shall set forth a job description for the HVAC technician. At the discretion of the state board, HVAC
8 technicians may be employed by the county board of education,  
9 by the regional educational service agency servicing the county  
10 or by the department of education using the funds allocated  
11 pursuant to this section. The hiring entity shall set a salary for  
12 the HVAC technician that is competitive with other employers  
13 of HVAC technicians in the region after accounting for annual  
14 leave, sick leave, insurance benefits, retirement benefits and  
15 any other benefits provided. Existing employees who have  
16 advanced HVAC skills or existing employees who receive  
17 appropriate HVAC training may be utilized as HVAC techni-  
18 cians. The rules also shall provide for sufficient continuing  
19 education training for HVAC technicians to maintain profi-  
20 ciency in the changing technologies in the field. The rules shall  
21 be submitted to the legislative oversight commission on  
22 educational accountability prior to the first day of September,  
23 one thousand nine hundred ninety-nine.  
24  
25 (b) County boards, regional educational service agencies  
26 and the department of education shall have the option to  
27 contract for HVAC services from prequalified vendors if this  
28 option is more cost effective than using existing employees or  
29 creating a new position: Provided, That an existing employee  
30 may not be displaced by contracting for HVAC technician  
31 services: Provided, however, That HVAC services that have  
32 been performed in the past or which require knowledge and  
33 experience the employer does not have access to, may be  
34 contracted out to a prequalified vendor.  
35  
36 (c) Funds appropriated for the purpose of hiring HVAC  
37 technicians shall be appropriated originally to the department  
38 of education. The department of education then may allocate  
39 the funds to the regional educational service agencies or to the  
40 counties, depending upon which entity employs the HVAC  
41 technician as specified by rule.  
42  
43 §18-9E-5. Investigation of indoor air quality complaints in exist-  
44 ing schools and schools subsequently constructed.  
45  
46 (a) The state board, in consultation with the division of  
47 health, shall promulgate rules pursuant to article three-b,  
48 chapter twenty-nine-a of this code which require each county
board to investigate all reports of indoor air quality problems within the county. The rules shall set forth a designated official or officials within the county school system to be responsible for addressing, pursuant to this section, any indoor air quality complaints. The rules also shall set forth a procedure for any party to file a complaint with the designated official or officials. Any indoor air quality complaint found to be valid by the designated official or officials shall be addressed by forming a plan of correction. Any county board that addresses an indoor air quality complaint is encouraged to seek any available assistance from local, state and federal agencies in both investigating the complaint and in forming the plan of correction. A county board shall consider any documented plans of closure of a school building when forming any plan of correction for that school building. The rules shall be submitted to the legislative oversight commission on education accountability prior to the first day of September, one thousand nine hundred ninety-nine. Additionally, the rules shall set an appropriate cost for a plan of correction over which all such plans of correction shall be reported to the legislative oversight commission on education accountability. Based upon the legislative oversight commission on education accountability's experience in receiving the complaints, the commission shall submit a recommendation for funding the plans of correction.

(b) Furthermore, each plan of correction shall be incorporated into each county board's ten-year county-wide major improvement plan set forth in section sixteen, article nine-d of this chapter. Also pursuant to section sixteen, article nine-d of this chapter, the state board may restrict the use of the necessary funds or otherwise allocate funds from moneys appropriated by the Legislature for those purposes set forth in section nine, article nine-a of this chapter: Provided, That nothing in this subsection shall be interpreted as requiring that a county board make addressing an air quality complaint a priority over other projects in the county board’s ten-year county-wide major improvement plan.
CHAPTER 103

(Com. Sub. for H. B. 2438 — By Delegates Douglas, Leach and Hubbard)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-l, relating to the creation of the "Ron Yost Personal Assistance Services Act" to provide personal assistance services to certain severely disabled individuals; stating public policy; making the division of rehabilitation responsible for administering the program through the West Virginia statewide independent living council; providing for development and components of program; creating a special account in the state treasury designated as the "Ron Yost Personal Assistance Services Fund"; limiting the amount of funds that may be expended for administrative costs; authorizing use of legislatively appropriated funds and directing application for funding from other sources; requiring the division of rehabilitation services to propose legislative rules to implement article; providing for payment based on ability to pay; requiring annual report; and providing for an expiration date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10L. RON YOST PERSONAL ASSISTANCE SERVICES ACT.

§18-10L-1. Short title.
§18-10L-2. Policy; principles; projects.
§18-10L-3. Definitions.
§18-10L-4. Programs.
§18-10L-5. Funding.
§18-10L-6. Rules.
§18-10L-8. Continuation of program.
§18-10L-1. Short title.

This article may be known and cited as the "Ron Yost Personal Assistance Services Act."

§18-10L-2. Policy; principles; projects.

(a) It is hereby declared to be the public policy of this state that:

(1) Availability of personal assistance services for persons with disabilities should be increased to enable them to live in their own homes and communities;

(2) Recipients of personal assistance will be those with severe disabilities, including mental, sensory or physical impairments, or any combination of impairments, who are in need of assistance to live in a living arrangement of their choice in lieu of a more restrictive setting; and

(3) Recipients of personal assistance have the right to make decisions regarding and to control the provision of their personal assistance services. This includes, but is not limited to, hiring, training, managing, paying and terminating an assistant's employment.

(b) Implementation of the program established in this article shall be based on the following five basic principles:

(1) Services may be received where they are needed, either at home or in the community, subject to available funding;

(2) Services may be scheduled when they are needed, twenty-four hours a day, seven days a week, as scheduled or needed on an emergency basis, subject to available funding;

(3) Recipients contribute to the cost of services based on their ability to pay;

(4) Recipients are granted control over the services provided to the fullest extent possible including how, when and by whom services are provided; and

(5) Eligibility shall be based on functional needs rather than on a medical diagnosis.
(c) Subject to available funds, other personal assistance projects shall be developed to increase the availability of services throughout the state to serve eligible individuals.

§18-10L-3. Definitions.

The following words and phrases, when used in this article, have the following meanings unless the context clearly indicates otherwise:

1. “Personal assistance services” means:

   (A) Those basic and ancillary services that enable eligible individuals to live in their homes and communities rather than in institutions and to carry out functions of daily living, self-care and mobility;

   (B) Basic services include, but are not limited to, getting in and out of a bed, wheelchair or motor vehicle; assistance with routine bodily functions, such as health maintenance activities; bathing and personal hygiene; dressing and grooming; and feeding, including preparation and cleanup.

2. “Personal assistant” means an individual of the consumer’s choice who provides personal assistance services for the eligible individual.

3. “Recipient” or “consumer” means any individual with a physical, mental, or sensory impairment that affects one or more major life activity who meets all of the following requirements:

   (A) Experiences any physical, mental or sensory impairment, or combination of impairments, which can be expected to recur or last for a period of not less than twelve months as determined by the evaluation conducted by functional assessment;

   (B) With support from the West Virginia statewide independent living council when necessary, assumes the employer responsibilities of selecting, supervising and, if needed, terminating the employment of a personal assistant, or designates an individual to assume those responsibilities;
(C) With support from the West Virginia statewide independent living council when necessary, manages his or her own financial and legal affairs or designates an individual to manage those responsibilities;

(D) Requires assistance to complete functions of daily living, self-care and mobility, including, but not limited to, those functions included in the definition of personal assistance services; and

(E) Is not currently receiving personal assistance services through any other program: Provided, That the division of rehabilitation services may, in the event that an option for consumer directed personal assistance services is developed through the state's medicaid program, develop a program coordinated with requirements of any medicaid option and available to medicaid-eligible persons.

§18-10L-4. Programs.

(a) The personal assistance services program shall be administered by the division of rehabilitation services through the state plan for independent living and managed by the West Virginia statewide independent living council, established pursuant to the provisions of 29 U.S.C. § 796d.

(b) The West Virginia statewide independent living council shall establish a standing committee to function as the consumer board to direct the implementation of the program. The board shall be composed of individuals with severe disabilities: Provided, That one member shall be a representative of the West Virginia statewide independent living council with a disability. No member of the board is eligible to receive personal assistance services through the program provided for in this article.

(c) Determination of eligibility and the need for and amount of personal assistance services shall be decided by the consumer board based on functional assessments conducted using a tool developed by the West Virginia statewide independent living council. Each consumer assessment shall include a written report which shall be filed with the division of rehabilitation services.
(d) The division of rehabilitation services shall develop a waiting list for those eligible individuals who cannot be served immediately.

(e) Any program developed pursuant to this article shall contain provisions designed to assure that the employment of any personal assistant providing services under this article is in compliance with applicable state and federal laws, including, but not limited to, state and federal payroll taxes, deductions and withholding, wage withholding for child support, and any other applicable employment related law.

(f) Funds or services provided to eligible individuals by the personal assistance services program under this article shall not be considered as income to those individuals for any purpose under this code or under the rules of any agency of state government.

§18-10L-5. Funding.

(a) There is hereby created in the state treasury a special fund designated the “Ron Yost Personal Assistance Services Fund”. The fund shall be an appropriated account within the division of rehabilitation services and the moneys shall be expended exclusively for the purposes of this article.

(b) Funds made available for programs under this article may be used only for the planning, designing, delivering and administering of personal assistance services and training. The division of rehabilitation services may use not more than seven percent of the total allocation for administrative costs.

(c) The programs created pursuant to this article may use funds from a number of sources, including state and federal funds, program fees and other allotted moneys. The division of rehabilitation services shall apply for and use all available funding sources to carry out this program.

(d) Funds shall be disbursed in a manner that ensures maximum consumer control of the services provided under the program.
(e) Personal assistance services shall be available only to the extent funding is available through annual appropriations of state, federal and other allotted funds.

§18-10L-6. Rules.

The division of rehabilitation services, as directed by the consumer board, shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, necessary for the effective administration of this article including a sliding scale for funding based on the recipient's, as the employer, ability to contribute to the cost of services.


An annual report shall be filed with the Legislature on or before the first day of January of each year, which is to include a summary of the personal assistance services provided under this article and recommendations regarding the program for upcoming fiscal years.

§18-10L-8. Continuation of program.

The personal assistance services program shall continue to exist until the first day of July, two thousand two, pursuant to the provisions of article ten, chapter four of this code, to allow for the completion of a preliminary performance review by the joint committee on government operations.

CHAPTER 104

(Com. Sub. for H. B. 2349 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed March 13, 1999; in effect July 1, 1999. Approved by the Governor.]
relating to providing a salary bonus for classroom teachers who hold a valid certificate issued by the national board of professional teaching standards and reimbursement for teachers in the process of receiving certification.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.

1 (a) The Legislature hereby finds and declares that the rigorous standards and processes for certification by the national board for professional teaching standards (NBPTS) helps to promote the quality of teaching and learning. Therefore, classroom teachers in the public schools of West Virginia should be encouraged to achieve national board certification through a reimbursement of expenses and an additional salary bonus which reflects their additional certification, to be paid in accordance with subsection (b) of this section.

(b) Beginning on the first day of July, one thousand nine-hundred ninety-eight, and subject to legislative appropriation, one thousand dollars shall be paid annually at the conclusion of the first semester to each classroom teacher who holds a valid certificate issued by the national board of professional teaching standards for the life of the certification, but in no event more than ten years for any one certification.

(c) Subject to legislative appropriation, one thousand dollars shall be paid for reimbursement once to each teacher who enrolls in the program for the national board for professional teaching standards certification and one thousand dollars shall be paid for reimbursement once to each teacher who completes the national board for professional teaching standards certification. Teachers who achieve national board for professional teaching standards certification may be reimbursed
a maximum of six hundred dollars for expenses actually incurred while obtaining the national board for professional teaching standards certification.

(d) The state board shall limit the number of teachers who receive the initial reimbursements to one hundred teachers annually. The state board shall establish selection criteria for the one hundred teachers by the legislative rule required pursuant to subsection (g) of this section.

(e) Funding for the national board for professional teaching standards certifications shall be administered by the state department of education from an appropriation established for that purpose by the Legislature. If funds appropriated by the Legislature to accomplish the purposes of this section are insufficient, the state department shall prorate the reimbursements for expenses and salary bonuses and shall request of the Legislature, at its next regular session, funds sufficient to accomplish the purposes of this section, including needed retroactive payments.

(f) Nothing in this section shall be construed to require any level of appropriation by the Legislature nor to create any entitlement for payments pursuant to the provisions of this section.

(g) The state board shall promulgate legislative rules pursuant to article three-b, chapter twenty-nine-a of this code to implement the provisions of this section.

CHAPTER 105

(H. B. 2612 — By Delegates Hubbard and Jenkins)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-d, relating
to personal leave for school personnel and providing that a surviving spouse may use the personal leave of his or her spouse under certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-10d. Use of personal leave days by surviving spouse in certain circumstances.

(a) For the purposes of this section, the following terms have the following meanings:

(1) "Surviving spouse" means an employee of a county board whose spouse was also employed by the same county board at the time of his or her death; and

(2) "Deceased spouse" means a person who, at the time of his or her death, was employed by the same board of education as his or her spouse.

(b) Beginning the first day of January, one thousand nine hundred ninety-nine, a county board of education may credit a surviving spouse with any or all personal leave days to which the deceased spouse was entitled at the time of the death of the deceased spouse.

(c) The provisions of this section only shall apply if all the following conditions are met:

(1) Both spouses were employed by the same county board of education at the time of the death of the deceased spouse;

(2) The deceased spouse had unused personal leave days which he or she was entitled to use;

(3) The surviving spouse is an active employee with less than five days accumulated personal leave;

(4) The death of the deceased spouse was by accident;
23 (5) It is determined by the county board, on evidence
24 provided by a licensed physician, that the surviving spouse is
25 physically disabled to work at the position held by the surviving
26 spouse; and
27
28 (6) It is determined by the county board that the cause of
29 the disability to the surviving spouse arose from the same
30 accident that resulted in the death of the deceased spouse.
31
32 (d) The county board periodically shall review the status of
33 the surviving spouse and, upon a determination of the county
34 board that the surviving spouse is able to work at his or her
35 assigned position, any personal leave days credited to the
36 surviving spouse pursuant to the terms of this section shall be
37 extinguished.
38
39 (e) Personal leave days credited to the surviving spouse
40 pursuant to this section may be used only for the purposes of
41 this section and may not be used for any other purpose, includ-
42 ing, but not limited to, the enhancement of retirement or health
43 insurance benefits.

CHAPTER 106

(Com. Sub. for S. B. 391 — By Senator Jackson)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article four, chapter
eighteen-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to requiring that all
department of education employees receive at least the same
pay as employees of the board of education wherein the
principal place of employment is located.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article four, chapter eighteen-a of the code
of West Virginia, one thousand nine hundred thirty-one, as amended,
be amended and reenacted to read as follows:
ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-18. Department of education certified staff salaries.

1 (a) Personnel employed by the state department of education who are required to hold a teaching certificate shall receive a salary that is at least equal to the salary paid to comparable professional personnel employed by the county board in the county in which their office is located, minus the six hundred dollars authorized pursuant to section two of this article for classroom teachers with twenty years of experience.

(b) Effective the first day of July, two thousand two, service personnel employed by the department of education shall receive a salary that is at least equal to the salary paid to comparable personnel employed by the county board in the county in which their principal place of employment is located. The department of education shall establish a salary schedule that phases in the necessary salary increases before the first day of July, two thousand two.

CHAPTER 107

(H. B. 3019 — By Delegates Mezzatesta, Williams, Stemple, Manuel, Shelton, Ennis and Davis)

[Passed March 21, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections six and seven; and to further amend said chapter by adding thereto a new article, designated article three-e, all relating to the board of directors of the state college system; authority, powers and duties of the board of directors of the state college system; community and technical college education; establishing the freestanding Eastern West Virginia Community and Technical College; authority, powers and duties of freestanding community and technical colleges; authority, powers and duties of the board of
directors relating to operation of Eastern West Virginia Community and Technical College; authority, powers and duties of Eastern West Virginia Community and Technical College; employing a president and appropriate faculty and staff; advisory board; courses, programs, services, tuition and fees; property and title; authorizing contracts for services; reports required; requiring preparation and submission of strategic plans; authorizing contractual arrangements for administration and operation prior to independent accreditation; community and technical college district; defining freestanding community and technical college; providing certain operational parameters for freestanding community and technical colleges; filing a request for approval of certificate and associate degree programs; requiring the board of directors to adopt a model of program approval; requiring legislative rules; legislative findings and intent; requiring a study to be authorized on certain higher education issues; and components of the study.

Be it enacted by the Legislature of West Virginia:

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

Article 3. Board of Directors of the State College System.

§188-3-6. Increasing flexibility for freestanding community and technical colleges.

§188-3-7. Legislative findings; study by Joint Committee on Government and Finance.

§18B-3-6. Increasing flexibility for freestanding community and technical colleges.

1 (a) For the purposes of this section, "freestanding community and technical college" means Eastern West Virginia Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College and any other freestanding
community and technical college so designated by the Legislature.

(b) Notwithstanding any rules or procedures of the state college system board of directors, the freestanding community and technical colleges under the jurisdiction of the board of directors have the authority and the duty to:

(1) Incorporate the most effective and efficient use of technology in accessing and delivering courses and programs in order to make the best use of available resources and to control costs;

(2) Incorporate a model to offer occupational program curricula in smaller modules to accommodate specific student and employer needs and to gain sufficient flexibility in formatting courses;

(3) Serve as a facilitator for education programs from outside delivery sources that meet the needs of the residents and employers of the district; and

(4) Employ faculty in the most effective manner to serve the core mission of the community and technical college. To that end the freestanding community and technical colleges may employ faculty for an indefinite period without a grant of tenure and shall work toward a staffing goal of no more than twenty percent of the faculty holding tenure or being tenure-track employees: Provided, That tenured faculty currently employed by public institutions of higher education may not be affected by this provision.

(c) The freestanding community and technical colleges may not be required to file a request for approval of certificate and associate degree programs with the board of trustees before implementing a new program pursuant to section eight, article one of this chapter.

(d) Potomac State College of West Virginia University and West Virginia University at Parkersburg may not be required to file a request for approval of certificate and associate degree programs with the board of directors before implementing a
new program pursuant to section eight, article one of this chapter.

(e) The board of directors shall adopt a model of program approval for the freestanding community and technical colleges that permits occupational programs to be customized to meet needs without requiring approval by the board of directors and, furthermore, that incorporates a post-audit review by the board of directors of such programs on a three-year cycle to determine the effectiveness of such programs in meeting district needs.

(f) The board of directors shall promulgate legislative rules in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to effectuate the purposes of this section: Provided, That the board may not promulgate emergency rules. The rules shall be filed with the legislative oversight commission on education accountability no later than the first day of November, one thousand nine hundred ninety-nine.

§18B-3-7. Legislative findings; study by joint committee on government and finance.

(a) The Legislature recognizes that it is in the best interest of the state to have effective and comprehensive higher education programs. It is critical that there be a system for the delivery of high quality community and technical college education because of its importance to the economic and cultural well-being of state residents.

(b) The Legislature finds that a need exists to strengthen the public community colleges so that they are able to respond better to the economic needs of the state for a highly trained, competent work force. Therefore, the Legislature has sought, through passage of legislation, to restructure and refocus community and technical college education for the purpose of establishing programs that function well with the public schools and four-year colleges, that make maximum use of resources, that encourage citizens to pursue a lifetime of learning, that serve as instruments of economic development, and that have the independence and flexibility to respond quickly to changing needs.
(c) The Legislature finds that, although great progress has been made on reaching some of the established goals, the purposes for which community and technical college education was created have not been fulfilled and many of the goals established have not been met.

(d) The Legislature further finds that a need exists to clarify the missions of public institutions of higher education, to consider the equity and effectiveness of current funding methods and to consider methods of equitably offering access to associate, baccalaureate and graduate education programs at institutions throughout the state.

(e) It is the responsibility of the Legislature to make the best use of available resources and to provide a blueprint that will meet goals established for public higher education. Therefore, the joint committee on government and finance shall authorize a study for the purpose of making specific and detailed recommendations to the Legislature. The recommendations shall be delivered to the Legislature by the first day of January, two thousand. The study shall include, but may not be limited to, the following:

(1) Recommendations on clarifying the missions of higher education institutions, directing resources to programs that meet the current and future work force needs of the state and distributing available revenues in an equitable fashion that enables each state institution of higher education to fulfill its mission;

(2) A review of state statutes and the rules, policies, practices and procedures of the higher education governing boards that may hinder effective delivery of high quality education programs and recommendations on how any statute or policy should be changed;

(3) A review of and recommendations on the higher education resource allocation model and resource allocation policies, established pursuant to section two, article five of this chapter, to determine a new or modified model for funding public higher education in West Virginia. The recommendations shall include a method of funding reimbursement based on
delivering credit and noncredit course work, eliminating or reducing the funding and regulatory differences between credit and noncredit courses to facilitate students moving between the two types of programs, and allowing faculty more flexibility to teach in both credit and noncredit program areas;

(4) Recommendations on a model for delivery of graduate education that makes effective use of resources available at four-year institutions under the jurisdiction of the board of directors;

(5) Recommendations on a model for delivery of baccalaureate education that makes effective use of resources available at the freestanding community colleges under the jurisdiction of the board of directors;

(6) A review of facility and maintenance needs of all state institutions of higher education and recommendations for addressing those needs;

(7) Recommendations on an appropriate model or models for governance of public institutions of higher education in the state; and

(8) Recommendations on the most effective and efficient model to be used in creating a system of public community and technical colleges in West Virginia.

ARTICLE 3E. EASTERN WEST VIRGINIA COMMUNITY AND TECHNICAL COLLEGE.

§18B-3E-1. Legislative findings and intent.

§18B-3E-2. Establishment and operation of Eastern West Virginia Community and Technical College; authority and duty to purchase property, expend appropriations and conduct programs.

§18B-3E-1. Legislative findings and intent.

(a) The Legislature finds that the potomac highlands is an area of the state that is underserved for higher education and that deserves more convenient access to higher education opportunities, including work force development opportunities.

(b) It is the intent of the Legislature in establishing Eastern West Virginia Community and Technical College to focus on the advantages available to the potomac highlands and to the
state by providing quality community and technical college education.

(c) It is further the intent of the Legislature that Eastern West Virginia Community and Technical College shall serve as a delivery platform for higher education in the potomac highlands while the study required by section seven, article three of this chapter is being conducted. The final organizational structure of the institution should reflect the results of the study.

(d) In order to satisfy the growing needs of the potomac highlands for access to quality higher education programs, the community and technical college shall meet the critical two-fold core mission which is to deliver work force development programs that meet the needs of employers and to increase the college participation rate of all the residents of the district. Establishment of this college is intended to provide an opportunity to implement more effective education delivery systems, organizational structures, and management and to result in finding the best model for delivery of high quality community and technical college education.

§18B-3E-2. Establishment and operation of Eastern West Virginia Community and Technical College; authority and duty to purchase property, expend appropriations and conduct programs.

(a) The board of directors shall establish, operate and maintain as a state institution of higher education and as a part of the state college system of West Virginia, the freestanding community and technical college, known as “Eastern West Virginia Community and Technical College”, located in Hardy County. The title to all real property, facilities and equipment of Eastern West Virginia Community and Technical College is and remains vested in the board of directors.

(b) The board of directors shall employ a president and such staff and faculty as determined appropriate for the institution; appoint a board of advisors consistent with section one, article six of this chapter; and exercise general determination, control,
13 supervision and management of the financial, business and
14 education policies and affairs of the community and technical
15 college.
16 (c) Subject to the intent of the Legislature as stated in
17 section one of this article, Eastern West Virginia Community
18 and Technical College may offer such curricula, programs,
19 courses and services and confer such degrees as is approved by
the board of directors. The board of directors shall fix tuition
20 and establish and set other fees to be charged students as it
21 considers appropriate, including establishing special fees for
22 specific purposes. Special fees shall be paid into special funds
23 and may be used only for the purposes for which the fees were
24 collected.
25 (d) The board of directors shall expend from the appropria-
26 tions allocated for Eastern West Virginia Community and
27 Technical College such funds as are necessary to operate and
28 conduct programs, to acquire clear title to any real property and
29 to make necessary capital improvements. The title to all
30 property purchased for the use of Eastern West Virginia
31 Community and Technical College is vested in the board of
32 directors.
33 (e) The board of directors may enter into contracts on
34 behalf of Eastern West Virginia Community and Technical
35 College with public and private education institutions, agencies,
36 boards, government agencies, corporations, partnerships and
37 individuals to perform instructional or other services.
38 (f) The board of directors shall make any necessary reports
39 to the legislative oversight commission on education account-
40 ability for the phased implementation of this section.
41 (g) Eastern West Virginia Community and Technical
42 College shall prepare and submit strategic plans in accordance
43 with the provisions of section one-c, article one of this chapter.
44 (h) The board of directors may provide through contractual
45 arrangement for the administration and operation of Eastern
46 West Virginia Community and Technical College by other state
47 institutions of higher education until such time as the commu-
community and technical college attains appropriate independent accreditation. Any contractual arrangement shall ensure that the programs offered at Eastern West Virginia Community and Technical College are accredited while independent accreditation is being sought.

(i) Notwithstanding the provisions of section three-a of this article, the community and technical college district of Eastern West Virginia Community and Technical College, for the purposes of initial implementation, is comprised as follows: Grant, Hardy, Hampshire, Pendleton and Tucker counties.

CHAPTER 108

(H. B. 3009 — By Delegates Mezzatesta, Martin, Williams, Stempie, Manuel, Houston and Fletcher)

[Passed March 12, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-d, relating to creating the workforce development initiative program under the council for community and economic development; providing that the council is responsible for administering the state fund for community and technical college and workforce development; providing the programs mission is to link postsecondary education capacity to the needs of employers; requirements for participating in the program; establishing grant application procedures; and requiring legislative rules.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 18B. HIGHER EDUCATION.
ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-1. Legislative findings and intent.
(a) The Legislature finds that a recent statewide study of the workforce training needs of employers throughout the state provided a clear message from the business community:

1. The needs of employers are rapidly changing and training providers must be more responsive or the state economy will suffer;

2. Information specific to West Virginia, once again emphasizes the critical link between education and economic development that empowering youth and adults with the knowledge and skills they need to succeed in the competitive work world also results in a workforce which enables businesses and communities to prosper;

3. Although employers are generally satisfied with the quality of the West Virginia workforce and the study provides additional support that the measures adopted in the Jobs Through Education Act will bring continued improvement, workforce needs are not static, critical skill shortages currently exist, and the establishment of a workforce development system that responds more quickly to the evolving skill requirements of employers is needed.

(b) The Legislature further finds that a study of community and technical education in West Virginia performed by the national center for higher education management systems called attention to problems in providing needed workforce education and found that there is a need to:

1. Jump-start development of community college and postsecondary workforce development initiatives,
(2) Provide incentives for existing public postsecondary providers to respond jointly to both short and long term needs of employers and other clients,

(3) Provide funding for explicit incentives for partnerships between employers and public postsecondary institutions to develop comprehensive community college and workforce development services, and

(4) Allocate funds competitively on the basis of proposals submitted by providers.

(c) It is further the intent of the Legislature that the granting of funds under this article will promote the mission of community and technical colleges as set forth in section three-a, article three of this chapter.

(d) It is the intent of the Legislature through the grant of funds under this article to provide limited seed money to address some of the specific areas where improvement is needed, including:

(1) Improving employer awareness and access to services available through the state’s education institutions,

(2) Providing designated professionals and resources to support workforce education through the state’s education institutions,

(3) Increasing the capacity of the state’s education institutions to respond rapidly to employer needs for workforce education, and training on an on-going basis through the development of a client-focused, visible point of contact for program development and delivery, service referral and needs assessment, such as a workforce development center, and

(4) Maximizing the use of available resources for workforce education and training through partnerships with public vocational, technical and adult education centers and private training providers.

(e) It is further the intent of the Legislature that consideration and partnering opportunities be given to small businesses on an equal basis with larger businesses for the purposes of this
article and that the seed money will assist providers in becoming self-sustaining through partnerships with business and industry which will include cost-sharing initiatives and fees charged for the use of services.

(f) The Legislature intends that grants of funds made under the provisions of this article will be competitive among applicants who meet all of the criteria established in this article and such other criteria as may be specified by the council. Subject to the availability of funds, more than one competition may be held during the same fiscal year and the dollar range of awards granted in successive competitions shall be prorated based on the number of months remaining in the fiscal year. Subject to annual review and justification, it is the intent of the Legislature to renew grant awards made under this article each year for five years following the initial grant award.

§18B-3D-2. Workforce development initiative program created; program administration.

(a) For the purposes of this article "Council" means the council for community and economic development as defined in section two, article two, chapter five-b of this code.

(b) There is hereby created under the council, a workforce development initiative program to administer and oversee grants to community and technical colleges to achieve the purposes of this article in accordance with legislative intent. The primary responsibility of the council as it relates to the workforce development initiative program is to administer the state fund for community and technical college and workforce development including setting criteria for grant applications, receiving applications for grants, making determinations on distribution of funds, and evaluating the performance of workforce development initiatives.

(c) The council shall review and approve the expenditure of all grant funds, including development of application criteria, the review and selection of applicants for funding, and the annual review and justification of applicants for grant renewal.

(1) To aid in decisionmaking, the council shall appoint an advisory committee consisting of the vice chancellor for
community and technical colleges, the secretary of education
and the arts or a designee, the assistant state superintendent for
technical and adult education, the chair of the joint commission
for vocational-technical-occupational education, and the chair
of the human resource investment council. The advisory
committee shall review all applications for workforce develop-
ment initiative grants and make a report including recommen-
dations for distributing grant funds to the council. The advisory
committee also shall make recommendations on methods to
share among the community and technical colleges any
curricula developed as a result of a workforce development
initiative grant.

(2) When determining which grant proposals will be
funded, the council shall give special consideration to proposals
by community and technical colleges that involve businesses
with fewer than fifty employees.

(3) The council also shall weigh each proposal to avoid
awarding grants which will have the ultimate effect of provid-
ing unfair advantage to employers new to the state who will be
in direct competition with established local businesses.

(d) The council may allocate a reasonable amount, not to
exceed five percent up to a maximum of $50,000 of the funds
available for grants on an annual basis, for general program
administration.

(e) The head of the council shall report to the legislative
oversight commission on education accountability on the status
of the workforce development initiative program by the first
day of December, one thousand nine hundred ninety-nine, and
annually thereafter by the first day of December.

(f) Moneys appropriated or otherwise available for the
workforce development initiative program shall be allocated by
line item to an appropriate account. Any moneys remaining in
the fund at the close of a fiscal year shall be carried forward for
use in the next fiscal year.

(g) Nothing in this article requires a specific level of
appropriation by the Legislature.

(a) The state-wide mission of the workforce development initiative program is to develop a strategy to strengthen the quality of the state’s workforce by linking the existing postsecondary education capacity to the needs of business, industry and other employers. Available funding will be used to provide explicit incentives for partnerships between employers and community and technical colleges to develop comprehensive workforce development services. Funds will be granted on the basis of proposals developed according to criteria established by the council.

(b) The mission of any community and technical college accepting a workforce development initiative grant is to:

1. Become client-focused and develop programs that meet documented employer needs;
2. Involve and collaborate with employers in the development of programs;
3. Develop customized training programs that provide for the changing needs of employers and that are offered at flexible times and locations to accommodate employer scheduling;
4. Develop partnerships with other public and private providers, including small business development centers and, vocational, technical and adult education centers, and with business and labor, to fulfill the workforce development needs of the service area;
5. Assist in the on-going assessment of the workforce development needs of the service area; and
6. Serve as a visible point of contact and referral for services to meet the workforce development needs of the service area.

§18B-3D-4. Grant application procedures.

(a) In order to participate in the workforce development initiative grant program, a community and technical college must meet the following conditions:
(1) Establish a consortia committee as required by section three, article three-a of this chapter. The consortia committee or a subcommittee thereof shall participate in the development of and approve applications for funding grants under the provisions of this article, and shall approve the workforce development initiative budget;

(2) Develop a plan to achieve measurable improvements in the quality of the workforce within its service area over a five-year period. The plan must be developed in partnership with employers, local vocational schools, and other workforce education providers;

(3) Establish a special revolving fund under the jurisdiction of the consortia committee dedicated solely to workforce development initiatives for the purposes provided in this article. Any fees or revenues generated from workforce development initiatives funded by a competitive grant shall be deposited into this fund.

(b) To be eligible to receive a workforce development initiative grant, a community and technical college must provide at least the following information in its application:

(1) Identification of the specific business or business sector training needs that will be met if a workforce development initiative grant is received;

(2) A commitment from the private sector to provide a match of one dollar for each dollar of state grant money received except in cases where the community and technical college can demonstrate in the grant application that it would be a hardship for the business being served to provide such a match. In those cases only, the match required may be reduced to one private dollar for every three dollars of state grant money provided;

(3) An agreement to share with other community and technical colleges any curricula developed using funds from a workforce development initiative grant;

(4) A specific plan showing how the community and technical college will collaborate with local postsecondary vocational institutions to maximize the use of existing facilities;
(5) An acknowledgment that acceptance of a grant under the provisions of this article commits the community and technical college and its consortia committee to such terms, conditions and deliverables as is specified by the council in the request for applications, including, but not limited to, the measures by which the performance of the workforce development initiative will be evaluated.

§18B-3D-5. Legislative rules.

1 The council shall propose a legislative rule pursuant to article three-a, chapter twenty-nine-a of this code to implement the provisions of this article and shall file the rule with the legislative oversight commission on education accountability no later than the first day of September, one thousand nine hundred ninety-nine.

CHAPTER 109

(H. B. 2471 — By Delegates Modesitt and Faircloth)

[Passed March 13, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and five-a, article four, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one and five, article twenty-nine, chapter thirty of said code; to amend and reenact section five hundred one, article five, chapter sixty-a of said code; and to amend and reenact section four, article three-b, chapter sixty-one of said code, all relating to renaming security officers of institutions of higher learning; providing that security officers are renamed “campus police officers”; empowering campus security officers to enforce the provisions of the uniform controlled substances act on campuses; campus police officers to carry firearms; providing that campus police officers are law-enforcement officers and setting forth definition.
Be it enacted by the Legislature of West Virginia:

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

Chapter

18B. Higher Education.
30. Professions and Occupations.
60A. Uniform Controlled Substances Act.
61. Crimes and Their Punishment.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-5. Campus police officers; appointment; qualifications; authority; compensation and removal.

§18B-4-5a. Crimes committed on campus of institutions of higher education.

§18B-4-5. Campus police officers; appointment; qualifications; authority; compensation and removal.

1 The governing boards are hereby authorized to appoint
2 bona fide residents of this state to act as campus police officers
3 upon any premises owned or leased by the state of West
4 Virginia and under the jurisdiction of the governing boards,
5 subject to the conditions and restrictions hereinafter imposed.
6 Before performing duties as a campus police officer in any
7 county, each person so appointed shall first qualify therefor in
8 the same manner as is required of county police officers by the
9 taking and filing of an oath of office as required by article one,
10 chapter six of this code and by posting an official bond as
11 required by article two, chapter six of this code. A campus
12 police officer shall have authority to carry a gun and may carry
13 any other dangerous weapon while on duty if the campus police
14 officer fulfills the certification requirement for law-enforcement
officers under section five, article twenty-nine, chapter thirty of
this code.

It is the duty of any person so appointed and qualified as a
campus police officer to preserve law and order only upon those
premises under the jurisdiction of the governing boards and on
any other street, road or thoroughfare, except controlled access
and open country highways, immediately adjacent to or passing
through such premises, to which the person may be assigned by
the president or other administrative head of the state institution
of higher education. For this purpose the campus police officer
is a law-enforcement officer pursuant to the provisions of
section one, article twenty-nine, chapter thirty of this code and,
as to offenses committed within any area so assigned, has and
may exercise all the powers and authority and is subject to all
the requirements and responsibilities of a law-enforcement
officer: Provided, That the assignment of campus police
officers to the duties authorized by this section may not be
deemed to supersede in any way the authority or duty of other
peace officers to preserve law and order on such premises. In
addition, the campus police officers appointed under provisions
of this section have authority to assist local peace officers on
public highways in the control of traffic in and around premises
owned by the state of West Virginia whenever such traffic is
generated as a result of athletic or other activities conducted or
sponsored by a state institution of higher education and when
such assistance has been requested by the local peace officers.

The salary of all such campus police officers shall be paid
by the appropriate governing board. Each state institution may
furnish each campus police officer with a firearm and an
official uniform to be worn while on duty and shall furnish and
require each officer while on duty to wear a shield with an
appropriate inscription and to carry credentials certifying to the
person's identity and authority as a campus police officer.

The governing boards may at their pleasure revoke the
authority of any campus police officer. The president or other
administrative head of the state institution of higher education
shall report the termination of employment of a campus police
officer by filing a notice to that effect in the office of the clerk
of each county in which the campus police officer's oath of
office was filed.

§18B-4-5a. Crimes committed on campus of institutions of higher
education.

The president or a designee of each institution of higher
education in this state shall on a regular and timely basis
provide information to the public concerning alleged crimes
occurring on the institution's property which have been
reported to a campus police officer or any other officer of the
institution. A crime shall be deemed reported whenever a
campus police officer or other officer of the institution deter-
mines that the report is credible, when the report is submitted
in writing and attested to by the victim on such forms as shall
be made available by the institution for such purpose, or when
the institution is notified by a law-enforcement agency of the
reporting of a crime alleged to have occurred on the institu-
tion’s property.

Such reports shall be referred within twenty-four hours to
the appropriate law-enforcement agencies, as defined in section
one, article twenty-nine, chapter thirty of this code, for further
investigation. The information required to be made available to
the public regarding the crime report shall be so available
within ten days of the report and shall include the nature of the
criminal offense, the date of the offense, the general location of
the offense (such as a designation of a specific building or area
of the campus) and the time of day when the offense occurred:
Provided, That this requirement shall not be construed to
require the release of any information which may disclose the
identity of the victim: Provided, however, That the institution
shall withhold the information required to be made available to
the public for a longer period upon certification of investigative
need that the information be withheld from the public, such
certification to be filed by an officer of one of the investigating
law-enforcement agencies with the president of the institution
or the designee to whom the duties required by this section have
been delegated: Provided further, That the required information
may in no event be withheld after an arrest has been made in connection with the crime report.

For purposes of this section, "crime" is defined as those offenses required to be reported under the federal Crime Awareness and Campus Security Act of 1990, as amended, and under section eight-a, article one of this chapter, and includes murder, rape, robbery, aggravated assault, burglary, motor vehicle theft and arrests for liquor, drug or weapons laws violations.

The governing boards shall provide crime reporting forms and promulgate such legislative rule pursuant to the provisions of article three-a, chapter twenty-nine-a of this code as are necessary for the implementation of this section. Such forms and rules shall be provided by the central office to other institutions of higher education in this state to assist them with the implementation of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

§30-29-5. Certification requirements.

§30-29-1. Definitions.

For the purposes of this article, unless a different meaning clearly appears in the context:

"Approved law-enforcement training academy" means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

"Chief executive" means the superintendent of the state police; the chief conservation officer of the division of natural resources; the sheriff of any West Virginia county; any administrative deputy appointed by the chief conservation officer of natural resources; or the chief of any West Virginia municipal law-enforcement agency;

"County" means the fifty-five major political subdivisions of the state;
“Exempt rank” means any noncommissioned or commissioned rank of sergeant or above;

“Governor’s committee on crime, delinquency and correction” or “governor’s committee” means the governor’s committee on crime, delinquency and correction established as a state planning agency pursuant to section one, article nine, chapter fifteen of this code;

“Law-enforcement officer” means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code, although those institutions may not be considered law-enforcement agencies. The term also includes those persons employed as rangers by the Hatfield-McCoy regional recreation authority in accordance with the provisions of section six, article fourteen, chapter twenty of this code, although the authority may not be considered a law-enforcement agency: Provided, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term “law-enforcement officer” does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special conservation officer;

“Law-enforcement official” means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

“Municipality” means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

“Subcommittee” or “law-enforcement training subcommittee” means the subcommittee of the governor’s committee on crime, delinquency and correction created by section two of this article; and
“West Virginia law-enforcement agency” means any duly authorized state, county or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: Provided, That neither the Hatfield-McCoy regional recreation authority nor any state institution of higher education may be deemed a law-enforcement agency.

§30-29-5. Certification requirements.

(a) Except as provided in subsections (b) and (g) below, no person may be employed as a law-enforcement officer by any West Virginia law-enforcement agency or by any state institution of higher education on or after the effective date of this article unless the person is certified, or is certifiable in one of the manners specified in subsections (c) through (e) below, by the governor’s committee as having met the minimum entry level law-enforcement qualification and training program requirements promulgated pursuant to this article.

(b) Except as provided in subsection (g) below, a person who is not certified, or certifiable in one of the manners specified in subsections (c) through (e) below, may be conditionally employed as a law-enforcement officer until certified: Provided, That, within ninety calendar days of the commencement of employment or the effective date of this article if the person is already employed on the effective date, he or she makes a written application to attend an approved law-enforcement training academy. The academy shall notify the applicant in writing of the receipt of the application and of the tentative date of the applicant’s enrollment. Any applicant who, as the result of extenuating circumstances acceptable to his or her law-enforcement official, is unable to attend the scheduled training program to which he or she was admitted may reapply and shall be admitted to the next regularly scheduled training program. An applicant who satisfactorily completes the program shall, within thirty days of completion, make written application to the governor’s committee requesting certification as having met the minimum entry level law-enforcement qualification and training program requirements. Upon determining that an
applicant has met the requirements for certification, the governor's committee shall forward to the applicant documentation of certification. An applicant who fails to complete the training program to which he or she is first admitted, or was admitted upon reapplication, may not be certified by the governor's committee.

(c) Any person who is employed as a law-enforcement officer on the effective date of this article and is a graduate of the West Virginia basic police training course, the West Virginia department of public safety cadet training program, or other approved law-enforcement training academy, is certifiable as having met the minimum entry law-enforcement training program requirements and is exempt from the requirement of attending a law-enforcement training academy. To receive certification, the person shall make written application within ninety calendar days of the effective date of this article to the governor's committee requesting certification. The governor's committee shall review the applicant's relevant scholastic records and, upon determining that the applicant has met the requirements for certification, shall forward to the applicant documentation of certification.

(d) Any person who is employed as a law-enforcement officer on the effective date of this article and is not a graduate of the West Virginia basic police training course, the West Virginia department of public safety cadet training program, or other approved law-enforcement training academy, is certifiable as having met the minimum entry level law-enforcement training program requirements and is exempt from the requirement of attending a law-enforcement training academy if the person has been employed as a law-enforcement officer for a period of not less than five consecutive years immediately preceding the date of application for certification. To receive certification, the person shall make written application within ninety calendar days following the effective date of this article to the governor's committee requesting certification. The application shall include notarized statements as to the applicant's years of employment as a law-enforcement officer. The
governor’s committee shall review the application and, upon
determining that the applicant has met the requirements for
certification, shall forward to the applicant documentation of
certification.

(e) Any person who begins employment on or after the
effective date of this article as a law-enforcement officer is
certifiable as having met the minimum entry level law-enforce-
ment training program requirements and is exempt from
attending a law-enforcement training academy if the person has
satisfactorily completed a course of instruction in law enforce-
ment equivalent to or exceeding the minimum applicable law-
enforcement training curricula promulgated by the governor’s
committee. To receive certification, the person shall make
written application within ninety calendar days following the
commencement of employment to the governor’s committee
requesting certification. The application shall include a notar-
ized statement of the applicant’s satisfactory completion of the
course of instruction in law enforcement, a notarized transcript
of the applicant’s relevant scholastic records, and a notarized
copy of the curriculum of the completed course of instruction.
The governor’s committee shall review the application and, if
it finds the applicant has met the requirements for certification
shall forward to the applicant documentation of certification.

(f) Any person who is employed as a law-enforcement
officer on or after the effective date of this article and fails to be
certified shall be automatically terminated and no further
emoluments shall be paid to such officer by his employer. Any
person terminated shall be entitled to reapply, as a private
citizen, to the subcommittee for training and certification, and
upon being certified may again be employed as a law-enforce-
ment officer in this state.

(g) Nothing in this article may be construed as prohibiting
any governing body, civil service commission or chief execu-
tive of any West Virginia law-enforcement agency from
requiring their law-enforcement officers to meet qualifications
and satisfactorily complete a course of law-enforcement
instruction which exceeds the minimum entry level law-
enforcement qualification and training curricula promulgated by the governor’s committee.

(h) The requirement of this section for qualification, training and certification of law-enforcement officers shall not be mandatory during the two years next succeeding the effective date of this article for the law-enforcement officers of a law-enforcement agency which employs a civil service system for its law-enforcement personnel, nor shall such provisions be mandatory during the five years next succeeding the effective date of this article for law-enforcement officers of a law-enforcement agency which does not employ a civil service system for its law-enforcement personnel: Provided, That such requirements shall be mandatory for all such law-enforcement officers until their law-enforcement officials apply for their exemption by submitting a written plan to the governor’s committee which will reasonably assure compliance of all law-enforcement officers of their agencies within the applicable two or five-year period of exemption.

(i) Any person aggrieved by a decision of the governor’s committee made pursuant to this article may contest such decision in accordance with the provisions of article five, chapter twenty-nine-a of this code.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 5. ENFORCEMENT AND ADMINISTRATIVE PROVISIONS.


(a) Any member of the state police, any sheriff, any deputy sheriff, any municipal police officer and any campus police officer may in the enforcement of the provisions of this act:

(1) Carry firearms;

(2) Execute and serve search warrants, arrest warrants, subpoenas, and summonses issued under the authority of this state;
(3) Make arrests without warrant for any offense under this act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this act which may constitute a felony;

(4) Make seizures of property pursuant to this act; or

(5) Perform such other law-enforcement duties as said state board of pharmacy or said appropriate department, board or agency, as specified in section 301, designates.

(b) All officers, agents, inspectors, and representatives of the said state board of pharmacy and of the said appropriate department, board, or agency, as specified in section 301, and members of the state police may execute and serve administrative warrants issued incident to the enforcement of the provisions of this act. Any such officer, agent, inspector, and representative of the said state board of pharmacy and of the said appropriate department, board, or agency, as specified in said section 301, may:

(1) Execute and serve subpoenas and summonses issued under the authority of this state;

(2) Make arrests without warrant for any offense under this act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this act which may constitute a felony; or

(3) Make seizures of property pursuant to this act.

(c) All prosecuting attorneys and the attorney general, or any of their assistants, shall assist in the enforcement of all provisions of this act and shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to controlled substances.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3B. TRESPASS.
§61-3B-4. Trespass on student residence premises or student facility premises of an institution of higher education.

(a) For the purposes of this section:

(1) "Residence hall" means housing or a unit of housing provided primarily for students as a temporary or permanent dwelling place or abode and owned, operated or controlled by an institution of higher education.

(2) "Student facility" means a facility owned, operated or controlled by an institution of higher education at which alcoholic liquor or nonintoxicating beer is purchased, sold or served to students enrolled at such institution, but does not include facilities at which athletic events are regularly scheduled and an admission fee is generally charged.

(3) "Institution of higher education" means any state university, state college or state community college under the control, supervision and management of the West Virginia board of trustees or West Virginia board of directors, or any other university, college or institution of higher education in the state subject to rules for accreditation under the provisions of section seven, article four, chapter eighteen-b of this code.

(4) "Person authorized to have access to a residence hall or student facility" means:

(A) A student who resides or dwells in the residence hall; or

(B) An invited guest of a student who resides or dwells in the residence hall; or

(C) A parent, guardian or person who has legal custody of a student who resides or dwells in the residence hall; or

(D) An employee of the institution of higher education who is required by such employment by such institution to be in the residence hall or student facility and who is acting within the scope of his or her employment; or
(E) A delivery person, repair person or other such person who is not an employee of the institution of higher education but who nonetheless has a legitimate commercial reason to be in the residence hall or student facility and who is acting pursuant to such legitimate commercial reason.

(b) If a person authorized to have access to a residence hall or a student facility enters such residence hall or student facility and by such presence or acts interferes with the peaceful or orderly operation of such residence hall or student facility, such person may be asked to leave such residence hall or student facility. If a person not authorized to have access to a residence hall or student facility enters such a residence hall or student facility, that person may be asked to leave such residence hall or student facility notwithstanding the fact that he or she has not interfered with the peaceful or orderly operation of such residence hall or student facility or otherwise committed a breach of the peace or violated any statute or ordinance. Such request to leave may be made by the president or other administrative head of the institution of higher education, an employee designated by the president to maintain order in the residence hall or student facility, a campus police officer appointed pursuant to the provisions of section five, article four, chapter eighteen-b of this code, or a municipal police officer, a sheriff or deputy sheriff, or a member of the West Virginia state police.

(c) It shall be unlawful for a person to remain in a residence hall or student facility after being asked to leave as provided for in subsection (b) of this section.

(d) Any person who violates the provisions of subsection (c) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined fifteen dollars. For any second or subsequent conviction for a violation occurring within one year after a previous violation for similar conduct, such person shall be fined an amount not to exceed one hundred dollars.

(e) This section shall not be construed to be in derogation of the common law, nor shall the provisions of this section contravene or infringe upon existing statutes related to the same subject.
AN ACT to amend article five, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-d, relating to increasing level of state-funded per pupil support for certain community and technical colleges.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-2d. Community and technical college allocation.

1 Each year the governing boards must request a special appropriation from the Legislature to fund an additional allocation to West Virginia Northern Community and Technical College, Southern West Virginia Community and Technical College, Potomac State College of West Virginia University and West Virginia University at Parkersburg, or any other community and technical college so designated in the appropriations bill. The total amount requested must equal any difference in per student appropriations existing between the public four-year baccalaureate institutions and the community and technical colleges set out above, as calculated by the resource allocation model and resource allocation policies of the governing boards. Any appropriations received by the governing boards under this section must be allocated consistent with the appropriation request or must be reduced proportionally for each institution, if sufficient legislative appropriation is not made.
AN ACT to amend and reenact section one, article six, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to institutional boards of advisors; expanding the number of members; and allowing persons who are not citizens of the state to serve as members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. ADVISORY COUNCILS OF FACULTY.

§18B-6-1. Institutional boards of advisors.

(a) There is established at each state institution of higher education, hereinafter referred to as the “institution”, excluding centers and branches thereof, an institutional board of advisors. The board of advisors consists of fifteen members, including an administrative officer of the institution appointed by the president of the institution; a full-time member of the faculty with the rank of instructor or above duly elected by the faculty; a member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body; a member of the institutional classified staff duly elected by the classified staff; and appointed by the appropriate governing board, eleven lay persons who have demonstrated a sincere interest in and concern for the welfare of that institution and who are representative of its population and fields of study. At least seven of the eleven lay persons appointed shall be residents of the state. Of the lay members who are residents of
the state, at least two shall be alumni of the institution, and no
more than a simple majority may be of the same political party.

The administrative officer and student member shall serve
for a term of one year; the faculty member and the classified
staff member shall serve for a term of two years and the eleven
lay members shall serve terms of four years each. All members,
except the administrative officer, are eligible to succeed
themselves for no more than one additional term. A vacancy in
an unexpired term of a member shall be filled within sixty days
of the occurrence thereof in the same manner as the original
appointment or election. Except in the case of a vacancy, all
elections shall be held and all appointments shall be made no
later than the thirtieth day of April preceding the commence-
ment of the term.

Each board of advisors shall hold a regular meeting at least
quarterly, commencing in July of each year. Additional
meetings may be held upon the call of the chairman, president
of the institution or upon the written request of at least four
members. A majority of the members constitutes a quorum for
conducting the business of the board of advisors.

(b) One of the eleven lay members shall be elected as
chairman by the board of advisors in July of each year: Pro-
vided, That no member may serve as chairman for more than
two consecutive years at a time.

The president of the institution shall make available
resources of the institution for conducting the business of the
board of advisors. The members of the board of advisors shall
be reimbursed for all reasonable and necessary expenses
actually incurred in the performance of their official duties
under this section upon presentation of an itemized sworn
statement thereof. All expenses incurred by the board of
advisors and the institution under this section shall be paid from
funds allocated to the institution for that purpose.

(c) The board of advisors shall review, prior to the submis-
sion by the president to its governing board, all proposals of the
institution in the areas of mission, academic programs, budget,
capital facilities and such other matters as requested by the
president of the institution or its governing board or otherwise
assigned to it by law. The board of advisors shall comment on
each such proposal in writing, with such recommendations for
concurrence therein or revision or rejection thereof as it
considers proper. The written comments and recommendations
shall accompany the proposal to the governing board and the
governing board shall include the comments and recommenda-
tions in its consideration of and action on the proposal. The
governing board shall promptly acknowledge receipt of the
comments and recommendations and shall notify the board of
advisors in writing of any action taken thereon.

(d) The board of advisors shall review, prior to their
implementation by the president, all proposals regarding
institution-wide personnel policies. The board of advisors may
comment on the proposals in writing.

(e) The board of advisors shall provide advice and assis-
tance to the president in establishing closer connections
between higher education and business, labor, government,
community and economic development organizations to give
students greater opportunities to experience the world of work,
such as business and community service internships, appren-
ticeships and cooperative programs; to communicate better and
serve the current work force and work force development needs
of their service area, including the needs of nontraditional
students for college-level skills upgrading and retraining and
the needs of employers for specific programs of limited
duration; and to assess the performance of the institution’s
graduates and assist in job placement. The administrative
officer of the institution serving on the advisory council may be
assigned the responsibility for coordinating the institution’s
activities related to economic development.

(f) Upon the occurrence of a vacancy in the office of
president of the institution, the board of advisors shall serve as
a search and screening committee for candidates to fill the
vacancy under guidelines established by its governing board.
When serving as a search and screening committee, the board
of advisors and its governing board are each authorized to
appoint up to three additional persons to serve on the committee as long as the search and screening process is in effect. The three additional appointees of the board of advisors shall be faculty members of the institution. Only for the purposes of the search and screening process, the additional members shall possess the same powers and rights as the regular members of the board of advisors, including reimbursement for all reasonable and necessary expenses actually incurred. Following the search and screening process, the committee shall submit the names of at least three candidates to the governing board for consideration and appointment. If the governing board rejects all candidates submitted, the committee shall submit the names of at least three additional candidates, and this process shall be repeated until the governing board appoints one of the candidates submitted. The governing board shall provide all necessary staff assistance to the board of advisors in its role as a search and screening committee.

CHAPTER 112

(Com. Sub. for S. B. 161 — By Senators Jackson and Tomblin, Mr. President)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deleting the limitation of one year relative to the application of certain seniority rights of employees involuntarily transferred to nonclassified positions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. PERSONNEL GENERALLY.
§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

(a) Definitions for terms used in this section are in accordance with those provided in section two, article nine of this chapter except that the provisions of this section shall apply only to classified employees whose employment, if continued, accumulates to a minimum total of one thousand forty hours during a calendar year and extends over at least nine months of a calendar year: \textit{Provided}, That this section also applies to any classified employee who is involuntarily transferred to a position in nonclassified status for which he or she did not apply: \textit{Provided, however}, That any classified employee involuntarily transferred to a position in nonclassified status may only exercise the rights set out in this section for positions equivalent to or lower than the last job class the employee held.

(b) All decisions by the appropriate governing board or their agents at state institutions of higher education concerning reductions in work force of full-time classified personnel, whether by temporary furlough or permanent termination, shall be made in accordance with this section. For layoffs by classification for reason of lack of funds or work, or abolition of position or material changes in duties or organization and for recall of employees laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the service of the state system of higher education. In the event that the institution wishes to lay off a more senior employee, the institution shall demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that institution in the same job class or any other equivalent or lower job class for which the senior employee is qualified: \textit{Provided}, That if an employee refuses to accept a position in a lower job class, the employee shall retain all rights of recall provided in this section. If two or more employees accumulate identical seniority, the priority shall be determined by a random selection system established by the employees and approved by the institution.
(c) Any employee laid off during a furlough or reduction in work force shall be placed upon a preferred recall list and shall be recalled to employment by the institution on the basis of seniority. An employee's listing with an institution shall remain active for a period of one calendar year from the date of termination or furlough or from the date of the most recent renewal. If an employee fails to renew the listing with the institution, the employee's name may be removed from the list. An employee placed upon the preferred list shall be recalled to any position opening by the institution within the classifications in which the employee had previously been employed or to any lateral position for which the employee is qualified. An employee on the preferred recall list shall not forfeit the right to recall by the institution if compelling reasons require the employee to refuse an offer of reemployment by the institution.

The institution shall notify all employees maintaining active listings on the preferred recall list of all position openings that from time to time exist. The notice shall be sent by certified mail to the last known address of the employee. It is the duty of each employee listed to notify the institution of any change in address and to timely renew the listing with the institution. No position openings shall be filled by the institution, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(d) A nonexempt classified employee, including a nonexempt employee who has not accumulated a minimum total of one thousand forty hours during the calendar year or whose contract does not extend over at least nine months of a calendar year, who meets the minimum qualifications for a job opening at the institution where the employee is currently employed, whether the job is a lateral transfer or a promotion, and applies for the job shall be transferred or promoted before a new person is hired unless the hiring is affected by mandates in affirmative action plans or the requirements of Public Law 101-336, the Americans With Disabilities Act. If more than one qualified, nonexempt classified employee applies, the best-qualified
73 nonexempt classified employee shall be awarded the position.
74 In instances where the classified employees are equally
75 qualified, the nonexempt classified employee with the greatest
76 amount of continuous seniority at that state institution of higher
77 education shall be awarded the position. A nonexempt classi-
78 fied employee is one to whom the provisions of the Federal Fair
79 Labor Standards Act, as amended, apply.
80 (e) In addition to any other information required, any
81 application for personnel governed by the provisions of this
82 section shall include the applicant’s social security number.

CHAPTER 113

(Com. Sub. for S. B. 40 — By Senators Jackson, Craigo, Unger,
Anderson, Redd, Bowman, Tomblin, Mr. President, Ross, Love,
Schoonover, Minear, Oliverio, Mitchell, Hunter, Kessler, Edgell,
Fanning, Prezioso, Plymale, Sharpe and Ball)

[Passed March 5, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend article ten, chapter eighteen-b of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section one-a, relating to
allowing members of the national guard participating in the
national guard education services program who are not residents
of West Virginia but who are active members of a national guard
unit in this state to pay resident tuition rates at institutions of
higher education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE
INSTITUTIONS OF HIGHER EDUCATION.
§18B-10-1a. Resident tuition rates for national guard members.

(a) The term "resident" or "residency", or any other term or expression used to designate a West Virginia resident student, when used to determine the rate of tuition to be charged students attending community colleges and state-related and state-owned institutions of higher education shall be construed to include members of the national guard who are not residents of West Virginia but who are active members of a national guard unit in West Virginia who are participating in the national guard education services program.

(b) A member of the national guard who qualifies as a resident, as that term is defined in subsection (a) of this section, on the first day of the semester or term of the college or institution, shall be charged resident tuition rates.

(c) The provisions of this section apply at the beginning of the semester or term immediately following the effective date of this section.

CHAPTER 114

(Com. Sub. for H. B. 2697 — By Delegates Pino, Doyle and Manuel)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to establishing programs at state institutions of higher education allowing residents who are at least sixty-five years old to audit, or take for credit, classes at reduced rates.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seven-a, to read as follows:
ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-7a. Tuition and fee waivers or adjustments for residents at least sixty-five years old.

1 The board of trustees and the board of directors shall promulgate a joint rule in accordance with article three-a, chapter twenty-nine-a of this code that establishes a reduced tuition and fee program for senior citizens. The joint rule shall include at least the following:

(a) The program shall include one option for those who attend undergraduate and graduate courses without receiving credit and one option for individuals who attend undergraduate and graduate courses for credit;

(b) A participant under either option of the program shall meet the following requirements:

(1) The participant is a resident of West Virginia;

(2) The participant is sixty-five years of age or older;

(3) Classroom space is available; and

(4) The instructor of the class consents;

(c) A method of establishing priority for allowing a participant to attend a class or course;

(d) A determination of whether to require participants to pay special fees, including laboratory fees, if the fees are required of all other students;

(e) A determination of whether to require participants to pay for parking;

(f) For participants in the program under the no credit option:

(1) A grade or credit may not be given; and

(2) The total tuition and fees charged for each course or class, excluding laboratory and parking fees, may not exceed fifty dollars: Provided, That after the first day of July, two
thousand four, the governing boards may by joint rule change
the maximum fee; and
(g) For participants in the program under the for credit
option, tuition and fee rates may not exceed fifty percent of the
normal rates charged to state residents by the institution.

CHAPTER 115
(H. B. 2455 — By Delegates Smirl and Romine)
[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter eighteen-b of the code of
West Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new section, designated section seven,
relating to authorizing the university of West Virginia board of
trustees on behalf of Marshall University to sell and convey a
parcel of land located at University Heights in Huntington, Cabell
County; and providing that the proceeds from the sale be depos­
ited in a special revenue account for capital development on the
downtown campus at Marshall University in Huntington.

Be it enacted by the Legislature of West Virginia:

That article fourteen, chapter eighteen-b of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, be
amended by adding thereto a ne w section, designated section seven,
to read as follows:

ARTICLE 14. MISCELLANEOUS.
§18B-14-7. Marshall University authorization to sell property;
use of net proceeds.

(a) Subject to the provisions of section five of this article,
relating to the authority of governing boards to sell any surplus
real property and deposit the net proceeds into a special revenue
account in the state treasury to be appropriated by the Legisla-
ture for the purchase of additional real property or technology,
or for capital improvements at the institution that sold the
surplus real property, the board of trustees is hereby authorized
and empowered to sell a parcel of land situate in Guyandotte
District, Cabell County, West Virginia, containing 8.31 acres,
more or less, bounded and described as follows:

A certain tract of land situate in the State of West Virginia,
Cabell County, Guyandotte District, and being more particu-
larly bounded and described as follows:

BEGINNING at a 5/8" x 32" rebar (recovered) on the
northwesterly right-of-way line of Norway Avenue, marking a
corner common to the lands now or formerly owned by R&J
Development (D.B. 1014, Pg. 504), and the lands now owned
by the State of West Virginia (D.B. 116, Pg. 304); thence, leaving
the northwesterly right-of-way line of the said Avenue, and
with the lands of the said R&J Development as follows:

North 22 degrees 01'00" East 71.69 feet to a 30" black
walnut tree (found),

North 00 degrees 25'00" East 336.64 feet to a 5/8" x 32"
rebar (recovered in a 30" white oak tree stump (found)),

North 65 degrees 35'00" East 42.00 feet to a 5/8" x 32"
rebar (recovered),

North 00 degrees 55'00" West 339.00 feet to a 5/8" x 32"
rebar (recovered),

North 02 degrees 36'00" East 111.60 feet to a 5/8" x 32"
rebar (recovered),

North 56 degrees 11'00" West 88.38 feet to a 5/8" x 32"
rebar (recovered),

North 77 degrees 51'00" West 152.51 feet to a 5/8" x 32"
rebar (recovered),

North 48 degrees 22'00" West 187.95 feet to a 5/8" x 32"
rebar (recovered),

North 25 degrees 23'00" West 109.01 feet to a 5/8" x 32"
rebar (recovered),
North 01 degrees 15'00" East 128.60 feet to a 5/8" x 32" rebar (recovered),

North 24 degrees 14'57" East 117.90 feet to a 5/8" x 32" rebar (set), marking a corner common to the lands now or formerly owned by the Department of Public Safety of the State of West Virginia, (D.B.606,Pg.267); thence, leaving the lands of the said R&J Development, and with the lands of the said Department of Public Safety,

North 87 degrees 09'00" East 50.35 feet to a 5/8" x 32" rebar (set); thence, leaving the lands of the said Department of Public Safety, and severing the lands of the said State of West Virginia as follows:

South 12 degrees 21'49" East 96'88" feet to a 5/8" x 32" rebar (set),

South 00 degrees 55'43" East 152.71 feet to a 5/8" x 32" rebar (set),

South 42 degrees 36'21" East 47.57 feet to a 5/8" x 32" rebar (set),

South 65 degrees 00'12" East 258.00 feet to a 5/8" x 32" rebar (set),

North 88 degrees 43'34" East 123.41 feet to a 5/8" x 32" rebar (set),

South 71 degrees 32'21" East 198.72 feet to a 5/8" x 32" rebar (set),

South 83 degrees 20'07" East 198.91 feet to a 5/8" x 32" rebar (set),

South 33 degrees 20'08" East 47.95 feet to a 5/8" x 32" rebar (set),

South 10 degrees 49'48" East 92.63 feet to a 5/8" x 32" rebar (set),

North 64 degrees 45'39" East 155.66 feet to a 5/8" x 32" rebar (set),
North 53 degrees 59'35" East 128.14 feet to a 5/8" x 32" rebar (set),
South 59 degrees 57'02" East 81.48 feet to a 5/8" x 32" rebar (set),
South 24 degrees 28'34" East 85.49 feet to a 5/8" x 32" rebar (set) on the north right-of-way line of the said Norway Avenue; thence, with the north right-of-way line of the said Avenue, with a curve to the right, having a radius of 694.80 feet, and an arc length of 163.20 feet, the long chord of which bears:
South 70 degrees 17'04" West 162.82 feet; thence,
South 77 degrees 00'49" West 94.74 feet; thence, with a curve to the left, having a radius of 620.00 feet, and an arc length of 43.17 feet, the long chord of which bears:
South 75 degrees 01'08" West 43.17 feet; thence,
South 73 degrees 01'26" West 248.30 feet; thence, with a curve to the left, having a radius of 320.00 feet, and an arc length of 279.62 feet, the long chord of which bears:
South 47 degrees 59'27" West 270.81 feet; thence,
South 22 degrees 57'28" West 488.53 feet; thence,
South 41 degrees 00'52" West 53.78 feet to the BEGIN-NING, containing 8.31 acres, more or less, as surveyed by Ronald L. Eastham, West Virginia Registered Professional Surveyor No. 150, on October 22, 1998.
The above described tract is a part of the same land as that described in a deed from the Colored Orphans Home and Industrial School, The State of West Virginia, dated August 4, 1911, and recorded in Deed Book 116, Page 304, in the office of the Clerk of the County Commission of Cabell County, West Virginia.
And being subject to all restrictions, reservations, rights-of-ways, easements, utilities, covenants, exceptions, conveyances, leases and exclusions previously imposed and appearing of record.
(b) Prior to the sale, the board of trustees shall cause the property to be appraised by two independent licensed appraisers and may not sell the property for less than the average of the two appraisals.

c) The proceeds from the sale of the property referred to shall be deposited in a special revenue account from which the board of trustees is hereby authorized to expend funds for capital development on the downtown campus at Marshall University in Huntington.

CHAPTER 116

(Com. Sub. for H. B. 2482 — By Delegates Mezzatesta, Michael, Doyle, Williams, Stemple, Manuel and Harrison)

[Passed March 13, 1999; in effect July 1, 1999. Approved by the Governor.]

AN ACT to amend and reenact sections three, four and six, article five, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, all relating to the higher education grant program; administration by the senior administrator; powers and duties of the senior administrator; recipients, awards and distribution of awards of grants; renewal of grant awards; creation of the higher education adult part-time student grant program; defined terms; eligibility criteria; legislative rules; authority of governing boards to promulgate emergency rules; and report to legislative oversight commission on education accountability.

Be it enacted by the Legislature of West Virginia:

That sections three, four and six, article five, chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section seven, all to read as follows:
ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.
§18C-5-3. Grant program to be administered by senior administrator; higher education grant fund created.
§18C-5-4. Powers and duties of senior administrator.
§18C-5-6. Recipients, awards and distribution of awards of grants; authority of senior administrator to enter into reciprocal agreements with other states concerning grants.
§18C-5-7. Higher education adult part-time student grant program.

§18C-5-3. Grant program to be administered by senior administrator; higher education grant fund created.

The grant program established and authorized by this article shall be administered by the senior administrator. Moneys appropriated or otherwise available for this purpose, shall be allocated by line item to an appropriate account.

§18C-5-4. Powers and duties of senior administrator.

Subject to the provisions of this article and within the limits of appropriations made by the Legislature, the senior administrator is authorized and empowered to: (1) Prepare and supervise the issuance of public information concerning the grant program; (2) prescribe the form and regulate the submission of applications for grants; (3) administer or contract for the administration of such examinations as may be prescribed by the senior administrator; (4) select qualified recipients of grants; (5) award grants; (6) accept grants, gifts, bequests and devises of real and personal property for the purposes of the grant program; (7) administer federal and state financial loan programs; (8) cooperate with approved institutions of higher education in the state and their governing boards in the administration of the grant program; (9) make the final decision pertaining to residency of an applicant for grant or renewal of grant; (10) employ or engage such professional and administrative employees as may be necessary to assist the senior administrator in the performance of the duties and responsibilities, who shall serve at the will and pleasure and under the direction and control of the senior administrator; (11) employ or engage such clerical and other employees as may be necessary to assist the senior administrator in the performance of the duties and responsibilities, who shall be under the direction and control of
the senior administrator; (12) prescribe the duties and fix the
compensation of all such employees; (13) administer the adult
part-time student higher education grant program established
under section seven of this article; and (14) propose legislative
rules in accordance with the provisions of article three-a,
chapter twenty-nine-a of this code, not inconsistent with the
provisions of this article relating to the administration of the
higher education grant program.

§18C-5-6. Recipients, awards and distribution of awards of
grants; authority of senior administrator to enter
into reciprocal agreements with other states con­
cerning grants.

The grant recipient is free to attend any approved institution
of higher education in this state or any three-year registered
nurse diploma program which is approved by the West Virginia
board of examiners for registered professional nurses and which
is offered at a nonprofit West Virginia hospital.

The institution is not required to accept the grant recipient
for enrollment, but is free to exact compliance with its own
admission requirements, standards and policies.

Grants may only be made to undergraduate students and to
students enrolled in approved three-year registered nurse
diploma programs, as provided in this article.

Each grant is renewable until the course of study is com­
pleted, but not to exceed an additional three academic years
beyond the first year of the award. These may not necessarily
be consecutive years, and the grant will be terminated if the
student receives a degree in a shorter period of time. Qualifica­
tions for renewal will include maintaining satisfactory academic
standing, making normal progress toward completion of the
course of study and continued eligibility, as determined by the
senior administrator.

Grant awards shall be made without regard to the appli­
cant’s race, creed, color, sex, national origin or ancestry; and in
making grant awards, the senior administrator shall treat all
approved institutions of higher education in a fair and equitable
manner.
The senior administrator from time to time shall identify areas of professional, vocational and technical expertise that are, or will be, of critical need in this state and, to the extent feasible, may direct grants to students that are pursuing instruction in those areas.

The senior administrator may enter into reciprocal agreements with state grant and grant program agencies in other states which provide financial assistance to their residents attending institutions of higher education located in West Virginia. In connection therewith, the senior administrator may authorize residents of West Virginia to use financial assistance under this article to attend institutions of higher education in such other states. Residents of West Virginia requesting financial assistance to attend institutions of higher education located in any such states must meet all of the eligibility standards set forth in section five of this article.

Grant awards are limited to the lesser of the payment of tuition and those related compulsory fees charged by an institution to all West Virginia undergraduate students or an amount equal to the average state general fund support for each full-time equivalent student at state institutions of higher education for the preceding academic year as calculated by the senior administrator. Payments of grants shall be made directly to the institution.

In the event that a grant recipient transfers from one approved institution of higher education or approved three-year registered nurse diploma program, to another approved institution of higher education or approved three-year registered nurse diploma program, the grant is transferable only with the approval of the senior administrator.

Should the recipient terminate enrollment for any reason during the academic year, the unused portion of the grant shall be returned by the institution to the appropriate governing board in accordance with the governing board's policy for issuing refunds, for transfer to the appropriate account and allocation for expenditure pursuant to the provisions of this article.
§18C-5-7. Higher education adult part-time student grant program.

(a) There is established the higher education adult part-time student grant program, hereafter referred to as the HEAPS grant program. The grant program established and authorized by this section is administered by the senior administrator. Moneys appropriated or otherwise available for such purpose shall be allocated by line item to an appropriate account. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year.

(b) As used in this section, the following terms have the meanings ascribed to them:

(1) "Approved distance education" means a course of study offered via electronic access that has been approved for inclusion in the applicant's program of study by the eligible institution of higher education at which the applicant is enrolled or has been accepted for enrollment;

(2) "Part-time" means enrollment for not less than six nor more than eleven semester or term hours: Provided, That for no more than two semesters during the recipient's ten years of eligibility, the recipient may be considered to be enrolled part-time if he or she is enrolled for three or more semester or term hours;

(3) "Satisfactory academic progress" means maintaining a cumulative grade point average of at least 2.0 on a 4.0 grading scale with a goal of obtaining a certificate, associate degree or bachelor's degree;

(4) "Eligible institution of higher education" means any community college; community and technical college; adult technical preparatory education program or training, as that term is defined in section one-b, article three-a, chapter eighteen-b of this code; state college or university, as those terms are defined in section two, article one, chapter eighteen-b of this code; approved institution of higher education as that term is defined in section two of this article; or any approved distance education, including world wide web based courses; and
(5) "State resident" means a student who has lived in West Virginia continuously for a minimum of twelve months immediately preceding the date of application for a HEAPS grant or renewal of a grant.

(c) A person is eligible for consideration for a HEAPS grant if the person:

(1) Demonstrates that he or she has applied for, accepted, or both, other student financial assistance in compliance with federal financial aid rules, including the federal Pell grant;

(2) Qualifies as an independent student according to current federal financial aid criteria;

(3) Demonstrates financial need for funds, as defined by legislative rule;

(4) Has not been enrolled in a high school diploma program, other than general education development (GED), for at least the two preceding years;

(5) Is a state resident and may not be considered a resident of any other state;

(6) Is a United States citizen or permanent resident thereof;

(7) Is not incarcerated in a correctional facility;

(8) Is not in default on a higher education loan; and

(9) Is enrolled in a program of study as an undergraduate on a part-time basis at an eligible institution of higher education and is making satisfactory academic progress at the time of application: Provided, That the requirement that the student be making satisfactory academic progress may not preclude a HEAPS grant award to a student who has been accepted for enrollment in a program of study but has not yet been enrolled.

(d) Each HEAPS grant award is eligible for renewal until the course of study is completed, but not to exceed an additional nine years beyond the first year of the award.

(e) The governing boards shall propose a joint legislative rule pursuant to article three-a, chapter twenty-nine-a to
Implement the provisions of this section which shall be filed with the legislative oversight commission on education accountability by the first day of September, one thousand nine hundred ninety-nine. The Legislature hereby declares that an emergency situation exists and, therefore, the governing boards jointly may establish by emergency rule, under the procedures of article three-a, chapter twenty-nine-a of this code, legislative rules to implement the provisions of this section, after approval by the legislative oversight commission on education accountability.

(1) The joint legislative rules shall provide that consideration of financial need, as required by subdivision (3), subsection (c) of this section, include the following factors:

(A) Whether the applicant has dependents as defined by federal law;

(B) Whether the applicant has any personal hardship as determined at the discretion of the senior administrator; and

(C) Whether the applicant will receive any other source of student financial aid during the award period.

(2) The joint legislative rule shall provide for an appropriate allocation process for distribution of funds directly to the eligible institutions of higher education, and may include a provision for making allocations directly to the community college components of four-year institutions where appropriate, based on the part-time enrollment figures of the prior year. The rules shall further provide for any funds not expended by an institution at the end of each fiscal year to be returned to the senior administrator for distribution under the provisions of this section.

(f) The amount of any HEAPS grant awarded per semester or term hour to a student enrolled at a public institution of higher education under the jurisdiction of the governing boards, as defined in section two, article one, chapter eighteen-b of this code, shall be based upon the actual per credit hour tuition and fees charged. The amount of any HEAPS grant awarded per semester or term hour to a student enrolled in any other
institution that qualifies under the provisions of this section shall be based upon the average per credit or term hour tuition and fee charges assessed by all public undergraduate institutions of higher education, under the jurisdiction of the governing boards, during the previous year.

(g) The senior administrator shall report annually, by the first day of December, on the status of the HEAPS grant program to the legislative oversight commission on education accountability.

(h) The HEAPS grant program is subject to any provision of this article not inconsistent with the provisions of this section.

CHAPTER 117

(Com. Sub. for H. B. 2695 — By Delegates Michael, Stemple, Mezzatesta, Doyle, Williams, Leach and Givens)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six, relating to higher education governing boards; creating the West Virginia engineering, science and technology scholarship program; legislative findings; legislative rules; definitions; creating in the state treasury a special revolving fund; scholarship agreements, limitations, selection criteria, procedures, eligibility, compliance, noncompliance, renewal, amount and duration; and relation of scholarship award to other sources of financial aid.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six, to read as follows:
ARTICLE 6. WEST VIRGINIA ENGINEERING, SCIENCE AND TECHNOLOGY SCHOLARSHIP PROGRAM.

§18C-6-1. Scholarship fund created; purposes; funding; limit on number of new scholarships per year.

§18C-6-2. Definitions.

§18C-6-3. Selection criteria and procedures.

§18C-6-4. Scholarship agreement.

§18C-6-5. Renewal conditions; noncompliance; deferral; excusal.

§18C-6-6. Amount and duration of scholarship; relation to other assistance.

§18C-6-1. Scholarship fund created; purposes; funding; limit on number of new scholarships per year.

(a) The purpose of this article is to attract talented students to West Virginia colleges and universities to major in engineering, science and technology. The Legislature recognizes that a larger pool of engineering, science and technology talent in West Virginia will build the state's economy and businesses. In addition, long-term population increases for West Virginia will develop a strong economic base. The new economy requires that West Virginia retain its education infrastructure in order to maintain economic growth.

(b) The higher education governing boards shall propose a joint legislative rule in accordance with the provisions of article three-a, chapter twenty-nine-a of this code, to implement the provisions of this article and shall file the rule with the legislative oversight commission on education accountability no later than the first day of December, one thousand nine hundred ninety-nine. The rule shall provide for the administration of the West Virginia engineering, science and technology scholarship program by the senior administrator in furtherance of the purposes of this article, including, but not limited to, an expression of legislative intent that academic ability be the primary criteria for selecting scholarship recipients, scholarship selection criteria and procedures, renewal, compliance, noncompliance and repayment, deferral and excusal. The rules also shall provide for appeal procedures under which a recipient may appeal any determination of noncompliance. The rules may provide for satisfaction of the work requirement provided in paragraph (A), subdivision (2), subsection (a), section four...
of this article through community service relating to engineering, science or technology. In accordance with the rules, the senior administrator shall establish appropriate guidelines for program operation.

(c) There is hereby created in the state treasury a special revolving fund known as the "West Virginia Engineering, Science and Technology Scholarship Fund" to be administered by the senior administrator solely for granting scholarships to prospective engineers, scientists and technologists in accordance with this article. Any moneys which may be appropriated by the Legislature, or received by the senior administrator from other sources, for the purposes of this article shall be deposited in the fund. Any moneys remaining in the fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Any moneys repaid to the senior administrator by reason of default of a scholarship agreement under this article also shall be deposited in the fund. Fund balances shall be invested with the state's consolidated investment fund, and any and all interest earnings on these investments shall be used solely for the purposes for which moneys invested were appropriated or otherwise received.

(d) The senior administrator may accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article and shall make a reasonable effort to encourage external support for the scholarship program.

(e) For the purpose of encouraging support for the scholarship program from private sources, the senior administrator may set aside no more than half of the funds appropriated by the Legislature for West Virginia engineering, science and technology scholarships to be used to match two state dollars to each private dollar from a nonstate source contributed on behalf of a specific institution of higher education in this state.

(f) West Virginia engineering, science and technology scholarships are limited to three hundred new scholarships per year and a maximum of one thousand outstanding scholarships during any year.
(g) Nothing in this article requires any specific level of funding by the Legislature.

§18C-6-2. Definitions.

When used in this article the following terms have the following meanings, unless the context clearly indicates a different meaning:

(a) "ABET" means the accrediting board for engineering and technology.

(b) "ABET approved engineering major" means a major approved by ABET's engineering accreditation commission.

(c) "ABET approved technology major" means a major approved by ABET's technology accreditation commission.

(d) "Eligible institution of higher education" means:

1. A state institution of higher education as defined in section two, article one, chapter eighteen-b of this code; and

2. Alderson-Broaddus College, Appalachian Bible College, Bethany College, the College of West Virginia, Davis and Elkins College, Ohio Valley College, Salem-Teikyo College, the University of Charleston, West Virginia Wesleyan College and Wheeling Jesuit College, all in West Virginia, and any other institution of higher education in this state, public or private, approved by the senior administrator: Provided, That if any institution listed in this paragraph is not regionally accredited, it shall not be included as an eligible institution;

(e) "Engineering, science and technology-related field" means any position for which the employer provides a written statement that engineering, science or technology skill, knowledge and ability, as evidenced by the attainment of a certificate, associate or baccalaureate degree in engineering, science or technology, are preferred or required or where an industry-based certification requirement exists.

(f) "Industry-based certification" means any special certification required, necessary or deemed preferred for employment in the field.
(g) "Science" means a major in biology, chemistry, computer science, physics or mathematics at an eligible institution of higher education or any other major as approved by the higher education governing boards by rule.

§18C-6-3. Selection criteria and procedures.

(a) The higher education governing boards shall designate an existing scholarship selection agency or panel to select the recipients of West Virginia engineering, science and technology scholarships from among those applicants who meet eligibility criteria set forth in subsection (b) of this section. If no such agency or panel exists, the higher education governing boards shall appoint a scholarship selection panel for this purpose which shall consist of seven persons representative of West Virginia engineering, science and technology higher education administrators and educators, with a minimum of one voting member representing community colleges, and one member representing West Virginia engineering, science and technology professionals.

(b) To be eligible to receive a scholarship under the provisions of this article, applicants must meet the following conditions:

(1) Be a United States citizen or resident alien who meets the definition of an eligible noncitizen under federal Title IV requirements;

(2) Have a cumulative grade point average of 3.0 on a 4.0 grading scale upon graduation from high school or the equivalent or have a cumulative grade point average of at least 3.0 on a 4.0 grading scale after completing two semesters of course work at an eligible institution of higher education; and

(3) Be enrolled or accepted for enrollment in an engineering, science or technology program leading to a certificate, associate or baccalaureate degree at an eligible institution of higher education. The program must be:

(A) An ABET approved technology major;
(B) An ABET approved engineering major;

(C) A science major;

(D) An engineering or technology program or major that has been approved by the senior administrator; or

(E) A program leading directly to specialized certification as established by appropriate industry standards.

(c) In accordance with the rules of the governing boards, and the intent of this article, the senior administrator shall develop criteria and procedures for the selection of scholarship recipients that reflect the purposes of this article and the areas in which particular efforts will be made in the selection of recipients as set forth in section one of this article and which may include, but not be limited to:

(1) The grade point average of the applicant,

(2) Involvement in extracurricular activities,

(3) Financial need,

(4) Current academic standing, and

(5) An expression of interest in a career in engineering, science or technology as demonstrated in an essay written by the applicant.

The criteria and procedures further may require the applicant to furnish letters of recommendation from teachers and others.

(d) In developing the selection criteria and procedures to be used by the panel, the senior administrator shall solicit the views of public and private engineering, science and technology agencies and institutions and other interested parties. The senior administrator shall collect this information by means of written and published selection criteria and procedures in final form for implementation. The senior administrator may call public hearings on the present and projected engineering, science and technology needs of the state or may use other appropriate methods to gather such information.
(e) The senior administrator shall make application forms for West Virginia engineering, science and technology scholarships available to public and private high schools in the state and other locations convenient to applicants, parents and others and shall make an effort to attract students from low-income backgrounds, ethnic or racial minority students, students with disabilities and women or minority students who show interest in pursuing careers in engineering, science and technology and who are under-represented in those fields.

(f) In awarding the scholarships, the panel shall give preference to applicants who are West Virginia residents.

(g) In awarding scholarships, not less than twenty percent of appropriated funds may be awarded to students enrolled in certificate and associate degree programs. Further awards will be determined based on established statewide need.

§18C-6-4. Scholarship agreement.

(a) Each recipient of a West Virginia engineering, science and technology scholarship shall enter into an agreement with the senior administrator under which the recipient shall:

(1) Provide the governing boards with evidence of compliance with subsection (a), section five of this article;

(2) Agree that within one year following the date the recipient ceases to be a full-time student at an eligible institution in a program of engineering, science or technology education for which the scholarship was awarded he or she will:

(A) Begin working full-time in an engineering, science or technology-related field in this state for a duration of not less than one year for each year the scholarship was received; or

(B) Begin repayment of all or part of the West Virginia engineering, science and technology scholarship received under this article plus interest and, if applicable, reasonable collection fees, in accordance with subsection (b), section five-b of this article, except as provided in subsections (c) and (d), section five of this article.
(b) A scholarship agreement shall disclose fully the terms and conditions of this article under which the scholarship is provided and under which repayment of the scholarship may be required.

§18C-6-5. Renewal conditions; noncompliance; deferral; excusal.

(a) The recipient of a West Virginia engineering, science and technology scholarship is eligible for scholarship renewal if the recipient is:

(1) Enrolled as a full-time student in an eligible institution of higher education;

(2) Pursuing a course of study leading to a certificate, associate or baccalaureate degree in engineering, science or technology or leading to specialized certification as established by industry-based standards;

(3) Maintaining satisfactory progress as determined by the eligible institution of higher education the recipient is attending; and

(4) Complying with any other standards established by the governing boards by rule.

(b) A recipient who violates a scholarship agreement is required to repay the amount of any scholarship award received, plus interest, and, where applicable, reasonable collection fees, on a schedule and at a rate of interest prescribed in the guidelines of the senior administrator. The legislative rules required in section one of this article shall provide for a method of prorating repayment amounts against any amount of the work requirement that has been fulfilled by the recipient.

(c) A recipient is not in violation of the agreement entered into under section three of this article during any period in which the recipient is:

(1) Pursuing a full-time course of study at an accredited institution of higher education;

(2) Serving as a member of the armed services of the United States for a period not in excess of four years; or
(3) Satisfying the provisions of additional repayment exemptions that may be prescribed by the governing boards by rule.

(d) A recipient is excused from repayment of a West Virginia engineering, science and technology scholarship received under this article if the recipient dies or becomes permanently and totally disabled as established by sworn affidavit of a physician qualified to make such a determination as determined by the rules established by the governing boards.

(e) The rules adopted by the governing boards shall provide that the length of the repayment period may not exceed ten years: Provided, That the rules may include provisions under which the senior administrator may, if extenuating circumstances exist, extend the period for fulfilling the obligation to fifteen years.

§18C-6-6. Amount and duration of scholarship; relation to other assistance.

(a) Subject to subsection (b) of this section, each recipient of a West Virginia engineering, science and technology scholarship is eligible to receive an award of up to three thousand dollars for each academic year of higher education. No individual may receive a scholarship award for more than four academic years for the completion of a baccalaureate degree.

(b) No individual may receive a scholarship award under this article which exceeds the cost of attendance at the institution the individual is attending. The cost of attendance shall be based upon the actual cost of tuition and fees. If the amount of the West Virginia engineering, science and technology scholarship award and the amount of financial assistance which the recipient has received from all other sources exceed the cost of attendance, the institution's financial aid officer, in consultation with the recipient, will determine which source of financial aid is to be reduced and shall do so in a manner to the best advantage of the recipient.
CHAPTER 118

(S. B. 591 — By Senators Hunter, Wooton, Ball, Dittmar, Kessler, McCabe, Minard, Mitchell, Oliverio, Redd, Schoonover, Snyder and McKenzie)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections thirty-four, thirty-seven and forty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two-a and five-b, article three of said chapter; to amend and reenact sections ten and twenty-three, article five of said chapter; to amend and reenact section three, article six of said chapter; and to amend and reenact sections two, two-a, five, five-a, five-b, five-f, nine, ten and twelve, article eight of said chapter, all relating to election law reform generally; authorizing certain voting from an automobile; authorizing children fourteen years of age or younger to accompany a parent, grandparent or legal guardian to the polls; increasing the compensation for ballot commissioners and poll clerks; changing mileage reimbursement limitations for election supply clerks; modifying prohibition on electioneering within certain distances of circuit clerk’s office during absentee voting period; allowing the use of federal write-in ballots in general, special and primary elections for local, state and federal offices; authorizing ballot commissioners to publish facsimile ballot or list of candidates for second publication before any election; increasing the percentage of signatures required on a nomination certificate; eliminating criminal penalty for persons who sign nomination certificate and vote in primary election; imposing reporting requirements on certain independent expenditures; defining term “independent expenditure”; setting forth requirements of communication; establishing limitations on contributions to inaugural events; establishing additional reporting requirements; limiting the expenditure of excess inaugural funds; creating the inaugural expense account for certain excess inaugural funds for inaugural events for a person elected gover-
nor; providing for the filing of an additional financial statement during general elections; limiting the information required in a financial statement; clarifying that contributions and loans need not be distinguished between individuals and firms, associations or committees; requiring that expenditures made by agents of candidates need to be included in filing; requiring the secretary of state to post filings on the internet; establishing restrictions and limitations on loans; clarifying allowable campaign expenses; allowing payment of dues, subscriptions or contributions to political parties from campaign funds; disallowing contributions to charitable organizations, political parties or candidates out of excess campaign funds until after the general election; allowing intraparty transfers with certain limitations; and prohibiting the placement of election paraphernalia in roadside receptacles under certain circumstances and providing a penalty for such placement.

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

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

**Article**

1. **General Provisions and Definitions.**
2. **Voting by Absentees.**
3. **Primary Elections and Nominating Procedures.**
4. **Conduct and Administration of Elections.**
5. **Regulation and Control of Elections.**

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.
§3-1-37. Restrictions on presence and conduct at polls.
§3-1-44. Compensation of election officials; expenses.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.
(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If such person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If such person be physically or otherwise unable to sign his name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under such affixation. No ballot shall be given to such person until he or she so signs his or her name on the pollbook or his or her signature is so affixed thereon.

(b) The clerk of the county commission is authorized, upon verification that the precinct at which a handicapped person is registered to vote is not handicap accessible, to transfer such person's registration to the nearest polling place in the county which is handicap accessible. Requests by such persons for a transfer of registration shall be received by the county clerk no later than thirty days prior to the date of the election. Any handicapped person who has not made a request for a transfer of registration at least thirty days prior to the date of the election may vote a challenged ballot, at a handicap accessible polling place in the county of his or her registration, and, if during the canvass the county commission determines that the person had been registered in a precinct not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped. To ensure confidentiality of such transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated "challenged ballot/handicapped voter". After validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped voter's ballot shall be placed with other approved
(c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and shall deliver the ballot to the voter to be voted by him or her then without leaving the election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark such ballot "spoiled" and the same shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side as before done. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot, using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.

(d) It shall be the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check mark inserted in the appropriate place on the registration record of each voter the fact that such voter voted in the election. In primary elections the clerk shall also insert thereon a distinguishing initial or initials of the political party for whose candidates the voter voted. If a person is challenged at the polls, such fact shall be indicated by the poll clerks on the registration record together with the name of the challenger. The subsequent removal of the challenge shall be recorded on the registration record by the clerk of the county commission.

(e)(1) No voter shall receive any assistance in voting unless, by reason of blindness, disability, advanced age or inability to read and write, that voter is unable to vote without assistance. Any voter qualified to receive assistance in voting under the provisions of this section may:
(A) Declare his or her choice of candidates to an election commissioner of each political party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner hereinbefore provided, and, on request, shall read over to such voter the names of candidates on the ballot as so prepared;

(B) Require the election commissioners to indicate to him or her the relative position of the names of the candidates on the ballot, whereupon the voter shall retire to one of the booths or compartments to prepare his or her ballot in the manner hereinbefore provided;

(C) Be assisted by any person of the voter's choice: Provided, That such assistance may not be given by the voter's present or former employer or agent of that employer or by the officer or agent of a labor union of which the voter is a past or present member; or

(D) If he or she is handicapped, vote from an automobile, outside the polling place or precinct, in the presence of an election commissioner of each political party.

(2) Any voter who requests assistance in voting but who is believed not to be qualified for such assistance under the provisions of this section shall nevertheless be permitted to vote a challenged ballot with the assistance of any person herein authorized to render assistance.

(3) Any one or more of the election commissioners or poll clerks in the precinct may challenge such ballot on the ground that the voter thereof received assistance in voting it when in his or their opinion that the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The election commissioner or poll clerk or commissioners or poll clerks making such challenge shall enter the challenge and reason therefor on the form and in the manner prescribed or authorized by article three of this chapter.

(4) An election commissioner or other person who assists a voter in voting:
111 (A) Shall not in any manner request, or seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question, and shall not keep or make any memorandum or entry of anything occurring within the voting booth or compartment, and shall not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, or which ticket he or she had voted, or how he or she had voted on any public question, or anything occurring within the voting booth or compartment or voting machine booth, except when required pursuant to law to give testimony as to such matter in a judicial proceeding; and

122 (B) Shall sign a written oath or affirmation before assisting such voter on a form prescribed by the secretary of state stating that he or she will not override the actual preference of the voter being assisted, attempt to influence the voter’s choice or mislead the voter into voting for someone other than the candidate of voter’s choice. Such person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation: Provided, That no person providing assistance to such voter shall be required to sign such oath or affirmation where the reason for requesting such assistance is the voter’s inability to vote without assistance because of blindness as defined in section three, article fifteen, chapter five of this code, and such inability to vote without assistance because of blindness is certified in writing by a physician of the voter’s choice and is on file in the office of the clerk of the county commission.

138 (5) In accordance with instructions issued by the secretary of state, the clerk of the county commission shall provide a form entitled “list of assisted voters”, the form of which list shall likewise be prescribed by the secretary of state. The commissioners shall enter the name of each voter receiving assistance in voting the ballot, together with the poll slip number of that voter and the signature of the person or the commissioner from each party who assisted the voter. If no voter shall have been assisted in voting the ballot as herein provided, the commissioners shall likewise make and subscribe to an oath of that fact on such list.
(f) After preparing the ballot the voter shall fold the same so that the face shall not be exposed and so that the names of the poll clerks thereon shall be seen. The voter shall then announce his or her name and present his or her ballot to one of the commissioners who shall hand the same to another commissioner, of a different political party, who shall deposit it in the ballot box, if such ballot is the official one and properly signed. The commissioner of election may inspect every ballot before it is deposited in the ballot box, to ascertain whether it is single, but without unfolding or unrolling it, so as to disclose its content. When the voter has voted, he or she shall retire immediately from the election room, and beyond the sixty-foot limit thereof, and shall not return, except by permission of the commissioners.

(g) Following the election, the oaths or affirmations required by this section from those assisting voters together with the “list of assisted voters”, shall be returned by the election commissioners to the clerk of the county commission along with the election supplies, records and returns, who shall make such oaths, affirmations and list available for public inspection and who shall preserve the same for a period of twenty-two months or until disposition is authorized or directed by the secretary of state, or court of record.

(h) Any person making an oath or affirmation required under the provisions of this section who shall therein knowingly swear falsely, or any person who shall counsel, or advise, aid or abet another in the commission of false swearing under this section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail for a period of not more than one year, or both.

(i) Any election commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when such voter is known to such election commissioner or poll clerk not to require assistance in voting, shall be guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the penitentiary for a period
of not less than one year nor more than five years, or both fined and imprisoned.

§3-1-37. Restrictions on presence and conduct at polls.

(a) Except as otherwise provided in this section, no person, other than the election officers and voters going to the election room to vote and returning therefrom, may be or remain within three hundred feet of the outside entrance to the building housing the polling place while the polls are open. This subsection does not apply to persons who reside or conduct business within such distance of the entrance to the building housing the polling place, while in the discharge of their legitimate business, or to persons whose business requires them to pass and repass within three hundred feet of such entrance.

(b) A person who is delivering a voter to a polling place by motor vehicle may drive such vehicle to a convenient and accessible location to discharge the voter, notwithstanding that the location is within three hundred feet of the outside entrance to the building housing the polling place. Upon discharging such voter from the vehicle, the person shall remove the vehicle from within three hundred feet of the entrance until such time as the voter is to be transported from the polling place or another voter delivered: Provided, That vehicles delivering voters who require assistance by reason of blindness, disability or advanced age may remain within three hundred feet of the entrance until such time as the voter is to be transported from the polling place.

(c) The election commissions shall limit the number of voters in the election room so as to preserve order. No person may approach nearer than five feet to any booth or compartment while the election is being held, except the voters to prepare their ballots, or the poll clerks when called on by a voter to assist in the preparation of his ballot, and no person, other than election officers and voters engaged in receiving, preparing and depositing their ballots, may be permitted to be within five feet of any ballot box, except by authority of the board of election commissioners, and then only for the purpose of keeping order and enforcing the law.
(d) Not more than one person may be permitted to occupy any booth or compartment at one time. No person may remain in or occupy a booth or compartment longer than may be necessary to prepare his ballot, and in no event longer than five minutes, except that any person who claims a disability pursuant to section thirty-four of this article shall have additional time up to ten additional minutes to prepare his ballot. No voter, or person offering to vote, may hold any conversation or communication with any person other than the poll clerks or commissioners of election, while in the election room.

(e) The provisions of this section do not apply to persons rendering assistance to blind voters as provided in section thirty-four of this article or to any child fourteen years of age or younger who accompanies a parent, grandparent or legal guardian who is voting. Any dispute concerning the age of a child accompanying a parent, grandparent or legal guardian who is voting shall be determined by the election commissioners.

§3-1-44. Compensation of election officials; expenses.

Each ballot commissioner shall be allowed and paid a sum, to be fixed by the county commission, not exceeding one hundred dollars for each day he or she shall serve as such, but, in no case shall a ballot commissioner receive allowance for more than ten days' services for any one primary, general or special election. Each commissioner of election and poll clerk shall be allowed and paid a sum, to be fixed by the county commission, not exceeding one hundred dollars for one day's services for attending the school of instruction for election officials if the commissioner or poll clerk provides at least one day’s service during an election and a sum not exceeding one hundred fifty dollars for his or her services at any one election: Provided, That each commissioner of election and poll clerk shall be paid and allowed a sum not exceeding one hundred fifty dollars for his or her services at any of the three special elections hereinafter specified and described. The commissioners of election obtaining and delivering the election supplies, as provided in section twenty-four of this article, and returning
them as provided in articles five and six of this chapter, shall be
allowed and paid an additional sum, likewise fixed by the
county commission, not exceeding one hundred dollars for all
such services at any one election and, in addition, shall be
allowed and paid mileage up to the rate of reimbursement
authorized per mile as set by the travel management office of
the department of administration per mile necessarily traveled
in the performance of such services. The rate paid for mileage
pursuant to this section may change from time to time in
accordance with changes in the reimbursement rates established
by the travel management office, or its successor agency. The
compensation of election officers, cost of printing ballots and
all other expenses incurred in holding and making the return of
elections, other than the three special elections hereinafter
specified and described, shall be audited by the county commis-
sion and paid out of the county treasury.

The compensation of election officers, cost of printing
ballots and all other reasonable and necessary expenses in
holding and making the return of a special election for the
purpose of taking the sense of the voters on the question of
calling a constitutional convention, of a special election to elect
members of a constitutional convention, and of a special
election to ratify or reject the proposals, acts and ordinances of
a constitutional convention shall be obligations of the state
incurred by the ballot commissioners, clerks of the circuit
courts, clerks of the county commissions and county commis-
sions of the various counties as agents of the state, and all such
expenses shall be audited by the secretary of state. The secre-
tary of state shall prepare and transmit to the county commis-
sions forms on which the county commissions shall certify all
such expenses of such special elections to the secretary of state.
If satisfied that such expenses as certified by the county
commissions are reasonable and were necessarily incurred, the
secretary of state shall requisition the necessary warrants from
the auditor of the state to be drawn on the state treasurer, and
shall mail such warrants directly to the vendors of such special
election services, supplies and facilities.
ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2a. Voting booths within public view to be provided by clerk; prohibition against display of campaign material.

§3-3-5b. Procedures for voting a special write-in absentee ballot by qualified persons.

§3-3-2a. Voting booths within public view to be provided by clerk; prohibition against display of campaign material.

Throughout the period of absentee voting in person in the clerk’s office as provided in this article, the circuit clerk shall make the following provisions for voting:

(a) The clerk shall provide a sufficient number of voting booths or devices appropriate to the voting system at which voters may prepare their ballots. The booths or devices shall be in an area separate from but within clear view of the public entrance area of the clerk’s office, and shall be arranged to ensure the voter complete privacy in casting the ballot.

(b) The clerk shall make the voting area secure from interference with the voter and shall ensure that voted and unvoted ballots are at all times secure from tampering. No person, other than a person lawfully assisting the voter according to the provisions of this chapter, may be permitted to come within five feet of the voting booth while the voter is voting. No person, other than the clerk or deputy clerks or members of the board of ballot commissioners assigned to conduct absentee voting, shall enter the area or room set aside for voting.

(c) When the voting area of the office of the clerk is not fully accessible to voters with physical disabilities, the clerk shall request the county commission to designate an accessible room within the same building as a portion of the clerk’s office for the purpose of absentee voting only by persons unable to use the regular area. The area shall be subject to the same requirements as the regular voting area.

(d) No person may do any electioneering, nor may any person display or distribute in any manner, or authorize the display or distribution of, any literature, posters or material of
any kind which tends to influence the voting for or against any
candidate or any public question on the property of the county
courthouse or judicial annex facilities thereof during the entire
period of regular in person absentee voting. The clerk is hereby
authorized to remove such material and to direct the sheriff of
the county to enforce the prohibition.

§3-3-5b. Procedures for voting a special write-in absentee ballot
by qualified persons.

(a) Notwithstanding any other provisions of this chapter, a
person qualified to vote an absentee ballot in accordance with
subdivision (3), subsection (d), section one of this article may
apply not earlier than the first day of January of an election year
for a special write-in absentee ballot for a primary or general
election, in conjunction with the application for a regular
absentee ballot or ballots. If the application is received after the
forty-ninth day preceding the election, the clerk of the circuit
court shall honor only the application for local, state and federal
offices in general, special and primary elections.

(b) The application for a special write-in absentee ballot
may be made on the federal postcard application form.

(c) In order to qualify for a special write-in absentee ballot,
the voter must state that he or she is unable to vote by regular
absentee ballot or in person due to requirements of military
service or due to living in isolated areas or extremely remote
areas of the world. This statement may be made on the federal
postcard application or on a form prepared by the secretary of
state and supplied and returned with the special write-in
absentee ballot.

(d) Upon receipt of said application within the time
required, the clerk shall issue the special write-in absentee
ballot which shall be the same ballot issued under the provi-
sions of the Uniformed and Overseas Citizens Absentee Voting
ballot shall permit the elector to vote in a primary election by
indicating his or her political party affiliation and the names of
the specific candidates for each office, and in a general election
by writing in a party preference for each office, the names of
specific candidates for each office, or the name of the person
whom the voter prefers for each office.

(e) When a special federal write-in ballot is received by the
clerk from a voter: (1) Who mailed the write-in ballot from any
location within the United States; (2) who did not apply for a
regular absentee ballot; (3) who did not apply for a regular
absentee ballot by mail; or (4) whose application for a regular
absentee ballot by mail was received less than thirty days before
the election, the write-in ballot shall not be counted.

(f) Any write-in absentee ballot must be received by the
clerk prior to the close of the polls on election day or it may not
be counted.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-10. Publication of sample ballots and lists of candidates.

(a) The ballot commissioners of each county shall prepare
a sample official primary ballot for each party, and, as the case
may be, for the nonpartisan candidates to be voted for at the
primary election, according to the provisions of articles four,
four-a and five, chapter three, as appropriate to the voting
system. If any ballot issue is to be voted on in the primary
election, the ballot commissioners shall likewise prepare a
sample official ballot for that issue according to the provisions
of law authorizing such election.

(b) The facsimile sample ballot for each political party and
for nonpartisan candidates or ballot issues shall be published as
follows:

(1) For counties in which two or more qualified newspapers
publish a daily newspaper, not more than fourteen nor less than
eight days preceding the primary election, the ballot commis-
sioners shall publish each sample official primary election
ballot as a Class I-0 legal advertisement in the two qualified
daily newspapers of different political parties within the county
having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than fourteen nor less than eight days preceding the primary election, the ballot commissioners shall publish the sample official primary election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code; and

(3) Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages, and shall be printed in a size no less than eighty percent of the actual size of the ballot, at the discretion of the ballot commissioners: Provided, That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee districts or when the ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the secretary of state, an official list of offices and candidates for each office which will appear on the primary election ballot for each party, and, as the case may be, for the nonpartisan candidates to be voted for at such primary election. All information which appears on the ballot, including instructions as to the number of candidates for whom votes may be cast for the office, any additional language which will appear on the ballot below the name of the office, any identifying information relating to the candidates, such as residence, magisterial district or presidential preference and the
ballot numbers of the candidates for punch card systems, shall be included in the list, in the same order in which it appears on the ballot. Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(d) The official list of candidates and issues as provided in subsection (c) of this section shall be published as follows:

(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the primary election, the ballot commissioners shall publish the official list of candidates and issues as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, on the last day on which a newspaper is published immediately preceding the primary election, the ballot commissioners shall publish the sample official list of nominees and issues as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(3) The publication of the official list of candidates for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows: (A) The words “official list of candidates”, the name of the county, the words “primary election”, the date of the election, the name of the political party or the designation of nonpartisan candidates shall be printed in all capital letters and in bold type no smaller than fourteen point. The designation of the national, state, district or other tickets shall be printed in all capital letters in type no smaller than fourteen point; (B) the title of the office shall be printed in bold type no smaller than twelve point and any voting instructions or other language
printed below the title shall be printed in bold type no smaller than ten point; and (C) the names of the candidates shall be printed in all capital letters in bold type no smaller than ten point, and the residence information shall be printed in type no smaller than ten point; and

(4) When any ballot issue is to appear on the ballot, the title of that ballot shall be printed in all capital letters in bold type no smaller than fourteen point. The text of the ballot issue shall appear in no smaller than ten point type. The ballot commissioners may require the publication of the ballot issue under this subsection in the facsimile sample ballot format in lieu of the alternate format.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, beginning with the primary election to be held in the year two thousand, the ballot commissioners of any county may choose to publish a facsimile sample ballot for each political party and for nonpartisan candidates or ballot issues instead of the official list of offices and candidates for each office for purposes of the last publication required before any primary election.

§3-5-23. Certificate nominations; requirements and control; penalties.

(a) Groups of citizens having no party organization may nominate candidates for public office otherwise than by conventions or primary elections. In such case, the candidate or candidates, jointly or severally, shall file a declaration with the secretary of state if the office is to be filled by the voters of more than one county, or with the clerk of the circuit court of the county if the office is to be filled by the voters of one county or political subdivision thereof; such declaration to be filed at least thirty days prior to the time of filing the certificate provided by section twenty-four of this article: Provided, That the deadline for filing the certificate for persons seeking ballot access as a candidate for the office of president or vice president shall be filed not later than the first day of August preceding the general election. At the time of filing of such declaration each candidate shall pay the filing fee required by law, and
if such declaration is not so filed or the filing fee so paid, the
certificate shall not be received by the secretary of state, or
clerk of the circuit court, as the case may be.

(b) The person or persons soliciting or canvassing signatures of duly qualified voters on such certificate or certificates, may solicit or canvass duly registered voters residing within the county, district or other political division represented by the office sought, but must first obtain from the clerk of the county commission credentials which must be exhibited to each voter canvassed or solicited, which credentials may be in the following form or effect:

State of West Virginia, County of ................................., ss:

This certifies that ..........................................., a duly registered voter of this State; whose post-office address is ........................., is hereby authorized to solicit and canvass duly registered voters residing in ........................................ (here place the county, district or other political division represented by the office sought) to sign a certificate purporting to nominate ........................................ (here place name of candidate heading list on certificate) for the office of ........................................ and others, at the general election to be held on ........................., 19........

Given under my hand and the seal of my office this ..................... day of .........................................., 19........

.................................................................

Clerk, County Commission of ........... County.

The clerk of each county commission, upon proper application made as herein provided, shall issue such credentials and shall keep a record thereof.

(c) The certificate shall be personally signed by duly registered voters, in their own proper handwriting or by their marks duly witnessed, who must be residents within the county, district or other political division represented by the office sought wherein such canvass or solicitation is made by the person or persons duly authorized. Such signatures need not all
be on one certificate. The number of such signatures shall be equal to not less than two percent of the entire vote cast at the last preceding general election for the office in the state, district, county or other political division for which the nomination is to be made, but in no event shall the number be less than twenty-five. The number of such signatures shall be equal to not less than two percent of the entire vote cast at the last preceding general election for any statewide, congressional or presidential candidate, but in no event shall the number be less than twenty-five. Where two or more nominations may be made for the same office, the total of the votes cast at the last preceding general election for the candidates receiving the highest number of votes on each ticket for such office shall constitute the entire vote. No signature on such certificate shall be counted unless it be that of a duly registered voter of the county, district or other political division represented by the office sought wherein such certificate was presented. It shall be the duty of those soliciting signatures to read to each voter whose signature is solicited the statement written on the certificate which gives notice that no person signing such certificate shall vote at any primary election to be held to nominate candidates for office to be voted for at the election to be held next after the date of signing such certificate.

(d) Such certificates shall state the name and residence of each of such candidates; that he is legally qualified to hold such office; that the subscribers are legally qualified and duly registered as voters and desire to vote for such candidates; and may designate, by not more than five words, a brief name of the party which such candidates represent and may adopt a device or emblem to be printed on the official ballot. All candidates nominated by the signing of such certificates shall have their names placed on the official ballot as candidates, as if otherwise nominated under the provisions of this chapter.

The secretary of state shall prescribe the form and content of the nomination certificates to be used for soliciting signatures. The content shall include the language to be used in giving written and oral notice to each voter that signing of the
nominating certificate forfeits that voter’s right to vote in the corresponding primary election.

Offices to be filled by the voters of more than one county shall use separate petition forms for the signatures of qualified voters for each county.

(e) The secretary of state, or the clerk of the circuit court, as the case may be, may investigate the validity of such certificates and the signatures thereon, and if upon such investigation there may be doubt as to the legitimacy and the validity of such certificate, he may request the attorney general of the state, or the prosecuting attorney of the county, to institute a quo warranto proceeding against the nominee or nominees by certificate to determine his or their right to such nomination to public office, and upon request being made, the attorney general or prosecuting attorney shall institute such quo warranto proceeding.

(f) Any person violating the provisions of this section, in addition to penalties prescribed elsewhere for violation of this chapter, is guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars, or confined in the county or regional jail for not more than one year, or both, in the discretion of the court: Provided, That no criminal penalty may be imposed upon anyone who signs a nomination certificate and votes in the primary election held after the date the certificate was signed.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-3. Publication of sample ballots and lists of candidates.

(a) The ballot commissioners of each county shall prepare a sample official general election ballot for all political party or independent nominees, nonpartisan candidates for election, if any, and all ballot issues to be voted for at the general election, according to the provisions of articles four, four-a and six of this chapter, as appropriate to the voting system, and for any ballot issue, according to the provisions of law authorizing such election.
(b) The facsimile sample general election ballot shall be published as follows:

1. For counties in which two or more qualified newspapers publish a daily newspaper, not more than fourteen nor less than eight days preceding the general election, the ballot commissioners shall publish the sample official general election ballot as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

2. For counties having no more than one daily newspaper, or having only one or more qualified newspapers which publish weekly, not more than fourteen nor less than eight days preceding the primary election, the ballot commissioners shall publish the sample official general election ballot as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code; and

3. Each facsimile sample ballot shall be a photographic reproduction of the official sample ballot or ballot pages, and shall be printed in a size no less than eighty percent of the actual size of the ballot, at the discretion of the ballot commissioners: Provided, That when the ballots for the precincts within the county contain different senatorial, delegate, magisterial or executive committee districts or when the ballots for precincts within a city contain different municipal wards, the facsimile shall be altered to include each of the various districts in the appropriate order. If, in order to accommodate the size of each ballot, the ballot or ballot pages must be divided onto more than one page, the arrangement and order shall be made to conform as nearly as possible to the arrangement of the ballot. The publisher of the newspaper shall submit a proof of the ballot and the arrangement to the ballot commissioners for approval prior to publication.

(c) The ballot commissioners of each county shall prepare, in the form and manner prescribed by the secretary of state, an official list of offices and nominees for each office which will
appear on the general election ballot for each political party, or as independent nominees, and, as the case may be, for the nonpartisan candidates to be voted for at the general election:

(1) All information which appears on the ballot, including the names of parties for which a straight ticket may be cast, instructions relating to straight ticket voting, instructions as to the number of candidates for whom votes may be cast for the office, any additional language which will appear on the ballot below the name of the office, any identifying information relating to the candidates, such as residence, magisterial district, or presidential preference, and the ballot numbers of the candidates for punch card systems, shall be included in the list, in the order specified in subdivision (2) of this subsection. Following the names of all candidates, the list shall include the full title, text and voting positions of any issue to appear on the ballot.

(2) The order of the straight ticket positions, offices and candidates for each office, and the manner of designating the parties, shall be as follows: (A) The straight ticket positions shall be designated "straight (party name) ticket", with the parties listed in the order in which they appear on the ballot, from left to right or from top to bottom, as the case may be; (B) the offices shall be listed in the same order in which they appear on the ballot; (C) the candidates within each office for which one is to be elected shall be listed in the order they appear on the ballot, from left to right or from top to bottom, as the case may be, and the candidate's political party affiliation or independent status shall be indicated by the one or two letter initial specifying the affiliation, placed in parenthesis to the right of the candidate's name; and (D) the candidates within each office for which more than one is to be elected shall be arranged by political party groups in the order they appear on the ballot and the candidate's affiliation shall be indicated as provided in part (C) of this subdivision.

(d) The official list of candidates and issues as provided in subsection (c) of this section shall be published as follows:
(1) For counties in which two or more qualified newspapers publish a daily newspaper, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the official list of nominees and issues as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(2) For counties having no more than one daily paper, or having only one or more qualified newspapers which publish weekly, on the last day on which a newspaper is published immediately preceding the general election, the ballot commissioners shall publish the sample official list of nominees and issues as a Class I legal advertisement in the qualified newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of this code;

(3) The publication of the official list of nominees for each party and for nonpartisan candidates shall be in single or double columns, as required to accommodate the type size requirements as follows: (A) The words “official list of nominees and issues”, the name of the county, the words “general election” and the date of the election shall be printed in all capital letters and in bold type no smaller than fourteen point; (B) the designation of the straight ticket party positions shall be printed in all capital letters in bold type no smaller than twelve point, and the title of the office shall be printed in bold type no smaller than twelve point, and any voting instructions or other language printed below the title shall be printed in bold type no smaller than ten point; and (C) the names of the candidates and the initial within parenthesis designating the candidate’s affiliation shall be printed in all capital letters in bold type no smaller than ten point, and the residence information shall be printed in type no smaller than ten point; and

(4) When any ballot issue is to appear on the ballot, the title of that ballot shall be printed in all capital letters in bold type no smaller than twelve point. The text of the ballot issue shall
appears in no smaller than ten point type. The ballot commissioners may require the publication of the ballot issue under this subsection in the facsimile sample ballot format in lieu of the alternate format.

(e) Notwithstanding the provisions of subsections (c) and (d) of this section, beginning with the general election to be held in the year two thousand, the ballot commissioners of any county may choose to publish a facsimile sample general election ballot, instead of the official list of candidates and issues, for purposes of the last publication required before any general election.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

§3-8-2a. Detailed accounts and verified financial statements for certain inaugural events; limitations; reporting requirements.

§3-8-5. Detailed accounts and verified financial statements required.

§3-8-5a. Information required in financial statement.

§3-8-5b. Where financial statements shall be filed; filing date prescribed.

§3-8-5f. Loans to candidates, organizations or persons for election purposes.

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

§3-8-10. Use of certain contributions.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

(a) Except candidates for party committeemen and committeewomen, in primary and other elections, all candidates for nomination or election and all persons or organizations of any kind advocating or opposing a nomination, election or defeat of any candidate, or the passage or defeat of any issue, shall keep records of receipts and expenditures which are made for political purposes. All such receipts and expenditures shall be subject to regulation by the provisions of this article. Verified
financial statements of such records and expenditures shall be made and filed as public records by all candidates and by their financial agents, representatives, or any person acting for and on behalf of any candidate, or the passage or defeat of any issue, and by the treasurers of all political party committees.

(b) In addition to any other reporting required by the provisions of this chapter, any independent expenditure in the amount of one thousand dollars or more for any statewide, legislative or multi-county judicial candidate or in the amount of five hundred dollars or more for any county office, single-county judicial candidate, committee supporting or opposing an issue or candidate on the ballot in more than one county, any municipal candidate or issue on a municipal election ballot, which is made after the eleventh day but more than twelve hours before the day of any election shall be reported, on a form prescribed by the secretary of state, within twenty-four hours after the expenditure is made or debt is incurred for a communication, to the secretary of state by hand-delivery, facsimile or other means to assure receipt by the secretary of state within such twenty-four hour period.

(c) For purposes of this section, “independent expenditure” means an expenditure made by a person other than a candidate or committee for a communication which expressly advocates the election or defeat of a clearly identified candidate but which is made independently of a candidate’s campaign and which has not been made with the cooperation or consent of, or in consultation with, or at the request or suggestion of, any candidate or any of his or her agents or authorized committees. An expenditure which does not meet the criteria for independence established in this subsection is considered a contribution.

(d) Any independent expenditure must include a clear and conspicuous public notice which identifies the name of the person who paid for the expenditure and states that the communication is not authorized by the candidate or his or her committee.

§3-8-2a. Detailed accounts and verified financial statements for certain inaugural events; limitations; reporting requirements.
(a) For purposes of this section:

(1) "Inaugural committee" includes any person, organization or group of persons soliciting or receiving contributions for the purpose of funding an inaugural event for a person elected to a statewide public office; and

(2) "Inaugural event" means any event or events held between the general election of a person elected to a statewide public office and ninety days after the general election, whether the event is sponsored by the inaugural committee or the state political party committee representing the party of the person elected and for which the person elected is a prominent participant or for which solicitations of contributions include the name of the person elected in prominent display.

(b) Any inaugural committee soliciting or receiving contributions for the funding of all or any part of an inaugural event for any person elected to a statewide office that receives an individual contribution in excess of two hundred fifty dollars for any such event shall file and retain detailed records of any such contribution.

(c) No person may contribute more than five thousand dollars for any inaugural event. For purposes of this section, "contribution" does not include volunteer personal services but does include in-kind contributions of materials or supplies.

(d) Any inaugural committee, financial agent or any person or officer acting on behalf of such committee which is subject to the provisions of this section, shall file a verified financial statement with the secretary of state on a form prescribed by the state election commission within ninety days of the event. The financial statement shall contain information as may be required by the provisions of this section relating to any contribution in excess of two hundred fifty dollars. The secretary of state shall file and retain such statements as public records for a period of not less than six years.

(e) In addition to any other information required by the state election commission, the report of contributions required by the provisions of this section shall include the methodology
of the fund raising, the nature of the expenditures made and the
names, addresses and amounts paid to any person.

(f) Amounts received by an inaugural committee for any
person elected to a statewide public office in excess of the
amount expended for an inaugural event may be contributed to
any educational, cultural or charitable organization. The
inaugural committee shall, within sixty days after filing the
report required by subsection (d) of this section, expend any
excess moneys and report, on a form prescribed by the secretary
of state, the names of the organizations to which such excess
moneys were donated. The secretary of state shall file and
retain such records as public records for a period of not less
than six years.

§3-8-5. Detailed accounts and verified financial statements
required.

(a) Every candidate, financial agent, person and association
of persons, organization of any kind, including every corpora-
tion, directly or indirectly, supporting a political committee
established pursuant to paragraph (C), subdivision (1), subsec-
tion (b), section eight of this article or engaging in other
activities permitted by said section and also including the
treasurer or equivalent officer of such association or organiza-
tion, advocating or opposing the nomination, election or defeat
of any candidate or the passage or defeat of any issue, thing or
item to be voted upon, and the treasurer of every political party
committee shall keep detailed accounts of every sum of money
or other thing of value received by him, including all loans of
money or things of value, and of all expenditures and disburse-
ments made, liabilities incurred, by such candidate, financial
agent, person, association or organization or committee, for
political purposes, or by any of the officers or members of such
committee, or any person acting under its authority or on its
behalf.

(b) Every person or association of persons required to keep
detailed accounts under this section shall file with the officers
hereinafter prescribed a detailed itemized statement, subscribed
and sworn to before an officer authorized to administer oaths, according to the following provisions and times:

(1) On the last Saturday in March or within fifteen days thereafter next preceding the primary election day whenever the total of all financial transactions relating to an election exceed five hundred dollars a statement which shall include all financial transactions which have taken place by the date of that statement, subsequent to any previous statement filed within the previous five years under this section, or if no previous statement was filed, all financial transactions made within the preceding five years; and

(2) Not less than seven nor more than ten days preceding each primary or other election, a statement which shall include all financial transactions which have taken place by the date of such statement, subsequent to the previous statement, if any; and

(3) Not less than twenty-five nor more than thirty days after each primary or other election, a statement which shall include all financial transactions which have taken place by the date of such statement, subsequent to the previous statement; and

(4) On the first day of July, one thousand nine hundred eighty-five, and thereafter on the last Saturday in March or within fifteen days thereafter annually, whenever contributions or expenditures relating to an election exceed five hundred dollars or whenever any loans are outstanding, a statement which shall include all financial transactions which have taken place by the date of such report, subsequent to any previous report; and

(5) On the last Saturday in September or within fifteen days thereafter next preceding the general election day whenever the total of all financial transactions relating to an election exceed five hundred dollars or whenever any loans are outstanding, a statement which shall include all financial transactions which have taken place by the date of such statement, subsequent to the previous statement.
(c) Every person who shall announce as a write-in candidate for any elective office and his financial agent or election organization of any kind shall comply with all of the requirements of this section after public announcement of such person's candidacy has been made.

(d) For purposes of this section, the term "financial transactions" includes all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election or defeat of any candidate or to promote the passage or defeat of any issue, thing or item to be voted on.

(e)(1) Except as provided in subdivision (2) of this subsection, any person, association, organization, corporation or other legal entity who publishes, distributes or disseminates any scorecard, voter guide or other written analysis of a candidate's position or votes on specific issues within sixty days of an election is presumed to be engaging in such activity for the purpose of advocating or opposing the nomination, election or defeat of any candidate.

(2) The provisions of subdivision (1) of this subsection shall not apply to:

(A) The publication, distribution or dissemination of such materials in the form of a news release to broadcast or print media;

(B) Persons who engage in news or feature reporting activities and editorial comment as working members of the press, radio or television, and persons who publish, distribute or disseminate such news, features or editorial comment through a newspaper, book, regularly published periodical, radio station or television station;

(C) The members of a nonprofit corporation or other organization who have such membership in accordance with the provisions of the articles of incorporation, bylaws or other instruments creating its form of organization and who have bona fide rights and privileges in the organization such as the
right to vote, to elect officers, directors and issues, to hold
office or otherwise as ordinarily conferred on members of such
organizations who publish, distribute or disseminate materials
described in subdivision (1) of this subsection to other such
members; or

(D) The employees of a church or synagogue which
currently holds or is eligible to hold an exemption as a church
issued by the internal revenue service under the provisions of
§26 U.S.C. 501(c)(3) who publish, distribute or disseminate
materials described in subdivision (1) of this subsection within
the membership of the church or synagogue: Provided, That the exemption from the presumption
provided by this subparagraph shall not apply to such employ-
ees of a church when the church or synagogue otherwise
advocates or opposes the nomination, election or defeat of any
candidate, or the passage of any issue, thing or item to be voted
upon.

(f) No scorecard, voter guide or other written analysis of a
candidate's position or votes on specific issues shall be pub-
lished, distributed or disseminated within sixty days of an
election unless it shall state thereon the name of the person,
association, organization, corporation or other legal entity
authorizing its publication, distribution or dissemination.

§3-8-5a. Information required in financial statement.

(a) Each financial statement required by the provisions of
this article shall contain only the following information:

(1) The first name, middle initial, if any, and last name,
residence and mailing address and telephone number of each
candidate, financial agent, treasurer or person, and the full
name, address and telephone number of each association,
organization or committee filing a financial statement.

(2) The balance of cash and any other sum of money on
hand at the beginning and the end of the period covered by the
financial statement.
(3) The first name, middle initial, if any, and the last name
in the case of an individual, and the full name of each firm,
association or committee, and the amount of such contribution
of such individual, firm, association or committee, and, if the
aggregate of the sum or sums contributed by any one such
individual, firm, association or committee exceeds two hundred
fifty dollars, there shall also be reported the residence and
mailing address and, in the case of an individual, the major
business affiliation and occupation. A contribution totaling
more than fifty dollars of currency of the United States or
currency of any foreign country by any one contributor is
prohibited and a violation of this provision is subject to sectionive-d of this article. The report on which contributions required
by this subdivision shall not distinguish between contributions
made by individuals and contributions made by firms, associa-
tions or committees.

(4) The total amount of contributions received during the
period covered by the financial statement.

(5) The first name, middle initial, if any, and the last name,
residence and mailing address of any individual or the full name
and mailing address of each lending institution making a loan
or of the spouse cosigning a loan, as appropriate, the amount of
any loan received, the date and terms of the loan, including the
interest and repayment schedule, and a copy of the loan
agreement.

(6) The first name, middle initial, if any, and the last name,
residence and mailing address of any individual or the full name
and mailing address of each firm, association or committee
having previously made or cosigned a loan for which payment
is made or a balance is outstanding at the end of the period,
together with the amount of repayment on the loan made during
the period and the balance at the end of the period.

(7) The total outstanding balance of all loans at the end of
the period.

(8) The first name, middle initial, if any, and the last name,
residence and mailing address of any individual, or the full
name and mailing address of each firm, association or committee to whom each expenditure was made or liability incurred, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

(9) The total expenditure for the nomination, election or defeat of a candidate or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, in whose behalf an expenditure was made or a contribution was given for the primary or other election.

(10) The total amount of expenditures made during the period covered by the financial statement.

(b) Any unexpended balance at the time of making the financial statements herein provided for shall be properly accounted for in that financial statement and shall appear as a balance in the next following financial statement.

(c) Each financial statement required by this section shall contain a separate section setting forth the following information for each fund-raising event held during the period covered by the financial statement:

(1) The type of event, date held, and address and name, if any, of the place where the event was held.

(2) All of the information required by subdivision (3), subsection (a) of this section.

(3) The total of all moneys received at the fund-raising event.

(4) The expenditures incident to the fund-raising event.

(5) The net receipts of the fund-raising event.

(d) When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required in this section, such lump sum expenditures shall be accounted for in the same manner as provided for herein.
(e) Any contribution or expenditure made by or on behalf of a candidate for public office, to any other candidate, or committee for a candidate for any public office in the same election shall be accounted for in accordance with the provisions of this section.

(f) No person, firm, association or committee may make any contribution except from their own funds, unless such person, firm, association or committee discloses in writing to the person required to report under this section the first name, middle initial, if any, and the last name in the case of an individual, or the full name in case of a firm, association or committee, residence and mailing address and the major business affiliation and occupation of the person, firm, association or committee which furnished the funds to such contributor. All such disclosures shall be included in the statement required by this section.

(g) Any firm, association, committee or fund permitted by section eight of this article to be a political committee shall disclose on the financial statement its corporate or other affiliation.

(h) No contribution may be made, directly or indirectly, in a fictitious name, anonymously or by one person through an agent, relative or other person so as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment of the contributor's identity.

(i) No person, firm, association or committee may accept any contribution for the purpose of influencing the nomination, election or defeat of a candidate or for the passage or defeat of any issue or thing to be voted upon unless the identity of the donor and the amount of the contribution is known and reported.

(j) When any candidate, organization, committee or person receives any anonymous contribution which cannot be returned because the donor cannot be identified, that contribution shall be donated to the general revenue fund of the state. Any anonymous contribution shall be recorded as such on the
candidate's financial statement, but may not be expended for election expenses. At the time of filing, the financial statement shall include a statement of distribution of anonymous contributions, which total amount shall equal the total of all anonymous contributions received during the period.

(k) Any membership organization which raises funds for political purposes by payroll deduction assessing them as part of its membership dues or as a separate assessment may report the amount raised as follows:

(1) If the portion of dues or assessments designated for political purposes equals twenty-five dollars or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments during the period is reported by showing the amount required to be paid by each member and the number of members.

(2) If the total payroll deduction for political purposes of each participating member equals twenty-five dollars or less over the course of a calendar or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes through such payroll deductions during the reporting period, and to the maximum extent possible, the amount of each yearly payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall maintain records of the name and yearly payroll deduction amounts of each participating member.

(3) If any member contributes to the membership organization through individual voluntary contributions by means other than payroll deduction, membership dues, or assessments as provided in this subsection, the reporting requirements of subdivision (3), subsection (a) of this section shall apply. Funds raised for political purposes must be segregated from the funds for other purposes and listed in its report.

(1) For purposes of this section:

(1) “Political purposes” means advocating or opposing the nomination, election or defeat of one or more candidates,
supporting the retirement of the debt of a candidate or activities of an established political party or an organization which has declared itself a political party, supporting the administration or activities of a political committee or advocating or opposing the passage of a ballot issue.

(2) "Membership organization" means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors, and the ability to hold office, to its members, and which uses a majority of its membership dues for purposes other than political purposes. This term shall not include organizations that grant membership upon receiving a contribution.

(3) "Fund-raising event" means an event such as a dinner, reception, testimonial, cocktail party, auction or similar affair through which contributions are solicited or received by such means as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services.

(m) Notwithstanding the provisions of section five of this article or of the provisions of this section to the contrary, an alternative reporting procedure may be followed by a political party executive committee or a political action committee representing a political party in filing financial reports for fund-raising events if the total profit does not exceed five thousand dollars per year. A political party executive committee or a political action committee representing a political party may report gross receipts for the sale of food, beverages, services, novelty items, raffle tickets or memorabilia, except that any receipt of more than fifty dollars from an individual or organization shall be reported as a contribution. A political party executive committee or a political action committee representing a political party using this alternative method of reporting shall report: (i) The name of the committee; (ii) the type of fund-raising activity undertaken; (iii) the location where the activity occurred; (iv) the date of the fund raiser; (v) the name of any individual who contributed more than fifty dollars worth of items to be sold; (vi) the name and amount received from any person or organization purchasing more than fifty dollars worth
of food, beverages, services, novelty items, raffle tickets or memorabilia; (vii) the gross receipts of the fund raiser; and (viii) the date, amount, purpose and name and address of each person or organization from whom items with a fair market value of more than fifty dollars were purchased for resale.

§3-8-5b. Where financial statements shall be filed; filing date prescribed.

(a) The sworn financial statements provided for in this article shall be filed, by or on behalf of candidates, with the secretary of state for legislative offices and for state and other offices to be nominated or elected by the voters of a political division greater than a county, and with the clerk of the county commission by all other candidates for offices to be nominated or elected.

(b) The statements may be filed by mail, in person, or by facsimile or other electronic means of transmission.

(c) For purposes of this article, the filing date of a financial statement shall, in the case of mailing, be the date of the postmark of the United States postal service, and in the case of hand delivery or delivery by facsimile or other electronic means of transmission, the date delivered to the office of the secretary of state or to the office of the clerk of the county commission, in accordance with the provisions of subsection (a) of this section, during regular business hours of such office.

(d) The sworn financial statements required to be filed by this section with the secretary of state shall be posted on the internet by the secretary of state within forty-five days from the date the financial statement was filed.

§3-8-5f. Loans to candidates, organizations or persons for election purposes.

(a) No candidate, financial agent, person or association of persons or organization advocating or opposing the nomination or election of any candidate or the passage or defeat of any issue or item to be voted upon may receive any money or any other thing of value as a loan toward election expenses except
from the candidate, his or her spouse or a lending institution. All loans shall be evidenced by a written agreement executed by the lender, whether the candidate, his or her spouse, or the lending institution. Such agreement shall state the date and amount of the loan, the terms, including interest and repayment schedule, and a description of the collateral, if any, and the full names and addresses of all parties to the agreement. A copy of the agreement shall be filed with the financial statement next required after the loan is executed.

(b) Loans may only be made in the regular course of business by a lending institution which is a state bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits are insured by the federal deposit insurance corporation or the national credit union administration. Such loans shall be subject to the following requirements:

(1) Endorsements or guarantees of such loans may be made by the candidate or his or her spouse;

(2) Endorsements or guarantees of such loans by parties other than the candidate or his or her spouse may be made only to the extent of the contribution limits established in this article; and

(3) No other form of security shall be furnished in connection with such loans by any party other than the candidate or his or her spouse.

(c) The provisions of this section shall not be construed to prohibit a candidate or his or her spouse from lending money to the candidate or to the candidate’s political committee: Provided, That the spouse of a candidate may not borrow money from a third party other than a lending institution authorized to make loans under this section for the purposes of lending money to the candidate or the candidate’s political committee.

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.
(a) No candidate, financial agent or treasurer of a political party committee shall pay, give or lend, either directly or indirectly, any money or other thing of value for any election expenses, except for the following purposes:

(1) For rent, maintenance, office equipment and other furnishing of offices to be used as political headquarters and for the payment of necessary clerks, stenographers, typists, janitors and messengers actually employed therein;

(2) In the case of a candidate who does not maintain a headquarters, for reasonable office expenses, including, but not limited to, filing cabinets and other office equipment and furnishings, computers, computer hardware and software, scanners, typewriters, calculators, audio visual equipment, the rental of the use of the same, or for the payment for the shared use of same with the candidate's business and for the payment of necessary clerks, stenographers and typists, actually employed;

(3) For printing and distributing books, pamphlets, circulars and other printed matter and radio and television broadcasting and painting, printing and posting signs, banners and other advertisements, including contributions to charitable, educational or cultural events, for the promotion of the candidate, the candidate's name or an issue on the ballot;

(4) For renting and decorating halls for public meetings and political conventions, for advertising public meetings, and for the payment of traveling expenses of speakers and musicians at such meetings;

(5) For the necessary traveling and hotel expenses of candidates, political agents and committees, and for stationery, postage, telegrams, telephone, express, freight and public messenger service;

(6) For preparing, circulating and filing petitions for nomination of candidates;

(7) For examining the lists of registered voters, securing copies thereof, investigating the right to vote of the persons
listed therein and conducting proceedings to prevent unlawful registration or voting;

(8) For conveying voters to and from the polls;

(9) For securing publication in newspapers and by radio and television broadcasting of documents, articles, speeches, arguments and any information relating to any political issue, candidate or question or proposition submitted to a vote;

(10) For conducting public opinion poll or polls. For the purpose of this section, the phrase "conducting of public opinion poll or polls" shall mean and be limited to the gathering, collection, collation and evaluation of information reflecting public opinion, needs and preferences as to any candidate, group of candidates, party, issue or issues. No such poll shall be deceptively designed or intentionally conducted in a manner calculated to advocate the election or defeat of any candidate or group of candidates or calculated to influence any person or persons so polled to vote for or against any candidate, group of candidates, proposition or other matter to be voted on by the public at any election: Provided, That nothing herein shall prevent the use of the results of any such poll or polls to further, promote or enhance the election of any candidate or group of candidates or the approval or defeat of any proposition or other matter to be voted on by the public at any election;

(11) For legitimate advertising agency services, including commissions, in connection with any campaign activity for which payment is authorized by subdivisions (3), (4), (5), (6), (7), (9) and (10) of this subsection;

(12) For the purchase of memorials, flowers or citations by political party executive committees or political action committees representing a political party;

(13) For the purchase of nominal noncash expressions of appreciation following the close of the polls of an election or within thirty days thereafter;

(14) For the payment of dues or subscriptions to any national, state or local committee of any political party; and
(15) For contributions to a county party executive committee, state party executive committee or a state party legislative caucus political committee.

(b) Every liability incurred and payment made shall be at a rate and for a total amount which is proper and reasonable and fairly commensurate with the services rendered.

(c) Every advertising agency subject to the provisions of this article shall file, in the manner and form required by section five-a of this article, the financial statements required by section five of this article at the times required therein and include therein, in itemized detail, all receipts from and expenditures made on behalf of a candidate, financial agent or treasurer of a political party committee.

(d) Any candidate may designate a financial agent by a writing duly subscribed by him which shall be in such form and filed in accordance with the provisions of section four of this article.

§3-8-10. Use of certain contributions.

After the first day of July, two thousand, amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may be used by the candidate to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of public office, may be contributed after the general election to any charitable organization, or may be transferred, without limitation, to any national, state or local committee of any political party or to any candidate for public office.

The state election commission shall promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the administration of this section.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of
employment or other benefits; limitations on contributions; public contractors; penalty.

(a) No person shall publish, issue or circulate, or cause to be published, issued or circulated, any anonymous letter, circular, placard, or other publication tending to influence voting at any election.

(b) No owner, publisher, editor or employee of a newspaper or other periodical shall insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election, unless directly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published.

(c) No person shall, in any room or building occupied for the discharge of official duties by any officer or employee of the state or a political subdivision thereof, solicit orally or by written communication delivered therein, or in any other manner, any contribution of money or other thing of value for any party or political purpose, from any postmaster or any other officer or employee of the federal government, or officer or employee of the state, or a political subdivision thereof. No officer, agent, clerk or employee of the federal government, or of this state, or any political subdivision thereof, who may have charge or control of any building, office or room, occupied for any official purpose, shall knowingly permit any person to enter the same for the purpose of therein soliciting or receiving any political assessments from, or delivering or giving written solicitations for, or any notice of, any political assessments to, any officer or employee of the state, or a political subdivision thereof.

(d) Except as provided in section eight of this article, no person entering into any contract with the state or its subdivisions, or any department or agency thereof, either for rendition of personal services or furnishing any material, supplies or equipment or selling any land or building to the state, or its subdivisions, or any department or agency thereof, if payment for the performance of such contract or payment for such
material, supplies, equipment, land or building is to be made, in
whole or in part, from public funds shall, during the period of
negotiation for or performance under such contract or furnish­
ing of materials, supplies, equipment, land or buildings, directly
or indirectly, make any contribution to any political party,
committee or candidate for public office or to any person for
political purposes or use; nor shall any person or firm solicit
any contributions for any such purpose during any such period.

(e) No person shall, directly or indirectly, promise any
employment, position, work, compensation or other benefit
provided for, or made possible, in whole or in part, by act of the
Legislature, to any person as consideration, favor or reward for
any political activity for the support of or opposition to any
candidate, or any political party in any election.

(f) No person shall, directly or indirectly, make any
contribution in excess of the value of one thousand dollars in
connection with any campaign for nomination or election to or
on behalf of any statewide or national elective office, or in
excess of the value of one thousand dollars, in connection with
any other campaign for nomination or election to or on behalf
of any other elective office in the state or any of its subdivi­
sions, or in connection with or on behalf of any committee or
other organization or person engaged in furthering, advancing
or advocating the nomination or election of any candidate for
any such office.

(g)(1) Notwithstanding the provisions of subsection (f) of
this section to the contrary, the aggregate contributions made to
a state party executive committee shall be permitted only
pursuant to the limitations imposed by the provisions of this
subsection.

(2) No person shall, directly or indirectly, make contribu­
tions to a state party executive committee which, in the aggre­
gate, exceed the value of one thousand dollars in any calendar
year.

(h) The limitations on contributions contained in this
section do not apply to transfers between and among a state
party executive committee or a state party’s legislative caucus
political committee from national committees of the same
political party: Provided, That transfers permitted herein shall
not exceed fifty thousand dollars in the aggregate in any
calendar year to any such state party executive committee or
state party legislative caucus political committee: Provided,
however, That such moneys transferred shall only be used for
voter registration and get-out-the-vote activities of the state
committees.

(i) No person shall solicit any contribution from any
nonelective salaried employee of the state government or of any
of its subdivisions or coerce or intimidate any such employee
into making such contribution. No person shall coerce or
intimidate any nonsalaried employee of the state government or
any of its subdivisions into engaging in any form of political
activity. The provisions hereof shall not be construed to prevent
any such employee from making such a contribution or from
engaging in political activity voluntarily, without coercion,
imidation or solicitation.

(j) No person shall solicit a contribution from any other
person without informing such other person at the time of such
solicitation of the amount of any commission, remuneration or
other compensation that the solicitor or any other person will
receive or expect to receive as a direct result of such contribu-
tion being successfully collected. Nothing in this subsection
shall be construed to apply to solicitations of contributions
made by any person serving as an unpaid volunteer.

(k) No person shall place any letter, circular, flyer, adver-
tisement, election paraphernalia, solicitation material or other
printed or published item tending to influence voting at any
election in a roadside receptacle unless it is: (1) Approved for
placement into a roadside receptacle by the business or entity
owning the receptacle; and (2) contains a written acknowledg-
ment of such approval. This subdivision does not apply to any
printed material contained in a newspaper or periodical pub-
lished or distributed by the owner of the receptacle. The term
“roadside receptacle” means any container placed by a newspa-
per or periodical business or entity to facilitate home or personal delivery of a designated newspaper or periodical to its customers.

(l) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in jail for not more than one year, or, in the discretion of the court, be subject to both such fine and confinement.

CHAPTER 119

(Com. Sub. for H. B. 2627 — By Delegates Mahan, Coleman, Johnson, Pino, Linch, Capito and Faircloth)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-g, relating to mailing of certain unsolicited electronic mail messages and establishing prohibitions relating thereto; defining terms; establishing that certain internet messages are prohibited under this article; specifying contents of prohibited messages; prohibiting misrepresenting or falsifying certain information; requiring prior approval, certain disclosures for certain messages activities; authorizing interactive computer services to limit transmissions of any bulk electronic mail which violates this article; limiting liability of interactive computer services for terminating service to persons that violate this article; and establishing a penalty for violations of this article.

Be it enacted by the Legislature of West Virginia:

That chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article six-g, to read as follows:
ARTICLE 6G. ELECTRONIC MAIL PROTECTION ACT.


1 As used in this article:

2 (1) "Bulk electronic mail message" means an electronic mail message sent in bulk to users of an interactive computer service who have not requested or solicited the message. Unauthorized for purposes of a bulk electronic mail message, means a bulk electronic mail message sent in quantity in contravention of the authorization granted by or in violation of the policies or contractual rights of the electronic mail service provider.

3 (2) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

4 (3) "Initiate the transmission" means the action by the original sender of an electronic mail message, not the action by any intervening interactive computer service that may handle or retransmit the message.

5 (4) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet.

6 (5) "Internet domain name" means a globally unique, hierarchical reference to an internet host or service, assigned through centralized internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

7 (6) "Person" means any individual, corporation, partnership, association, limited liability company or any other form or business association.
§46A-6G-2. Limitations on unauthorized electronic mail.

No person may initiate the transmission of an unauthorized electronic mail message with the intent to deceive and defraud, or a bulk electronic mail message from a computer located in the state of West Virginia or to an electronic mail address that the sender knows, or has reason to know, is held by a West Virginia resident that:

1. Uses a third party's internet domain name without the permission of the third party, or otherwise misrepresents any information in identifying the point of origin or the transmission path of a commercial electronic mail message;
2. Contains false or misleading information in the subject line;
3. Does not clearly provide the date and time the message is sent, the identity of the person sending the message, and the return electronic mail address of that person; or
4. Contains "sexually explicit materials" which are defined as a visual depiction, in actual or simulated form, or an explicit description in a predominately sexual context, nudity, human genitalia, or any act of natural or unnatural sexual intercourse.

§46A-6G-3. Interactive computer service authority; liability.

1. An interactive computer service may block the receipt or transmission through its service of any bulk electronic mail that it reasonably believes is, or will be, sent in violation of this article.
2. An interactive computer service may disconnect or terminate the service of any person that is in violation of this article.
3. No interactive computer service may be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any bulk electronic mail which it reasonably believes is, or will be, sent in violation of this article; nor will any interactive computer service be held liable for any action voluntarily taken in good faith to discon-
14  nect or terminate the service of any person that is in violation
15  of this article.

16  (4) No interactive computer service or public utility will be
17  liable for merely transmitting a bulk electronic mail message on
18  its network.

§46A-6G-4. Sale or possession of enabling software prohibited.

1  No person may sell, give or otherwise distribute or possess
2  with the intent to sell, give or distribute software that:

3  (1) Is primarily designed or produced for the purpose of
4  facilitating or enabling the falsification of electronic mail
5  transmission information or other routing information;

6  (2) Has only a limited commercially significant purpose or
7  use other than to facilitate or enable the falsification of elec-
8  tronic mail transmission information or other routing informa-
9  tion; or

10  (3) That is marketed by that person or another acting in
11  concert with that person with that person's knowledge for use
12  in facilitating or enabling the falsification of electronic mail
13  transmission information or other routing information.

§46A-6G-5. Violations; right of action for injunction, damages.

1  (a) No person or organization may initiate an unauthorized
2  bulk electronic mail message in violation of this article.

3  (b) A recipient of an unauthorized bulk electronic mail
4  message in violation of this article may bring an action to
5  recover actual damages for any injury sustained by the receipt
6  of an unauthorized bulk electronic mail message. In lieu of
7  actual damages, a minimum damage assessment of one thou-
8  sand dollars may be recovered for violations of this article.
9  Punitive damages may be awarded for the willful failure to
10  cease initiating unauthorized bulk electronic mail messages.
11  Court costs and reasonable attorney fees may be awarded for
12  violations of this article.

13  (c) A recipient of an unauthorized bulk electronic mail
14  message initiated in violation of this article may bring an action
to enjoin the initiator from sending any further unauthorized bulk electronic mail messages. Any court costs or other costs incident to such action including reasonable attorney fees may be awarded.

(d) Initiating an unauthorized bulk electronic mail message to any computer or computer network located in this state shall constitute an act in the state for the purposes of section thirty-three, article three, chapter fifty-six of this code.

(e) Any interactive computer service provider or public utility whose property or person is injured by any violation of this article may bring an action to recover for any damages sustained, including, but not limited to, loss of profits. In addition, court costs and attorney fees may be recovered. The service provider may elect, in lieu of actual damages, to recover ten dollars for each and every unauthorized bulk electronic mail message transmitted in violation of this article, or twenty-five thousand dollars per day, whichever is greater.

(f) The provisions of this section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

CHAPTER 120

(S. B. 681 — Originating in the Committee on Energy, Industry and Mining.)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a; to amend and reenact section seven, article one, chapter twenty-two of said code; to amend and reenact sections thirteen, twenty-three and twenty-four, article three of said chapter; to further amend said article by adding thereto three new sections, designated sections thirteen-a, twenty-two-a and thirty-a; to further amend said chapter by
adding thereto a new article, designated article three-a; and to amend and reenact section seven-a, article eleven of said chapter, all relating to surface mining; creating the office of coalfield community development within the West Virginia development office; office of coalfield community development’s powers and duties; promulgation of rules; requiring a community impact statement; requiring a coalfield community development statement; determining and developing needed community assets; addressing land and infrastructure needs; annual reports; land acquisition process; continuation of offices; creating the office of explosives and blasting within the division of environmental protection; office of explosives and blasting’s duties, powers and responsibilities; promulgation of rules; enforcement of blasting laws and pre-blast surveys by the office of explosives and blasting; education, training, examination, certification and disciplinary procedures for blasters; establishing a claims process for blasting damage; requirements for a pre-blast survey; recordation of notice of pre-blast survey and waiver; prohibiting production blasting within three hundred feet of a protected structure; requiring site-specific blast designs within one thousand feet of a protected structure; requiring studies by the office of blasting; requiring mining operators to replace an owner’s damaged underground water supply within a specific area and within a certain amount of time; provision for an emergency water supply; promulgation of rules; requiring compliance with blasting laws; civil liability and penalties; reducing the acreage and monetary amount for mitigation of watersheds by mining operators; and authorizing a study of the impact of mountaintop mining and valley fills upon the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

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

Chapter


22. Environmental Resources.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. Office of Coalfield Community Development.

§5B-2A-1. Legislative findings and declaration.

§5B-2A-2. Application of article.

§5B-2A-3. Definitions.

§5B-2A-4. Office of coalfield community development.


§5B-2A-7. Coalfield community development statement.

§5B-2A-8. Determining and developing needed community assets.


§5B-2A-10. Action report; annual update.

§5B-2A-11. Land acquisitions.

§5B-2A-12. Rule making.


§5B-2A-1. Legislative findings and declaration.

1 The Legislature hereby finds and declares the following:

2 (a) Coal mining has made and continues to make significant
3 contributions to the economy of West Virginia. These contribu-
4 tions include the creation of quality jobs that pay high wages
5 and provide good benefits; the consequent stimulation and
6 support of mining contractors, suppliers of mining equipment
7 and services, other mining-related industries and numerous
8 providers of goods and services that are indirectly related to
9 coal mining and dependent upon its existence and prosperity;
10 the generation of significant severance and other tax revenues
11 that support important economic development, infrastructure
12 and education initiatives in mining communities and throughout
13 the state; the support of civic, education and service groups in
14 mining communities; and in the case of surface-mining opera-
15 tions, including mountaintop mining, the creation of much-
16 needed flat land for economic development and recreational
17 uses.
(b) The development and increasing prominence of surface-mining operations, including mountaintop mining, has brought increasingly high levels of productivity, safety and efficiency to the state's mining industry, enabling the recovery of coal that could not otherwise be mined and marketed profitably, increasing the severance tax revenues and other economic benefits described in subsection (a) above and ensuring the competitiveness of the state's coal industry from a national and international perspective.

(c) Where implemented, surface-mining operations, particularly mountaintop mining, tend to extract most, if not all, of the recoverable coal reserves in an accelerated fashion. For a state long dependent on the employment and revenue coal mining provides, this reality should be sobering and there is no place in which the comprehension of this reality is more crucial than the coalfields of West Virginia. Long dependent primarily on mining, this area must plan for a future without coal. The state and its subdivisions have a legitimate interest in securing that future.

(d) The coal industry and those related to the extraction of mineral resources benefit from the mining of our state's coal through mining practices which impact its citizens — some in a negative way — and through practices which will extract significant portions of coal reserves in an accelerated fashion. Those industries must therefore accept a greater responsibility to help address the long-term needs of the communities and citizens impacted by their activities.

(e) Once it becomes public knowledge that a permit is being sought, the marketability of property may change and the relative bargaining power of the parties may change with it. The potential for negative impact on those living in communities near surface-mining operations may limit the options and bargaining power of the property owners.

(f) Surface-mining operations, including mountaintop mining, present unique challenges to the coal mining industry and the state and its citizens, especially those living and
working in communities that rely heavily upon these methods of mining. This requires that these communities, in conjunction with county commissions, state, local, county and regional development authorities, landowners and civic, community and business groups and interested citizens, develop plans related to the communities' long-term economic viability.

(g) The West Virginia development office, as the state agency charged with economic development activities, shall take a more active role in the long-term economic development of communities in which these mining methods are prevalent and shall establish a formal process to assist property owners in the determination of the fair market value where the property owner and the coal company voluntarily enter into an agreement relating to the purchase and sale of such property.

§5B-2A-2. Application of article.

(a) The provisions of this article shall apply to all surface-mining operations, except:

(1) The surface operations and surface impacts incident to an underground coal mine; and

(2) Surface-mining operations of operators that: (A) Establish that their probable total annual coal production from all locations during any consecutive twelve-month period, either during the term of the permit or during the first five years after issuance of the permit, whichever period is shorter, will not exceed three hundred thousand tons, as determined pursuant to rules promulgated by the division; and (B) otherwise qualify for the small operator assistance program authorized under the federal Surface-Mining Control and Reclamation Act of 1977, as amended, and the federal regulations promulgated thereunder, as amended.

(b) The provisions of this article shall not apply: (1) To underground coal mining operations; or (2) to the extraction of minerals by underground mining methods or the surface impacts thereof.
§5B-2A-3. Definitions.
(a) For the purpose of this article, the following terms have the meanings ascribed to them:
(1) "Division" means the division of environmental protection established in article one, chapter twenty-two of this code;
(2) "Office" means the office of coalfield community development; and
(3) "West Virginia development office" means the office established in article two of this chapter.
(b) Unless used in a context that clearly requires a different meaning or as otherwise defined herein, terms used in this article shall have the definitions set forth in this section.

§5B-2A-4. Office of coalfield community development.
(a) The office of coalfield community development is hereby established within the West Virginia development office.
(b) The executive director shall appoint a chief to administer the office, who will serve at the will and pleasure of the executive director of the West Virginia development office.

The office shall have and exercise the following duties, powers and responsibilities:
(1) To establish a procedure for developing a community impact statement as provided in section six of this article and to administer the procedure so established;
(2) To establish a procedure for developing and implementing coalfield community development statements as provided in section seven of this article and to administer the procedure so established;
(3) To establish a procedure for determining the assets that could be developed in and maintained by the community to
foster its long-term viability as provided in section eight of this article and to administer the procedure so established;

(4) To establish a procedure for determining the land and infrastructure needs in the general area of the surface-mining operations as provided in section nine of this article and to administer the procedure so established;

(5) To establish a procedure to develop action reports and annual updates as provided in section ten of this article and to administer the procedure so established;

(6) To determine the need for meetings to be held among the various interested parties in the communities impacted by surface-mining operations and, when appropriate, to facilitate such meetings;

(7) To establish a procedure to assist property owners in the sale of their property as provided in section eleven of this article and to administer the procedure so established; and

(8) In conjunction with the division, to maintain and operate a system to receive and address questions, concerns and complaints relating to surface mining.


(a) (1) The operator shall develop a community impact statement as described in this section, which shall be submitted to the office within sixty days of the filing of a surface-mining application pursuant to the provisions of article three of chapter twenty-two of this code. Failure to submit a community impact statement to the office shall be considered a violation under the provisions of section seventeen, article three, chapter twenty-two of this code; and

(2) The operator shall provide copies of the community impact statement to the division’s office of mining reclamation and office of explosives and blasting and to the county commissions, county clerks’ offices and local or regional economic development authorities of the areas to be affected by the surface-mining operations.
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(b) The community impact statement, where practicable, shall not be a highly technical or legalistic document, but shall be written in a clear and concise manner understandable to all citizens. The community impact statement shall include the following:

(1) The amount and location of land to be mined or used in the actual mining operations;

(2) The expected duration of the mining operations in each area of the community;

(3) The extent of anticipated mining-related property acquisitions, to the extent that such acquisitions are known or knowable;

(4) The intentions of the surface and mineral owners relative to the acquired property, to the extent that such intentions are known or knowable;

(5) A statement of the post-mining land use for all land within the permit boundary;

(6) The intended blasting plan and the expected time and duration it will affect each community;

(7) Information concerning the extent and nature of valley fills and the watersheds to be affected; and

(8) Economic information, such as the number of jobs created and annual coal production resulting from the surface-mining operation, the anticipated life of the mining operation and such other information as may be deemed appropriate.

c) Where the operator makes any significant revision to the permit application under section eighteen, article three, chapter twenty-two of this code, which revision substantially affects any of the information provided in subsection (b) of this section, the operator shall revise the affected provisions of its community impact statement and shall submit such revisions as set forth in subsection (a) of this section.

d) The provisions of this section shall apply as follows:
(1) To all surface-mining permits granted after the effective date of this article; and

(2) At the first renewal date of all previously issued permits: Provided, That the permittee shall be afforded ninety days from said date to comply with the provisions of this section.

§5B-2A-7. Coalfield community development statement.

(a) At the time that the operator applies for any permit pursuant to article three, chapter twenty-two of this code, the office shall coordinate the development of a coalfield community development statement as described in this section.

(b) The office shall establish a procedure for the development of the coalfield community development statement, which procedure shall include the following:

(1) A method for giving adequate notice to affected persons and entities about the coalfield community development statement process and how they can participate. Notice shall be given to at least the following:

(A) The permit applicant;

(B) The individuals living in the affected communities;

(C) Business owners and operators doing business in the affected communities;

(D) Any company owning land or resources on the property to be mined, including the surface and mineral owners of such property; and

(E) State and local government agencies such as county commissions, city or town governments and local or regional economic development authorities; and

(2) A procedure to follow which provides for fair and reasonable input into the development of the coalfield community development statement by those persons and entities listed in subdivision (1) of this subsection.

(c) The office shall determine what information, findings and recommendations shall be contained in the coalfield
community development statement, which shall include, but not be limited to, the following:

(1) An evaluation of the future of the community once mining operations are completed;

(2) A method to measure compliance with the provisions of section eight of this article; and

(3) A method to measure compliance with the provisions of section nine of this article.

(d) The Legislature hereby finds that, while the preparation of a coalfield community development statement is important to addressing the legitimate needs and concerns of the communities, individuals and entities which may be affected by surface-mining operations, such a statement as required by this section is in part subjective in nature. The Legislature further finds that, because of such subjectivity, the development of a coalfield community development statement shall not be an element of or in any way related to the application for and approval of any surface-mining permit under article three, chapter twenty-two of this code. Therefore, the following shall apply to this section:

(1) The office alone shall have authority over the coordination and development of the coalfield community development statement; and

(2) The development of the coalfield community development statement shall be a collaborative effort among those persons and entities identified in subdivision (1), subsection (b) of this section.

§5B-2A-8. Determining and developing needed community assets.

(a) As a part of the coalfield community development statement required by section seven of this article, the office, in a collaborative effort with those persons and entities identified in subdivision (1), subsection (b), section seven of this article, shall determine the community assets that may be developed by the community, county or region to foster its viability when surface-mining operations are completed.
(b) Community assets to be identified pursuant to subsection (a) of this section may include the following:

(1) Water and wastewater services;

(2) Developable land for housing, commercial development or other community purposes;

(3) Recreation facilities and opportunities; and

(4) Education facilities and opportunities.

c To assist the office in the development of the coalfield community development statement, the operator shall be required to prepare and submit to the office the information set forth in this subsection, as follows:

(1) A map of the area for which a permit under article three, chapter twenty-two of this code is being sought or has been obtained;

(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and

(3) A statement of the post-mining land use for all land which may be affected by the mining operations.

d In determining the nature and extent of the needed community assets, the office shall consider at least the following:

(1) An evaluation of the future of the community once mining operations are completed as required to be determined in the coalfield community development statement;

(2) The prospects for the long-term viability of any asset developed under this section;

(3) The desirability of foregoing some or all of the asset development required by this section in lieu of the requirements of section nine of this article;

(4) The determinations made during the development of the coalfield community development statement of the impacts of the mining operations on the community; and
(5) The extent to which the community, local, state or the federal government may participate in the development of assets the community needs to assure its viability.


(a) As a part of the coalfield community development statement required by section seven of this article, the office, in a collaborative effort with those persons and entities identified in subdivision (1), subsection (b), section seven of this article, shall determine the land and infrastructure needs in the general area of the surface-mining operations.

(b) For the purposes of this section, the term “general area” shall mean the county or counties in which the mining operations are being conducted, or any adjacent county.

(c) To assist the office in the development of the coalfield community development statement, the operator shall be required to prepare and submit to the office the information set forth in this subsection, as follows:

(1) A map of the area for which a permit under article three, chapter twenty-two of this code is being sought or has been obtained;

(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and

(3) A statement of the post-mining land use for all land which may be affected by the mining operations.

(d) In making a determination of the land and infrastructure needs in the general area of the mining operations, the office shall consider at least the following:

(1) The availability of developable land in the general area;

(2) The needs of the general area for developable land;

(3) The availability of infrastructure including, but not limited to, access roads, water service, wastewater service, and other utilities;

(4) The amount of land to be mined and the amount of valley to be filled;
(5) The amount, nature and cost to develop and maintain the community assets identified in section eight of this article; and

(6) The availability of federal, state and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

(e) In making a determination of the land and infrastructure needs in the general area of the surface-mining operations, the office shall give significant weight to developable land on or near existing or planned multi-lane highways.

§5B-2A-10. Action report; annual update.

(a) Based upon the information developed under sections eight and nine of this article, the office shall prepare an action report which shall make recommendations for achieving economic development initiatives, including identifying sources of potential funding.

(b) The office shall prepare an annual status update of the action report which shall describe accomplishments and prospects for continued economic development.

§5B-2A-11. Land acquisitions.

The office shall establish a procedure to assist property owners who desire voluntarily to sell their property to the operator or any person, firm or corporation directly or indirectly affiliated with the operator. The procedure developed shall be subject to the following:

(1) The procedure only shall apply if all the following conditions are met:

(A) The operator or any person, firm or corporation directly or indirectly affiliated with the operator, makes an offer in writing to purchase the property stating all the terms and conditions of the proposed purchase;

(B) The property to be purchased is located within one thousand feet of property which actually is or will be mined; and
(C) The structures are actually being used for commercial purposes or are occupied residences situate on the property to be purchased;

(2) Once a permit application has been filed, the operator shall notify the office of any intended property acquisitions to which this section applies;

(3) The office shall cause notice to be given to potential sellers of the procedure established by this section, but shall provide no other assistance unless requested by the potential seller;

(4) If requested by the potential seller, the office shall make a determination as to whether the value of the property intended to be acquired is diminished by ongoing or intended mining operations and that the purchase price offered by the purchaser is less than the value the property would have had prior to any diminution of value. The office only shall provide assistance if it determines that the value of such property is diminished and that the offer made by the operator is less than the value the property would have had prior to any diminution of value; and

(5) If the office determines that the value of such property is diminished and that the offer made by the operator is less than the value the property would have had prior to any diminution of value, then the office shall establish the value of such property prior to any diminution and shall certify the same to the parties.

§5B-2A-12. Rule making.

The office shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, to establish, implement and enforce the provisions of this article, which rules shall include, but not be limited to:

(1) The development of standards for establishing the value of property by the office; and

(2) A process for the development of a coalfield community development statement when multiple permit applications are applied for by one or more operators in any single county or contiguous area of an adjacent county.

The office of coalfield community development is continued until the first day of July, two thousand two, pursuant to the provisions of article ten, chapter four of this code.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

Article

1. Division of Environmental Protection.

3. Surface Coal Mining and Reclamation Act.

3A. Office of Explosives and Blasting.

11. Water Pollution Control Act.

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

*§22-1-7. Offices within division; continuation of the office of water resources.

(a) Consistent with the provisions of this article the director shall, at a minimum, maintain the following offices within the division:

(1) The office of abandoned mine lands and reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article two of this chapter;

(2) The office of mining and reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles three and four of this chapter;

(3) The office of air quality, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article five of this chapter;

(4) The office of oil and gas, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles six, seven, eight, nine and ten of this chapter;

(5) The office of water resources, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles eleven and twelve of this chapter.

* Clerk's Note: This section was also amended by SB 513 (Chapter 255), which passed prior to this act.
sion of the director, the provisions of articles eleven, twelve, thirteen and fourteen of this chapter;

(6) The office of waste management, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles fifteen, sixteen, seventeen, eighteen, nineteen and twenty of this chapter; and

(7) The office of explosives and blasting, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article three-a of this chapter.

(b) Pursuant to the provisions of article ten, chapter four of this code, the office of water resources within the division of environmental protection shall continue to exist until the first day of July, two thousand one.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.


§22-3-13a. Pre-blast survey requirements.

§22-3-22a. Blasting restrictions; site specific blasting design requirement.

§22-3-23. Release of bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.

§22-3-24. Water rights and replacement; waiver of replacement.

§22-3-30a. Blasting requirements; liability and civil penalties in the event of property damage.


(a) Any permit issued by the director pursuant to this article to conduct surface-mining operations shall require that the surface-mining operations will meet all applicable performance standards of this article and other requirements set forth in legislative rules proposed by the director.

(b) The following general performance standards are applicable to all surface mines and require the operation, at a minimum to:
(1) Maximize the utilization and conservation of the solid fuel resource being recovered to minimize reaffecting the land in the future through surface mining;

(2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicants' declared proposed land use following reclamation is not considered to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour: Provided, That in surface mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: Provided, however, That in surface mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the
mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and, the overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion and water pollution and revegetated in accordance with the requirements of this article: Provided further, That the director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, governing variances to the requirements for return to approximate original contour or highwall elimination and where adequate material is not available from surface-mining operations permitted after the effective date of this article for: (A) Underground mining operations existing prior to the third day of August, one thousand nine hundred seventy-seven; or (B) for areas upon which surface mining prior to the first day of July, one thousand nine hundred seventy-seven, created highwalls;

(4) Stabilize and protect all surface areas, including spoil piles, affected by the surface-mining operation to effectively control erosion and attendant air and water pollution;

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful vegetative cover by quick growing plants or by other similar means in order to protect topsoil from wind and water erosion and keep it free of any contamination by other acid or toxic material: Provided, That if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate and preserve in a like manner any other strata which is best able to support vegetation;
(1) Maximize the utilization and conservation of the solid fuel resource being recovered to minimize reaffecting the land in the future through surface mining;

(2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicants' declared proposed land use following reclamation is not considered to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour: Provided, That in surface mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: Provided, however, That in surface mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the
mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and, the overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion and water pollution and revegetated in accordance with the requirements of this article: Provided further, that the director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, governing variances to the requirements for return to approximate original contour or highwall elimination and where adequate material is not available from surface-mining operations permitted after the effective date of this article for: (A) Underground mining operations existing prior to the third day of August, one thousand nine hundred seventy-seven; or (B) for areas upon which surface mining prior to the first day of July, one thousand nine hundred seventy-seven, created highwalls;

(4) Stabilize and protect all surface areas, including spoil piles, affected by the surface-mining operation to effectively control erosion and attendant air and water pollution;

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful vegetative cover by quick growing plants or by other similar means in order to protect topsoil from wind and water erosion and keep it free of any contamination by other acid or toxic material: Provided, That if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate and preserve in a like manner any other strata which is best able to support vegetation;
(6) Restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) Ensure that all prime farmlands are mined and reclaimed in accordance with the specifications for soil removal, storage, replacement and reconstruction established by the United States secretary of agriculture and the soil conservation service pertaining thereto. The operator, at a minimum, shall:

(A) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and if not utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (C) replace and regrade the root zone material described in paragraph (B) of this subdivision, with proper compaction and uniform depth over the regraded spoil material; and (D) redistribute and grade in a uniform manner the surface soil horizon described in paragraph (A) of this subdivision;

(8) Create, if authorized in the approved surface-mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities in accordance with rules promulgated by the director;

(9) Where augering is the method of recovery, seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the director determines that the resulting impoundment of water in the auger holes may
create a hazard to the environment or the public welfare and safety: Provided, That the director may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the mineral resources or to protect against adverse water quality impacts;

(10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface-mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from entering ground and surface waters; (B) conducting surface-mining operations so as to prevent to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law; (C) constructing an approved drainage system pursuant to paragraph (B) of this subdivision, prior to commencement of surface-mining operations, the system to be certified by a person approved by the director to be constructed as designed and as approved in the reclamation plan; (D) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines; (E) unless otherwise authorized by the director, cleaning out and removing temporary or large settling ponds or other siltation structures after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the director; (F) restoring recharge capacity of the mined area to approximate premining conditions; and (G) any other actions prescribed by the director;

(11) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine working excavations, stabilize all waste piles in
designated areas through construction in compacted layers, including the use of noncombustible and impervious materials if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site will be stabilized and revegetated according to the provisions of this article;

(12) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with standards and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(13) Refrain from surface mining within five hundred feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: Provided, That the director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the director; and (B) the operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: Provided, however, That any breakthrough which does occur shall be sealed;

(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters, and that contingency plans are developed to prevent sustained combustion: Provided, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the director, which shall include provisions to:
(A) Maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; and

(B) Require that all blasting operations be conducted by persons certified by the office of explosives and blasting.

(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface-mining operations. Time limits shall be established by the director requiring backfilling, grading and planting to be kept current: Provided, That where surface-mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the director may grant a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) If the director finds in writing that:

(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;
(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article; and

(vi) Provisions for the off-site storage of spoil will comply with subdivision (22), subsection (b) of this section;

(B) If the director has promulgated specific rules to govern the granting of the variances in accordance with the provisions of this subparagraph and has imposed any additional requirements as the director considers necessary;

(C) If variances granted under the provisions of this paragraph are reviewed by the director not more than three years from the date of issuance of the permit: Provided, That the underground mining permit shall terminate if the underground operations have not commenced within three years of the date the permit was issued, unless extended as set forth in subdivision (3), section eight of this article; and

(D) If liability under the bond filed by the applicant with the director pursuant to subsection (b), section eleven of this article is for the duration of the underground mining operations and until the requirements of subsection (g), section eleven and section twenty-three of this article have been fully complied with;

(17) Ensure that the construction, maintenance and postmining conditions of access and haul roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property: Provided, That access roads constructed for and used to provide infrequent service to surface facilities, such as ventilators or monitoring devices, are exempt from specific construction criteria provided adequate stabilization to control erosion is achieved through alternative measures;

(18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to the channel so as to significantly alter the normal flow of water;
(19) Establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected or of a fruit, grape or berry producing variety suitable for human consumption and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or when necessary to achieve the approved postmining land use plan;

(20) Assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than five growing seasons, as defined by the director, after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection: Provided, That when the director issues a written finding approving a long-term agricultural postmining land use as a part of the mining and reclamation plan, the director may grant exception to the provisions of subdivision (19) of this subsection: Provided, however, That when the director approves an agricultural postmining land use, the applicable five growing seasons of responsibility for revegetation begins on the date of initial planting for the agricultural postmining land use;

On lands eligible for remining assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than two growing seasons, as defined by the director after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection;

(21) Protect off-site areas from slides or damage occurring during surface-mining operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area: Provided, That spoil material may be placed outside the permit area, if approved by the director after a finding that environmental benefits will result from the placing of spoil material outside the permit area;
(22) Place all excess spoil material resulting from surface-mining activities in a manner that: (A) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in a way as to assure mass stability and to prevent mass movement; (B) the areas of disposal are within the bonded permit areas and all organic matter is removed immediately prior to spoil placements; (C) appropriate surface and internal drainage system or diversion ditches are used to prevent spoil erosion and movement; (D) the disposal area does not contain springs, natural water courses or wet weather seeps, unless lateral drains are constructed from the wet areas to the main under drains in a manner that filtration of the water into the spoil pile will be prevented; (E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the director, the spoil could be placed in compliance with all the requirements of this article, and is placed, where possible, upon, or above, a natural terrace, bench or berm, if placement provides additional stability and prevents mass movement; (F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed; (G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses; (H) the design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and (I) all other provisions of this article are met: Provided, That where the excess spoil material consists of at least eighty percent, by volume, sandstone, limestone or other rocks that do not slake in water and will not degrade to soil material, the director may approve alternate methods for disposal of excess spoil material, including fill placement by dumping in a single lift, on a site specific basis: Provided, however, That the services of a qualified registered professional engineer experienced in the design and construction of earth and rockfill embankment are utilized: Provided further, That the approval may not be unreasonably withheld if the site is suitable;

(23) Meet any other criteria necessary to achieve reclamation in accordance with the purposes of this article, taking into
consideration the physical, climatological and other characteristics of the site;

(24) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of these resources where practicable; and

(25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where: (A) Natural barriers do not provide adequate stability; (B) natural barriers would result in potential future water quality deterioration; and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That at a minimum, the constructed barrier shall be of sufficient width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points.

(c) (1) The director may prescribe procedures pursuant to which he or she may permit surface-mining operations for the purposes set forth in subdivision (3) of this subsection.

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection, a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b) or (d) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill, except as provided in subparagraph (A), subdivision (4) of this subsection, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accordance with the requirements of this subsection.

(3) In cases where an industrial, commercial, woodland, agricultural, residential, public or fish and wildlife habitat and
recreation lands use is proposed for the postmining use of the
affected land, the director may grant a permit for a surface-
mining operation of the nature described in subdivision (2) of
this subsection where: (A) The proposed postmining land use
is determined to constitute an equal or better use of the affected
land, as compared with premining use; (B) the applicant
presents specific plans for the proposed postmining land use
and appropriate assurances that the use will be: (i) Compatible
with adjacent land uses; (ii) practicable with respect to achiev-
ing the proposed use; (iii) supported by commitments from
public agencies where appropriate; (iv) practicable with respect
to private financial capability for completion of the proposed
use; (v) planned pursuant to a schedule attached to the reclama-
tion plan so as to integrate the mining operation and reclama-
tion with the postmining land use; and (vi) designed by a person
approved by the director in conformance with standards
established to assure the stability, drainage and configuration
necessary for the intended use of the site; (C) the proposed use
would be compatible with adjacent land uses, and existing state
and local land use plans and programs; (D) the director provides
the county commission of the county in which the land is
located and any state or federal agency which the director, in
his or her discretion, determines to have an interest in the
proposed use, an opportunity of not more than sixty days to
review and comment on the proposed use; and (E) all other
requirements of this article will be met.

(4) In granting any permit pursuant to this subsection, the
director shall require that: (A) A natural barrier be retained to
inhibit slides and erosion on permit areas where outcrop
barriers are required: *Provided,* That constructed barriers may
be allowed where: (i) Natural barriers do not provide adequate
stability; (ii) natural barriers would result in potential future
water quality deterioration; and (iii) natural barriers would
conflict with the goal of maximum utilization of the mineral
resource: *Provided, however,* That, at a minimum, the con-
structed barrier shall be sufficient in width and height to
provide adequate stability and the stability factor shall equal or
exceed that of the natural outcrop barrier: *Provided further,*
That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points; (B) the reclaimed area is stable; (C) the resulting plateau or rolling contour drains inward from the outslopes except at specific points; (D) no damage will be done to natural watercourses; (E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use: And provided further, That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subdivision (22), subsection (b) of this section; and (F) ensure stability of the spoil retained on the mountaintop and meet the other requirements of this article.

(5) All permits granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit; unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) In addition to those general performance standards required by this section, when surface mining occurs on slopes of twenty degrees or greater, or on lesser slopes as may be defined by rule after consideration of soil and climate, no debris, abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural downslope below the initial bench or mining cut: Provided, That soil or spoil material from the initial cut of earth in a new surface-mining operation may be placed on a limited specified area of the downslope below the initial cut if the permittee can establish to the satisfaction of the director that the soil or spoil will not slide and that the other requirements of this section can still be met.

(e) The director may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, that permit variances from the approximate original contour requirements of this section: Provided, That the watershed control of the area is improved: Provided, however, That complete backfilling with spoil material is required to
(f) The director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, for the design, location, construction, maintenance, operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection shall include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: Provided, That whenever the director finds that any coal processing waste pile constitutes an imminent danger to human life, he or she may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who operated or operates a pile or the landowners involved, enter upon the premises where any coal processing waste pile exists and may take or order to be taken any remedial action that may be necessary or expedient to secure the coal processing waste pile and to abate the conditions which cause the danger to human life: Provided, however, That the cost reasonably incurred in any remedial action taken by the director under this subsection may be paid for initially by funds appropriated to the division for these purposes, and the sums expended shall be recovered from any responsible operator or landowner, individually or jointly, by suit initiated by the attorney general at the request of the director. For purposes of this subsection "operates" or "operated" means to enter upon a coal processing waste pile, or part of a coal processing waste pile, for the purpose of disposing, depositing, dumping coal processing wastes on the pile or removing coal processing waste from the pile, or to employ a coal processing waste pile for retarding the flow of or for the impoundment of water.
§22-3-13a. Pre-blast survey requirements.

(a) At least thirty days prior to commencing blasting, as defined in section twenty-two-a of this article, an operator or an operator's designee shall make the following notifications in writing to all owners and occupants of man-made dwellings or structures that the operator or operator's designee will perform pre-blast surveys in accordance with subsection (f) of this section:

1. For surface-mining operations that are less than two hundred acres in a single permitted area or less than three hundred acres of contiguous or nearly contiguous area of two or more permitted areas, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted area or areas;

2. For all other surface-mining operations, the required notifications shall be to all owners and occupants of man-made dwellings or structures within five tenths of a mile of the permitted area or areas or seven tenths of a mile of the proposed blasting site, whichever is greater.

(b) Within thirty days of the effective date of this section, any operator identified in subdivision (2), subsection (a) of this section, that has already completed pre-blast surveys for man-made dwellings or structures within five tenths of a mile of the permit area and has commenced operations by the effective date of this section, shall be required to notify in writing all additional owners and occupants of man-made dwellings or structures within seven tenths of a mile of the proposed blasting site. Except for those dwellings or structures for which the operator secures a written waiver or executes an affidavit in accordance with the requirements of subsection (c) of this section, the operator or the operator's designee must perform the additional pre-blast surveys in accordance with subsection (f) of this section within ninety days of the effective date of this section.

(c) An occupant or owner of a man-made dwelling or structure within the areas described in subdivisions (1) or (2) of
subsection (a) of this section, may waive the right to a pre-blast survey in writing. If a dwelling is occupied by a person other than the owner, both the owner and the occupant must waive the right to a pre-blast survey in writing. If an occupant or owner of a man-made dwelling or structure refuses to allow the operator or the operator's designee access to the dwelling or structure and refuses to waive in writing the right to a pre-blast survey or to the extent that access to any portion of the structure, underground water supply or well is impossible or impractical under the circumstances, the pre-blast survey shall indicate that access was refused, impossible or impractical. The operator or the operator's designee shall execute a sworn affidavit explaining the reasons and circumstances surrounding the refusals. The office of explosives and blasting shall not determine the pre-blast survey to be incomplete because it indicates that access to a particular structure, underground water supply or well was refused, impossible or impractical. The operator shall send copies of all written waivers and affidavits executed pursuant to this subsection to the office of explosives and blasting.

(d) If a pre-blast survey was waived by the owner and was within the requisite area and the property was sold, the new owner may request a pre-blast survey from the operator.

(e) An owner within the requisite area may request, from the operator, a pre-blast survey on structures constructed after the original pre-blast survey.

(f) The pre-blast survey shall include:

(1) The names, addresses or description of structure location and telephone numbers of the owner and the residents of the structure being surveyed and the structure number from the permit blasting map;

(2) The current home insurer of the owner and the residents of the structure;

(3) The names, addresses and telephone numbers of the surface-mining operator and the permit number;
(4) The current general liability insurer of the surface-mining operator;

(5) The name, address and telephone number of the person or firm performing the pre-blast survey;

(6) The current general liability insurer of the person or firm performing the pre-blast survey;

(7) The date of the pre-blast survey and the date it was mailed or delivered to the office of explosives and blasting;

(8) A general description of the structure and its appurtenances including, but not limited to: (A) The number of stories; (B) the construction materials for the frame and the exterior and interior finish; (C) the type of construction including any unusual or substandard construction; and (D) the approximate age of the structure;

(9) A general description of the survey methods and the direction of progression of the survey, including a key to abbreviations used;

(10) Written documentation and drawings, videos or photographs of the pre-blast defects and other physical conditions of all structures, appurtenances and water sources which could be affected by blasting;

(11) Written documentation and drawings, videos or photographs of the exterior and interior of the structure to indicate pre-blast defects and condition;

(12) Written documentation and drawings, videos or photographs of the exterior and interior of any appurtenance of the structure to indicate pre-blast defects and condition;

(13) Sufficient exterior and interior photographs or videos, using a variety of angles, of the structure and its appurtenances to indicate pre-blast defects and the condition of the structure and appurtenances;

(14) Written documentation and drawings, videos or photographs of any unusual or substandard construction technique and materials used on the structure and/or its appurtenances;
(15) Written documentation relating to the type of water supply, including a description of the type of system and treatment being used, an analysis of untreated water supplies, a water analysis of water supplies other than public utilities, and information relating to the quantity and quality of water;

(16) When the water supply is a well, written documentation, where available, relating to the type of well; the well log; the depth, age and type of casing or lining; the static water level; flow data; the pump capacity; the drilling contractor; and the source or sources of the documentation;

(17) A description of any portion of the structure and appurtenances not documented or photographed and the reasons;

(18) The signature of the person performing the survey; and

(19) Any other information required by the chief which additional information shall be established by rule in accordance with article three, chapter twenty-nine-a of this code.

(g) Except for additional pre-blast surveys prepared within one hundred twenty days of the effective date of this section, pursuant to subsection (b) of this section, the pre-blast survey shall be submitted to the office of explosives and blasting at least fifteen days prior to the commencement of any production blasting. The office of explosives and blasting shall review each pre-blast survey as to form and completeness only and notify the operator of any deficiencies. The office of explosives and blasting shall notify the owner and occupant of the location and availability of the pre-blast survey and a copy of the pre-blast survey shall be provided to the owner and/or occupant upon request.

(h) The surface-mining operator shall file notice of the pre-blast survey or the waiver in the office of the county clerk of the county commission of the county where the man-made dwelling or structure is located to notify the public that a pre-blast survey has been conducted or waived. The notice shall be on a form prescribed by the office of explosives and blasting.
(i) The chief of the office of explosives and blasting shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, dealing with pre-blast survey requirements and setting the qualifications for individuals and firms performing pre-blast surveys.

(j) The provisions of this section shall not apply to the following: (1) Underground coal mining operations; and (2) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods.

§22-3-22a. Blasting restrictions; site specific blasting design requirement.

(a) For purposes of this section, the term "production blasting" means blasting that removes the overburden to expose underlying coal seams and shall not include construction blasting.

(b) For purposes of this section, the term "construction blasting" means blasting to develop haul roads, mine access roads, coal preparation plants, drainage structures, or underground coal mine sites and shall not include production blasting.

(c) For purposes of this section, the term "protected structure" means any of the following structures that are situated outside the permit area: an occupied dwelling, a temporarily unoccupied dwelling which has been occupied within the past ninety days, a public building, a structure for commercial purposes, a school, a church, a community or institutional building, a public park or a water well.

(d) Production blasting is prohibited within three hundred feet of a protected structure or within one hundred feet of a cemetery.

(e) Blasting within one thousand feet of a protected structure shall have a site specific blast design approved by the office of explosives and blasting. The site specific blast design shall limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts to do the following:
(1) Prevent injury to persons; (2) prevent damage to public
and private property outside the permit area; (3) prevent
adverse impacts on any underground mine; (4) prevent change
in the course, channel or availability of ground or surface water
outside the permit area; and (5) reduce dust outside the permit
area.

In the development of a site specific blasting plan consider-
ation shall be given, but is not limited to, the physical condi-
tion, type and quality of construction of the protected structure,
the current use of the protected structure and the concerns of the
owner or occupant living in the protected structure in the
blasting schedule.

(f) An owner or occupant of a protected structure may
waive the blasting prohibition within three hundred feet or the
site specific restriction within one thousand feet in writing. If
a protected structure is occupied by a person other than the
owner, both the owner and the occupant of the protected
structure shall waive the blasting prohibition within three
hundred feet or the site specific restriction within one thousand
feet in writing. The operator shall send copies of all written
waivers executed pursuant to this subsection to the office of
explosives and blasting. Written waivers executed and filed
with the office of explosives and blasting shall be valid during
the life of the permit or any renewals of the permit and shall be
enforceable against any subsequent owners or occupants of the
protected structure.

(g) The provisions of this section shall not apply to the
following: (1) Underground coal mining operations; (2) the
surface operations and surface impacts incident to an under-
ground coal mine; and (3) the extraction of minerals by
underground mining methods or the surface impacts of the
underground mining methods: Provided, That nothing con-
tained in this section shall be construed to exempt any coal
mining operation from the general performance standards as
contained in section thirteen of this article and any rules
promulgated pursuant thereto.
§22-3-23. Release of bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.

(a) The permittee may file a request with the director for the release of a bond or deposit. The permittee shall publish an advertisement regarding such request for release in the same manner as is required of advertisements for permit applications. A copy of such advertisement shall be submitted to the director as part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed and a description of the results achieved as they relate to the permittee’s approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters which the permittee has sent to adjoining property owners, local government bodies, planning agencies, sewage and water treatment authorities or water companies in the locality in which the surface-mining operation is located, notifying them of the permittee’s intention to seek release from the bond. Any request for grade release shall also be accompanied by final maps.

(b) Upon receipt of the application for bond release, the director, within thirty days, taking into consideration existing weather conditions, shall conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of such pollution and the estimated cost of abating such pollution. The director shall notify the permittee in writing of his or her decision to release or not to release all or part of the bond or deposit within sixty days from the date of the initial publication of the advertisement if no public hearing is requested. If a public hearing is held, the director’s decision shall be issued within thirty days thereafter.
(c) If the director is satisfied that reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this article, he or she may release said bond or deposit, in whole or in part, according to the following schedule:

1. When the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with the operator's approved reclamation plan, the release of sixty percent of the bond or collateral for the applicable bonded area: Provided, That a minimum bond of ten thousand dollars shall be retained after grade release;

2. Two years after the last augmented seeding, fertilizing, irrigation or other work to ensure compliance with subdivision (19), subsection (b), section thirteen of this article, the release of an additional twenty-five percent of the bond or collateral for the applicable bonded area: Provided, That a minimum bond of ten thousand dollars shall be retained after the release provided for in this subdivision; and

3. When the operator has completed successfully all surface-mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified in subdivision (20), subsection (b), section thirteen of this article: Provided, That the revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan: Provided, however, That such a release may be made where the quality of the untreated post-mining water discharged is better than or equal to the premine water quality discharged from the mining site.

No part of the bond or deposit may be released under this subsection so long as the lands to which the release would be applicable are contributing additional suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section thirteen of this article, or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section
nine of this article. Where a sediment dam is to be retained as a permanent impoundment pursuant to section thirteen of this article, or where a road or minor deviation is to be retained for sound future maintenance of the operation, the portion of the bond may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the director.

Notwithstanding the bond release scheduling provisions of subdivisions (1), (2) and (3) of this subsection, if the operator completes the backfilling and reclamation in accordance with an approved post-mining land use plan that has been approved by the division of environmental protection and accepted by a local or regional economic development or planning agency for the county or region in which the operation is located, provisions for sound future maintenance are assured by the local or regional economic development or planning agency, and the quality of any untreated postmining water discharge complies with applicable water quality criteria for bond release, the director may release the entire amount of said bond or deposit. The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to govern a bond release pursuant to the terms of this paragraph.

(d) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and notifying the operator of the right to a hearing.

(e) When any application for total or partial bond release is filed with the director, he or she shall notify the municipality in which a surface-mining operation is located by registered or certified mail at least thirty days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which is or may be adversely affected by release of the bond or the responsible officer or head of any federal, state or local governmental agency which has jurisdiction by law or special expertise with
respect to any environmental, social or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations, has the right to file written objections to the proposed bond release and request a hearing with the director within thirty days after the last publication of the permittee's advertisement. If written objections are filed and a hearing requested, the director shall inform all of the interested parties of the time and place of the hearing and shall hold a public hearing in the locality of the surface-mining operation proposed for bond release within three weeks after the close of the public comment period. The date, time and location of such public hearing shall also be advertised by the director in a newspaper of general circulation in the same locality.

(g) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the director pursuant to this section, the director may hold an informal conference to resolve any written objections and satisfy the hearing requirements of this section thereby.

(h) For the purpose of such hearing, the director has the authority and is hereby empowered to administer oaths, subpoena witnesses and written or printed materials, compel the attendance of witnesses, or production of materials, and take evidence including, but not limited to, inspections of the land affected and other surface-mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this section shall be made and a transcript made available on the motion of any party or by order of the director at the cost of the person requesting the transcript.

§22-3-24. Water rights and replacement; waiver of replacement.

(a) Nothing in this article affects in any way the rights of any person to enforce or protect, under applicable law, the person's interest in water resources affected by a surface-mining operation.

(b) Any operator shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's
supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution or interruption proximately caused by the surface-mining operation, unless waived by the owner.

(c) There is a rebuttable presumption that a mining operation caused damage to an owner's underground water supply if the inspector determines the following: (1) Contamination, diminution or damage to an owner's underground water supply exists; and (2) a pre-blast survey was performed, consistent with the provisions of section thirteen-a of this article, on the owner's property including the underground water supply that indicated that contamination, diminution or damage to the underground water supply did not exist prior to the mining conducted at the mining operation. The operator conducting the mining operation shall: (1) Provide an emergency drinking water supply within twenty-four hours; (2) provide a temporary water supply within seventy-two hours; (3) provide a permanent water supply within thirty days; and (4) pay all reasonable costs incurred by the owner in securing a water supply.

(d) An owner aggrieved under the provisions of subsections (b) or (c) of this section, may seek relief in court or pursuant to the provisions of section five, article three-a of this chapter.

(e) The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the requirements of this section.

(f) The provisions of subsection (c) of this section shall not apply to the following: (1) Underground coal mining operations; (2) the surface operations and surface impacts incident to an underground coal mine; and (3) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods.

§22-3-30a. Blasting requirements; liability and civil penalties in the event of property damage.
(a) Blasting of overburden and coal shall be conducted in accordance with the rules and laws established to regulate blasting.

(b) If the division of environmental protection establishes after an inspection that a blast was not in compliance with the regulations governing blasting parameters and resulted in property damage to a protected structure, as defined in section twenty-two-a of this article, other than water wells, the following penalties shall be imposed for each permit area or contiguous permit areas where the blasting was out of compliance:

(1) For the first offense, the operator shall be assessed a penalty of not less than one thousand dollars nor more than five thousand dollars.

(2) For the second offense and each subsequent offense within one year of the first offense, the surface-mining operator shall be assessed a penalty of not less than five thousand dollars nor more than ten thousand dollars.

(3) For the third offense and any subsequent offense within one year of the first offense, or for the failure to pay any assessment set forth within a reasonable time established by the director, the surface-mining operator's permit shall be subject to an immediate issuance of a cessation order, as set out in section sixteen of this article. The cessation order shall only be released upon written order of the director of the division of environmental protection when the following conditions have been met:

(A) A written plan has been established and filed with the director assuring that additional violations will not occur;

(B) The permittee has provided compensation for the property damages or the assurance of adequate compensation for the property damages that have occurred; and

(C) A permittee shall provide such monetary and other assurances as the director shall determine appropriate to compensate for future property damages. The monetary assurances required shall be in an amount at least equal to the
amount of compensation required in paragraph (B), subdivision (3) of this subsection.

(4) In addition to the penalties described in subdivisions (1), (2) and (3) of this subsection, for the second and subsequent offenses on any one permitted area regardless of the time period, the owner of the protected structure is entitled to a rebuttable presumption that the property damage is a result of the blast if: (A) A pre-blast survey was performed; and (B) the blasting site to which the second or subsequent offense relates is within seven tenths of a mile of the protected structure.

(5) No more than one offense shall arise out of any one shot. For purposes of this section, “shot” means a single blasting event composed of one or multiple detonations of explosive material, or the assembly of explosive materials for this purpose. One “shot” may be composed of numerous explosive charges detonated at intervals measured in milliseconds.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the division of environmental protection may not impose penalties on an operator for the violation of any rule identified in subsection (a) of this section that is merely administrative in nature.

(d) The remedies provided in this section are not exclusive and shall not bar an owner or occupant from any other remedy accorded by law.

(e) Where inspection by the division of environmental protection establishes that production blasting, in violation of section twenty-two-a of this article, was done within three hundred feet or was not site specific production blasting within one thousand feet of any protected structure as defined in section twenty-two-a of this article, or within one hundred feet of a cemetery, the monetary penalties and revocation, as set out in subsection (b) of this section, apply.

(f) All penalties and liabilities as set forth in this section shall be assessed by the director, collected by the director and
deposited with the treasurer of the state of West Virginia, in the "general school fund".

(g) The director shall propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code for the implementation of this section.

(h) The provisions of this section shall not apply to the following: (1) Underground coal mining operations; (2) the surface operations and surface impacts incident to an underground coal mine; and (3) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods: Provided, That nothing contained in this section shall be construed to exempt any coal mining operation from the general performance standards as contained in section thirteen of this article and any rules promulgated pursuant thereto.

ARTICLE 3A. OFFICE OF EXPLOSIVES AND BLASTING.

§22-3A-1. Legislative findings; policy and purposes.

(a) The Legislature declares that the establishment of an office within the division of environmental protection to enforce blasting laws pursuant to surface-mining within the state of West Virginia is in the public interest and will promote the protection of the property and citizens of the state of West Virginia without sacrificing economic development. It is the policy of the state of West Virginia, in cooperation with other governmental agencies, public and private organizations, and
the citizens of this state, to use reasonable means and measures
to prevent harm from the effects of blasting to its property and
citizens.

(b) It is the purpose of this article to create the office of
explosives and blasting within the division of environmental
protection, and to vest in the office the authority to enforce all
the rules and laws established to regulate blasting consistent
with the authority granted in this article.

§22-3A-2. Office of explosives and blasting created; transfer of
functions; responsibilities.

(a) There is hereby created the office of explosives and
blasting within the division of environmental protection. The
director shall appoint a chief to administer the office. The chief
shall serve at the will and pleasure of the director.

(b) As of the effective date of this article, the office of
explosives and blasting shall assume responsibility for the
enforcement of all the rules and laws established to regulate
blasting consistent with the authority granted in this article.

(c) Terms used in this article shall have the definitions set
forth in article three of this chapter, unless used in a context that
clearly requires a different meaning or as otherwise defined
herein.


The duties of the office shall include, but are not limited to:

(a) Regulating blasting on all surface-mining operations;

(b) Implementing and overseeing the pre-blast survey
process, as set forth in section thirteen-a, article three of this
chapter;

(c) Maintaining and operating a system to receive and
address questions, concerns and complaints relating to mining
operations;

(d) Setting the qualifications for individuals and firms
performing pre-blast surveys;
(e) The education, training, examination and certification of blasters; and

(f) Proposing rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code for the implementation of this article.

§22-3A-4. Legislative rules on surface-mining blasting; disciplinary procedures for certified blasters.

(a) The office of explosives and blasting shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, for the purposes of implementing this article. The rules shall include, but not be limited to, the following:

(1) A procedure for the review, modification and approval, prior to the issuance of any permit, of any blasting plan required to be submitted with any application for a permit to be issued by the director pursuant to article three of this chapter, which sets forth procedures for the inspection and monitoring of blasting operations for compliance with blasting laws and rules, and for the review and modification of the blasting plan of any operator against whom an enforcement action is taken by the division of environmental protection;

(2) Specific minimum requirements for pre-blast surveys, as set forth in section thirteen-a, article three of this chapter;

(3) A procedure for review of pre-blast surveys required to be submitted under section thirteen-a, article three of this chapter;

(4) A procedure for the use of seismographs for production blasting which shall be made part of the blasting log;

(5) A procedure to warn of impending blasting to the owners or occupants adjoining the blasting area;

(6) A procedure to limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to: (A) Prevent injury to persons; (B) prevent damage to public and
28 private property outside the permit area; (C) prevent adverse
29 impacts on any underground mine; (D) prevent change in the
30 course, channel or availability of ground or surface water
31 outside the permit area; and (E) reduce dust outside the permit
32 area;
33
34 (7) Provisions for requiring mining operators to publish the
35 planned blasting schedule in a newspaper of general circulation
36 in the locality of the mining operation; and
37
38 (8) Provisions for requiring mining operators to provide
39 adequate advance written notice of the proposed blasting
40 schedule to local governments, owners and occupants living
41 within the distances prescribed in subsection (a), section
42 thirteen-a, article three of this chapter.
43
44 (b) The office of explosives and blasting shall propose rules
45 for legislative approval in accordance with the provisions of
46 article three, chapter twenty-nine-a of this code. The rules shall
47 include, but not be limited to, the following:
48
49 (1) Provisions for establishing a process for the education,
50 training, examination and certification of blasters working on
51 surface-mining operations; and
52
53 (2) Provisions for establishing disciplinary procedures for
54 all certified blasters responsible for blasting on surface-mining
55 operations conducted within this state in violation of any law or
56 rule promulgated by the division of environmental protection to
57 regulate blasting.


1 (a) The office of explosives and blasting shall establish and
2 manage a process for the filing, administration and resolution
3 of claims related to blasting.
4
5 (b) Claims which may be filed and determined under the
6 provisions of this section shall be those arising from both of the
7 following: (1) Damage to property arising from blasting
8 activities conducted pursuant to a permit granted under article
9 three of this chapter; and
(2) The damage is incurred by a claimant who is the owner or occupant of the property.

(c) The claims process established by the office of explosives and blasting shall include the following:

(1) An initial determination by the office of the merit of the claim; and

(2) An arbitration process whereby the claim can be determined and resolved by an arbitrator in a manner which is inexpensive, prompt and fair to all parties.

The office shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code for the development of standards for establishing rules relating to the initial claim determination and the arbitration process provided in this subsection.

(d) If the operator disagrees with the initial determination made by the office and requests arbitration, then the following shall apply:

(1) Any party may be represented by a representative of their choice;

(2) At the request of the claimant, the office shall provide the claimant with representation in the arbitration process, which representation shall not necessarily be an attorney-at-law; and

(3) If the claim is upheld in whole or in part, then the operator shall pay the costs of the proceeding, as well as reasonable representation fees and costs of the claimant, in an amount not to exceed one thousand dollars.

(e) Participation in the claims process created by this section shall be voluntary for the claimant. However, once the claimant has submitted a claim for determination under the provisions of this section, it is intended that the finding of the office, if not taken to arbitration, shall be final. If arbitration is requested, it is intended that the results of such arbitration shall be final. The office shall provide written notification to the claimant of the provisions of this subsection and shall secure a
written acknowledgment from the claimant prior to processing a claim pursuant to the provisions of this section.

(f) The operator shall pay any claim for which the operator is adjudged liable within thirty days of a final determination. If the claim is not paid within thirty days, the director shall issue a cessation order pursuant to section sixteen, article three of this chapter for all sites operated by the operator.

(g) No permit to mine coal shall be granted unless the permit applicant agrees to be subject to the terms of this section.

(h) To fulfill its responsibilities pursuant to this section, the office may retain the services of inspectors, experts and other persons or firms as may be necessary.

§22-3A-6. Rules, orders and permits to remain in effect; proceedings not affected.

(a) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective prior to the enactment of this article shall remain in effect according to their terms until modified, terminated, superseded, set aside or revoked pursuant to this article, by a court of competent jurisdiction, or by operation of law.

(b) Any proceedings, including notices of proposed rule-making, or any application for any license, permit or certificate pending before the division are not affected by this enactment.

§22-3A-7. Funding.

(a) The office shall assess each operator permitted under the provisions of this chapter a fee on each quantity of explosive material used for any purpose on the surface-mining operations.

(b) The office shall propose a legislative rule for promulgation in accordance with article three, chapter twenty-nine-a of this code, establishing the fees required by this section. The fees shall be calculated to generate sufficient money to provide for the operation of this office and the office of coalfield commu-
nity development as provided for in article two-a, chapter five-b of this code.

(c) The office shall deposit all moneys received from these fees into a special revenue fund to be known as the "mountain-top removal fund" in the state treasury to be expended by the offices in the performance of their duties. The expenditure of moneys in the fund is not authorized from collections, but shall be appropriated by the Legislature.

§22-3A-8. Transfer of personnel and assets.

The director shall transfer to the office any personnel and assets presently used to perform or used in the performance of the duties and functions required by this article.


Except for sections five and seven of this article, all provisions of this article are also applicable to surface-blasting activities related to underground mining operations.

§22-3A-10. Office to conduct study.

(a) The office shall conduct or participate in studies or research to develop scientifically based data and recommendations of the following:

(1) Ground vibrations associated with blasting and how the vibrations impact protected structures;

(2) The proper size and shot parameters to assure protection of protected structures;

(3) The necessity of expanding the parameters where blasting is prohibited in relation to protected structures to assure that the shots do not cause damage to protected structures;

(4) The appropriateness of modifying pre-blast survey requirements that reflect a pattern of excessive ground vibration and air blast has occurred within a measured distance;

(5) Analysis of the appropriate air blast limitations to determine damage criteria; and
(6) Any other data or recommendations the office deems appropriate.

(b) The office shall report the data and recommendations to the joint committee on government and finance on or before the first day of January, two thousand one, and annually thereafter or as otherwise required.


The office of explosives and blasting is continued until the first day of July, two thousand two, pursuant to the provisions of article ten, chapter four of this code.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7a. Certification agreements; required provisions; effective date.

(a) Any applicant for the water quality certification that seeks certification of activities covered by the United States army corps of engineers permits issued in accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 for use at or in conjunction with a surface coal mining operation as defined in section three, article three of this chapter, certification may be issued subject to the following conditions:

(1) If the applicant's surface coal mining operation will not impact waters of the state designated as national resource waters and streams where trout naturally reproduce and will not impact wetlands of the state in a manner inconsistent with all applicable state or federal standards as the case may be, as required by the federal Clean Water Act, and if the watershed above the toe of the farthest downstream permanent structure authorized pursuant to the United States army corps of engineers permits issued in accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 is less than two hundred fifty acres, then the director may issue a water quality certification pursuant to the requirements of this section. If the watershed above the toe of the farthest downstream permanent structure impacted is equal to or greater than two hundred fifty acres, the director shall require that mitigation be undertaken. Additionally, the director may require mitigation for temporary impacts
to waters of the state as specified in subdivision (2) of this subsection.

(2) If the watershed above the toe of the farthest down-stream permanent structure authorized pursuant to the United States army corps of engineers permits issued in accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 is greater than or equal to two hundred fifty acres and all other necessary requirements are met consistent with this section, the director shall further condition a water quality certification on a requirement that the applicant mitigate the expected water quality impacts under the following conditions:

(A) The water quality certification may require mitigation at a ratio appropriate to the type of waters impacted, consistent with state or federal standards as required by the federal Clean Water Act, for the types and locations of waters impacted;

(B) For waters of the state isolated as a result of a permanent structure, the maximum mitigation ratio shall be five-tenths acre of mitigation area for every one acre of those isolated waters;

(C) The director may accept mitigation on the permitted area, mitigation off the permitted area, mitigation banking of waters of the state, or any combination thereof, or any other mitigation measure acceptable to the director; and

(D) Upon completion of the work required by an agreement to conduct operations authorized by this subsection the surface coal mining operation shall obtain a certification from a registered professional engineer that all mitigation work specified in the agreement has been completed in accordance with the conditions of the water quality certification. The director shall promptly review the certification and provide to the surface coal mining operation with notice that all mitigation work has been successfully completed, or that further mitigation work is necessary to meet the conditions imposed by the water quality certification. The mitigation amount may not exceed two hundred thousand dollars per acre of stream disturbed above the toe of the farthest downstream permanent structure. Those moneys shall be deposited in the stream restoration fund under the jurisdiction of the division of
environmental protection and any expenditures from this fund after the thirtieth day of June, one thousand nine hundred ninety-eight, shall not be authorized from collections but shall only be authorized by appropriation by the Legislature. Additionally, the expenditures are only authorized in those counties where the activity leading to the mitigation occurred or in those counties adjacent to the counties where the activity leading to the mitigation occurred. The director shall by the thirty-first day of December of each year provide a report to the joint committee on government and finance on receipts and expenditures from the stream restoration fund, the number of acreage reclaimed by the division through the use of these funds and the effectiveness of achieving stream restoration through the payment of the mitigation amounts into the fund in lieu of reclamation by the certificate holder.

(3) The director shall confer with representatives of the surface coal mining industry and representatives of environmental organizations with an interest in water quality in developing a manual of approval options for mitigation on permitted areas, mitigation off permitted areas and mitigation involving banking of waters of the state.

(4) The proposed surface coal mining operation shall comply with all applicable state and federal laws, rules and regulations.

(5) The director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, for the purpose of implementing the provisions of this section which rules shall include, but not be limited to, the following:

(A) Establishing all necessary operational and performance requirements for an operator undertaking activities covered by this section;

(B) Modifying the provisions of this section, when necessary and appropriate to bring the provisions of this section into compliance with state or federal law or regulation; and
(C) Establishing the specific operational requirements for mining operations consistent with this section appropriate to protect the waters of this state during and following mining operations.

(b) The joint committee on government and finance may undertake or facilitate a study of the impact of mountaintop mining and valley fills upon the state of West Virginia.

(1) To facilitate the study, the joint committee on government and finance is further authorized to coordinate with and seek funding from appropriate federal agencies to facilitate the study including, but not limited to: The environmental protection agency, army corps of engineers, office of surface-mining and the fish and wildlife service.

(2) In order to facilitate the research, the joint committee on government and finance shall appoint a council to coordinate and direct the research. The composition of the council shall be determined by the joint committee, but shall include representatives from the various interested parties as determined solely by the joint committee.

CHAPTER 121

(Com. Sub. for S. B. 440 — By Senator Ross)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five, six and fifteen, article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state air pollution control requirements; modifying requirements for the issuance of a cease and desist order; clarifying the criminal penalty for knowing misrepresentation of a material fact in a report or other document; and modifying requirements relating to rules for motor vehicle emissions.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-5. Issuance of cease and desist orders by director; service; permit suspension, modification and revocation; appeals to board.

§22-5-6. Penalties; recovery and disposition; duties of prosecuting attorneys.


§22-5-5. Issuance of cease and desist orders by director; service; permit suspension, modification and revocation; appeals to board.

If, from any investigation made by the director or from any complaint filed with him or her, the director is of the opinion that a person is violating the provisions of this article, or any rules promulgated pursuant thereto, he or she shall make and enter an order directing the person to cease and desist the activity, unless the director determines the violation is of a minor nature or the violation has been abated. The director shall fix a reasonable time in such order by which the activity must stop or be prevented. The order shall contain the findings of fact upon which the director determined to make and enter the order.

If, after any investigation made by the director, or from any complaint filed with him or her, the director is of the opinion that a permit holder is violating the provisions of this article, or any rules promulgated pursuant thereto, or any order of the director, or any provision of a permit, the director may issue notice of intent to suspend, modify or revoke and reissue such permit. Upon notice of the director’s intent to suspend, modify or revoke a permit, the permit holder may request a conference with the director to show cause why the permit should not be suspended, modified or revoked. The request for conference must be received by the director within fifteen days following receipt of notice. After conference or fifteen days after issuance of notice of intent, if no conference is requested, the director may enter an order suspending, modifying or revoking the permit and send notice to the permit holder. Such order is a
cease and desist order for purposes of administrative and judicial review and shall contain findings of fact upon which the director determined to make and enter the order. If an appeal of the director’s order is filed, the order of the director shall be stayed from the date of issuance pending a final decision of the board.

The director shall cause a copy of any such order to be served upon the person by registered or certified mail or by any proper law-enforcement officer.

Any person upon whom a copy of the final order has been served may appeal such order to the air quality board pursuant to the provisions of article one, chapter twenty-two-b of this code.

§22-5-6. Penalties; recovery and disposition; duties of prosecuting attorneys.

(a) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code is subject to a civil penalty not to exceed ten thousand dollars for each day of such violation, which penalty shall be recovered in a civil action brought by the director in the name of the state of West Virginia in the circuit court of any county wherein the person resides or is engaged in the activity complained of or in the circuit court of Kanawha County. The amount of the penalty shall be fixed by the court without a jury: Provided, That any person is not subject to civil penalties unless the person has been given written notice thereof by the director: Provided, however, That for the first such minor violation, if the person corrects the violation within the time as was specified in the notice of violation issued by the director, no civil penalty may be recovered: Provided further, That if the person fails to correct a minor violation or for any serious or subsequent serious or minor violation, the person is subject to civil penalties imposed pursuant to this section from the first day of the violation notwithstanding the date of the issuance or receipt of the notice of violation. The director shall, by rule subject to the provisions of chapter twenty-nine-a of this code, determine the definitions of serious and minor violations. The amount of any
penalty collected by the director shall be deposited in the general revenue of the state treasury according to law.

(b) (1) Any person who knowingly misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated under this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars or imprisoned in the county jail not more than six months or both fined and imprisoned: Provided, That if the violation occurs on separate days or is continuing in nature, the fine shall be no more than twenty-five thousand dollars for each day of such violation.

(2) Any person who knowingly violates any provision of this article, any permit or any rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars for each day of such violation or imprisoned in the county jail not more than one year or both fined and imprisoned.

(c) Upon a request in writing from the director it is the duty of the attorney general and the prosecuting attorney of the county in which any such action for penalties accruing under this section or section seven of this article may be brought to institute and prosecute all such actions on behalf of the director.

(d) For the purpose of this section, violations on separate days are separate offenses.


(a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate and in furtherance of the purposes of this article, the director may provide by legislative rule for the control of emissions from motor vehicles. The legislative rule may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles. Any legislative rule pursuant to this section shall be consistent with provisions
of federal law, if any, relating to control of emissions from the
vehicles concerned. The director shall not require, as a condi-
tion precedent to the initial sale of a vehicle or vehicular
equipment, the inspection, certification or other approval of any
feature or equipment designed for the control of emissions from
motor vehicles, if such feature or equipment has been certified,
approved or otherwise authorized pursuant to federal law.

(b) Except as permitted or authorized by law or legislative
rule, no person shall fail to maintain in good working order or
remove, dismantle or otherwise cause to be inoperative any
equipment or feature constituting an operational element of the
air pollution control system or mechanism of a motor vehicle
required by rules of the director to be maintained in or on the
vehicle. Any such failure to maintain in good working order or
removal, dismantling or causing of inoperability subjects the
owner or operator to suspension or cancellation of the registra-
tion for the vehicle by the department of transportation, division
of motor vehicles. The vehicle is not thereafter eligible for
registration until all parts and equipment constituting opera-
tional elements of the motor vehicle have been restored,
replaced or repaired and are in good working order.

(c) The department of transportation, division of motor
vehicles, department of administration, information and
communication services division and the state police shall make
available technical information and records to the director to
implement the legislative rule regarding motor vehicle pollu-
tion, inspection and maintenance. The director may promulgate
a legislative rule establishing motor vehicle pollution, inspec-
tion and maintenance standards and imposing an inspection fee
at a rate sufficient to implement the motor vehicle inspection
program and shall do so when required pursuant to federal law
regarding attainment of ambient air quality standards.

(d) The director may promulgate a legislative rule requiring
maintenance of features of equipment in or on motor vehicles
for the purpose of controlling emissions therefrom and shall do
so when required pursuant to federal law regarding attainment
of ambient air quality standards, and no motor vehicle may be
issued a division of motor vehicles registration certificate, or
the existing registration certificate shall be revoked, unless the
motor vehicle has been found to be in compliance with the
director's legislative rule.

(e) The remedies and penalties provided in this section and
section one, article three, chapter seventeen-a of this code,
apply to violations hereof and the provisions of sections six or
seven of this article do not apply thereto.

(f) As used in this section "motor vehicle" has the same
meaning as in chapter seventeen-c of this code.

CHAPTER 122

(Com. Sub. for H. B. 2684 — By Delegates Michael, Compton,
Trump, Jenkins, Capito, Johnson and Amores)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article eleven, chapter
twenty-two of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to application and permit
fees paid to the division of environmental protection for certain
permits; continuing the water quality management fund; permit-
ting the director of the division of environmental protection to
expend interest, assessments and other moneys deposited in the
water quality management fund; increasing maximum fees for
permit applications and permits issued under the water pollution
control act; exempting home aerator units of six hundred gallons
and under; changing the circumstances under which permits
become void for failure to pay annual permit fees; requiring the
director of the division of environmental protection to promulgate
emergency and legislative rules to implement a revised schedule
for application and permit fees; and reporting requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-10. Water quality management fund established; permit application fees; annual permit fees; dedication of proceeds; rules.

(a) The special revenue fund designated the "Water Quality Management Fund" established in the state treasury on the first day of July, one thousand nine hundred eighty-nine is hereby continued.

(b) The permit application fees and annual permit fees established and collected pursuant to this section; any interest or surcharge assessed and collected by the director; interest accruing on investments and deposits of the fund; and any other moneys designated by the director shall be deposited into the water quality management fund. The director shall expend the proceeds of the water quality management fund for the review of initial permit applications, renewal permit applications and permit issuance activities.

(c) The director shall propose for promulgation, legislative rules in accordance with the provisions of chapter twenty-nine-a of this code, to establish a schedule of application fees for which the appropriate fee shall be submitted by the applicant to the division with the application filed pursuant to this article for any state water pollution control permit or national pollutant discharge elimination system permit. The schedule of application fees shall be designed to establish reasonable categories of permit application fees based upon the complexity of the permit application review process required by the division pursuant to the provisions of this article and the rules promulgated thereunder: Provided, That no initial application fee may exceed fifteen thousand dollars for any facility nor may any permit renewal application fee exceed five thousand dollars. The division may not process any permit application pursuant to this article until the required permit application fee has been received.
(d) The director shall propose for promulgation legislative rules in accordance with the provisions of chapter twenty-nine-a of this code, to establish a schedule of permit fees to be assessed annually upon each person holding a state water pollution control permit or national pollutant discharge elimination system permit issued pursuant to this article. Each person holding a permit shall pay the prescribed annual permit fee to the division pursuant to the rules promulgated hereunder: Provided, That no person holding a permit for a home aerator of six hundred gallons and under shall be required to pay an annual permit fee. The schedule of annual permit fees shall be designed to establish reasonable categories of annual permit fees based upon the relative potential of categories or permits to degrade the waters of the state: Provided, however, That no annual permit fee may exceed five thousand dollars. The director may declare any permit issued pursuant to this article void when the annual permit fee is more than ninety days past due pursuant to the rules promulgated hereunder. Voiding of the permit will only become effective upon the date the director mails, by certified mail, written notice to the permittee's last known address notifying the permittee that the permit has been voided.

(e) The director shall promulgate an emergency rule and propose a legislative rule for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code by the first day of July, one thousand nine hundred ninety-nine, to implement the fee schedule authorized by the amendments to this section enacted in the year one thousand nine hundred ninety-nine. Beginning the first day of September, one thousand nine hundred ninety-nine, the director shall file a quarterly report with the joint committee on government and finance setting forth the fees established and collected pursuant to this section.

(f) The provisions of this section are not applicable to fees required for permits issued under article three of this chapter.
AN ACT to amend and reenact sections three, five, six, twelve and sixteen, article seventeen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to incorporating federal updates to the underground storage tank act and providing subrogation authority to the director of the division of environmental protection; and proposal of rules.

Be it enacted by the Legislature of West Virginia:

That sections three, five, six, twelve and sixteen, article seventeen, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 17. UNDERGROUND STORAGE TANK ACT.

§22-17-3. Definitions.

(a) "Change in status" means causing an underground storage tank to be no longer in use or a change in the reported uses, contents or ownership of an underground storage tank.

(b) "Director" means the director of the West Virginia division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter.
(c) "Nonoperational storage tank" means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after the eighth day of November, one thousand nine hundred eighty-four.

(d) "Operator" means any person in control of, or having responsibility for, the daily operation of an underground storage tank.

(e) "Owner" means:

(1) In the case of an underground storage tank in use on the eighth day of November, one thousand nine hundred eighty-four, or brought into use after that date, a person who owns an underground storage tank used for the storage, use or dispensing of a regulated substance.

(2) In the case of an underground storage tank in use before the eighth day of November, one thousand nine hundred eighty-four, but no longer in use on that date, a person who owned such a tank immediately before the discontinuation of its use.

(f) "Person" means any individual, trust, firm, joint stock company, corporation (including government corporations), partnership, association, state, municipality, commission, political subdivision of a state, interstate body, consortium, joint venture, commercial entity and the United States government.

(g) "Petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute.

(h) "Regulated substance" means:

(1) Any substance defined in section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended; or
(2) Petroleum.

(i) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into groundwater, surface water or subsurface soils.


(k) "Underground storage tank" means one tank or a combination of tanks, and the underground pipes connected thereto, which is used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground, but does not include:

(1) Farm or residential tanks with a capacity of eleven hundred gallons or less and used for storing motor fuel for noncommercial purposes;

(2) Tanks used for storing heating oil for consumptive use on the premises where stored;

(3) Septic tanks;

(4) A pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, or the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline facility regulated under state laws comparable to the provisions of either of those acts;

(5) Surface impoundments, pits, ponds or lagoons;

(6) Storm water or wastewater collection systems;

(7) Flow-through process tanks;

(8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

(9) Storage tanks situated in an underground area such as a basement, cellar, mineworking, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.
The term "underground storage tank" does not include any pipes connected to any tank which is described in subparagraphs (1) through (9).

§22-17-5. Powers and duties of director; integration with other acts.

(a) In addition to all other powers and duties prescribed in this article or otherwise by law, and unless otherwise specifically set forth in this article, the director shall perform any and all acts necessary to carry out the purposes and requirements of Subtitle I.

(b) The director shall cooperate with and may receive and expend money from the federal government or other source.

(c) The director may accept applications for and issue policies of insurance to owners or operators of petroleum underground storage tanks that are subscribers to the underground storage tank insurance fund and may accept, review, pay and settle claims pursuant to those policies of insurance under such terms as the director may establish by rules proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(d) The director may enter into any agreements, including reimbursement or subrogation agreements, contracts and cooperative arrangements under such terms and conditions as he or she deems appropriate, with other state agencies, educational institutions or other organizations and individuals as necessary to implement the provisions of this article.

(e) The director may take such actions as are necessary and appropriate to carry out and enforce any agreements, contracts or cooperative arrangements entered into as provided in subsection (d) of this section, including the institution and prosecution of suits in any state or federal court or administrative tribunal, whether in the director’s name or in the name of an insured or a subrogor.

§22-17-6. Promulgation of rules and standards by director.

(a) The director has overall responsibility for the promulgation of rules under this article. In promulgating and revising
such rules the director shall comply with the provisions of chapter twenty-nine-a of this code. Such rules shall be no more stringent than the rules and regulations promulgated by the United States environmental protection agency pursuant to Subtitle I.

(b) The director shall promulgate rules applicable to owners or operators of underground storage tanks or other affected persons, as appropriate, as follows:

(1) A requirement for a yearly registration fee for underground storage tanks;

(2) A requirement that an owner or operator register with the director each underground storage tank after the effective date of the rules and that an owner or operator report annually on changes in status of any underground storage tank;

(3) Such release detection, prevention and correction rules applicable to underground storage tanks as may be necessary to protect human health and the environment;

(4) Requirements for maintaining a leak detection system, inventory control systems together with tank testing, or a comparable system or method designed to identify releases from underground storage tanks in a manner consistent with the protection of human health and the environment;

(5) Requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(6) Rules for procedures and amount of fees to be assessed for the underground storage tank administrative fund, the leaking underground storage tank response fund and the underground storage tank insurance fund established pursuant to this article, which shall include a capitalization fee to be assessed against all owners or operators of underground tanks to be used for initial establishment of the underground storage tank insurance fund;

(7) Procedures for making expenditures from the underground storage tank administrative fund, the leaking underground storage tank response fund and the underground storage tank insurance fund;
ground storage tank response fund and the underground storage
tank insurance fund;

(8) Acceptable methods by which an owner or operator may
demonstrate financial responsibility;

(9) Requirements for reporting of releases and corrective
action taken in response to a release;

(10) Requirements for taking corrective action in response
to a release from an underground storage tank;

(11) Requirements for the closure of tanks to prevent future
releases of regulated substances to the environment;

(12) Requirements for certification of installation, removal,
retrofit, testing and inspection of underground storage tanks and
leak detection systems by a registered professional engineer or
other qualified person;

(13) Requirements for public participation in the enforce­
ment of the state underground storage tank program;

(14) Procedures establishing when and how the director
determines if information obtained by any agency under this
article is confidential;

(15) Standards of performance for new underground storage
tanks;

(16) Procedures for the review, acceptance, settlement and
payment of claims under policies issued by the director
pursuant to subsection (c) of section five of this article; or

(17) Any other rules or standards necessary and appropriate
for the effective implementation and administration of this
article.

§22-17-12. Confidentiality.

(a) Any records, reports or information obtained from any
persons under this article shall be available to the public, except
that upon a showing satisfactory to the director by any person
that records, reports or information, or a particular part thereof,
to which the director or any officer, employee, or representative
thereof has access under this section, if made public, would
divulge information entitled to protection under section 1905 of
Title 18 of the United States Code, such information or particu-
tlar portion thereof is confidential in accordance with the
purposes of this section, except that such record, report,
document or information may be disclosed to other officers,
employees, or authorized representatives of the United States
environmental protection agency or of this state if such officers,
employees or authorized representatives are implementing the
provisions of this article.

(b) Any person who knowingly and willfully divulges or
discloses any information entitled to protection under this
section is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not more than five thousand dollars, or
imprisoned in the county jail for not more than one year, or
both fined and imprisoned.

(c) In submitting data under this article, a person required
to provide such data may designate the data which he or she
believes is entitled to protection under this section and submit
such designated data separately from other data submitted under
this article. A designation under this subsection shall be made
in writing and in such manner as the director may prescribe.

§22-17-16. Civil penalties.

(a) Any violator who fails to comply with an order of the
director issued under subsection (a), section fifteen of this
article within the time specified in the order is liable for a civil
penalty of not more than twenty-five thousand dollars for each
day of continued noncompliance.

(b) Any owner who knowingly: (1) Fails to register; or (2)
submits false information pursuant to this article is liable for a
civil penalty not to exceed ten thousand dollars for each tank
which is not registered or for which false information is
submitted.

(c) Any owner or operator of an underground storage tank
who fails to comply with any requirement or standard promul-
gated by the director under section six of this article is subject
to a civil penalty not to exceed ten thousand dollars for each
tank for each day of violation.
AN ACT to amend and reenact sections two, four and five, article twenty-four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the small business environmental loan program; providing a definition of pollution prevention; providing loan conditions for projects that are at a minimum seventy-five percent pollution prevention; and authorizing the director to accept gifts, donations and contributions for the revolving loan account.

Be it enacted by the Legislature of West Virginia:

That sections two, four and five, article twenty-four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, as follows:

ARTICLE 24. SMALL BUSINESS ENVIRONMENTAL LOAN PROGRAM.


§22-24-4. Loan conditions.

§22-24-5. Small business environmental revolving loan account.


(a) "Authority" means the West Virginia economic development authority established in article fifteen, chapter thirty-one of this code.

(b) "Director" means the director of the West Virginia division of environmental protection.

(c) "Division" means the West Virginia division of environmental protection as established in article one of this chapter.

(d) "Eligible borrower" means a small business as defined in subsection (h) of this section that is required or needs to
conduct a qualifying environmental project as defined in subsection (g) of this section. An eligible borrower also means a small business that desires to refinance the remaining balance of a debt that was incurred between the first day of January, one thousand nine hundred ninety-two, and until two years after the effective date of this article, and that meets, or would have met, at the time of the original loan application, the requirements of this subsection. The refinancing option is not available for applications received by the authority more than three years after the effective date of this article. Funds available for refinanced loans may not, at any time, exceed forty percent of the total funds available plus the outstanding balance of funded loans.

(e) "Environmental project" means:

(1) Any environmental equipment purchases and installations of the equipment;

(2) Any associated transportation, technical or consulting services for installation or modification of environmental equipment;

(3) Any equipment, purchase and installation necessary to effect a process change that in the director’s judgment yields significant environmental benefits; or

(4) Any combination of subdivisions (1), (2) or (3) of this subsection.

(f) "Pollution prevention" means the reduction or elimination of pollutants at the source through process modification, material substitution, in-process recycling, reduction of raw material use or other source reduction or elimination opportunities.

(g) "Qualifying environmental project" means an environmental project as described in subsection (e) of this section that is to be undertaken at a location in West Virginia and used for the purpose of:

(1) Effecting pollution elimination, minimization, prevention, recycling or abatement measures;
(2) Improving conditions or operations environmentally or substantially improving compliance with local, city, state, interstate or federal rules, regulations or laws pertaining to the environment and human health; or

(3) Purchasing equipment to establish environmental information, computing, consulting or laboratory services.

(h) "Small business" means a business that:

(1) Is properly registered with the appropriate agencies to do business in this state;

(2) Is actively conducting business in this state;

(3) Is current with all workers' compensation and unemployment premiums and state taxes; and

(4) Employs less than fifty full-time employees as defined in subsection (i) of this section within the entire company, business or corporation inside and outside this state.

(i) “Total number of full-time employees” means all full-time employees, plus all part-time employees counted as full-time employee equivalents, plus all full and part-time equivalent employees providing any type of service by contract or by any other arrangement.

§22-24-4. Loan conditions.

A loan made to an eligible borrower as provided by this article shall:

(a) Have an interest rate not to exceed one half of the federal prime interest rate, but in no case may the annual rate be less than four percent: Provided, That environmental loan projects that have been determined by the director to be at a minimum, seventy-five percent "pollution prevention", shall be authorized an additional one half of one percent annual interest rate reduction and the annual interest for these special pollution prevention qualifying environmental projects may be as low as three and one-half percent;

(b) Have repayment terms not to exceed ten years;
(c) Have collateral terms acceptable to the authority; and

(d) Be in an amount of not less than five thousand dollars nor more than one hundred fifty thousand dollars; but in no case may the amount exceed ninety percent of the cost of the project.

§22-24-5. Small business environmental revolving loan account.

(a) The small business environmental revolving loan account is hereby continued in the authority and shall be made available for environmental loans defined by this article for any type of qualifying environmental project. Loans may be issued only during the five-year period commencing on the effective date of this article unless the time period is otherwise extended by the Legislature. The administration of this loan program is authorized for one year beyond the last payment date for any outstanding loan.

(b) The environmental revolving loan account shall be funded by appropriations from the Legislature and, at the director's discretion, by using portions of penalties and fines that are collected from various sources, including violators that economically benefited by noncompliance and the director is also authorized to accept gifts, donations, contributions, bequests or devises of money, security or property for deposit in the account: Provided, That the maximum value of all active outstanding loans, combined with funds in reserve at any time, may not exceed five million dollars.

(c) Interest income from the small business environmental loan program as well as appropriations from the Legislature shall be used to defray the operating costs of the program, including, but not limited to, administration, facilities, salaries and travel. Any excess interest income shall be used to reestablish the loan program to its maximum authorized limit of five million dollars, with additional excesses returned to the state's general revenue account. If interest income is not projected to provide the necessary operating funds for all aspects of the small business environmental loan program for any one year, the authority shall request the necessary funding in the annual budget request.
AN ACT to amend and reenact section twenty, article one, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting certain convicted felons from obtaining the victim’s share in joint property through survivorship.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. CREATION OF ESTATES GENERALLY.

§36-1-20. When survivorship preserved.

(a) The preceding section shall not apply to any estate which joint tenants have as executors or trustees, nor to an estate conveyed or devised to persons in their own right, when it manifestly appears from the tenor of the instrument that it was intended that the part of the one dying should then belong to the others. Neither shall it affect the mode of proceeding on any joint judgment or decree in favor of, or on any contract with, two or more, one of whom dies.

(b) When the instrument of conveyance or ownership in any property, whether real estate or tangible or intangible personal property, links multiple owners together with the disjunctive “or,” such ownership shall be held as joint tenants with the right of survivorship, unless expressly stated otherwise.

(c) No person convicted of violating the provisions of section one or three, article two, chapter sixty-one of this code
as a principal, aider and abettor or accessory before the fact, or
convicted of a similar provision of law of another state or the
United States, may take or acquire any real or personal property
by survivorship pursuant to this section when the victim of the
criminal offense was a joint holder of title to the property. The
property to which the person so convicted would otherwise
have been entitled shall go to the person or persons who would
have taken the same if the person so convicted had predeceased
the victim.

CHAPTER 126

(S. B. 427 — By Senators Wooton, Minear, Sharpe, Ross and Kessler)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight, eleven and fourteen,
article one, chapter forty-four of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to amend and
reenact section one, article two of said chapter; and to amend
article four of said chapter by adding thereto a new section,
designated section fourteen-a, all relating to the administration of
estates and trusts; providing that an executor may be relieved of
posting bond where the will so directs; providing for a commis­sion for sheriffs administering estates; providing for criminal
penalties to be assessed where a personal administrator fails to
appraise an estate; eliminating language that requires appraise­ments to be done in triplicate; reducing the time for creditors to
file a proof of claim for estates that will not be referenced to a
fiduciary commissioner; establishing a time period for a fiduciary
to make a final settlement of a decedent’s estate; providing that
a fiduciary may obtain an extension of time under certain
circumstances; requiring a fiduciary to report to the county
commission when an estate is not settled within the prescribed
time period; permitting the county commission to discharge a
fiduciary of his or her duties under certain circumstances; and
establishing criminal penalties for a fiduciary's failure to appraise an estate and failure to report to the county commission.

Be it enacted by the Legislature of West Virginia:

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

Article
1. Personal Representatives.
2. Proof and Allowance of Claims Against Estates of Decedents.
3. Accounting by Fiduciaries.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-8. When executor not to give bond.
§44-1-11. When sheriff to administer estate.
§44-1-14. Appraisal of estates in triplicate; disposition; authority of appraisers to act throughout the state; hiring of experts.

§44-1-8. When executor not to give bond.

1 Subject to the provisions of section three, article five of this chapter governing the appointment of a nonresident of this state as an executor, where the will directs that an executor shall not give bond, it shall not be required of him or her, unless at the time the will is admitted to probate or at any time subsequently, on the application of any person interested, or from the knowledge of the court or clerk admitting the will to probate, it is deemed proper that bond ought to be given.

§44-1-11. When sheriff to administer estate.

1 If at any time two months elapse without there being an executor or administrator of the estate of a decedent (except during a contest about the decedent's will, or during the infancy or absence of the executor), the court or clerk before whom the will was admitted to probate, or having jurisdiction to grant administration, shall on motion of any person order the sheriff of the county to take into his or her possession the estate of such decedent and administer the same; whereupon such
sheriff, without taking any other oath of office, or giving any
other bond or security than he or she may have before taken or
given, shall be the administrator or administrator de bonis non
of the decedent, with his or her will annexed if there be a will,
and shall be entitled to all the rights and bound to perform all
the duties of the administrator. For his or her services as
administrator of an estate, the sheriff shall receive from the
estate a fee of five percent of the estate subject to administra-
tion, which fee shall be deposited to the treasury of the county.
Every sheriff shall, in the month of January in each year, make
a written report to the county commission of his or her county,
and if the court is not in session, then he or she shall file the
report with the clerk of the court, of the receipts and disburse-
ments of each estate so committed to him or her, and at the end
of his or her term of office make a complete report and settle-
ment of each estate so committed to him or her, and shall turn
over to his or her successor in office all moneys or property in
his or her hands remaining unadministered. The court or clerk
may, however, at any time afterward revoke such order and
allow any other person to qualify as the executor or administra-
tor; and the court, or the clerk thereof, shall, at the expiration of
the term of office of any sheriff, commit to his or her successor
in office any and all estates which may appear, by the final
report above required to be made by the sheriff at the end of his
or her term, not to have been fully administered. Every sheriff
to whom any estate shall have been committed, as aforesaid,
who shall fail to render any report as required herein, or who
shall fail to make such settlement within two months after the
end of his or her term of office shall be guilty of a misdemeanor
and, upon conviction thereof, shall be fined not less than fifty
nor more than five hundred dollars.

§44-1-14. Appraisal of estates in triplicate; disposition; authority
of appraisers to act throughout the state; hiring of
experts.

The real and personal estate of every deceased person, or in
which such deceased person had an interest at the time of his or
her death, shall be appraised by the personal representative of
such deceased person. Such personal representative, after first
taking an oath for the purpose, shall list and appraise at its real and actual value all the real estate and all the tangible property of every description owned by the deceased at the time of his or her death, including, but not limited to, all real estate and tangible property in which the decedent had an interest as joint tenant or otherwise or in which any beneficial interest passes to another person by reason of the death of such decedent whose estate is being so appraised and irrespective of whether such real estate or tangible property is subject to administration and located in each county or the counties, as the case may be. The personal representative shall also list and appraise at its real and actual value all of the decedent’s intangible property of every description, including moneys, credits, investments, annuities, life insurance policies, (irrespective of whether such policies are payable to named beneficiaries or in trust or otherwise), judgments and decrees for moneys, notes, bonds, accounts and all other evidences of debt, whether owing to him or her by persons or corporations in or out of the state, and the number and value, including both the par value, if any, and the actual value, of any shares of capital stock owned by the decedent in any corporation, and every other item of intangible property of whatsoever nature or kind, including all intangible property in which the decedent had an interest as joint tenant or otherwise or in which any beneficial interest passes to another by reason of the death of such decedent, and irrespective of whether such intangible property is subject to administration and whether located in this state or elsewhere. Any real estate or interest therein so appraised shall be identified with particularity and description, shall identify the source of title in the decedent and the location of such realty for purposes of real property ad valorem taxation. In addition to all other information required by law, the appraisement shall contain and include a question-naire designed and formulated by the tax commissioner which is designed for the purpose of examining the personal representative to determine that he or she has made a thorough and proper search and investigation as to the existence and value of each and every kind and species of property required to be included within, and subject to appraisement by, the provisions of this or any other section of this code, which said question-
naire shall be completed and answered upon the oath or adjuration of the personal representative or fiduciary.

The appraisement, list and questionnaire aforesaid shall be executed and signed by the personal representative. The original appraisement, list and questionnaire and two copies thereof must be returned to the clerk of the county commission by whom such personal representative was appointed or to the fiduciary supervisor within ninety days of the date of qualification of the personal representative. Such clerk or supervisor shall inspect such appraisement, list and questionnaire, see that the same are in proper form, and that all property, if any, suggested by the questionnaire is included within the appraisement. If such appraisement, list and questionnaire are returned to a fiduciary supervisor within ten days after they are received and approved by him or her, such supervisor shall deliver the same to the clerk of the county commission. Upon receipt of the appraisement, list and questionnaire, the clerk of the county commission shall record the same, with the certificate of approval of the supervisor, and mail a certified copy of the same to the tax commissioner of West Virginia. The date of return of an appraisement shall be entered by the clerk of the county commission in his or her record of fiduciaries. The appraisement and list shall be prima facie evidence of the value of the property embraced therein, and that the personal estate embraced therein which is subject to administration came to the hands of the personal representative. No person shall be permitted by any means whatsoever to avoid the appraisement and listing of his or her estate and of all property, real, tangible and intangible, of whatsoever nature and kind, in which a beneficial interest passes to another by reason of the death of the decedent and irrespective of whether such property is subject to administration as herein provided, nor shall his or her personal representative be permitted to do so. Any personal representative who refuses or declines, without reasonable cause, to comply with the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than five hundred dollars.
Every personal representative shall have authority to retain or hire the services of such expert or experts as may be deemed appropriate to assist and advise him or her in and about his or her duties in appropriately and accurately appraising all or any part of the assets or property to be appraised according to the provisions of this section. Such expert or experts so retained or hired shall be compensated a reasonable sum by the personal representative from the assets coming into his or her hands or of which he or she is embraced, which compensation and the reasonableness thereof shall be subject to review and approval by the county commission, upon recommendation of the fiduciary supervisor.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-1. Reference of decedents' estates; proceedings thereon.

(a) Upon the return of the appraisement by the personal representative to the county clerk, the estate of his or her decedent shall, by order of the county commission to be then made, be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees, and any other matter necessary and proper for the settlement of the estate: Provided, That in counties where there are two or more such commissioners, the estates of decedents shall be referred to such commissioners in rotation, in order that, so far as possible, there may be an equal division of the work. Notwithstanding any other provision of this code to the contrary, a fiduciary commissioner may not charge to the estate a fee greater than three hundred dollars and expenses for the settlement of an estate, except upon: (i) Approval of the personal representative; or (ii) a determination by the county commission after a hearing that complicating issues or problems attendant to such settlement substantiate the allowance of a greater fee.

(b) If the personal representative delivers to the clerk an appraisement of the assets of the estate showing their value to be fifty thousand dollars or less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to
the clerk that there is only one beneficiary of the probate estate
and that the beneficiary is competent at law, the clerk shall
record the appraisement and publish a notice once a week for
two successive weeks in a newspaper of general circulation
within the county of administration of the estate, substantially
as follows:

NOTICE OF PENDING OR
UNADMINISTERED ESTATE

"Notice is hereby given that settlement of the estate of the
following named decedents will proceed without reference to a
fiduciary commissioner unless within forty-five days from the
first publication of this notice such reference is requested by a
party in interest or an unpaid creditor files a claim and good
cause is shown to support reference to a fiduciary commis-

Dated this _____ day of __________________, ____.  

___________________________

Clerk of the County Commission of
___________ County, West Virginia."

The clerk shall charge to the personal representative, and
receive, the reasonable cost of publication of the notice. If an
unpaid creditor files a claim against the estate, the personal
representative has twenty days after the date of the filing of a
claim against the estate of the decedent to approve or reject the
claim before the estate is referred to a fiduciary commissioner.
If the personal representative approves all claims as filed, then
no reference may be made.

The personal representative shall, within a reasonable time
after the date of recordation of the appraisement in such case:
(i) File a waiver of final settlement in accordance with the
provisions of section twenty-nine of this article; or (ii) make a
report to the clerk of his or her receipts, disbursements and
distribution and submit an affidavit stating that all claims
against the estate for expenses of administration, taxes and
debts of the decedent have been paid in full. The clerk shall
collect a fee of ten dollars for recording such report and
affidavit and for publication of the notice hereafter provided, the fee to be in lieu of any other fee provided by law for recording a report of settlement of the accounts of a decedent's personal representative. At least once a month the clerk shall cause to be published once a week for two successive weeks in a newspaper of general circulation within the county of the administration of the estate, with regard to reports received in the prior month, a notice substantially as follows:

NOTICE OF FILING OF ESTATE ACCOUNTS OR WAIVERS OF FINAL SETTLEMENT

"I have before me the account or waiver of final settlement of the executor(s) or administrator(s) of the estates of the following deceased persons:

Any person having a claim against the estate of any such deceased person, or who has any beneficial interest therein, may appear before me or the county commission at any time within thirty days after first publication of this notice, and request reference of said estate to a commissioner or object to confirmation of the accounting. In the absence of such request or objection, the accounting may be approved by the county commission.

Clerk of the County Commission of

County, West Virginia."

If no such request or objection is made to the clerk or to the county commission, the county commission may confirm the report of the personal representative and thereupon the personal representative and his or her surety shall be discharged; but if such objection or request is made, the county commission may confirm the accounting and record the same or may refer the estate to one of its fiduciary commissioners: Provided, That the personal representative has twenty days after the date of the
filing of a claim or claims against the estate of the decedent to approve or reject the claim before the estate is referred to a fiduciary commissioner and if all claims are approved as filed, then no reference may be made.

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

§44-4-14a. Final settlement by fiduciaries for decedent’s estates; penalty.

(a) The provisions of this chapter notwithstanding, every fiduciary for the estate of a resident decedent shall, within five years of appointment as fiduciary make a full and final settlement, report and accounting for the decedent’s estate in the manner provided for in this code for accountings by fiduciaries, and further shall, at the time of making the final settlement, notify in writing the clerk of the county commission of the county where the fiduciary was appointed that the final settlement has been made.

(b) If the fiduciary is unable to make a full and final settlement, report and accounting of the decedent’s estate within the above time period because there have been unusual or extraordinary circumstances, demands or conditions imposed upon the fiduciary which have caused a delay in the final settlement, he or she may request an extension of time in which to make the settlement. Such request must be in writing to the county commission and include a date by which the fiduciary reasonably expects to make the full and final settlement.

(c) Any fiduciary failing to comply with this section, in whole or in part, is personally liable to the beneficiaries or creditors of the decedent’s estate for any loss or waste caused by the failure to make the final settlement. The fiduciary shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than one thousand dollars for failure to comply with this section, except for good and sufficient cause shown.

(d) In the event the fiduciary has not made the final settlement of the estate within five years of appointment, the fiduciary shall notify the county commission that the final
settlement has not been made. If the fiduciary does not establish
good cause for not making the final settlement within the five-
year period, as determined by the county commission, the
fiduciary is discharged of his or her duties as fiduciary. The
sheriff of the county shall then take charge of the estate and
proceed to make a final settlement of the estate in an expedi-
tious manner.

(e) A fiduciary who fails to notify the county commission
in accordance with subsection (d) of this section shall be guilty
of a misdemeanor and, upon conviction thereof, shall be fined
not less than fifty dollars nor more than five hundred dollars.

CHAPTER 127

(Com. Sub. for S. B. 597 — By Senator Plymale)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and twenty-six, article
two, chapter forty-four of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended; and to amend and
reenact sections four, four-a and thirty-two, article three-a of said
chapter, all relating to decedents' estates; revising the time in
which creditors may file a claim against an estate; removing a
reference to inheritance tax; and requiring that a release of an
estate tax lien be recorded before an estate can be closed under a
short-term settlement.

Be it enacted by the Legislature of West Virginia:

That sections two and twenty-six, article two, chapter forty-four
of the code of West Virginia, one thousand nine hundred thirty-one,
as amended, be amended and reenacted; and that sections four, four-a
and thirty-two, article three-a of said chapter be amended and
reenacted to read as follows:
Article

2. Proof and Allowance of Claims Against Estates of Decedents.

3A. Optional Procedure for Proof and Allowance of Claims Against Estates of Decedents; County Option.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-2. Fiduciary commissioner to publish notice of time for receiving claims against decedents estates.

§44-2-26. When claims not presented and proved barred of recovery from personal representative.

§44-2-2. Fiduciary commissioner to publish notice of time for receiving claims against decedents estates.

(a) Each month the fiduciary commissioner shall publish a notice designating the date by which claims against the estate or estates referred to him during the previous calendar month may be presented. No claims against the estate shall be accepted by the fiduciary commissioner after the date set forth herein. The date so designated by the fiduciary commissioner shall be ninety days from the date of the first publication of the notice hereinafter set forth. The notice shall be to the following effect:

To the Creditors and Beneficiaries of the Estate(s) of
(Naming the decedent or decedents, as the case may be)
All persons having claims against the estate(s) of the said
(Naming the decedent or decedents, as the case may be)
deceased, whether due or not, are notified to exhibit their claims, with the voucher thereof, legally verified, to the undersigned, at (designating the place) on or before the ........... day of ............, otherwise they may by law be excluded from all benefit of said estate(s). All beneficiaries of said estate(s) may appear on or before said day to examine said claims and otherwise protect their interests.

Given under my hand this ........... day of ..................
(b) Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The publication of such notice shall be equivalent to personal service on the creditors, distributees and legatees, or any of them.

§44-2-26. When claims not presented and proved barred of recovery from personal representative.

Every person including the state tax commissioner, having a claim against a deceased person, whether due or not, who has not, after notice to creditors has been published as prescribed in this article, presented his claim on or before the time fixed in such notice, or before that time has not instituted a civil action or suit thereon, shall, notwithstanding the same be not barred by some other statute of limitations that is applicable thereto, be barred from recovering such claim of or from the personal representative, or from thereafter setting off the same against the personal representative in any action or suit whatever; except that if a surplus remain after providing for all claims presented in due time, or on which action or suit shall have been commenced in due time, and such surplus shall not have been distributed by the personal representative to the beneficiaries of the estate, and the claimant prove that he had no actual notice of the publication to creditors nor knowledge of any proceedings before the fiduciary commissioner, such creditor may prove his claim by action or suit and have the same allowed out of such surplus; and, in order that such late claims if proved may be provided for, the fiduciary commissioner shall reopen his report if the same has not been returned to the county commission, or if returned, shall make and return a supplemental report: Provided, That, as to real estate, the provisions of subsection (b), section one of this article shall apply.
ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDEENTS; COUNTY OPTION.

§44-3A-4. Notice of claim; settlement in certain cases.

§44-3A-4a. Short form settlement.

§44-3A-32. When claims not presented and proved barred of recovery from personal representative.

§44-3A-4. Notice of claim; settlement in certain cases.

(a) The fiduciary supervisor shall at least once a month as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, cause to be published in a newspaper of general circulation within the county wherein letters of administration have been granted, a notice substantially as follows:

NOTICE OF FILING OF ESTATE ACCOUNTS

To the Creditors and Beneficiaries of the within named deceased persons:

I have before me the estates of the following deceased persons and the accounts of the fiduciaries of their respective estates:

Name of Decedent: .................................................................
Name of Fiduciary: ..............................................................
Address: .............................................................................
Name of Decedent: .................................................................
Name of Fiduciary: ..............................................................
Address: .............................................................................
Name of Decedent: .................................................................
Name of Fiduciary: ..............................................................
Address: .............................................................................

All persons having claims against the estate(s) of any of the above-named deceased persons whether due or not, are notified to exhibit their claims with vouchers thereof, legally verified,
to the fiduciary of such deceased person as shown herein within seventy-five days of the first publication hereof; or, if not so exhibited to such fiduciary by that date, to exhibit the same at the office of the undersigned fiduciary supervisor at the address shown below within ninety days of the first publication of this notice; otherwise any or all such claims may by law be excluded from all benefits of said estate(s). No claims against the estate shall be accepted by the fiduciary supervisor after the last date shown above. All beneficiaries of said estate(s) may appear either before the above-named fiduciary by the date first shown above, or thereafter before the undersigned fiduciary supervisor by the date last shown above to examine said claims and otherwise protect their respective interests.

Given under my hand this ............... day of ............., 19...........

........................................................................
Fiduciary Supervisor

........................................ County, W.Va.

(b) All such claims are to be filed with the appropriate fiduciary at the address shown in such notice within seventy-five days of the date of the first publication of such notice or with the fiduciary supervisor within ninety days of such date. No claims against the estate shall be accepted by the fiduciary supervisor after the last date shown above.

(c) Subject to the provisions of this section, at the end of the ninety-day period set forth in such notice, the fiduciary supervisor may proceed with supervision of all estates referred to him for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees and any and all other matter or matters necessary and proper for the settlement of the estate, including, but not limited to, his recommendations concerning the approval of the fees of any fiduciary commissioner to whom the estate may have been referred, determination that inheritance taxes, if any, occasioned by the death of the decedent or returnable by reason thereof have been returned upon such estate and such taxes have been paid or such payment provided for and whether a release therefor has been
issued by the proper authority, all matters required by section nineteen of this article and all other matters deemed proper by him.

§44-3A-4a. Short form settlement.

(a) In all estates of decedents administered under the provisions of this article where more than ninety days has elapsed since the filing of any notice required by section four, an estate may be closed by a short form settlement filed in compliance with this section: Provided, That any lien for payment of estate taxes under article eleven, chapter eleven of this code is released and that the release is filed with the clerk.

(b) The fiduciary may file with the fiduciary supervisor a proposed short form settlement which shall contain an affidavit made by the fiduciary that the time for filing claims has expired, that no known and unpaid claims exist against the estate and showing the allocation to which each distributee and beneficiary is entitled in the distribution of the estate and contain a representation that the property to which each distributee or beneficiary is entitled has been or upon approval of the settlement will be delivered thereto, or that each distributee and beneficiary has agreed to a different allocation. The application shall contain a waiver signed by each distributee and beneficiary.

(c) Such waiver may be signed in the case of a distributee or beneficiary under a disability by the duly qualified personal representative of such distributee or beneficiary. A personal representative signing such waiver shall be responsible to his or her cestui que trust for any loss resulting from such waiver.

(d) The fiduciary supervisor shall examine the affidavit and waiver and determine that the allocation to the distributees and beneficiaries set forth in the affidavit is correct and all proper parties signed the waiver, both shall be recorded as in the case of and in lieu of settlement. If the fiduciary supervisor identifies any error the fiduciary supervisor shall within five days of the filing of such settlement give the fiduciary notice as in the case of any other incorrect settlement.
§44-3A-32. When claims not presented and proved barred of recovery from personal representative.

Every person having a claim against a deceased person, whether due or not, who shall not, when notice to creditors has been published as prescribed in this article, have presented his claim on or before the ninety-day time period fixed in such notice, or before that time have instituted an action thereon, shall, notwithstanding the same be not barred by some other statute of limitations that is applicable thereto, be barred from recovering such claim of or from the personal representative, or from thereafter setting off the same by way of counterclaim or otherwise against the personal representative in any action whatever; except that if a surplus remain after providing for all claims presented in due time, or on which action shall have been commenced in due time, and such surplus shall not have been distributed by the personal representative to the beneficiaries of the estate, and the claimant prove that he had no actual notice of the publication to creditors nor knowledge of the proceedings before the fiduciary supervisor or fiduciary commissioner, such creditor may prove his claim by action or suit and have the same allowed out of such surplus; and, in order that such late claims if proved may be provided for, the fiduciary supervisor or fiduciary commissioner shall reopen his report if the same has not been returned to the county commission, or if returned shall make and return a supplemental report.
adding thereto a new section, designated section ten-b, relating to imposing mandatory safety procedures for firefighters in situations deemed immediately dangerous to life or health.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-10b. Mandatory safety procedures for situations deemed immediately dangerous to life and health.

(a) For the purposes of this article:

(1) "Immediately dangerous to life or health" or "IDLH" means an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

(2) "Interior structural firefighting" means the physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage.

(3) "Self-contained breathing apparatus" or "SCBA" means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(b) In all atmospheres that are immediately dangerous to life or health, the fire department or company shall ensure that:

(1) One or, when needed, more than one firefighter, is located outside the IDLH atmosphere;

(2) Visual, voice or signal line communication is maintained between all firefighters in the IDLH atmosphere and those outside the IDLH atmosphere;

(3) All firefighters located outside the IDLH atmosphere are trained and equipped to provide effective emergency rescue;
(4) The fire department or company, or designee authorized by the fire department or company, is notified before any firefighter located outside the IDLH atmosphere enters the IDLH atmosphere to provide emergency rescue;

(5) Once notified, the fire department or company, or designee authorized by the fire department or company, provides necessary assistance appropriate to the situation;

(6) All firefighters located outside the IDLH atmospheres are equipped with:

Pressure demand or other positive pressure self-contained breathing apparatus or a pressure demand or other positive pressure supplied-air respirator with an auxiliary SCBA, and either:

(A) Appropriate retrieval equipment for removing all firefighters who enter IDLH atmospheres where retrieval equipment would contribute to the rescue of the firefighters and would not increase the overall risk resulting from entry; or

(B) Equivalent means of rescue where retrieval equipment is not required or not available.

(c) In addition to the requirements set forth under subsection (b) of this section, when firefighters are engaging in interior structural firefighting, the fire department or company shall ensure that:

(1) At least two firefighters enter the IDLH atmosphere and remain in visual or voice contact with one another at all times;

(2) At least two firefighters are located outside the IDLH atmosphere; and

(3) All firefighters engaged in interior structural firefighting use an SCBA.

(d) Nothing in this section is meant to preclude:

(1) The assignment of one of the firefighters located outside the IDLH atmosphere to an additional role, such as incident commander in charge, emergency officer or safety officer, so
long as this firefighter is able to perform assistance or rescue
activities without jeopardizing the safety or health of any
firefighter working in the IDLH atmosphere; and

(2) The performance of emergency rescue activities by
firefighters before an entire team has assembled.

CHAPTER 129

(S. B. 240 — By Senators Wooton, Ball, Dittmar, Fanning, Hunter,
Kessler, McCabe, Minard, Mitchell, Oliverio, Redd, Ross,
Schoonover, Snyder and Deem)

[Passed February 19, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen-a, article three, chapter
twenty-nine of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to smoke detector
requirements; carbon monoxide detector requirements; notice to
occupants; offenses; and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16a. Smoke detectors in one- and two-family dwellings;
carbon monoxide detectors in residential units;
penalty.

(a) On or before the first day of July, one thousand nine
hundred ninety-one, an operational smoke detector shall be
installed in the immediate vicinity of each sleeping area within
all one- and two-family dwellings, including any "manufactured
home" as that term is defined in subsection (j), section two,
article nine, chapter twenty-one of this code. Such smoke
detector shall be capable of sensing visible or invisible particles
of combustion and shall meet the specifications and be installed
as provided for in the National Fire Protection Association
Standard 74, "Standard for the Installation, Maintenance and
Use of Household Fire Warning Equipment", 1989 edition, and
in the manufacturer's specifications. When activated, the smoke
detector shall provide an alarm suitable to warn the occupants
of the danger of fire.

(b) The owner of each dwelling described in subsection (a)
of this section shall provide, install and replace the operational
smoke detectors required by this section. So as to assure that the
smoke detector continues to be operational, in each dwelling
described in subsection (a) of this section which is not occupied
by the owner thereof, the tenant in any such dwelling shall
perform routine maintenance on the smoke detectors within
such dwelling.

(c) Where a dwelling is not occupied by the owner and is
occupied by an individual who is deaf or hearing impaired, the
owner shall, upon written request by or on behalf of such
individual, provide and install a smoke detector with a light
signal sufficient to warn the deaf or hearing-impaired individual
of the danger of fire.

(d) An automatic fire sprinkler system installed in accor-
dance with the National Fire Protection Association Standard
13D, "Standard for the Installation of Sprinkler Systems in
Residential Occupancies", 1989 edition, may be provided in
lieu of smoke detectors.

(e) After investigating a fire in any dwelling described in
subsection (a) of this section, the local investigating authority
shall issue to the owner a smoke detector installation order in
the absence of the required smoke detectors.

(f) After the first day of July, one thousand nine hundred
ninety-eight, an operational carbon monoxide detector with a
suitable alarm shall be installed in accordance with the manu-
facturer's direction:

(1) In any newly constructed residential unit which has a
fuel-burning heating or cooking source, including, but not
limited to, an oil or gas furnace or stove; and
(2) In any residential unit which is connected to a newly constructed building, including, but not limited to, a garage, storage shed or bar, which has a fuel-burning heating or cooking source, including, but not limited to, an oil or gas furnace or stove.

(g) Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor, occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the carbon monoxide detector installed.

(h) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor, occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.

(i) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars.

(j) A violation of this section shall not be deemed by virtue of such violation to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

(k) A violation of this section shall not constitute a defense in any civil action or proceeding involving any insurance policy.

(l) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners of any dwelling or other building described in subsection (a) or (f) of this section a greater duty with regard to the installation, repair and replacement of the smoke detectors or carbon monoxide detectors than is required by this section.
AN ACT to amend and reenact sections two and five, article four, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article one, chapter twenty-nine of said code; to amend and reenact sections three, six, ten and thirteen, article twenty-two-a of said chapter; and to further amend said article by adding thereto a new section, designated section nineteen, all relating to distribution of proceeds from net terminal income of racetrack video lottery proceeds; creating a capitol dome and capitol improvements fund; eliminating the Morris Square repair fund; creating the grants for competitive arts program fund; providing that a portion of the net terminal income from racetrack video lottery be deposited into the created funds; relating to the operation of video lottery games at licensed horse and dog racetracks; redefining certain terms; authorizing lottery commission to approve video lottery terminals and in doing so requiring that certain matters be taken into consideration; modifying requirement that printing mechanisms be contained in video lottery terminals in certain circumstances; approving changes in video lottery terminals; permitting winnings to be paid by noncash prizes, annuitized payments over time, coins, vouchers or tokens in connection with video lottery games; permitting the display of actual symbols on video lottery terminals; requiring electronic accounting meter in video lottery terminals that record use of coins and tokens; and dividing certain amounts of net terminal income between counties and certain municipalities; creation of compulsive gambling treatment fund; source of funding; criteria for distribution of funding; and reports to the Legislature.
Be it enacted by the Legislature of West Virginia:

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

Chapter
5A. Department of Administration.
29. Miscellaneous Boards and Officers.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 4. GENERAL SERVICES DIVISION.
§5A-4-2. Care, control and custody of capitol buildings and grounds.
§5A-4-5. Regulation of parking on state-owned property in Charleston; construction of parking garage for general public; penalties; jurisdiction; creation of funds.

§5A-4-2. Care, control and custody of capitol buildings and grounds.

(a) The director has the full responsibility for the care, control and custody of the capitol buildings and in this connection he or she shall:

(1) Furnish janitorial services, which are to be provided by employees of the department of administration for the main capitol building, including east and west wings, together with all the departments in the building, or connected with the building, regardless of the budget or budgets, departmental or otherwise, from which the janitorial services are paid, and shall furnish janitorial supplies, light, heat and ventilation for all the rooms and corridors of the buildings: Provided, That nothing in this section shall be construed to prohibit contracts for janitorial services with sheltered workshops. The president of the Senate and speaker of the House of Delegates, or their respective designees, have charge of the halls and committee rooms of
their respective houses and any other quarters at the state
capitol provided for the use of the Legislature or its staff, and
shall keep the areas properly cleaned, warmed and in good
order, and shall do and perform any other duties in relation to
the areas as either house may require;

(2) Landscape and take care of the lawns and gardens; and

(3) Direct the making of all minor repairs to and alterations
of the capitol buildings and governor's mansion and the
grounds of the buildings and mansion. Major repairs and
alterations shall be made under the supervision of the director,
subject to the direction of the secretary.

(b) The offices of the assistants and employees appointed
to perform these duties shall be located where designated by the
secretary, except that they shall not be located in any of the
legislative chambers, offices, rooms or halls. Office hours shall
be arranged so that emergency or telephone service is available
at all times. The hours shall be arranged so that janitorial
service shall not interfere with other employment during regular
office hours.

(c) There is created in the state treasury a special revenue
account to be named the "capitol dome and capitol improve-
ments fund." The fund shall consist of moneys received under
section ten, article twenty-two-a, chapter twenty-nine of this
code and funds from any other source. Moneys in the fund shall
be expended for maintenance and repairs of the capitol dome
and other capital improvements and repairs to state-owned
buildings.

§5A-4-5. Regulation of parking on state-owned property in
Charleston; construction of parking garage for
general public; penalties; jurisdiction; creation of
funds.

(a) It is the intent of the Legislature to provide a parking
facility for the general public and to direct the secretary of the
department of administration to plan and construct a parking
garage at the state capitol complex that will provide sufficient
and additional parking for the general public.
(b) The secretary may regulate the parking of motor vehicles in accordance with the provisions of this section with regard to the following state-owned property in the city of Charleston, Kanawha County:

(1) The east side of Greenbrier Street between Kanawha Boulevard and Washington Street, East;

(2) The west side of California Avenue between Kanawha Boulevard and Washington Street, East;

(3) Upon the state-owned grounds upon which state office building no. 3 is located;

(4) Upon the state-owned grounds which state office building no. 4, 112 California Avenue, is located;

(5) In the state-owned parking garage at 212 California Avenue and upon the state-owned grounds upon which such parking garage is located;

(6) Upon the state-owned property at Michigan Avenue and Virginia Terrace; and

(7) Upon any other property now or hereafter owned by the state and used for parking purposes in conjunction with the state capitol or state office buildings numbers three and four, including the Laidley field complex: Provided, That the secretary shall present to the joint committee on government and finance for its suggestions, on or before the first day of July, one thousand nine hundred ninety-eight, plans for the construction of a state capitol parking garage to be constructed, on property owned by the state or to be purchased by the state, no later than the thirtieth day of June, one thousand nine hundred ninety-nine. The submitted plans shall include proposals for general public parking, including the estimated use and cost; relocation of parking for official state vehicles; and state employee parking, including the estimated use and cost.

(c) The secretary shall propose rules for promulgation respecting parking and to allocate parking spaces to public officers and employees of the state upon all of the property set
forth in subsection (a) of this section: Provided, That during
sessions of the Legislature, including regular, extended,
extraordinary and interim sessions, parking on the east side of
Greenbrier Street between Kanawha Boulevard and Washington
Street, East, in the science and culture center parking lot, on the
north side of Kanawha Boulevard between Greenbrier Street
and California Avenue, and on the west side of California
Avenue between Kanawha Boulevard and Washington Street,
East, is subject to rules promulgated jointly by the speaker of
the House of Delegates and the president of the Senate. Any
person parking any vehicle contrary to the rules promulgated
under authority of this subsection is subject to a fine of not less
than one dollar nor more than twenty-five dollars for each
offense. In addition, the secretary or the Legislature, as the case
may be, may cause the removal at owner expense of any vehicle
that is parked in violation of the rules. Magistrates in Kanawha
County have jurisdiction of all the offenses.

(d) The secretary may employ the persons as may be
necessary to enforce the parking rules promulgated under the
provisions of this section.

(e) There is created in the department of administration a
special fund to be named the “Parking Garage Fund” in which
shall be deposited funds that are appropriated and funds from
other sources to be used for the construction and maintenance
of a parking garage on the state capitol complex.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article
1. Division of Culture and History.
22A. Racetrack Video Lottery.

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-3. Commission on the arts.

(a) The commission on the arts is continued and shall be
composed of fifteen appointed members.

(b)(1) The governor shall appoint, by and with the advice
and consent of the Senate, the members of the commission for
staggered terms of three years. A person appointed to fill a
vacancy shall be appointed only for the remainder of that term.

(2) No more than eight members may be of the same
political party. Members of the commission shall be appointed
so as to fairly represent both sexes, the ethnic and cultural
diversity of the state and the geographic regions of the state.

(3) The commission shall elect one of its members as chair.
It shall meet at the times specified by the chair. Notice of each
meeting shall be given to each member by the chair in compli-
cance with the open meetings laws of the state. A majority of the
members constitute a quorum for the transaction of business.
The director of the arts section shall be an ex officio nonvoting
member of the commission and shall serve as secretary. The
director or a majority of the members may also call a meeting
upon notice as provided in this section.

(4) Each member or ex officio member of the commission
shall serve without compensation, but shall be reimbursed for
all reasonable and necessary expenses actually incurred in the
performance of the duties of the office; except that in the event
the expenses are paid, or are to be paid, by a third party, the
member or ex officio member, as the case may be, shall not be
reimbursed by the state.

(5) Upon recommendation of the commissioner, the
governor may also appoint those officers of the state that are
appropriate to serve on the commission as ex officio nonvoting
members.

(c) The commission has the following powers:

(1) To advise the commissioner and the director of the arts
section concerning the accomplishment of the purposes of that
section and to establish a state plan with respect to the arts
section;

(2) To approve and distribute grants-in-aid and awards from
federal and state funds relating to the purposes of the arts
section;
(3) To request, accept or expend federal funds to accomplish the purposes of the arts section when federal law or regulations would prohibit the same by the commissioner or section director, but would permit the same to be done by the commission on the arts;

(4) To otherwise encourage and promote the purposes of the arts section;

(5) To approve rules concerning the professional policies and functions of the section as promulgated by the director of the arts section; and

(6) To advise and consent to the appointment of the director by the commissioner.

(d) There is created in the state treasury a special revenue account to be named the “grants for competitive arts program fund.” The fund shall consist of moneys received under section ten, article twenty-two-a, chapter twenty-nine of this code and funds from any other source. Moneys in the fund shall be expended for the grants for competitive arts program: Provided, That the commission shall make a women’s veterans memorial statue a priority when expending the funds: Provided, however, That the commission shall submit the plans for the statue to the secretary of administration for his or her approval.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.


§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.
§29-22A-13. Payment of credits; no state liability; method of payment; restrictions on payment of credits; redeemed tickets required to be defaced; liability for video lottery terminal malfunction.


As used in this article:

(a) "Applicant" means any person applying for any video lottery license or permit.

(b) "Associated equipment" means any hardware located on a licensed racetrack's premises which is connected to the video lottery system for the purpose of performing communication, validation or other functions, but not including the video lottery terminals or the communication facilities of a regulated public utility.

(c) "Background investigation" means a security, criminal and credit investigation of a person, as defined in this section, who has applied for a video lottery license or permit, or who has been granted a video lottery license or permit.

(d) "Central computer," "central control computer" or "central site system" means any central site computer provided to and controlled by the commission to which video lottery terminals communicate for purposes of information retrieval and terminal activation and to disable programs.

(e) "Commission" or "state lottery commission" means the West Virginia lottery commission created by article twenty-two of this chapter.

(f) "Control" means the authority to direct the management and policies of an applicant or a license or permit holder.

(g) "Costs" means the expenses incurred by the commission in the testing and examination of video lottery terminals and the performance of background investigations and other related activities which are charged to and collected from applicants or license or permit holders.
(h) "Director" means the individual appointed by the governor to provide management and administration necessary to direct the state lottery office.

(i) "Disable" or "terminal disable" means the process of executing a shutdown command from the central control computer which causes video lottery terminals to cease functioning.

(j) "Display" means the visual presentation of video lottery game features on a video lottery terminal in the form of video images, actual symbols or both.

(k) "EPROM" and "erasable programmable read-only memory chips" means the electronic storage medium on which the operation software for all games playable on a video lottery terminal resides and which can also be in the form of CD-ROM, flash RAM or other new technology medium that the commission may from time to time approve for use in video lottery terminals. All electronic storage media are considered to be the property of the state of West Virginia.

(l) "Floor attendant" means a person, employed by a licensed racetrack, who holds a permit issued by the commission and who corrects paper jams and bill jams in video lottery terminals and also provides courtesy services for video lottery players.

(m) "Gross terminal income" means the total amount of cash, vouchers or tokens inserted into the video lottery terminals operated by a licensee, minus the total value of coins and tokens won by a player and game credits which are cleared from the video lottery terminals in exchange for winning redemption tickets.

(n) "License" or "video lottery license" means authorization granted by the commission to a racetrack which is licensed by the West Virginia racing commission to conduct thoroughbred or greyhound racing meetings pursuant to article twenty-three, chapter nineteen of this code permitting the racetrack to operate video lottery terminals authorized by the commission.
(o) "Lottery" means the public gaming systems or games established and operated by the state lottery commission.

(p) "Manufacturer" means any person holding a permit granted by the commission to engage in the business of designing, building, constructing, assembling or manufacturing video lottery terminals, the electronic computer components of the video lottery terminals, the random number generator of the video lottery terminals, or the cabinet in which it is housed, and whose product is intended for sale, lease or other assignment to a licensed racetrack in West Virginia, and who contracts directly with the licensee for the sale, lease or other assignment to a licensed racetrack in West Virginia.

(q) "Net terminal income" means gross terminal income minus an amount deducted by the commission to reimburse the commission for its actual costs of administering racetrack video lottery at the licensed racetrack. No deduction for any or all costs and expenses of a licensee related to the operation of video lottery games shall be deducted from gross terminal income.

(r) "Noncash prize" means merchandise which a video lottery player may be given the option to receive in lieu of cash in exchange for a winning redemption ticket and which shall be assigned a redemption value equal to the actual cost of the merchandise to the licensed racetrack.

(s) "Own" means any beneficial or proprietary interest in any property or business of an applicant or licensed racetrack.

(t) "Pari-mutuel racing facility", "licensed racetrack", "racetrack" or "track" means a facility where horse or dog race meetings are held and the pari-mutuel system of wagering is authorized pursuant to the provisions of article twenty-three, chapter nineteen of this code: Provided, That, for the purposes of this article, "pari-mutuel racing facility", "licensed racetrack", "racetrack" or "track" includes only a facility which was licensed prior to the first day of January, one thousand nine hundred ninety-four, to hold horse or dog race meetings, and
which conducts not less than two hundred twenty live racing
dates for each horse or dog race meeting or such other number
of live racing dates as may be approved by the racing commis-
sion in accordance with the provisions of section twelve-b,
article twenty-three, chapter nineteen of this code.

(u) "Permit" means authorization granted by the commis-
sion to a person to function as either a video lottery manufac-
turer, service technician or validation manager.

(v) "Person" means any natural person, corporation,
association, partnership, limited partnership, or other entity,
regardless of its form, structure or nature.

(w) "Player" means a person who plays a video lottery
game on a video lottery terminal at a racetrack licensed by the
commission to conduct video lottery games.

(x) "Service technician" means a person, employed by a
licensed racetrack, who holds a permit issued by the commis-
sion and who performs service, maintenance and repair on
licensed video lottery terminals in this state.

(y) "Video lottery game" means a commission approved,
owned and controlled electronically simulated game of chance
which is displayed on a video lottery terminal and which:

(1) Is connected to the commission’s central control
computer by an on-line or dial-up communication system;

(2) Is initiated by a player’s insertion of coins, currency,
vouchers or tokens into a video lottery terminal, which causes
game play credits to be displayed on the video lottery terminal
and, with respect to which, each game play credit entitles a
player to choose one or more symbols or numbers or to cause
the video lottery terminal to randomly select symbols or
numbers;

(3) Allows the player to win additional game play credits,
coins or tokens based upon game rules which establish the
random selection of winning combinations of symbols or
numbers or both and the number of free play credits, coins or tokens to be awarded for each winning combination of symbols or numbers or both;

(4) Is based upon computer-generated random selection of winning combinations based totally or predominantly on chance;

(5) In the case of a video lottery game which allows the player an option to select replacement symbols or numbers or additional symbols or numbers after the game is initiated and in the course of play, either: (A) Signals the player, prior to any optional selection by the player of randomly generated replacement symbols or numbers, as to which symbols or numbers should be retained by the player to present the best chance, based upon probabilities, that the player may select a winning combination; (B) signals the player, prior to any optional selection by the player of randomly generated additional symbols or numbers, as to whether such additional selection presents the best chance, based upon probabilities, that the player may select a winning combination; or (C) randomly generates additional or replacement symbols and numbers for the player after automatically selecting the symbols and numbers which should be retained to present the best chance, based upon probabilities, for a winning combination, so that in any event, the player is not permitted to benefit from any personal skill, based upon a knowledge of probabilities, before deciding which optional numbers or symbols to choose in the course of video lottery game play;

(6) Allows a player at any time to simultaneously clear all game play credits and print a redemption ticket entitling the player to receive the cash value of the free plays cleared from the video lottery terminal; and

(7) Does not use the following game themes commonly associated with casino gambling: Roulette, dice, or baccarat card games: Provided, That games having a display with symbols which appear to roll on drums to simulate a classic casino slot machine, game themes of other card games and keno may be used.
(z) "Validation manager" means a person who holds a permit issued by the commission and who performs video lottery ticket redemption services.

(aa) "Video lottery" means a lottery which allows a game to be played utilizing an electronic computer and an interactive computer terminal device, equipped with a video screen and keys, a keyboard or other equipment allowing input by an individual player, into which the player inserts coins, currency, vouchers or tokens as consideration in order for play to be available, and through which terminal device the player may receive free games, coins, tokens or credit that can be redeemed for cash, annuitized payments over time, a noncash prize or nothing, as may be determined wholly or predominantly by chance. "Video lottery" does not include a lottery game which merely utilizes an electronic computer and a video screen to operate a lottery game and communicate the results of the game, such as the game "Travel", and which does not utilize an interactive electronic terminal device allowing input by an individual player.

(bb) "Video lottery terminal" means a commission-approved interactive electronic terminal device which is connected with the commission's central computer system, and which is used for the purpose of playing video lottery games authorized by the commission. A video lottery terminal may simulate the play of one or more video lottery games.

(cc) "Wager" means a sum of money or thing of value risked on an uncertain occurrence.

§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

(a) The commission may approve video lottery terminals and in doing so shall take into account advancements in computer technology, competition from nearby states and the
preservation of jobs in the West Virginia pari-mutuel racing industry. In approving video lottery terminals licensed for placement in this state the commission shall ensure that the terminals meet the following hardware specifications:

(1) Electrical and mechanical parts and design principles may not subject a player to physical hazards or injury.

(2) A surge protector shall be installed on the electrical power supply line to each video lottery terminal. A battery or equivalent power back-up for the electronic meters shall be capable of maintaining accuracy of all accounting records and terminal status reports for a period of one hundred eighty days after power is disconnected from the terminal. The power back-up device shall be located within the locked logic board compartment of the video lottery terminal.

(3) An on/off switch which controls the electrical current used in the operation of the terminal shall be located in an accessible place within the interior of the video lottery terminal.

(4) The operation of each video lottery terminal may not be adversely affected by any static discharge or other electromagnetic interference.

(5) A minimum of one electronic or mechanical coin acceptor or other means accurately and efficiently to establish credits shall be installed on each video lottery terminal. Each video lottery terminal may also contain bill acceptors for one or more of the following: One dollar bills, five dollar bills, ten dollar bills and twenty dollar bills. All coin and bill acceptors must be approved by the commission prior to use on any video lottery terminal in this state.

(6) Access to the interior of video lottery terminal shall be controlled through a series of locks and seals.

(7) The main logic boards and all erasable programmable read-only memory chips (Eproms) are deemed to be owned by the commission and shall be located in a separate locked and sealed area within the video lottery terminal.
(8) The cash compartment shall be located in a separate locked area within or attached to the video lottery terminal.

(9) No hardware switches, jumpers, wire posts or any other means of manipulation may be installed which alter the pay tables or payout percentages in the operation of a game. Hardware switches on a video lottery terminal to control the terminal’s graphic routines, speed of play, sound and other purely cosmetic features may be approved by the commission.

(10) Each video lottery terminal shall contain a single printing mechanism capable of printing an original ticket and retaining an exact legible copy within the video lottery terminal or other means of capturing and retaining an electronic copy of the ticket data as approved by the commission: Provided, That such printing mechanism is optional on any video lottery terminal which is designed and equipped exclusively for coin or token payouts. The following information shall be recorded on the ticket when credits accrued on a video lottery terminal are redeemed for cash:

(i) The number of credits accrued;

(ii) Value of the credits in dollars and cents displayed in both numeric and written form;

(iii) Time of day and date;

(iv) Validation number; and

(v) Any other information required by the commission.

(11) A permanently installed and affixed identification plate shall appear on the exterior of each video lottery terminal and the following information shall be on the plate:

(i) Manufacturer of the video lottery terminal;

(ii) Serial number of the terminal; and

(iii) Model number of the terminal.

(12) The rules of play for each game shall be displayed on the video lottery terminal face or screen. The commission may reject any rules of play which are incomplete, confusing, misleading or inconsistent with game rules approved by the
commission. For each video lottery game, there shall be a
display detailing the credits awarded for the occurrence of each
possible winning combination of numbers or symbols. A video
lottery terminal may not allow more than two dollars to be
wagged on a single game. All information required by this
subdivision shall be displayed under glass or another transparent
stance. No stickers or other removable devices may be
placed on the video lottery terminal screen or face without the
prior approval of the commission.

(13) Communication equipment and devices shall be
installed to enable each video lottery terminal to communicate
with the commission's central computer system by use of a
communications protocol provided by the commission to each
permitted manufacturer, which protocol shall include information
retrieval and terminal activation and disable programs, and
the commission may require each licensed racetrack to pay the
cost of a central site computer as a part of the licensing require-
ment.

(14) All video lottery terminals shall have a security system
which temporarily disables the gaming function of the terminal
while opened.

(b) Each video lottery terminal shall have a random number
generator to determine randomly the occurrence of each
specific symbol or number used in video lottery games. A
selection process is random if it meets the following statistical
criteria:

(1) Chi-square test. Each symbol or number shall satisfy the
ninety-nine percent confidence limit using the standard chi-
square statistical analysis of the difference between the ex-
pected result and the observed result.

(2) Runs test. Each symbol or number may not produce a
significant statistic with regard to producing patterns of
occurrences. Each symbol or number is random if it meets the
ninety-nine percent confidence level with regard to the "runs
test" for the existence of recurring patterns within a set of data.

(3) Correlation test. Each pair of symbols or numbers is
random if it meets the ninety-nine percent confidence level
using standard correlation analysis to determine whether each symbol or number is independently chosen without regard to another symbol or number within a single game play.

(4) Serial correlation test. Each symbol or number is random if it meets the ninety-nine percent confidence level using standard serial correlation analysis to determine whether each symbol or number is independently chosen without reference to the same symbol or number in a previous game.

(c) Each video lottery terminal shall meet the following maximum and minimum theoretical percentage payout during the expected lifetime of said terminal:

(1) Video lottery games shall pay out no less than eighty percent and no more than ninety-five percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory.

(2) Manufacturers must file a request and receive approval from the commission prior to manufacturing for placement in this state video lottery terminals programmed for a payout greater than ninety-two percent of the amount wagered. Commission approval must be obtained prior to applying for testing of such high payout terminals.

(3) Each terminal shall have a probability greater than one in seventeen million of obtaining the maximum payout for each play.

(d) Each video lottery terminal shall be capable of continuing the current game with all current game features after a video lottery terminal malfunction is cleared. If a video lottery terminal is rendered totally inoperable during game play, the current wager and all credits appearing on the video lottery terminal screen prior to the malfunction shall be returned to the player.

(e) Each video lottery terminal shall at all times maintain electronic accounting regardless of whether the terminal is being supplied with electrical power. Each meter shall be capable of maintaining a total of no less than eight digits in
length for each type of data required. The electronic meters shall record the following information:

(1) Number of coins inserted by players or the coin equivalent if a bill acceptor is being used or tokens or vouchers are used;

(2) Number of credits wagered;

(3) Number of total credits, coins and tokens won;

(4) Number of credits paid out by a printed ticket;

(5) Number of coins or tokens won, if applicable;

(6) Number of times the logic area was accessed;

(7) Number of times the cash door was accessed;

(8) Number of credits wagered in the current game;

(9) Number of credits won in the last complete video lottery game; and

(10) Number of cumulative credits representing money inserted by a player and credits for video lottery games won but not collected.

(f) No video lottery terminal may have any mechanism which allows the electronic accounting meters to clear automatically. Electronic accounting meters may not be cleared without the prior approval of the commission. Both before and after any electronic accounting meter is cleared, all meter readings shall be recorded in the presence of a commission employee.

(g) The primary responsibility for the control and regulation of any video lottery games and video lottery terminals operated pursuant to this article rests with the commission.

(h) The commission shall directly or through a contract with a third party vendor other than the video lottery licensee, maintain a central site system of monitoring the lottery terminals, utilizing an on-line or dial-up inquiry. The central site system shall be capable of monitoring the operation of each video lottery game or video lottery terminal operating pursuant to this article and, at the direction of the director, immediately
disable and cause not to operate, any video lottery game and video lottery terminal. As provided in this section, the commission may require the licensed racetrack to pay the cost of a central site computer as part of the licensing requirement.

*§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer's permit, the protocol documentation data necessary to enable the respective manufacturer's video lottery terminals to communicate with the commission's central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission thirty days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission, the commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack, and the resulting amount after such deduction shall be the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income.

*Clerk's Note: This section was also amended by SB 380 (Chapter 131), which passed prior to this act.*
(c) Net terminal income shall be divided as set out in this subsection. The licensed racetrack’s share shall be in lieu of all lottery agent commissions and is considered to cover all costs and expenses required to be expended by the licensed racetrack in connection with video lottery operations. The division shall be made as follows:

(1) The commission shall receive thirty percent of net terminal income, which shall be paid into the general revenue fund of the state to be appropriated by the Legislature;

(2) Fourteen percent of net terminal income at a licensed racetrack shall be deposited in the special fund established by the licensee, and used for payment of regular purses in addition to other amounts provided for in article twenty-three, chapter nineteen of this code;

(3) The county where the video lottery terminals are located shall receive two percent of the net terminal income: Provided, That:

(A) Beginning the first day of July, one thousand nine hundred ninety-nine, and thereafter, any amount in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack is located that has participated in the West Virginia thoroughbred development fund since on or before the first day of January, one thousand nine hundred ninety-nine, shall be divided as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipalities of the county shall receive fifty percent of the excess amount, said fifty percent to be divided among the municipalities on a per capita basis as determined by the most recent decennial United States census of population; and

(B) Beginning the first day of July, one thousand nine hundred ninety-nine, and thereafter, any amount in excess of the two percent received during fiscal year one thousand nine hundred ninety-nine by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality
within the county since on or before the first day of January,
one thousand nine hundred ninety-nine, shall be divided, if
applicable, as follows:

(i) The county shall receive fifty percent of the excess
amount; and

(ii) The municipality shall receive fifty percent of the
excess amount; and

(C) This proviso shall not affect the amount to be received
under this subdivision by any county other than a county
described in paragraph (A) or (B) of this proviso;

(4) One half of one percent of net terminal income shall be
paid for and on behalf of all employees of the licensed racing
association by making a deposit into a special fund to be
established by the racing commission to be used for payment
into the pension plan for all employees of the licensed racing
association;

(5) The West Virginia thoroughbred development fund
created under section thirteen-b, article twenty-three, chapter
nineteen of this code and the West Virginia greyhound breeding
development fund created under section ten, article
twenty-three, chapter nineteen of this code shall receive an
equal share of a total of not less than one and one-half percent
of the net terminal income: Provided, That for any racetrack
which does not have a breeder’s program supported by the
thoroughbred development fund or the greyhound breeding
development fund, the one and one-half percent provided for in
this subdivision shall be deposited in the special fund estab-
lished by the licensee and used for payment of regular purses,
in addition to other amounts provided for in subdivision (2) of
this subsection and article twenty-three, chapter nineteen of this
code;

(6) The West Virginia thoroughbred breeders classic shall
receive one percent of the net terminal income which shall be
used for purses. The moneys shall be deposited in the separate
account established for the classic under section thirteen, article
twenty-three, chapter nineteen of this code;
(7) A licensee shall receive forty-seven percent of net terminal income;

(8) The tourism promotion fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the net terminal income; and

(9) The veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the state capitol complex in Charleston, West Virginia. The moneys shall be deposited in the state treasury in the division of culture and history special fund created under section three, article one-i, chapter twenty-nine of this code: Provided, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than twenty thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited into a special revenue fund in the state treasury, to be known as the "John F. 'Jack' Bennett Fund". The moneys in this fund shall be expended by the division of veterans affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The division of veterans affairs shall promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent, determine the ability of the surviving spouse to pay for the placement of the marker, and setting forth the standards to be used to determine the priority in which the veterans grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the veterans memorial, one hundred thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited in the special fund in the division of culture and history created under section three, article one-i, chapter twenty-nine of this code and be expended by the division of culture and history to establish a West Virginia veterans memorial archives within the cultural center.
to serve as a repository for the documents and records pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the capitol grounds, and not more than twenty thousand dollars be deposited in the “John F. ‘Jack’ Bennett Fund”: Provided, however, That five hundred thousand dollars of the one percent of net terminal income shall be deposited in the state treasury in a special fund of the department of administration, created under section five, article four, chapter five-a of this code to be used for construction and maintenance of a parking garage on the state capitol complex: Provided further, That the remainder of the one percent of net terminal income shall be deposited in equal amounts in the capitol dome and improvements fund created under section two, article four, chapter five-a of this code and the grants for competitive arts program fund created under section three, article one, chapter twenty-nine of this code.

(d) Each licensed racetrack shall maintain in its account an amount equal to or greater than the gross terminal income from its operation of video lottery machines, to be electronically transferred by the commission on dates established by the commission. Upon a licensed racetrack’s failure to maintain this balance, the commission may disable all of a licensed racetrack’s video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged for state income tax delinquency under chapter eleven of this code, which interest shall begin to accrue on the date payment is due to the commission.

(e) The commission’s central control computer shall keep accurate records of all income generated by each video lottery terminal. The commission shall prepare and mail to the licensed racetrack a statement reflecting the gross terminal income generated by the licensee’s video lottery terminals. Each licensed racetrack must report to the commission any discrepancies between the commission’s statement and each terminal’s mechanical and electronic meter readings. The licensed racetrack is solely responsible for resolving income discrepan-
cies between actual money collected and the amount shown on the accounting meters or on the commission’s billing statement.

(f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the commission may make no credit adjustments. For any video lottery terminal reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal’s software. If the meter readings and the commission’s records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit such amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed racetrack’s possession, under its control or in which it has an interest and the licensed racetrack must authorize all third
(a) No payment for credits awarded on a video lottery terminal may be made unless the ticket meets the following requirements:

1. The ticket is fully legible and printed on paper approved by the commission and the ticket contains all information required by this article;
2. The ticket is not mutilated, altered, unreadable or tampered with in any manner;
3. The ticket is not counterfeit, in whole or in part; and
4. The ticket is presented by a person authorized to play video lottery pursuant to this article.

(b) Each licensed racetrack shall designate validation managers and employees authorized to redeem tickets and to sell and redeem tokens during the business hours of operation. Credits shall be immediately paid in cash, by check, by annuitized payments over time or in the form of a noncash prize, when a player presents a valid ticket for payment.

(c) Licensed racetracks shall not redeem tickets for credits awarded on video lottery terminals which are not located on its premises. A ticket must be presented for payment no later than ten days after the date the ticket is printed. The commission is not liable for the payment of any video lottery ticket credits.

(d) All tickets redeemed by a licensed racetrack shall be defaced in a manner which prevents any subsequent presentation and payment.

(e) The commission is not responsible for any video lottery terminal malfunction which causes a credit to be wrongfully
awarded or denied to players. The licensed racetrack is solely responsible for any wrongful award or denial of credits.


There is hereby created and established a separate special account to be known as the "Compulsive Gambling Treatment Fund". Such fund shall be appropriated from the commission's administrative expense account and shall be not less than one hundred fifty thousand dollars nor more than five hundred thousand dollars per fiscal year, as determined by the commission, to provide funds for compulsive gambling treatment programs in the state.

The department of health and human resources shall develop criteria which a treatment program for compulsive gamblers must meet in order to become eligible for a grant from the funds made available for such treatment programs pursuant to this provision. The department, in conjunction with the commission, shall develop a formula for the distribution of available funds which will result in an equitable distribution among programs submitted which meet the eligibility criteria for grants as developed by the department.

The Commission shall report annually to the Legislature the number and amounts of grants distributed and the number of people served by such programs.

CHAPTER 131

(Com. Sub. for S. B. 380 — By Senator Schoonover)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article twenty-two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article twenty-
five, all relating generally to authorized games of chance; redistributing moneys from racetrack video lottery; authorizing a gaming facility and providing generally therefor; legislative findings and intent; defining certain terms; duties and powers of the state lottery commission; authorizing operation of video lottery games at the gaming facility; appointment of lottery commission staff; adoption and proposal of rules; contract agreements and cost for law-enforcement services; local option elections to approve licensure of a gaming facility; providing generally for licenses to engage in activities related to operation of a gaming facility; authorization for no more than one license; severability of article; qualifications for applicant for license to operate a gaming facility; conditions of license; license application requirements; information required of certain corporations; gaming facility qualifications; application, license and investigative fees; requirement for surety bond; authorization of license and prohibiting transfer, assignment, sale or pledge as collateral; audits and reports of licensee; requirements for license for supplier of gaming facility; requirements for license for employee of operator of gaming facility; prohibition of false statements on application for license; grounds for denial, revocation or suspension of license; reprimand of licensee; information included on license; display and availability of license; notice of change of address; expiration and renewal of licenses; renewal fees; hearing procedures; licensee consent to warrantless searches of person and property; patron consent to presence of law-enforcement officers; permitting gaming operators to set wagers; transfers of gross terminal income to state gaming fund; imposing privilege tax on adjusted gross receipts of gaming facility; providing generally for filing and payment of taxes; creating state gaming fund; distribution of amounts in fund; prohibited wagers and other activities; prohibiting wagers by certain persons; establishing criminal offenses and penalties; forfeiture of certain property; and providing civil penalties.

Be it enacted by the Legislature of West Virginia:

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

Article
  22A. Racetrack Video Lottery.
  25. Authorized Gaming Facility.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer’s permit, the protocol documentation data necessary to enable the respective manufacturer’s video lottery terminals to communicate with the commission’s central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.

(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission thirty days’ advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission, the commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack, and the resulting amount after that deduction is the net terminal income. The amount deducted for administrative costs and

* Clerk’s Note: This section was also amended by HB 3029 (Chapter 130), which passed subsequent to this act.
expenses of the commission may not exceed four percent of 
gross terminal income.

(c) Net terminal income shall be divided as set out in this 
subsection. The licensed racetrack’s share shall be in lieu of all 
lottery agent commissions and is considered to cover all costs 
and expenses required to be expended by the licensed racetrack 
in connection with video lottery operations. The division shall 
be made as follows:

(1) The commission shall receive thirty percent of net 
terminal income, which shall be paid into the general revenue 
fund of the state to be appropriated by the Legislature;

(2) Fourteen percent of net terminal income at a licensed 
racetrack shall be deposited in the special fund established by 
the licensee and used for payment of regular purses in addition 
to other amounts provided for in article twenty-three, chapter 
nineteen of this code;

(3) The county where the video lottery terminals are located 
shall receive two percent of the net terminal income;

(4) One half of one percent of net terminal income shall be 
paid for and on behalf of all employees of the licensed racing 
association by making a deposit into a special fund to be 
established by the racing commission to be used for payment 
into the pension plan for all employees of the licensed racing 
association;

(5) The West Virginia thoroughbred development fund 
created under section thirteen-b, article twenty-three, chapter 
nineteen of this code and the West Virginia greyhound breeding 
development fund created under section ten, article 
twenty-three, chapter nineteen of this code shall receive an 
equal share of a total of not less than one and one-half percent 
of the net terminal income: Provided, That for any racetrack 
which does not have a breeder’s program supported by the 
thoroughbred development fund or the greyhound breeding 
development fund, the one and one-half percent provided for in 
this subdivision shall be deposited in the special fund estab-
lished by the licensee and used for payment of regular purses,
in addition to other amounts provided for in subdivision (2) of this subsection and article twenty-three, chapter nineteen of this code;

(6) The West Virginia thoroughbred breeders classic shall receive one percent of the net terminal income which shall be used for purses. The moneys shall be deposited in the separate account established for the classic under section thirteen, article twenty-three, chapter nineteen of this code;

(7) A licensee shall receive forty-seven percent of net terminal income;

(8) The tourism promotion fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the net terminal income; and

(9) The remaining one percent of net terminal income shall be distributed in the manner set forth in this subdivision. Not more than twenty thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited into a special revenue fund in the state treasury, to be known as the "John F. 'Jack' Bennett Fund". The moneys in this fund shall be expended by the division of veterans affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The division of veterans affairs shall propose legislative rules for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent, determining the ability of the surviving spouse to pay for the placement of the marker, and setting forth the standards to be used to determine the priority in which the veterans grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans grave markers in any one year, or at all. One hundred thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited in the special fund in the division of culture and history created under section three, article one-i, chapter twenty-nine of this code and be expended by the division of culture and history to establish a West Virginia veterans memorial archives within the cultural center to serve as a
repository for the documents and records pertaining to the veterans memorial and to restore and maintain the monuments and memorial on the capitol grounds. Five hundred thousand dollars of the one percent of net terminal income shall be deposited in the state treasury in a special fund of the department of administration, created under section five, article four, chapter five-a of this code to be used for construction and maintenance of a parking garage on the state capitol complex. The remainder of the one percent of net terminal income shall be deposited in equal amounts into the grants for competitive arts program and the capitol dome and capitol improvements fund.

(d) Each licensed racetrack shall maintain in its account an amount equal to or greater than the gross terminal income from its operation of video lottery machines, to be electronically transferred by the commission on dates established by the commission. Upon a licensed racetrack’s failure to maintain this balance, the commission may disable all of a licensed racetrack’s video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged for state income tax delinquency under chapter eleven of this code, which interest shall begin to accrue on the date payment is due to the commission.

(e) The commission’s central control computer shall keep accurate records of all income generated by each video lottery terminal. The commission shall prepare and mail to the licensed racetrack a statement reflecting the gross terminal income generated by the licensee’s video lottery terminals. Each licensed racetrack shall report to the commission any discrepancies between the commission’s statement and each terminal’s mechanical and electronic meter readings. The licensed racetrack is solely responsible for resolving income discrepancies between actual money collected and the amount shown on the accounting meters or on the commission’s billing statement.

(f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the commission may make no credit
adjustments. For any video lottery terminal reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal's software. If the meter readings and the commission's records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit the amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than noon on the day when the payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed racetrack's possession, under its control or in which it has an interest and the licensed racetrack shall authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

ARTICLE 25. AUTHORIZED GAMING FACILITY.
§29-25-1. Authorization of limited gaming facility; findings; intent.

(a) Operation of authorized games of chance. — Notwithstanding any provision of law to the contrary, the operation of those authorized games of chance permitted by this article and the related operation of a gaming facility and ancillary activities is not unlawful when conducted under the terms specified in this article.

(b) Legislative findings. — The Legislature finds and declares that the tourism industry plays a critical role in the economy of this state and that a substantial state interest exists in protecting that industry. It further finds and declares that the authorization of the operation of a gaming facility at no more than one well-established historic resort hotel in this state as
provided in this article will serve to protect and enhance the
tourism industry, and indirectly other segments of the economy
of this state, by providing a resort hotel amenity which is
becoming increasingly important to many actual and potential
resort hotel patrons.

The Legislature finds and declares that, except for video
lottery operation pursuant to subsection (c), section three of this
article, the operation of the authorized games of chance
permitted by this article does not constitute the operation of
lotteries or gift enterprises within the purview of section thirty-
six, article VI of the constitution of this state.

With respect to video lottery games contemplated hereunder, the Legislature restates and reaffirms the findings and
declarations set forth in section two, article twenty-two-a of this
chapter.

(c) Legislative intent. — It is the intent of the Legislature in
the enactment of this article to promote tourism and year-round
employment in this state. It is expressly not the intent of the
Legislature to promote gaming. As a consequence, it is the
intent of the Legislature to allow limited gaming as authorized
by this article with all moneys gained from the operation of the
gaming facility, other than those necessary to reimburse
reasonable costs of operation, to enure to the benefit of the
state.


(a) “Applicant” means any person or entity applying for a
license.

(b) “Adjusted gross receipts” means the gross receipts of a
gaming facility from authorized games of chance less winnings
paid to wagerers in the games.

(c) “Authorized game of chance” includes baccarat, twenty-
one or blackjack, poker, craps, roulette, wheel of fortune, video
lottery games and any other Monte Carlo style table game
expressly authorized by rule of the commission, but expressly
excludes punchboards, faro, keno, numbers tickets, push cards,
jar tickets, pull tabs or similar games.
(d) "Controlling interest" means:

(1) For a partnership, an interest as a general or limited partner holding more than fifty percent interest in the entity;

(2) For a corporation, an interest of more than fifty percent of the stock in the corporation; and

(3) For any other entity, an ownership interest of more than fifty percent in the entity.

(e) "Controlling person" means, with respect to another person, any person directly or indirectly owning or holding a controlling interest in that other person.

(f) "Commission" means the state lottery commission created in section four, article twenty-two of this chapter.

(g) "Director" means the director of the state lottery commission.

(h) "Gaming devices and supplies" means gaming tables for all authorized games of chance, roulette wheels, wheels of fortune, video lottery terminals, cards, dice, chips, tokens, markers or any other mechanical, electronic or other device, mechanism or equipment or related supplies utilized in the operation of an authorized game of chance.

(i) "Gaming facility" means a designated area on the premises of an historic resort hotel in which authorized games of chance are conducted by a gaming licensee.

(j) "Gaming licensee" means the licensed operator of a gaming facility.

(k) "Gross receipts" means the total amount of money exchanged for the purchase of chips, tokens or electronic cards by patrons of a gaming facility reduced by gross terminal income to the extent gross terminal income is included in the amount of money exchanged.

(l) "Gross terminal income" has the same meaning ascribed to the term as set forth in article twenty-two-a of this chapter.
(m) "Historic resort hotel" means a resort hotel registered with the United States department of the interior as a national historic landmark in its national registry of historic places having not fewer than five hundred guest rooms under common ownership and having substantial recreational guest amenities in addition to the gaming facility.

(n) "License" means a license issued by the commission, including:

(1) A license to operate a gaming facility;

(2) A license to supply gaming devices and supplies to a gaming facility; or

(3) A license to be employed in connection with the operation of a gaming facility.

(o) "Licensed gaming facility employee" means any individual licensed to be employed by a gaming licensee in connection with the operation of a gaming facility.

(p) "Licensed gaming facility supplier" means a person who is licensed by the commission to engage in the business of supplying gaming devices and gaming supplies to a gaming facility.

(q) "Licensee" means a gaming licensee, a licensed gaming facility supplier or a licensed gaming facility employee.

(r) "Person" means any natural person, corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.

(s) "State gaming fund" means the special fund in the state treasury created in section twenty-two of this article.

(t) "Video lottery games" and "video lottery terminals" have the same meaning ascribed the terms in article twenty-two-a of this chapter.


(a) Duties. — In addition to the duties set forth elsewhere in this article, the commission shall:
(1) Establish standards for gaming devices and supplies, including electronic or mechanical gaming devices;

(2) Approve rules for all authorized games of chance proposed to be operated by a gaming licensee;

(3) Establish standards governing gaming facilities generally, including the maintenance of financial books and records;

(4) Provide staff to supervise, inspect and monitor the operation of any gaming facility, including inspection of gaming devices and supplies used in the operation to assure continuous compliance with all rules of the commission and provisions of this article;

(5) Establish minimum levels of insurance to be maintained with respect to a gaming facility;

(6) Investigate applicants to determine eligibility for any license and, where appropriate, select among competing applicants;

(7) Designate appropriate classifications of personnel to be employed in the operation of a gaming facility and establish appropriate licensing standards within the classifications;

(8) Issue all licenses;

(9) Charge and collect the taxes and fees authorized, required or specified in this article and receive, accept and pay all taxes and fees collected under this article into the state gaming fund;

(10) Maintain a record of all licenses issued;

(11) Keep a public record of all commission actions and proceedings; and

(12) File a written report to the governor, the president of the Senate and the speaker of the House of Delegates on or before the thirtieth day of January of each year and any additional reports as the governor or Legislature may request.

(b) Powers. — In addition to the powers set forth elsewhere in this article, the commission has the following powers:
(1) To sue to enforce any provision of this article by injunction;

(2) To hold hearings, administer oaths and issue subpoenas for the attendance of a witness to testify and to produce evidence;

(3) To enter a gaming facility at any time and without notice to ensure strict compliance with the rules of the commission;

(4) To bar, for cause, any person from entering or participating in any capacity in the operation of a gaming facility; and

(5) To exercise any other powers that may be necessary to effectuate the provisions of this article.

(c) Video lottery games. — The commission is authorized to implement and operate video lottery games at the gaming facility licensed pursuant to this article consistent with the gaming licensee’s operation of the gaming facility. With respect to video lottery games, the provisions of article twenty-two-a of this chapter apply to this article, except in the event of a conflict or inconsistency between any of the provisions of this article and the provisions of article twenty-two-a of this chapter. In that event, the provisions of this article supersede any conflicting or inconsistent provisions contained in article twenty-two-a of this chapter. In carrying out its authority under this article, the commission may: (1) Specify by rule additional licensure and fee requirements consistent with the provisions of article twenty-two-a of this chapter respecting video lottery manufacturers, service technicians and validation managers; and (2) adopt and specify any reasonable procedure, protocol or requirement to enable video lottery terminals to effectively and efficiently communicate with the commission’s central computer system used in administering article twenty-two-a of this chapter.

§29-25-4. Appointment of commission staff; conditions of employment.

The director, pursuant to the provisions of section six, article twenty-two of this chapter, with the approval of the
commission, may appoint any professional, clerical, technical  
and administrative personnel, who shall be state employees  
hired in accordance with article six of this chapter, that may be  
necessary to carry out the provisions of this article. Prior to his  
or her appointment, each staff person shall undergo a thorough  
background investigation, including fingerprinting and a check  
of criminal records. No employee may directly or indirectly  
hold any financial interest in any entity licensed under this  
article.

§29-25-5. Rules.

The commission shall propose for promulgation legislative  
rules in accordance with the provisions of article three, chapter  
twenty-nine-a of this code as are necessary to provide for  
implementation and enforcement of the provisions of this  
article. Any rules proposed by the commission before the first  
day of September, one thousand nine hundred ninety-nine, may  
be by emergency rule.


(a) Generally. — Notwithstanding any provision of this  
code to the contrary, the director may by contract or coopera-  
tive agreements with state, county or municipal law-enforce-  
ment agencies operating in the county in which the gaming  
facility is located arrange for those law-enforcement services  
that are necessary to enforce the provisions of this article.

(b) Costs. — The actual cost of services provided by the  
state police or municipal law-enforcement agencies in connec-  
tion with enforcement of the provisions of this article shall be  
paid from the state gaming fund, and shall include all costs of  
required training and equipment as well as salary, benefits and  
other direct costs of additional required personnel.

The costs of services related to a gaming facility provided  
by law-enforcement officers of the county in which the gaming  
facility is located shall be paid from that portion of the state  
gaming fund allocated to that county. The costs shall include all  
costs of required training and equipment as well as salary,  
benefits and other direct costs of additional required personnel.
§29-25-7. Local option.

(a) No gaming facility may be licensed to operate in a county until the county commission of the county holds an election on the question of whether a gaming facility may be operated within the county and the voters approve the operation of a gaming facility in the county. The election shall be determined by a vote of the resident voters of the county in which the facility is proposed to be located.

The county commission of the county in which the proposed facility is located shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall West Virginia lottery commission video lottery games and authorized games of chance be permitted within an area at the [name of qualified historic resort hotel]?

[ ] Yes [ ] No

(Place a cross mark in the square opposite your choice.)

Any local option election to approve or disapprove of the proposed authorization of a gaming facility within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election, or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of gaming facility operations at the election.

If a majority votes against allowing a gaming facility, no election on the issue shall be held for a period of one hundred four weeks. If a majority votes “yes” no election reconsidering
the action may be held for a period of five years. A local option
election may thereafter be held if a written petition of qualified
voters residing within the county equal to at least five percent
of the number of persons who were registered to vote in the
next preceding general election is received by the county
commission of the county in which the gaming facility is to be
located. The petition may be in any number of counterparts.
The election shall take place at the next primary or general
election scheduled more than ninety days following receipt by
the county commission of the petition required by this subsec-
tion: Provided, That the issue may not be placed on the ballot
until all statutory notice requirements have been met: Provided,
however, That no subsequent disapproval may take effect until
after the expiration of the five year licensing period in effect at
the time of the referendum.

(b) No local law or regulation providing any penalty,
disability, restriction, regulation or prohibition for operating a
gaming facility or supplying a gaming facility may be enacted,
and the provisions of this article preempt all regulations, rules,
ordinances and laws of any county or municipality in conflict
with this article.

(c) Except as specifically provided in this article, no other
fees or taxes may be imposed by a local governing body.

§29-25-8. Licenses required.

(a) No person may engage in any activity in connection
with a gaming facility in this state for which a license is
required by subsection (b) of this section unless that person has
been licensed by the commission in accordance with this article.

(b) Licenses are required for the following purposes:

(1) For any person engaging in the business of operating a
gaming facility in the state;

(2) For any person engaging in the business of supplying a
gaming facility with gaming devices, supplies or services if the
gaming facility expends more than fifty thousand dollars
annually with that person; and
(3) For any individual employed by a gaming licensee in connection with the operation of a gaming facility in the state.

(c) Any license required under this article is in addition to all other licenses or permits otherwise required by law.

§29-25-9. License to operate a gaming facility.

(a) Single license. — The commission may issue only one license to operate a gaming facility. If the one license limitation in the preceding sentence is found to be unconstitutional in a final, nonappealable order by a court of competent jurisdiction, the commission shall have no authority to issue any license under this article and, in such event, the provisions of this article shall not be severable, and any license issued under the provisions of this article prior thereto shall be void. The Legislature intends that no more than one license to operate one gaming facility in this state shall be authorized in any event.

(b) Applicant qualifications. — An applicant for a license to operate a gaming facility shall be the owner or be wholly owned by the owner of an existing historic resort hotel in which the gaming facility is to be located, and the resort hotel shall be located within the jurisdiction of a county approving the operation of a gaming facility in accordance with section seven of this article. An applicant shall meet the qualifications and requirements set forth in this article and rules adopted by the commission. In determining whether to grant a license to operate a gaming facility to an applicant, the commission shall consider:

(1) The character, reputation, experience and financial integrity of the applicant and any controlling person of the applicant;

(2) Whether the applicant has adequate capital to construct and maintain the proposed gaming facility for the duration of a license;

(3) The extent to which the applicant meets standards contained in rules adopted by the commission relating to public safety or other standards; and
(4) The plan submitted by the applicant regarding employment levels and the extent to which the submitted plan demonstrates an ability on the part of the applicant to create at least one hundred full-time equivalent jobs with a salary and benefit package commensurate with existing employees at the historic resort hotel.

(c) Conditions attached to license. — A license to operate a gaming facility may only be granted to an applicant upon the express condition that:

(1) The licensee may not enter into any management service contract, understanding or arrangement of any kind which would act to permit any person other than the licensee to operate a licensed gaming facility unless the management service contract, understanding or arrangement is in writing and has been approved by the commission. The commission shall condition its approval upon the successful completion of a thorough background investigation at the expense of the licensee;

(2) The licensee may not in any manner permit a person other than the licensee to have a share, percentage or proportion of any profits generated from the operation of a gaming facility;

(3) The licensee shall not conduct any advertising and promotional activities related to the gaming facility without the prior written approval of the director of the lottery commission; and

(4) The licensee shall permit authorized games of chance to be played only during those hours established and approved by the commission.

(d) License application requirements. — An applicant for a license to operate a gaming facility shall:

(1) Submit an application to the commission on a form prescribed by the commission, which shall include:

(A) Information concerning the applicant and of any controlling person of the applicant sufficient to serve as a basis for a thorough background check;
(B) Subject to the provisions of subsection (e) of this section with respect to publicly-traded corporations, the identity of all stockholders or other persons having a financial interest in either the applicant or any controlling person of the applicant and the identity of each director or executive officer of the applicant and of any controlling person of the applicant;

(C) The identity of the historic resort hotel at which the gaming facility is to be located, including identification of the county in which the historic resort hotel is located; and

(D) Any other information designated by the commission as appropriate to assist it in determining whether a license should be issued;

(2) Pay to the commission a nonrefundable application fee for deposit into the state gaming fund in the amount of twenty-five thousand dollars; and

(3) Pay to the commission an investigative fee for deposit in the state gaming fund in the amount of twenty thousand dollars.

(e) Publicly-traded corporations. — In the event that an applicant or any controlling person of an applicant is a publicly-traded corporation, then information otherwise required to be furnished by an applicant with respect to stockholders, directors and executive officers of the publicly-traded corporation shall be limited to information concerning only those executive officers of the publicly-traded corporation whose ongoing and regular responsibilities relate or are expected to relate directly to the operation or oversight of the gaming facility. "Publicly-traded corporation" as used in this subsection means any corporation or other legal entity except a natural person which has one or more classes of securities registered pursuant to section twelve of the Securities Exchange Act of 1934, as amended (15 U.S.C. §78), or is an issuer subject to section fifteen-d of that act.

(f) Gaming facility qualifications. — An applicant for a license to operate a gaming facility shall demonstrate that the gaming facility will: (1) Be accessible to disabled individuals;
(2) not be located at the main entrance to the historic resort hotel; (3) be licensed in accordance with all other applicable federal, state and local laws; and (4) meet any other qualifications specified by rules adopted by the commission.

(g) Investigative fee. — The investigative fee paid by an applicant at the time of submitting an application shall be applied to the cost of any investigation relating to the applicant required under this article.

(1) If the cost of the investigation is greater than twenty thousand dollars, the investigative agency shall show cause for the additional cost. The applicant shall pay the additional costs to the extent approved by the commission, but not to exceed a total investigative fee of forty thousand dollars.

(2) If the cost of the investigation is less than the aggregate investigative fee paid by an applicant, the commission shall refund the difference.

(h) Surety bond requirement. — The licensed operator of a gaming facility shall execute a surety bond to be given to the state to guarantee the licensee faithfully makes the payments, keeps books and records, makes reports and conducts gaming in the licensee's gaming facility in accordance with the provisions of this article and rules promulgated by the commission. The surety bond shall be:

(1) In the amount of five million dollars;

(2) In a form approved by the commission; and

(3) With a surety approved by the commission.

The bond shall remain in effect during the term of the license and may not be canceled by a surety on less than thirty days notice in writing to the commission. The total and aggregate liability of the surety on the bond is limited to the amount specified in the bond.

(i) Authorization of license. — A license to operate a gaming facility authorizes the licensee to engage in the business
of operating a gaming facility while the license is effective. A license to operate a gaming facility is not transferable or assignable and cannot be sold or pledged as collateral.

(j) Audits. — A licensed gaming facility operator shall submit to the commission an annual audit, by a certified public accountant licensed in the state of West Virginia, of the financial transactions and condition of the licensee’s total operations. The audit shall be in accordance with generally accepted auditing principles.

(k) Annual license maintenance fee. — The licensed gaming facility operator shall pay to the commission an annual license maintenance fee of five thousand dollars.

(l) The licensed gaming facility operator shall provide to the commission, at no cost to the commission, suitable office space at the gaming facility to perform the duties required of it by the provisions of this article.

§29-25-10. Reports by licensee.

(a) A gaming licensee shall file with the commission an annual balance sheet and profit and loss statement pertaining to the licensee’s operation of a gaming facility in this state. A gaming licensee also shall file with the commission an annual statement identifying each controlling person of the licensee and all stockholders, partners, officers or directors for the licensee and any controlling person: Provided, That if a gaming licensee or controlling person is a publicly-traded corporation, then as to the publicly-traded corporation the annual report is required to identify only executive officers whose ongoing regular duties relate directly to the operation of the gaming facility. A gaming licensee shall file further reports with the commission as the commission may require by rule.

(b) A gaming licensee shall maintain daily records showing the following:

(1) The total number of patrons of the gaming facility; and

(2) The gross receipts and the adjusted gross receipts.
(c) From information provided under this subsection, from the audit described in subsection (j), section nine of this article, and from any other source available to the commission, the commission shall identify the profits made from the operation of the gaming facility and compare the profits to profits made from the operation of facilities of a similar nature in other states. Annually, the commission shall submit a report to the joint committee on government and finance setting forth the profits made in the operation of the gaming facility in this state and the results of the comparison to profits made in other states. The commission shall include in the report its recommendations for any adjustments in the taxes imposed upon the operation of a gaming facility under the provisions of this article that would be commensurate with the legislative intent to maximize taxes received from the operation of a gaming facility and minimize profits derived by a licensee from the operation of a gaming facility.

§29-25-11. License to supply gaming facility.

(a) Licenses. — The commission may issue a license to each applicant for a license to supply a gaming facility with gaming devices, gaming supplies or services who meets the requirements of this section.

(b) License qualifications. — To qualify for a license, an applicant shall meet the requirements of this section. Each applicant who is an individual and each individual who is a controlling person of an applicant that is not an individual shall be of good moral character and reputation, and shall have the necessary experience and financial ability to successfully carry out the functions of a gaming facility supplier. The commission may adopt rules establishing additional requirements for a gaming facility supplier.

(c) Supplier specifications. — An applicant for a license to supply gaming devices, equipment and supplies to a gaming facility shall demonstrate that the gaming devices, equipment and supplies that the applicant plans to sell or lease to the licensed operator of the gaming facility, conform or will conform to standards established by rules of the commission and applicable state law.
(d) **License application requirements.** — An applicant for a license shall:

1. Submit an application to the commission on the form that the commission requires;
2. Pay to the commission a nonrefundable application fee for deposit into the state gaming fund in the amount of five thousand dollars; and
3. Pay to the commission an investigative fee for deposit into the state gaming fund in the amount of ten thousand dollars, or a lesser amount as the commission upon application may conditionally approve in a particular case.

(e) **Investigative fee.** — The investigative fee paid by an applicant for a license to supply a gaming facility shall be applied to the cost of any investigation of the applicant required under this article:

1. If the costs of the investigation of an applicant are greater than ten thousand dollars, or the lesser investigative fee as may have been conditionally approved by the commission, the investigative agency must show cause for the additional cost. If the commission approves, the applicant shall pay the additional costs as required by the commission, but not to exceed a total investigative fee of fifty thousand dollars.
2. If the costs of the investigation of an applicant are less than the aggregate investigative fee paid to the commission, the commission shall refund the difference.

(f) **Authorization of licensee.** — A license to supply a gaming facility authorizes the licensee to engage in the business of selling gaming devices and supplies to a gaming facility while the license is effective.

(g) **Inventory.** — A licensed gaming facility supplier shall submit to the commission a list of all equipment, gaming devices and supplies sold or delivered to a gaming facility in this state when required by the commission.

(h) **Annual license maintenance fee.** — A licensed gaming facility supplier shall pay to the commission an annual license maintenance fee of five thousand dollars.
§29-25-12. License to be employed by operator of gaming facility.

(a) Licenses. — The commission shall issue a license to each applicant for a license to be employed in the operation of a gaming facility who meets the requirements of this section.

(b) License qualifications. — To qualify for a license to be employed in a gaming facility, the applicant shall be an individual of good moral character and reputation and have been offered employment by the gaming facility contingent upon licensure pursuant to the provisions of this section. The commission by rule may specify additional requirements to be met by applicants based on the specific job classifications in which the applicant is to be employed.

(c) License application requirements. — An applicant for a license to be employed in the operation of a gaming facility shall:

(1) Submit an application to the commission on the form that the commission requires, including adequate information to serve as a basis for a thorough background check;

(2) Pay to the commission a nonrefundable application fee for deposit into the state gaming fund in the amount of three hundred dollars, which fee may be paid on behalf of the applicant by the employer; and

(3) Pay to the commission a nonrefundable investigative fee for deposit into the state gaming fund in an amount to be fixed by the commission by rule, which fee may be paid on behalf of the applicant by the employer.

(d) Authorization of licensee. — A license to be employed by a gaming facility authorizes the licensee to be employed in the capacity designated by the commission with respect to the license while the license is effective.

(e) Annual license maintenance fee. — Each licensed employee shall pay to the commission an annual license maintenance fee set by the commission. The maintenance fee may vary based on the capacity designated with respect to the licensee but in no event to exceed three hundred dollars. The
fee may be paid on behalf of the licensed employee by the
employer.

§29-25-13. False statements on applications; other license re-
requirements and prohibitions.

(a) Any person who knowingly makes a false statement on
an application is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than one hundred nor more than
five hundred dollars, or confined in the county or regional jail
not less than six months, or both fined and confined.

(b) The commission may not grant a license pursuant to the
provisions of this article if there is substantial evidence that the
applicant:

(1) Has knowingly made a false statement of a material fact
to the commission;

(2) Has been suspended from operating a gambling game,
gaming device or gambling operation in another jurisdiction by
a board or other governmental authority of that jurisdiction
having responsibility for the regulation of gambling or gaming
activities;

(3) Has been convicted of a felony, an offense of moral
turpitude, a gambling offense, a theft or fraud offense, or has
otherwise demonstrated, either by a police record or other
satisfactory evidence, a lack of respect for law and order;

(4) Has failed to meet any monetary obligation in connec-
tion with a gaming facility or any other form of gaming; or

(5) In the case of an applicant for a license to operate a
gaming facility or to supply a gaming facility:

(A) Has not demonstrated financial responsibility sufficient
to meet adequately the requirements of the enterprise proposed;

(B) Is not the true owner of the enterprise or is not the sole
owner and has not disclosed the existence or identity of other
persons who have an ownership interest in such enterprise; or

(C) Is a corporation and five percent or more of the stock of
the corporation is subject to a contract or option to purchase at
any time during the period for which the license is issued unless the contract or option was disclosed to and approved by the commission.

(c) In addition to any other grounds specified in this article, and subject to the hearing provisions of section seventeen of this article, in the case of a license to operate a gaming facility the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee or any controlling person of the applicant or licensee knowingly employs an individual in a senior management position who has been convicted of a felony under the laws of this state, another state, a territory of the United States or the United States or employs any individual in a senior management position who has had a license relating to the operation of a gaming facility revoked by this state or any other state.

(d) Character references may be required of persons licensed, but the character references may not be obtained from persons in the same or similar occupations or professions in other states.

§29-25-14. Licenses; availability for inspection; change of address.

(a) The commission shall include on each license that the commission issues:

(1) The type of license;
(2) The identity and address of the licensee;
(3) The effective date of the license; and
(4) Any other information the commission considers appropriate.

(b) Each gaming licensee or licensed supplier of a gaming facility shall display the license conspicuously in its place of business or have the license readily available for inspection at the request of any agent of the commission or of the state police. Each holder of a license to be employed by a gaming facility shall carry the license on his or her person at all times when present in a gaming facility and, if required by rules
adopted by the commission with respect to the particular
capacity in which the licensee is employed, have some indicia
of licensure prominently displayed on his or her person.

(c) Each licensee shall give the commission written notice
of any change of address and any other relevant information
necessary for the maintenance of accurate records by the
commission.

§29-25-15. Expiration date and renewal of gaming license.

(a) A license expires on the fifth anniversary of its effective
date, unless the license is renewed for additional five-year
terms as provided in this section.

(b) At least two months before a license expires, the
commission shall send to the licensee, by mail to the last known
address, a renewal application form and notice that states:

(1) The date on which the current license expires;

(2) The date by which the commission must receive the
renewal application for the renewal to be issued and mailed
before the existing license expires; and

(3) The amount of the renewal fee.

(c) Before the license expires the licensee may renew it for
successive additional five-year terms if the licensee:

(1) Otherwise is entitled to be licensed;

(2) Pays to the commission the following renewal fee:

(A) The sum of twenty-five thousand dollars for a license
to operate a gaming facility;

(B) The sum of five thousand dollars for a license to supply
a gaming facility; and

(C) As set by the commission by rule in the case of a
license to be employed by an operator of a gaming facility, not
to exceed three hundred dollars, which renewal fee may be paid
on behalf of the licensee by the employer; and
(3) Submits to the commission a renewal application in the form that the commission requires accompanied by satisfactory evidence of compliance with any additional requirements set by rules of the commission for license renewal; and

(4) Submits to the commission evidence satisfactory to the commission of the gaming facility operator's compliance with the plan described in subdivision (4), subsection (b), section nine of this article to create at least one hundred full-time equivalent positions with a salary and benefit package commensurate with existing employees at the historic resort hotel. Notwithstanding any provision of subsection (d) of this section, the failure to substantially comply with the plan, as determined by the commission, may constitute grounds for the denial of the renewal of the license.

(d) The commission shall renew the license of each licensee who meets the requirements of this section.

§29-25-16. License denial, revocation and reprimand.

(a) The commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if the applicant or licensee, or any controlling person of the applicant or license:

(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;

(2) Fraudulently or deceptively uses a license; or

(3) Is convicted of a felony under the laws of this state, another state, a territory of the United States or the United States.

(b) Instead of or in addition to reprimanding a licensee or suspending or revoking a license, the commission may impose a civil penalty under section twenty-seven of this article.

§29-25-17. Hearing procedures.

Except as otherwise provided by law, before the commission takes any action involving a licensee under the provisions of this article, it shall give the persons against whom the action
is contemplated an opportunity for a hearing before the commission.

The commission shall give notice and hold the hearing in accordance with state law. The notice shall be given to the person by certified mail to the last known address of the person at least thirty days before the hearing. The person may be represented at the hearing by counsel.

If a person fails to comply with a subpoena issued under this section, on petition of the commission, the circuit court may compel obedience to the subpoena. If after due notice the person against whom the action is contemplated fails or refuses to appear, the commission may hear and determine the matter.

Any person aggrieved by a final decision of the commission in a contested case, as defined in chapter twenty-nine-a of this code, may appeal as provided for in that chapter.


As a condition of licensure and notwithstanding the separate licensure of the facility as a private club pursuant to article seven, chapter sixty of this code, any licensee shall consent to any search without a warrant by agents of the commission or of the state police designated by the commission of the licensee’s person, personal property and effects, and premises which are located in the gaming facility or adjacent facilities under the control of the licensee, to inspect or investigate for criminal violations of this article or violations of rules adopted by the commission.


(a) Consent to presence of law-enforcement officers. — Any individual entering a gaming facility shall be advised by the posting of a notice or other suitable means of the possible presence of state, county or municipal law-enforcement officers, and by entering the gaming facility impliedly consents to the presence of the law-enforcement officers.
(b) Setting of wagering limits. — The operator of a gaming facility may set minimum and maximum wagers for any authorized game of chance, except for video lottery. Video lottery terminals operated at the gaming facility may not allow more than two dollars to be wagered on a single game.

§29-25-20. Accounting and reporting of gross terminal income.

The licensed gaming facility shall remit fifty-three percent of the gross terminal income from video lottery games at the licensed gaming facility to the commission through electronic funds transfer. The gaming licensee shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. The gaming licensee shall provide the commission thirty days’ advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds.

§29-25-21. Taxes on games other than video lottery games.

(a) Imposition and rate of limited gaming profits tax. — There is hereby levied and shall be collected a privilege tax against a gaming licensee in an amount to be determined by application of the rate against adjusted gross receipts of the licensed gaming facility. The rate of tax is thirty-seven percent. This tax is in addition to all other taxes and fees imposed: Provided, That the consumers sales and services tax imposed pursuant to article fifteen, chapter eleven of this code may not apply to the proceeds from any wagering with respect to an authorized game of chance pursuant to this article.

(b) Computation and payment of tax. — The taxes levied under the provisions of this section are due and payable in monthly installments on or before the twenty-first day of the month following the month in which the tax is accrued. The taxpayer shall, on or before the twenty-first day of each month make out and mail to the commission a return for the preceding month, in the form prescribed by the commission, showing: (1) The total gross receipts from the gaming facility for that month and the adjusted gross receipts; (2) the amount of tax for which the taxpayer is liable; and (3) any further information necessary in the computation and collection of the tax which the tax
commissioner or the commission may require. Payment of the
amount of tax due shall accompany the return. All payments
made pursuant to this section shall be deposited in the state
gaming fund.

(c) Prohibition on credits. — Notwithstanding any other
provision of this code to the contrary, no credits may be
allowed against any tax imposed on any taxpayer by this code
for an investment in gaming devices and supplies, for an
investment in real property which would be directly utilized for
the operation of a gaming facility or for any jobs created at a
gaming facility. Notwithstanding any other provision of this
code to the contrary, the tax imposed by this section may not be
added to federal taxable income in determining West Virginia
taxable income of a taxpayer for purposes of article twenty-
four, chapter eleven of this code.

§29-25-22. State gaming fund created; allocation of net income.

(a) There is hereby created a special fund in the state
treasury which shall be designated and known as the “state
gaming fund”. All revenues received from licenses and appli-
cants under this article, all gross terminal income received by
the commission under section twenty of this article and all tax
revenues from the tax imposed under section twenty-one of this
article shall be deposited with the state treasurer and placed in
the state gaming fund. The fund shall be an interest bearing
account with interest to be credited to and deposited in the state
gaming fund.

(b) All expenses of the commission shall be paid from the
state gaming fund, including reimbursement of the state police
for activities performed at the request of the commission in
connection with background investigations or enforcement
activities pursuant to this article. At no time may the commis-
sion’s expenses under this article exceed fifteen percent of the
total of the annual revenue received from the licensee under this
article, including all license fees, taxes or other amounts
required to be deposited in the state gaming fund.

(c) The balance of the state gaming fund shall be divided as
follows:
(1) Eighty-nine percent of the state gaming fund net income shall be paid into the general revenue fund to be appropriated by the Legislature;

(2) The tourism promotion fund established in section nine, article one, chapter five-b of this code shall receive three percent of the state gaming fund net income;

(3) The county where the gaming facility is located shall receive four percent of the state gaming fund net income;

(4) The municipality where the gaming facility is located or the municipality closest to the gaming facility by paved road access shall receive two percent of the state gaming fund net income; and

(5) The municipalities within the county where the gaming facility is located, except for the municipality receiving funds under subdivision (4) of this subsection, shall receive equal shares of two percent of the state gaming fund net income.

§29-25-23. Prohibition on unauthorized wagering.

(a) A gaming licensee may not permit any form of wagering except as authorized under this article.

(b) A gaming licensee may receive wagers only from an individual present in a licensed gaming facility.

(c) All gaming facility operations shall use a cashless wagering system whereby all players' money is converted to tokens, electronic cards or chips at the request of the wagerer which can only be used for wagering in a licensed gaming facility, and wagering may not be conducted with money or other negotiable currency.

(d) The gaming licensee is prohibited from offering any property or service, other than incidental food and beverages, to any person as an inducement to participate in a game of chance. This prohibition includes the offering of complimentary or discounted rooms in exchange for a guest participating in any game of chance at the gaming facility.

(a) An individual may not enter a gaming facility or remain in a gaming facility to participate in authorized games of chance if the individual:

1. Is not a registered overnight guest in the historic resort hotel on whose premises the gaming facility is located;
2. Is under the age of twenty-one years;
3. Is intoxicated;
4. Is determined by the gaming facility operator or the commission to be unruly, disruptive or otherwise interfering with operation of the gaming facility; or to be likely to commit, or to attempt to commit, a violation of this article; or
5. Has been barred by the commission from entering a gaming facility.

(b) Notwithstanding any provisions of this code to the contrary, no employee of the commission or employee of the historic resort hotel or any member of his or her immediate household may wager at the gaming facility.

§29-25-25. Offenses and penalties.

(a) A gaming licensee is guilty of unlawful operation of a game of chance when:

1. The licensee operates a game of chance in any location other than a gaming facility;
2. The licensee acts, or employs another person to act, as a shill or decoy to encourage participation in a game of chance in a gaming facility;
3. The licensee knowingly permits an individual under the age of twenty-one years of age to enter or remain in a gaming facility for the purpose of making a wager; or
4. The licensee exchanges tokens, chips or other forms of credit to be used for wagering in a gaming facility for anything of value except in exchange for money.
(b) A person is guilty of felonious wager when:

(1) The person offers, promises or gives anything of value or benefit to a person who is connected with a gaming facility pursuant to an agreement or arrangement or with intent that the promise or thing of value or benefit will influence the actions of the person to whom the offer, promise, or gift was made in order to affect or attempt to affect the outcome of an authorized game of chance, or to influence official action of the commission. For the purposes of this subdivision and subdivision (2) of this subsection, the term "person who is connected with a gaming facility" includes, but is not limited to, an officer or employee of a licensee;

(2) The person solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with a gaming facility, pursuant to an understanding or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of an authorized game of chance, or to influence official action of the commission;

(3) The person uses or possesses with the intent to use a device to assist:

(A) In projecting the outcome of an authorized game of chance;

(B) In keeping track of cards played or in play;

(C) In analyzing the probability of the occurrence of an event relating to an authorized game of chance; or

(D) In analyzing the strategy for playing or betting to be used in an authorized game of chance, except as permitted by the commission;

(4) The person cheats at an authorized game of chance in a gaming facility;

(5) The person manufactures, sells, or distributes any cards, chips, dice, game or device which is intended to be used to violate any provision of this article;
(6) The person instructs a person in cheating or in the use of a device for that purpose with the knowledge or intent that the information or use conveyed may be employed to violate any provision of the article;

(7) The person places a bet after acquiring knowledge, not available to all players, of the outcome of the game of chance which is the subject of the bet, or aids a person in acquiring the knowledge for the purpose of placing a bet contingent on that outcome;

(8) The person claims, collects, takes, or attempts to claim, collect or take, money or anything of value into or from a gaming facility, with intent to defraud, without having made a wager contingent on winning a game of chance, or claims, collects or takes an amount of money or thing of value of greater value than the amount won;

(9) The person uses counterfeit chips or tokens to place a wager in a gaming facility;

(10) The person knowingly uses any medium other than chips, tokens or other methods of credit approved by the commission to place a wager in a gaming facility;

(11) The person, not a gaming licensee or employee or agent of a gaming licensee acting in furtherance of the gaming licensee’s interests, has in his or her possession any device intended to be used to violate a provision of this article; or

(12) The person, not a gaming licensee or agent of a gaming licensee acting in furtherance of the gaming licensee’s interests, has in his or her possession any key or device designed for the purpose of opening, entering or affecting the operation of an authorized game of chance, drop box or an electronic or mechanical device connected with or used in connection with an authorized game of chance in a gaming facility or for removing coins, tokens, chips or other contents therefrom.

(c) Any person who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars
or confined in a county or regional jail for not more than six months.

(d) Any person who violates the provisions of subsection (b) of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than ten thousand dollars and committed to the division of corrections of a definite term of imprisonment of not less than one year nor more than five years.


(a) Anything of value, including all traceable proceeds including, but not limited to, real and personal property, moneys, negotiable instruments, securities and conveyances, is subject to forfeiture to the state of West Virginia if the item was used for any of the following:

(1) As a bribe intended to affect the outcome of an authorized game of chance in a gaming facility; or

(2) In exchange for or to facilitate a violation of this article.

(b) Subsection (a) of this section does not apply if the act or omission which would give rise to the forfeiture was committed or omitted without knowledge or consent of the owner of the property to be forfeited.

§29-25-27. Civil penalties.

The commission may impose on a person who violates the provisions of this article a civil penalty not to exceed ten thousand dollars for each violation, whether or not the person is licensed under this article.

The provisions of article five, chapter twenty-nine-a of this code shall apply to any civil penalty imposed pursuant to the provisions of this section.
AN ACT to amend and reenact section three, article ten, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointment and termination of guardians by county commissions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-3. Appointment and revocation of guardian by county commission.

(a) The county commission of the county in which the minor resides, or if the minor is a nonresident of the state, the county in which the minor has an estate, may appoint as the minor's guardian a suitable person. The father or mother shall receive priority. However, in every case, the competency and fitness of the proposed guardian and the welfare and best interests of the minor shall be given precedence by the court when appointing the guardian.

(b) The county commission, the guardian, or the minor may revoke or terminate the guardianship appointment when:

(1) The minor reaches the age of eighteen and executes a release stating that the guardian estate was properly administered and that the minor has received the assets of the estate from the guardian;

(2) The guardian or the minor dies;
16 (3) The guardian petitions the county commission to resign
17 and the county commission enters an order approving the
18 resignation; or
19
20 (4) A petition is filed by the guardian, the minor, an
21 interested person or upon the motion of the county commission
22 stating that the minor is no longer in need of the assistance or
23 protection of a guardian.
24
25 (c) A guardianship shall not be terminated by the county
26 commission if there are any assets in the estate due and payable
27 to the minor: Provided, That another guardian may be ap-
28 pointed upon the resignation of a guardian whenever there are
29 assets in the estate due and payable to the minor.

CHAPTER 133

(Com. Sub. for H. B. 2472 — By Delegates Staton,
Coleman, Faircloth, Givens, Mahan, Pino and Smirl)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]
authority commences; providing for the written designation of a standby guardianship by a parent; requiring a standby guardian authorized by a written designation to file a petition for approval after the commencement of his authority; providing for institution of proceedings to determine permanent guardianship; establishing procedures for revocation and refusal; and providing that the standby guardian's authority continues until it is revoked by the qualified parent or rescinded by the circuit court.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. STANDBY GUARDIANSHIP.

§44A-5-1. Title.

This article may be cited as the "Standby Guardianship Act.”


(a) “Attending physician” means the physician who has primary responsibility for the treatment and care of a qualified parent.

(b) “Designation” means a writing that is: (i) Voluntarily executed in conformance with the requirements of section five of this article, signed by a parent; and (ii) names a person to act as standby guardian.

(c) “Determination of debilitation” means a written determination made by an attending physician that a qualified
parent is chronically and substantially unable to care for a
minor child as a result of a debilitating illness, disease or injury.
Such a determination shall include the physician’s medical
opinion to a reasonable degree of medical certainty regarding
the nature, cause, extent and probable duration of the parent’s
debilitating condition.

(d) “Determination of incompetence” means a written
determination made by the attending physician that to a
reasonable degree of medical certainty a qualified parent is
chronically and substantially unable to understand the nature
and consequences of decisions concerning the care of a minor
child as a result of a mental or organic impairment and conse-
quently is unable to care for the child. Such a determination
shall include the physician’s medical opinion, to a reasonable
degree of medical certainty, regarding the nature, cause, extent
and probable duration of the parent’s incompetence.

(e) “Functional parent” means a person other than a
biological or adoptive parent, who is performing daily
caretaking functions for the child.

(f) “Parent” means a biological or adoptive parent and
includes a person, other than a parent, who has physical custody
of a child and who has either been awarded custody by a court
or claims a right to custody.

(g) “Petition” means a writing that is voluntarily executed
and filed in the circuit court of the county in which the child
resides in conformance with the requirements of section three
of this article.

(h) “Qualified parent” means a parent who has been
diagnosed, as evidenced in writing, by a licensed physician to
be afflicted with a progressive or chronic condition caused by
injury, disease or illness from which, to a reasonable degree of
medical probability, the patient cannot recover and that is likely
to lead to debilitation or incompetence.

(i) “Standby guardian” means a person who, in accordance
with this article, is designated in writing or approved by the
circuit court to temporarily assume the duties of guardian of the
person or property, or both, of a minor child, on behalf of or in
conjunction with a qualified parent, upon the occurrence of a
triggering event. A standby guardianship shall be so construed
as to enable the parent to plan for the future of a child, without
terminating parental or legal rights by creating coguardianship
rights between a parent and a standby guardian who has the
authority to act in a manner consistent with the known wishes
of a qualified parent regarding the care, custody and support of
the minor child.

(j) "Triggering event" means the event upon the occurrence
of which the standby guardian may be authorized to act. The
triggering event shall be specified in a court order or written
designation and shall be the earlier of a determination of
incompetence or the death of a qualified parent. In the case of
a standby guardian judicially approved pursuant to section three
of this article, the triggering event may also be specified as the
qualified parent's written consent to the commencement of the
standby guardian's authority. In the case of a standby guardian
designated pursuant to section five of this article, the triggering
event may also be specified as: (i) A determination of debilita-
tion of the qualified parent; and (ii) that parent's written
consent to the commencement of the designated standby
guardian's authority.

§44A-5-3. Petition for approval of standby guardian; fees.

(a) Upon petition of a parent, functional parent or any
person acting on parent's behalf, the circuit court of the county
in which a child resides may approve a person as standby
guardian for a child of a qualified parent upon the occurrence
of a specific triggering event. If requested in the petition, the
court may also approve an alternate standby guardian identified
by the petitioner, to act in the event the standby guardian is
unable or unwilling to assume the responsibilities of the
standby guardianship.

(b) The petition shall include:

(1) The name and address of the petitioner and his or her
relationship to the child, the name and address of the child's
qualified parent, and the name and address of any other parent
of the child whose identity and whereabouts are known to the 
petitioner or can reasonably be ascertained;

(2) The name, address and birth date of the child;

(3) The nature of the proposed triggering event and, if 
written consent is chosen as the proposed triggering event, any 
factors or circumstances that must be present before the 
qualified parent’s written consent is effective;

(4) Whether a determination of incompetence or debilita­
tion has been made and, if so, when and by whom;

(5) Whether there is a significant risk that the qualified 
parent will die imminently or become physically or mentally 
incapable of caring for the child or die as a result of a progres­
se chronic condition or illness; however, a petitioner shall not 
be required to submit medical documentation of a parent’s 
medical status with the petition;

(6) The name and address of the person proposed as 
standby guardian and any alternate standby guardian, and if the 
parent is competent, that the qualified parent approves of the 
persons proposed;

(7) Whether the petitioner requests that the person proposed 
as standby guardian be given authority as a guardian of the 
person or guardian of the property of the minor, or both;

(8) A statement of any known reasons why the child’s other 
parent is not assuming or should not assume the responsibilities 
of a standby guardian;

(9) Whether there is any prior judicial history or pending 
litigation regarding custody of the child; and

(10) The name and address of the attending physician.

(c) Upon filing of a petition, notice of the filing must be 
promptly given to each parent of the child whose identity and 
whereabouts are known to the petitioner, the child, if he or she 
is fourteen or more years of age, the proposed standby guardian 
and alternate, if any.
(1) The notice must be accompanied by a copy of the petition and shall be mailed by certified mail return receipt requested, by the petitioner.

(2) The notice should include a statement that no change in custody or other legal rights is effected by the appointment of a standby guardian and that it is not necessary for the recipient of the notice to appear. The notice should also state that any parent may request a hearing on the petition provided that such request is made within ten days from the date the notice was sent.

(d) A hearing must be held prior to any order approving the standby guardianship if there is another known parent who requests a hearing within ten days of the date that notice of filing was sent or if there is other litigation pending regarding the custody of the child.

(e) Prior to any hearing on the petition, the circuit court may appoint a discreet and competent attorney at law as guardian ad litem to represent the child pursuant to section ten, article four, chapter fifty-six of this code. If the petition for standby guardianship is filed by anyone other than a parent of the child, the circuit court shall appoint a guardian ad litem. The qualified parent shall not be required to appear at the hearing if he or she is medically unable to appear, except upon motion for good cause shown.

§44A-5-4. Circuit court’s order approving standby guardianship; authority; when effective.

(a) When a petition is filed by a person other than a parent having custody of the child, the standby guardian may be appointed only with the consent of the qualified parent unless the circuit court finds that such consent cannot be given for medical reasons.

(b) Upon consideration of the factors set out in subsection (b), section three of this article and finding that: (i) The child’s parent is a qualified parent; and (ii) appointment of a standby guardian is in the best interest of the child, the circuit court shall appoint the person requested in the petition as standby
guardian, and, if requested, the requested alternate standby
guardian. However, when a petition is filed by a person other
than a parent having custody of the child, the standby guardian
shall be appointed only with the consent of the qualified parent
unless the court finds that such consent cannot be given for
medical reasons.

(c) The order shall specify the triggering event and shall
provide that the authority of the standby guardian is effective:
(i) Upon receipt of either a determination of incompetence or a
certificate of death; or (ii) if so requested in the petition, upon
receipt by the standby guardian of the qualified parent's written
consent and filing of this consent with the circuit court. The
written consent shall be executed after the entry of the court
order and signed by the qualified parent, or by another in his or
her presence and on his or her behalf.

(d) As soon as practicable after entry of the order, a copy
shall be served on the standby guardian.

(e) A standby guardian shall have the powers and duties of
a guardian of the person and guardian of the property of a
minor, unless otherwise specified in the order.

(f) The standby guardian shall file with the circuit court as
soon as practicable but in no event later than thirty days
following a parent's death, determination of incompetence or
consent, a copy of the certificate of death, determination of
incompetence or consent of the qualified parent upon which the
standby authority is based and a determination of debilitation.
Failure to file within the time specified shall be grounds for the
circuit court to rescind the authority of the standby guardian
upon petition of any person, but all acts undertaken by the
standby guardian on behalf of and in the interests of the child
be valid and enforceable until authority is rescinded.

§44A-5-5. Written designation of a standby guardian by a parent;
commencement of authority; approval required.

(a) A parent may execute a written designation of a standby
guardian at anytime. The written designation shall be signed by
the parent, witnessed by two adults. Another adult may sign the
written designation on behalf of the parent if the parent is physically unable to do so, provided the designation is signed at the express request of the parent and in the presence of the parent. The designated standby guardian or alternate may not sign on behalf of the parent. The signed designation shall be delivered to the standby guardian and any alternate named as soon as practicable. The written designation shall state:

(1) The name, address and birth date of the child affected;

(2) The triggering event; and

(3) The name and address of the person designated as standby guardian or alternate.

(b) Following such delivery of the designation, the authority of a standby guardian to act for a qualified parent shall commence upon the occurrence of the specified triggering event and receipt by him or her of: (i) A determination of incompetence; (ii) a certificate of death of the parent; or (iii) a determination of debilitation and the qualified parent’s written consent to such commencement signed by the parent or another on his behalf and at his direction as provided in subsection (a) of this section for the designation.

(c) A standby guardian under a designation shall have the authority of a guardian of the person and a guardian of the property of the child, unless otherwise specified in the designation.

(d) A designated standby guardian or alternate shall file a petition for approval with the circuit court as soon as practicable after the occurrence of the triggering event but in no event later than thirty days after the date of the commencement of his or her authority. The authority of the standby guardian shall cease upon his or her failure to so file, but shall recommence upon such filing. The petition shall be accompanied by a copy of the designation and a: (i) Determination of incompetence; (ii) determination of debilitation and consent; or (iii) a certificate of death.

(e) The notice provisions of subsection (c), section three of this article shall apply to a petition filed pursuant to this section.
The circuit court shall enter in an order approving the designated guardian upon finding that:

(1) The person was duly designated as standby guardian pursuant to the section and the designation has not been revoked;

(2) A determination of incompetence was made; a determination of debilitation was made and the parent consented to commencement of the standby guardian's authority; or the parent has died;

(3) The best interests of the child will be served by approval of the standby guardian; and

(4) If the petition is by an alternate, that the designated standby guardian is unwilling or unable to serve.

§44A-5-6. Further proceedings to determine permanent guardianship.

(a) If the triggering event was death of the qualified parent, the standby guardian shall within ninety days of such death, petition for appointment of a guardian for the child as otherwise provided by law or may initiate proceedings to determine legal and physical custody of the child pursuant to article four, chapter forty-eight, or both.

(b) In all other cases a standby guardian shall promptly after occurrence of the triggering event initiate such proceedings to determine guardianship and custody, absent objection by the qualified parent.

(c) The petition shall be accompanied by:

(1) The circuit court's order approving the standby guardian or the qualified parent's written designation of the standby guardian; and

(2) (i) The attending physician's written determination of incompetence or debilitation; or (ii) certificate of death.

§44A-5-7. Revocation, refusal and termination of standby guardianship.

(a) The authority of a standby guardian approved by the circuit court may be revoked by the qualified parent by his or
her filing a notice of revocation with the circuit court. The notice of revocation shall identify the standby guardian or alternate standby guardian to which the revocation will apply. A copy of the revocation shall also be delivered to the standby guardian whose authority is revoked and any alternate standby guardian who may then be authorized to act. At any time following his or her approval by the circuit court, a standby guardian may decline to serve by filing a written statement of refusal with the court and having the statement personally served on the qualified parent and any alternate standby guardian who may then be authorized to act.

(b) When a written designation has been executed, but is not yet effective because the triggering event has not yet occurred, the parent may revoke or the prospective standby guardian may refuse the designation by notifying the other party in writing. A written designation may also be revoked by the subsequent execution of an inconsistent designation.

(c) When a standby guardian’s authority is effective upon debilitation or incompetence of the qualified parent, the standby guardian’s authority to act on behalf of the parent continues after the parent is restored to health unless the qualified parent notifies the guardian and, if appropriate, the county commission, in writing, that the standby guardian’s authority is revoked. If at any time the circuit court finds that the parent no longer meets the definition of “qualified parent,” it shall rescind its approval of the standby guardian.


A child’s parent, stepparent, functional parent, adult sibling or any adult related to the child by blood or marriage may petition the circuit court that approved the standby guardian at any time following such approval for review of whether continuation of the standby guardianship is in the best interest of the child. Notice of the filing of a petition for review shall promptly be given to the standby guardian, the child if the child is fourteen or more years of age, and each parent of the child whose identity and whereabouts are known or could reasonably be ascertained.
AN ACT to amend article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-b, relating to permit approval by the commissioner of the bureau of public health for individual sewage systems with surface water discharge; consideration for approval under certain conditions; reserve area requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF HEALTH.

§16-1-9b. Permit approval for individual systems with surface water discharge; reserve areas.

Individual systems with surface water discharge may be considered for approval for a permit pursuant to section nine of this article under the following conditions: (1) To correct existing failures when other means of treatment and disposal have proven ineffective; or (2) on a tract, lot or parcel of land that equals or exceeds two acres which cannot qualify for standard or alternative soil absorption systems; or (3) on existing lots which received approval under a prior permit where it has been determined that applicable standards cannot be met to qualify for a standard or alternate soil absorption system. Approval under these conditions is applicable only to single family residential units.
When installing a standard sewage disposal system, modified system, experimental system or other approved system, the reserve area shall consist of an area for the placement of the original system together with an area for replacement and upgrade of absorption field lines within the reserve area. Testing of the site for approval shall consist of a six foot hole and a percolation test of the soils.

CHAPTER 135

(S. B. 492 — By Senators Tomblin, Mr. President, and Sprouse)  
[By Request of the Executive]

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, four-a, five, six, seven, seven-a, eight, nine, ten, eleven, thirteen and fifteen, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to definitions; certificate of need; new institutional health services definition; exemptions from certificate of need; conversion of acute beds to skilled nursing beds in rural areas; powers and duties of health care authority relating to certificate of need program, health planning, state health plan, application fees, long term care beds, ICF/MR beds, life care retirement centers, moratoriums for certain health services, certificate of need standards and rural health facilities; providing for the conversion of acute care beds to skilled nursing beds at certain hospitals under specified conditions; minimum criteria for certificate of need reviews, long-range plans; procedures for certificate of need reviews; notification to the public; public hearings; file closing; annual report; access for the public; reconsideration; expedited review; review for nonhealth-related projects; filing with consumer advocate; rule-making powers; final decision; required findings; emergency certificate of need; appeal of final decision; certificate of need is nontransferable; extensions and withdrawals
of certificates of need; injunctive relief; civil penalties; and previously approved rules and regulations.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, four-a, five, six, seven, seven-a, eight, nine, ten, eleven, thirteen and fifteen, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.
§16-2D-3. Certificate of need; new institutional health services defined.
§16-2D-4. Exemptions from certificate of need program.
§16-2D-4a. Conversion of hospital acute beds to skilled nursing beds.
§16-2D-5. Powers and duties of state agency.
§16-2D-6. Minimum criteria for certificate of need reviews.
§16-2D-7. Procedures for certificate of need reviews.
§16-2D-7a. Coordination and filing with consumer advocate.
§16-2D-8. Agency to promulgate additional rules.
§16-2D-9. Agency to render final decision; issue certificate of need; write findings; specify capital expenditure maximum.
§16-2D-10. Appeal of certificate of need decisions.
§16-2D-11. Nontransference, time period compliance and withdrawal of certificate of need.
§16-2D-13. Injunctive relief; civil penalty.

§16-2D-2. Definitions.

1 Definitions of words and terms defined in articles five-f and twenty-nine-b of this chapter are incorporated in this section unless this section has different definitions.

2 As used in this article, unless otherwise indicated by the context:

3 (a) “Affected person” means:

4 (1) The applicant;

5 (2) An agency or organization representing consumers;

6 (3) Any individual residing within the geographic area served or to be served by the applicant;

7 (4) Any individual who regularly uses the health care facilities within that geographic area;
(5) The health care facilities which provide services similar to the services of the facility under review and which will be significantly affected by the proposed project;

(6) The health care facilities which, prior to receipt by the state agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future;

(7) Third-party payors who reimburse health care facilities similar to those proposed for services;

(8) Any agency that establishes rates for health care facilities similar to those proposed; or

(9) Organizations representing health care providers.

(b) "Ambulatory health care facility" means a free-standing facility that provides health care to noninstitutionalized and nonhomebound persons on an outpatient basis. For purposes of this definition, a free-standing facility is not located on the campus of an existing health care facility. This definition does not include the private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: Provided, That this exemption from review shall not be construed to include practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: Provided, however, That this exemption from review shall not be construed to include certain health services otherwise subject to review under the provisions of subdivision (1), subsection (a), section four of this article.

(c) "Ambulatory surgical facility" means a free-standing facility that provides surgical treatment to patients not requiring hospitalization. For purposes of this definition, a free-standing facility is not physically attached to a health care facility. This definition does not include the private office practice of any one or more health professionals licensed to practice surgery in this state pursuant to the provisions of chapter thirty of this code: Provided, That this exemption from review shall not be construed to include practices where major medical equipment otherwise subject to review under the provisions of this article
is acquired, offered or developed: Provided, however, That this
exemption from review shall not be construed to include health
services otherwise subject to review under the provisions of
subdivision (1), subsection (a), section four of this article.

(d) "Applicant" means: (1) The governing body or the
person proposing a new institutional health service who is, or
will be, the health care facility licensee wherein the new
institutional health service is proposed to be located; and (2) in
the case of a proposed new institutional health service not to be
located in a licensed health care facility, the governing body or
the person proposing to provide the new institutional health
service. Incorporators or promoters who will not constitute the
governing body or persons responsible for the new institutional
health service may not be an applicant.

(e) "Bed capacity" means the number of beds licensed to a
health care facility, or the number of adult and pediatric beds
permanently staffed and maintained for immediate use by
inpatients in patient rooms or wards in an unlicensed facility.

(f) "Campus" means the adjacent grounds and buildings, or
grounds and buildings not separated by more than a public
right-of-way, of a health care facility.

(g) "Capital expenditure" means:

(1) An expenditure made by or on behalf of a health care
facility, which:

(A)(i) Under generally accepted accounting principles is not
properly chargeable as an expense of operation and mainte-
nance; or (ii) is made to obtain either by lease or comparable
arrangement any facility or part thereof or any equipment for a
facility or part; and

(B)(i) Exceeds the expenditure minimum; (ii) is a substan-
tial change to the bed capacity of the facility with respect to
which the expenditure is made; or (iii) is a substantial change
to the services of such facility;

(2) The donation of equipment or facilities to a health care
facility, which if acquired directly by that facility would be
subject to review;
(3) The transfer of equipment or facilities for less than fair market value if the transfer of the equipment or facilities at fair market value would be subject to review; or

(4) A series of expenditures, if the sum total exceeds the expenditure minimum and if determined by the state agency to be a single capital expenditure subject to review. In making this determination, the state agency shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; whether the expenditures are to be made over a two-year period and are directed towards the accomplishment of a single goal within the health care facility's long-range plan; or whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

(h) "Expenditure minimum" means two million dollars and includes the cost of any studies, surveys, designs, plans, working drawings, specifications and other activities, including staff effort and consulting and other services essential to the acquisition, improvement, expansion or replacement of any plant or equipment.

(i) "Health", used as a term, includes physical and mental health.

(j) "Health care facility" means a publicly or privately owned facility, agency or entity that offers or provides health care services, whether a for-profit or nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part, and includes, but is not limited to, hospitals; skilled nursing facilities; kidney disease treatment centers, including free-standing hemodialysis units; intermediate care facilities; ambulatory health care facilities; ambulatory surgical facilities; home health agencies; hospice agencies; rehabilitation facilities; health maintenance organizations; and community mental health and mental retardation facilities. For purposes of this definition, "community mental health and mental retardation facility" means a private facility which provides such comprehensive services and continuity of care as emergency, outpa-
tient, partial hospitalization, inpatient or consultation and
education for individuals with mental illness, mental retardation
or drug or alcohol addiction.

(k) "Health care provider" means a person, partnership,
corporation, facility, hospital or institution licensed or certified
or authorized by law to provide professional health care service
in this state to an individual during that individual's medical,
remedial or behavioral health care, treatment or confinement.

(l) "Health maintenance organization" means a public or
private organization which:

(1) Is required to have a certificate of authority to operate
in this state pursuant to section three, article twenty-five-a,
chapter thirty-three of this code; or

(2) (A) Provides or otherwise makes available to enrolled
participants health care services, including substantially the
following basic health care services: Usual physician services,
hospitalization, laboratory, X ray, emergency and preventive
services and out-of-area coverage;

(B) Is compensated except for copayments for the provision
of the basic health care services listed in paragraph (A) of this
subdivision to enrolled participants on a predetermined periodic
rate basis without regard to the date the health care services are
provided and which is fixed without regard to the frequency,
extent or kind of health service actually provided; and

(C) Provides physicians' services: (i) Directly through
physicians who are either employees or partners of the organi-
ization; or (ii) through arrangements with individual physicians
or one or more groups of physicians organized on a group
practice or individual practice basis.

(m) "Health services" means clinically related preventive,
diagnostic, treatment or rehabilitative services, including
alcohol, drug abuse and mental health services.

(n) "Home health agency" means an organization primarily
engaged in providing professional nursing services either
directly or through contract arrangements and at least one of the
following services: Home health aide services, other therapeutic services, physical therapy, speech therapy, occupational therapy, nutritional services or medical social services to persons in their place of residence on a part-time or intermittent basis.

(o) "Hospice agency" means a private or public agency or organization licensed in West Virginia for the administration or provision of hospice care services to terminally ill persons in the persons' temporary or permanent residences by using an interdisciplinary team, including, at a minimum, persons qualified to perform nursing services; social work services; the general practice of medicine or osteopathy; and pastoral or spiritual counseling.

(p) "Hospital" means a facility licensed as such pursuant to the provisions of article five-b of this chapter, and any acute care facility operated by the state government, that primarily provides inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick persons under the supervision of physicians and includes psychiatric and tuberculosis hospitals.

(q) "Intermediate care facility" means an institution that provides health-related services to individuals with mental or physical conditions that require services above the level of room and board, but do not require the degree of services provided in a hospital or skilled-nursing facility.

(r) "Long-range plan" means a document formally adopted by the legally constituted governing body of an existing health care facility or by a person proposing a new institutional health service, which contains the information required by the state agency in rules adopted pursuant to section eight of this article.

(s) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions, which is used for the provision of medical and other health services and costs in excess of two million dollars. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of
a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven of Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining whether medical equipment is major medical equipment, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

(t) "Medically underserved population" means the population of an area designated by the state agency as having a shortage of personal health services. The state agency may consider unusual local conditions that are a barrier to accessibility or availability of health services. The designation shall be in rules adopted by the state agency pursuant to section eight of this article, and the population so designated may include the state's medically underserved population designated by the federal secretary of health and human services under Section 330(b)(3) of the Public Health Service Act, as amended, Title 42 U.S.C. §254.

(u) "New institutional health service" means any service as described in section three of this article.

(v) "Offer," when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means to provide specified health services.

(w) "Person" means an individual, trust, estate, partnership, committee, corporation, association and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision or instrumentality thereof or any legal entity recognized by the state.

(x) "Physician" means a doctor of medicine or osteopathy legally authorized to practice by the state.

(y) "Proposed new institutional health service" means any service as described in section three of this article.
(z) "Psychiatric hospital" means an institution that primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mentally ill and emotionally disturbed persons.

(aa) "Rehabilitation facility" means an inpatient facility operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services, which are provided under competent professional supervision.

(bb) "Review agency" means an agency of the state, designated by the governor as the agency for the review of state agency decisions.

(cc) "Skilled nursing facility" means an institution, or a distinct part of an institution, that primarily provides inpatient skilled nursing care and related services, or rehabilitation services, to injured, disabled or sick persons.

(dd) "State agency" means the health care authority created, established and continued pursuant to article twenty-nine-b of this chapter.

(ee) "State health plan" means the document approved by the governor after preparation by the former statewide health coordinating council, or that document as approved by the governor after amendment by the former health care planning council or the state agency.

(ff) "Substantial change to the bed capacity" of a health care facility means any change, associated with a capital expenditure, that increases or decreases the bed capacity, or relocates beds from one physical facility or site to another, but does not include a change by which a health care facility reassigns existing beds as swing beds between acute care and long-term care categories: Provided, That a decrease in bed capacity in response to federal rural health initiatives excluded from this definition.

(gg) "Substantial change to the health services" of a health care facility means: (1) The addition of a health service offered by or on behalf of the health care facility, which was not
offered by or on behalf of the facility within the twelve-month period before the month in which the service is first offered; or (2) the termination of a health service offered by or on behalf of the facility: Provided, That "substantial change to the health services" does not include the providing of ambulance service, wellness centers or programs, adult day care or respite care by acute care facilities.

(hh) "To develop," when used in connection with health services, means to undertake those activities which upon their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, in relation to the offering of such a service.

§16-2D-3. Certificate of need; new institutional health services defined.

(a) Except as provided in section four of this article, any new institutional health service may not be acquired, offered or developed within this state except upon application for and receipt of a certificate of need as provided by this article. Whenever a new institutional health service for which a certificate of need is required by this article is proposed for a health care facility for which, pursuant to section four of this article, no certificate of need is or was required, a certificate of need shall be issued before the new institutional health service is offered or developed. No person may knowingly charge or bill for any health services associated with any new institutional health service that is knowingly acquired, offered or developed in violation of this article, and any bill made in violation of this section is legally unenforceable.

(b) For purposes of this article, a proposed "new institutional health service" includes:

(1) The construction, development, acquisition or other establishment of a new health care facility or health maintenance organization;

(2) The partial or total closure of a health care facility or health maintenance organization with which a capital expenditure is associated;
(3) Any obligation for a capital expenditure incurred by or on behalf of a health care facility, except as exempted in section four of this article, or health maintenance organization in excess of the expenditure minimum or any obligation for a capital expenditure incurred by any person to acquire a health care facility. An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

(A) When a contract, enforceable under state law, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset;

(B) When the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(C) In the case of donated property, on the date on which the gift is completed under state law;

(4) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;

(5) The addition of health services as specified by the state agency which are offered by or on behalf of a health care facility or health maintenance organization and which were not offered on a regular basis by or on behalf of the health care facility or health maintenance organization within the twelve-month period prior to the time the services would be offered. The state agency shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code by the first day of July, one thousand nine hundred ninety-nine, to specify the health services which are subject to certificate of need review. The state agency shall specify by rule those health services subject to certificate of need as recommended by the certificate of need study conducted pursuant to section nineteen-a, article twenty-nine-b of this chapter;

(6) The addition of ventilator services for any nursing facility bed by any health care facility or health maintenance organization;
(7) The deletion of one or more health services, previously offered on a regular basis by or on behalf of a health care facility or health maintenance organization which is associated with a capital expenditure;

(8) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure, if the change is associated with a previous capital expenditure for which a certificate of need was issued and if the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken;

(9) The acquisition of major medical equipment;

(10) A substantial change in an approved new institutional health service for which a certificate of need is in effect. For purposes of this subsection, “substantial change” shall be defined by the state agency in rules adopted pursuant to section eight of this article; or

(11) An expansion of the service area for hospice or home health service, regardless of the time period in which the expansion is contemplated or made.

§16-2D-4. Exemptions from certificate of need program.

(a) Except as provided in subsection (b), subdivision (9), section three of this article, nothing in this article or the rules adopted pursuant to the provisions of this article may be construed to authorize the licensure, supervision, regulation or control in any manner of the following:

(1) Private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed: Provided, however, That such exemption from review of private office
practice shall not be construed to include the acquisition, offering or development of one or more health services, including ambulatory surgical facilities or centers, lithotripsy, magnetic resonance imaging and radiation therapy by one or more health professionals. The state agency shall adopt rules pursuant to section eight of this article which specify the health services acquired, offered or developed by health professionals which are subject to certificate of need review;

(2) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees: Provided, That such facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four hours;

(3) Establishments, such as motels, hotels and boarding-houses, which provide medical, nursing personnel and health related services;

(4) The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination;

(5) The creation of new primary care services located in communities that are underserved with respect to primary care services: Provided, That to qualify for this exemption, an applicant must be a community-based nonprofit organization with a community board that provides or will provide primary care services to people without regard to ability to pay: Provided, however, That the exemption from certificate of need review of new primary care services provided by this subdivision shall not include the acquisition, offering or development of major medical equipment otherwise subject to review under the provisions of this article or to include the acquisition, offering or development of ambulatory surgical facilities, lithotripsy, magnetic resonance imaging or radiation therapy. The office of community and rural health services shall define which services constitute primary care services for purposes of...
this subdivision, and shall, to prevent duplication of primary care services, determine whether a community is underserved with respect to certain primary care services within the meaning of this subdivision. Any organization planning to qualify for an exemption pursuant to this subdivision shall submit to the state agency a letter of intent describing the proposed new services and area of service; and

(6) The creation of birthing centers by nonprofit primary care centers that have a community board and provide primary care services to people in their community without regard to ability to pay, or by nonprofit hospitals with less than one hundred licensed acute care beds: Provided, That to qualify for this exemption, an applicant shall be located in an area that is underserved with respect to low-risk obstetrical services: Provided, however, That if a primary care center attempting to qualify for this exemption is located in the same county as a hospital that is also eligible for this exemption, or if a hospital attempting to qualify for this exemption is located in the same county as a primary care center that is also eligible for this exemption, then at least one primary care center and at least one hospital from said county shall collaborate for the provision of services at a birthing center in order to qualify for this exemption: Provided further, That for purposes of this subsection, a "birthing center" is a short-stay ambulatory health care facility designed for low-risk births following normal uncomplicated pregnancy. Any primary care center or hospital planning to qualify for an exemption pursuant to this subdivision shall submit to the state agency a letter of intent describing the proposed birthing center and area of service.

(b) (1) A health care facility is not required to obtain a certificate of need for the acquisition of major medical equipment to be used solely for research, the addition of health services to be offered solely for research, or the obligation of a capital expenditure to be made solely for research if the health care facility provides the notice required in subdivision (2) of this subsection, and the state agency does not find, within sixty
87 days after it receives such notice, that the acquisition, offering
88 or obligation will, or will have the effect to:

89 (A) Affect the charges of the facility for the provision of
90 medical or other patient care services other than the services
91 which are included in the research;

92 (B) Result in a substantial change to the bed capacity of the
93 facility; or

94 (C) Result in a substantial change to the health services of
95 the facility.

96 (2) Before a health care facility acquires major medical
97 equipment to be used solely for research, offers a health service
98 solely for research or obligates a capital expenditure solely for
99 research, such health care facility shall notify in writing the
100 state agency of such facility’s intent and the use to be made of
101 such medical equipment, health service or capital expenditure.

102 (3) If major medical equipment is acquired, a health service
103 is offered or a capital expenditure is obligated and a certificate
104 of need is not required for such acquisition, offering or obliga-
105 tion as provided in subdivision (1) of this subsection, such
106 equipment or service or equipment or facilities acquired
107 through the obligation of such capital expenditure may not be
108 used in such a manner as to have the effect or to make a change
109 described in paragraphs (A), (B) and (C) of said subdivision
110 unless the state agency issues a certificate of need approving
111 such use.

112 (4) For purposes of this subsection, the term “solely for
113 research” includes patient care provided on an occasional and
114 irregular basis and not as part of a research program.

115 (c) (1) The state agency may adopt rules pursuant to section
116 eight of this article to specify the circumstances under which a
117 certificate of need may not be required for the obligation of a
118 capital expenditure to acquire, either by purchase or under lease
119 or comparable arrangement, an existing health care facility:
120 Provided, That a certificate of need is required for the obliga-
121 tion of a capital expenditure to acquire, either by purchase or
under lease or comparable arrangement, an existing health care
facility if:

(A) The notice required by subdivision (2) of this subsection is not filed in accordance with that subdivision with respect
to such acquisition; or

(B) The state agency finds, within thirty days after the date
it receives a notice in accordance with subdivision (2) of this
subsection, with respect to such acquisition, that the services or
bed capacity of the facility will be changed by reason of said
acquisition.

(2) Before any person enters into a contractual arrangement
to acquire an existing health care facility, such person shall
notify the state agency of his or her intent to acquire the facility
and of the services to be offered in the facility and its bed
capacity. Such notice shall be made in writing and shall be
made at least thirty days before contractual arrangements are
entered into to acquire the facility with respect to which the
notice is given. The notice shall contain all information the state
agency requires.

(d) The state agency shall adopt rules pursuant to section
eight of this article to specify the circumstances under which
and the procedures by which a certificate of need may not be
required for shared services between two or more acute care
facilities providing services made available through existing
technology that can reasonably be mobile. The state agency
shall specify the types of items in the rules and under what
circumstances mobile MRI and mobile lithotripsy may be so
exempted from review. In no case, however, will mobile
cardiac catheterization be exempted from certificate of need
review. In addition, if the shared services mobile unit proves
less cost effective than a fixed unit, the acute care facility will
not be exempted from certificate of need review.

On a yearly basis, the state agency shall review existing
technologies to determine if other shared services should be
included under this exemption.
§16-2D-4a. Conversion of hospital acute beds to skilled nursing beds.

(a) Legislative findings and purpose. — The Legislature hereby finds and declares that a need exists for skilled nursing health care beds in this state due to a shortage of existing facilities with adequate bed capacity and lack of willingness to provide such services; that patients in need of skilled nursing services have sometimes been retained in an inappropriate level of care facility; that such practices have resulted in malutilization of health care facilities and resources; that there currently exists a surplus of acute care beds in hospitals, particularly those in rural areas within this state; that the surplus of acute care beds is, for the foreseeable future, permanent in nature; that the same excess capacity of acute care beds promotes economic inefficiencies in operation while failing to meet community needs; that nursing homes are unable under subsection (h), section five of this article, to add intermediate or dually certified beds to skilled nursing beds at the present time in numbers in excess of ten percent or not more than ten beds, whichever is less; and that remedial action by the Legislature is necessary to effectuate relief of these problems to promote the health and welfare of the citizens of the state by allowing, in certain instances, for the conversion of acute care beds to skilled nursing beds by hospitals, but with no increase in overall hospital bed capacity.

(b) Notwithstanding the provisions of subsection (h), section five of this article, and, further, notwithstanding the provisions of subsection (b), subdivision (4), section three of this article, the state agency shall adopt rules pursuant to section eight of this article, to exempt from review the conversion of acute care beds to skilled nursing care beds by a licensed hospital by the state department of health and human resources if the hospital meets the following conditions:

(1) It is located in a nonmetropolitan statistical area as defined by the bureau of census of the federal government;
(2) It has experienced an average occupancy rate of less than fifty percent for the twelve months preceding the date of request for this exemption; and

(3) The nursing home service area within which the hospital is located is under the bed ceiling as calculated by the thirty beds per thousand population formula as set forth in the long-term care chapter of the state health plan, except for the purposes of this article existing nursing home beds shall be used in the calculation.

(c) The state agency shall include in its rules requirements that:

(1) In converting beds, the hospital must change one acute care bed into one skilled nursing care bed;

(2) All acute care beds converted shall be permanently deleted from the hospital's acute-care bed complement and the hospital may not thereafter add, by conversion or otherwise, acute-care beds to its bed complement without satisfying the requirements of subsection (b), subdivision (4), section three of this article, for which purposes such an addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term found in subsection (ff), section two of this article;

(3) The hospital shall meet all applicable federal and state licensing requirements for the provisions of skilled nursing services including a requirement that all skilled care beds created under this exemption shall be located in distinct-part, long-term care units;

(4) No hospital is permitted to convert more than twenty-five percent of its licensed bed capacity in any twenty-four month period pursuant to this exemption; however, in the event that subsection (g), section five of this article, is repealed and to the extent that other methods of converting acute care beds are available under this article, the hospital may request certificate of need approval of such conversions; and
(5) The hospital shall undergo substantial compliance review of a conversion under this exemption under such terms and at such a time as set by the state agency in its rules.

(d) Nothing in this section negatively affects the rights of inspection and certification which are elsewhere required by federal law or regulations or by this code or duly adopted rules of an authorized state entity.

§16-2D-5. Powers and duties of state agency.

1 (a) The state agency shall administer the certificate of need program as provided by this article.

(b) The state agency is responsible for coordinating and developing the health planning research efforts of the state and for amending and modifying the state health plan which includes the certificate of need standards. The state agency shall review the state health plan, including the certificate of need standards and make any necessary amendments and modifications within three years from the effective date of this section. The state agency shall also review the cost effectiveness of the certificate of need program. The state agency may form task forces to assist it in addressing these issues. The task forces shall be composed of representatives of consumers, business, providers, payers and state agencies.

(c) The state agency may seek advice and assistance of other persons, organizations and other state agencies in the performance of the state agency’s responsibilities under this article.

(d) For health services for which competition appropriately allocates supply consistent with the state health plan, the state agency shall, in the performance of its functions under this article, give priority, where appropriate to advance the purposes of quality assurance, cost effectiveness and access, to actions which would strengthen the effect of competition on the supply of the services.

(e) For health services for which competition does not or will not appropriately allocate supply consistent with the state health plan, the state agency shall, in the exercise of its func-
f) Notwithstanding the provisions of section seven of this article, the state agency may charge a fee for the filing of any application, the filing of any notice in lieu of an application, the filing of any exemption determination request or the filing of any request for a declaratory ruling. The fees charged may vary according to the type of matter involved, the type of health service or facility involved or the amount of capital expenditure involved. The state agency shall implement this subsection by filing procedural rules pursuant to chapter twenty-nine-a of this code. The fees charged shall be deposited into a special fund known as the certificate of need program fund to be expended for the purposes of this article.

(g) No hospital, nursing home or other health care facility shall add any intermediate care or skilled nursing beds to its current licensed bed complement. This prohibition also applies to the conversion of acute care or other types of beds to intermediate care or skilled nursing beds: Provided, That hospitals eligible under the provisions of section four-a and subsection (i), section five of this article may convert acute care beds to skilled nursing beds in accordance with the provisions of these sections, upon approval by the state agency. Furthermore, no certificate of need shall be granted for the construction or addition of any intermediate care or skilled nursing beds except in the case of facilities designed to replace existing beds in unsafe existing facilities. A health care facility in receipt of a certificate of need for the construction or addition of intermediate care or skilled nursing beds which was approved prior to the effective date of this section shall incur an obligation for a capital expenditure within twelve months of the date of issuance of the certificate of need. No extensions shall be granted beyond the twelve-month period. The state agency shall establish a task force or utilize an existing task force to study the need for additional nursing facility beds in this state. The study shall include a review of the current moratorium on the
development of nursing facility beds; the exemption for the
conversion of acute care beds to skilled nursing facility beds;
the development of a methodology to assess the need for
additional nursing facility beds; and, certification of new beds
both by medicare and medicaid. The task force shall be com-
posed of representatives of consumers, business, providers,
payers and government agencies.

(h) No additional intermediate care facility for the mentally
retarded (ICF/MR) beds shall be granted a certificate of need,
except that prohibition does not apply to ICF/MR beds ap-
proved under the Kanawha County circuit court order of the
third day of August, one thousand nine hundred eighty-nine,
civil action number MISC-81-585 issued in the case of E. H. v.

(i) Notwithstanding the provisions of subsection (g), section
five of this article and, further notwithstanding the provisions
of subsection (b), section three of this article, an existing acute
care hospital may apply to the health care authority for a
certificate of need to convert acute care beds to skilled nursing
beds: Provided, That the proposed skilled nursing beds are
medicare certified only: Provided, however, That any hospital
which converts acute care beds to medicare certified only
skilled nursing beds shall not bill for any medicaid reimburse-
ment for any converted beds. In converting beds, the hospital
shall convert a minimum of one acute care bed into one
medicare certified only skilled nursing bed. The health care
authority may require a hospital to convert up to and including
three acute care beds for each medicare certified only skilled
nursing bed: Provided further, That a hospital designated or
 provisionally designated by the state agency as a rural primary
care hospital may convert up to thirty beds to a distinct-part
nursing facility, including skilled nursing beds and intermediate
care beds, on a one-for-one basis if the rural primary care
hospital is located in a county without a certified free-standing
nursing facility and the hospital may bill for medicaid reim-
bursement for the converted beds: And provided further, That
if the hospital rejects the designation as a rural primary care
hospital then the hospital may not bill for medicaid reimburse-
ment. The health care authority shall adopt rules to implement this subsection which require that:

(1) All acute care beds converted shall be permanently deleted from the hospital's acute care bed complement and the hospital may not thereafter add, by conversion or otherwise, acute care beds to its bed complement without satisfying the requirements of subsection (b), section three of this article for which purposes an addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term found in subsection (ff), section two of this article.

(2) The hospital shall meet all federal and state licensing certification and operational requirements applicable to nursing homes including a requirement that all skilled care beds created under this subsection shall be located in distinct-part, long-term care units.

(3) The hospital shall demonstrate a need for the project.

(4) The hospital shall use existing space for the medicare certified only skilled nursing beds. Under no circumstances shall the hospital construct, lease or acquire additional space for purposes of this section.

(5) The hospital shall notify the acute care patient, prior to discharge, of facilities with skilled nursing beds which are located in or near the patient's county of residence. Nothing in this subsection negatively affects the rights of inspection and certification which are otherwise required by federal law or regulations or by this code or duly adopted rules of an authorized state entity.

(j) (1) Notwithstanding the provisions of subsection (g) of this section, a retirement life care center with no skilled nursing beds may apply to the health care authority for a certificate of need for up to sixty skilled nursing beds provided the proposed skilled beds are medicare certified only. On a statewide basis, a maximum of one hundred eighty skilled beds which are medicare certified only may be developed pursuant to this subsection. The state health plan is not applicable to projects
submitted under this subsection. The health care authority shall adopt rules to implement this subsection which shall include a requirement that:

(A) The one hundred eighty beds are to be distributed on a statewide basis;

(B) There be a minimum of twenty beds and a maximum of sixty beds in each approved unit;

(C) The unit developed by the retirement life care center meet all federal and state licensing certification and operational requirements applicable to nursing homes;

(D) The retirement center demonstrate a need for the project;

(E) The retirement center offer personal care, home health services and other lower levels of care to its residents; and

(F) The retirement center demonstrate both short and long-term financial feasibility.

(2) Nothing in this subsection negatively affects the rights of inspection and certification which are otherwise required by federal law or regulations or by this code or duly adopted rules of an authorized state entity.

(k) The state agency may order a moratorium upon the offering or development of a new institutional health service, when criteria and guidelines for evaluating the need for the new institutional health service have not yet been adopted or are obsolete. The state agency may also order a moratorium on the offering or development of a health service, notwithstanding the provisions of subdivision (5), subsection (b), section three of this article, when it determines that the proliferation of the service may cause an adverse impact on the cost of health care or the health status of the public. A moratorium shall be declared by a written order which shall detail the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need for the health service affected by the moratorium, or one hundred eighty days from the declaration of a moratorium, whichever is less, the moratorium shall be...
declared to be over and applications for certificates of need are processed pursuant to section six of this article.

(l) (1) The state agency shall coordinate the collection of information needed to allow the state agency to develop recommended modifications to certificate of need standards as required in this article. When the state agency proposes amendments or modifications to the certificate of need standards, it shall file with the secretary of state, for publication in the state register, a notice of proposed action, including the text of all proposed amendments and modifications, and a date, time and place for receipt of general public comment. To comply with the public comment requirement of this section, the state agency may hold a public hearing or schedule a public comment period for the receipt of written statements or documents.

(2) All proposed amendments and modifications to the certificate of need standards, with a record of the public hearing or written statements and documents received pursuant to a public comment period, shall be presented to the governor. Within thirty days of receiving the proposed amendments or modifications, the governor shall either approve or disapprove all or part of the amendments and modifications, and, for any portion of amendments or modifications not approved, shall specify the reason or reasons for nonapproval. Any portions of the amendments or modifications not approved by the governor may be revised and resubmitted.

(m) The state agency may exempt from or expedite rate review, certificate of need, and annual assessment requirements and issue grants and loans to financially vulnerable health care facilities located in underserved areas that the state agency and the office of community and rural health services determine are collaborating with other providers in the service area to provide cost effective health care services.

§16-2D-6. Minimum criteria for certificate of need reviews.

(a) Except as provided in subsection (f), section nine of this article, in making its determination as to whether a certificate of need shall be issued, the state agency shall, at a minimum,
consider all of the following criteria that are applicable:

Provided, That the criteria set forth in subsection (f) of this section apply to all hospitals, nursing homes and health care facilities when ventilator services are to be provided for any nursing facility bed:

(1) The relationship of the health services being reviewed to the state health plan;

(2) The relationship of services reviewed to the long-range development plan of the person providing or proposing the services;

(3) The need that the population served or to be served by the services has for the services proposed to be offered or expanded, and the extent to which all residents of the area, and in particular low income persons, racial and ethnic minorities, women, handicapped persons, other medically underserved population, and the elderly, are likely to have access to those services;

(4) The availability of less costly or more effective alternative methods of providing the services to be offered, expanded, reduced, relocated or eliminated;

(5) The immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service;

(6) The relationship of the services proposed to the existing health care system of the area in which the services are proposed to be provided;

(7) In the case of health services proposed to be provided, the availability of resources, including health care providers, management personnel, and funds for capital and operating needs, for the provision of the services proposed to be provided and the need for alternative uses of these resources as identified by the state health plan and other applicable plans;

(8) The appropriate and nondiscriminatory utilization of existing and available health care providers;
(9) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(10) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. The entities may include medical and other health professional schools, multidisciplinary clinics and specialty centers;

(11) In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low income persons, racial and ethnic minorities, women, handicapped persons, other medically underserved population, and the elderly, to obtain needed health care;

(12) In the case of a construction project: (A) The cost and methods of the proposed construction, including the costs and methods of energy provision; and (B) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project and on the costs and charges to the public of providing health services by other persons;

(13) In the case of health services proposed to be provided, the effect of the means proposed for the delivery of proposed health services on the clinical needs of health professional training programs in the area in which the services are to be provided;

(14) In the case of health services proposed to be provided, if the services are to be available in a limited number of facilities, the extent to which the schools in the area for health professions will have access to the services for training purposes;
In the case of health services proposed to be provided, the extent to which the proposed services will be accessible to all the residents of the area to be served by the services;

In accordance with section five of this article, the factors influencing the effect of competition on the supply of the health services being reviewed;

Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with section five of this article, and serve to promote quality assurance and cost effectiveness;

In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;

In the case of existing services or facilities, the quality of care provided by the services or facilities in the past;

In the case where an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The state agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels;

The special circumstances of health care facilities with respect to the need for conserving energy;

The contribution of the proposed service in meeting the health related needs of members of medically underserved populations which have traditionally experienced difficulties in obtaining equal access to health services, particularly those needs identified in the state health plan as deserving of priority. For the purpose of determining the extent to which the proposed service will be accessible, the state agency shall consider:
(A) The extent to which medically underserved populations currently use the applicant's services in comparison to the percentage of the population in the applicant's service area which is medically underserved, and the extent to which medically underserved populations are expected to use the proposed services if approved;

(B) The performance of the applicant in meeting its obligation, if any, under any applicable federal regulations requiring provision of uncompensated care, community service, or access by minorities and handicapped persons to programs receiving federal financial assistance, including the existence of any civil rights access complaints against the applicant;

(C) The extent to which medicare, medicaid and medically indigent patients are served by the applicant; and

(D) The extent to which the applicant offers a range of means by which a person will have access to its services, including, but not limited to, outpatient services, admission by a house staff and admission by personal physician;

(23) The existence of a mechanism for soliciting consumer input into the health care facility's decision making process.

(b) The state agency may include additional criteria which it prescribes by rules adopted pursuant to section eight of this article.

(c) Criteria for reviews may vary according to the purpose for which a particular review is being conducted or the types of health services being reviewed.

(d) An application for a certificate of need may not be made subject to any criterion not contained in this article or not contained in rules adopted pursuant to section eight of this article.

(e) In the case of any proposed new institutional health service, the state agency may not grant a certificate of need under its certificate of need program unless, after consideration of the appropriateness of the use of existing facilities providing services similar to those being proposed, the state agency
makes, in addition to findings required in section nine of this article, each of the following findings in writing: (1) That superior alternatives to the services in terms of cost, efficiency and appropriateness do not exist and the development of alternatives is not practicable; (2) that existing facilities providing services similar to those proposed are being used in an appropriate and efficient manner; (3) that in the case of new construction, alternatives to new construction, such as modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable; (4) that patients will experience serious problems in obtaining care of the type proposed in the absence of the proposed new service; and (5) that in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, the addition will be consistent with the plans of other agencies of the state responsible for the provision and financing of long-term care facilities or services including home health services.

(f) In the case where an application is made by a hospital, nursing home or other health care facility to provide ventilator services which have not previously been provided for a nursing facility bed, the state agency shall consider the application in terms of the need for the service and whether the cost exceeds the level of current medicaid services. No facility may, by providing ventilator services, provide a higher level of service for a nursing facility bed without demonstrating that the change in level of service by provision of the additional ventilator services will result in no additional fiscal burden to the state.

(g) In the case where application is made by any person or entity to provide personal care services which are to be billed for medicaid reimbursement, the state agency shall consider the application in terms of the need for the service and whether the cost exceeds the level of the cost of current medicaid services. No person or entity may provide personal care services to be billed for medicaid reimbursement without demonstrating that the provision of the personal care service will result in no additional fiscal burden to the state: Provided, That a certificate of need is not required for a person providing specialized foster care personal care services to one individual and those services

Provided, That a certificate of need is not required for a person providing specialized foster care personal care services to one individual and those services
are delivered in the provider's home. The state agency shall also consider the total fiscal liability to the state for all applications which have been submitted.

§16-2D-7. Procedures for certificate of need reviews.

(a) Prior to submission of an application for a certificate of need, the state agency shall require the submission of long-range plans by health care facilities with respect to the development of proposals subject to review under this article. The plans shall be in such form and contain such information as the state agency requires.

(b) An application for a certificate of need shall be submitted to the state agency prior to the offering or development of all new institutional services within this state. Persons proposing new institutional health services shall submit letters of intent not less than fifteen days prior to submitting an application. The letters of intent shall be of such detail as specified by the state agency.

(c) The state agency may adopt rules pursuant to section eight of this article for:

(1) Provision for applications to be submitted in accordance with a timetable established by the state agency;

(2) Provision for such reviews to be undertaken in a timely fashion; and

(3) Except for proposed new institutional health services which meet the requirements for consideration under subsection (f), section nine of this article with regard to the elimination or prevention of certain imminent safety hazards or to comply with certain licensure or accreditation standards, provision for all completed applications pertaining to similar types of services, facilities or equipment to be considered in relation to each other, at least three times a year.

(d) An application for a certificate of need shall specify the time the applicant will require to make such service or equipment available or to obligate such expenditure and a timetable
for making such service or equipment available or obligating such expenditure.

(e) The application shall be in such form and contain such information as the state agency establishes by rule, but requests for information shall be limited to only that information which is necessary for the state agency to perform the review.

(f) Within fifteen days of receipt of application, the state agency shall determine if the application is complete. The state agency may request additional information from the applicant.

(g) The state agency shall provide timely written notice to the applicant and to all affected persons of the beginning of the review, and to any person who has asked the state agency to place the person's name on a mailing list maintained by the state agency. Notification shall include the proposed schedule for review, the period within which a public hearing during the course of the review may be requested by affected persons, which period may not be less than thirty days from the date of the written notification of the beginning of the review required by this section, and the manner in which notification will be provided of the time and place of any public hearing so requested. For the purposes of this subsection, the date of notification is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later.

(h) Written notification to members of the public and third-party payers may be provided through newspapers of general circulation in the applicable health service area and public information channels; notification to all other affected persons shall be by mail which may be as part of a newsletter.

(i) If, after a review has begun, the state agency requires the person subject to the review to submit additional information respecting the subject of the review, such person shall be provided at least fifteen days to submit the information and the state agency shall, at the request of such person, extend the review period by fifteen days. This extension applies to all other applications which have been considered in relation to the application for which additional information is required.
(j) The state agency shall adopt schedules for reviews which provide that no review may, to the extent practicable, take longer than ninety days from the date that notification, as described under subsection (g) of this section, is sent to the applicant to the date of the final decision of the state agency, and in the case of expedited applications, may by rules adopted pursuant to section eight of this article provide for a shortened review period.

(k) The state agency shall adopt criteria for determining when it would not be practicable to complete a review within ninety days.

(l) The state agency shall provide a public hearing in the course of agency review if requested by any affected person and the state agency may on its own initiate such a public hearing:

(1) The state agency shall, prior to such hearing, provide notice of such hearing and shall conduct such hearing in accordance with administrative hearing requirements in article five, chapter twenty-nine-a of this code, and its procedure adopted pursuant to this section.

(2) In a hearing any person has the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing. Any person affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matter.

(3) The state agency shall maintain a verbatim record of the hearing.

(4) After the commencement of a hearing on the applicant’s application and before a decision is made with respect to it, there may be no ex parte contacts between: (A) The applicant for the certificate of need, any person acting on behalf of the applicant or holder of a certificate of need, or any person opposed to the issuance of a certificate for the applicant; and (B) any person in the state agency who exercises any responsibility respecting the application.
(5) The state agency may not impose fees for such a public hearing.

(m) If a public hearing is not conducted during the review of a new institutional health service, the state agency may, by rules adopted pursuant to section eight of this article, provide for a file closing date during the review period after which date no other factual information or evidence may be considered in the determination of the application for the certificate of need. A detailed itemization of documents in the state agency file on a proposed new institutional health service shall, on request, be made available by the state agency at any time before the file closing date.

(n) The extent of additional information received by the state agency from the applicant for a certificate of need after a review has begun on the applicant’s proposed new institutional health service, with respect to the impact on such new institutional health service and additional information which is received by the state agency from the applicant, may be cause for the state agency to determine the application to be a new proposal, subject to a new review cycle.

(o) The state agency shall in timely fashion notify, upon request, providers of health services and other persons subject to review under this article of the status of the state agency review of new institutional health services subject to review, findings made in the course of such review, and other appropriate information respecting such review.

(p) The state agency shall prepare and publish, at least annually, reports of reviews completed and being conducted, with general statements about the status of each review still in progress and the findings and rationale for each completed review since the publication of the last report.

(q) The state agency shall provide for access by the general public to all applications reviewed by the state agency and to all other pertinent written materials essential to agency review.

(r) (1) Any person may request in writing a public hearing for purposes of reconsideration of a state agency decision. No
fees may be imposed by the state agency for the hearing. For purposes of this section, a request for a public hearing for purposes of reconsideration shall be considered to have shown good cause if, in a detailed statement, it:

(A) Presents significant, relevant information not previously considered by the state agency, and demonstrates that with reasonable diligence the information could not have been presented before the state agency made its decision;

(B) Demonstrates that there have been significant changes in factors or circumstances relied upon by the state agency in reaching its decision;

(C) Demonstrates that the state agency has materially failed to follow its adopted procedures in reaching its decision; or

(D) Provides such other bases for a public hearing as the state agency determines constitutes good cause.

(2) To be effective, a request for such a hearing shall be received within thirty days after the date of the state agency decision, and the hearing shall commence within thirty days of receipt of the request.

(3) Notification of such public hearing shall be sent, prior to the date of the hearing, to the person requesting the hearing, the person proposing the new institutional health service, and to others upon request.

(4) The state agency shall hold public reconsideration hearings in accordance with the provisions for administrative hearings contained in:

(A) Its adopted procedures;

(B) Ex parte contact provisions of subdivision (4), subsection (1) of this section; and

(C) The administrative procedures for contested cases contained in article five, chapter twenty-nine-a of this code.

(5) The state agency shall make written findings which state the basis for its decision within forty-five days after the conclusion of such hearing.
(6) A decision of the state agency following a reconsideration hearing shall be considered a decision of the state agency for purposes of sections nine and ten of this article and for purposes of the notification of the status of review, findings and annual report provisions of subsections (o) and (p) of this section.

(s) The state agency may adopt rules pursuant to section eight of this article for reviews and such rules may vary according to the purpose for which a particular review is being conducted or the type of health services being reviewed.

(t) Notwithstanding other provisions of this article, the state agency shall adopt rules for determining when there is an application which warrants expedited review.

(u) Notwithstanding other provisions of this article, the state agency shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code by the first day of July, one thousand nine hundred ninety-nine, to establish a review process for nonhealth related projects. The review process shall not exceed forty-five days. The state agency shall specify in the rule which projects are eligible for this review.

§16-2D-7a. Coordination and filing with consumer advocate.

Each health care facility or health care provider filing a certificate of need application with the state agency pursuant to sections four and seven of this article shall notify the director of the office of consumer advocacy established pursuant to section sixteen, article two, chapter thirty-three of this code of said application by submitting a copy of the same to the office of the consumer advocate on or before the date of such filing.

§16-2D-8. Agency to promulgate additional rules.

(a) The state agency may promulgate additional rules:

(1) To carry out the provisions of this article; and

(2) To assure hospitals' compliance with requests for information concerning rates charged for each of the twenty-
five most frequently used hospital services in the state including
the average semiprivate and private room rates.

(b) All rules shall be promulgated pursuant to chapter
twenty-nine-a of this code and as described herein. In addition,
before adopting proposed rules the state agency shall give
interested persons an opportunity to offer written comments on
the rules, or any revisions thereof, which it proposes to adopt.

(c) Subsequent amendments and modifications to any rule
promulgated pursuant to this article may be implemented by
emergency rule.

§16-2D-9. Agency to render final decision; issue certificate of
need; write findings; specify capital expenditure
maximum.

(a) Only the state agency, or the appropriate administrative
or judicial review body, may issue, deny or withdraw certifi-
cates of need, grant exemptions from certificate of need
reviews, or determine that certificate of need reviews are not
required.

(b) A certificate of need may only be issued if the proposed
new institutional health service is:

(1) Found to be needed; and

(2) Except in emergency circumstances that pose a threat to
public health, consistent with the state health plan.

(c) The state agency shall render a final decision on every
application for a certificate of need or application for exemption
in the form of an approval, a denial, or an approval with
conditions. Any decision of the state agency with respect to a
certificate of need, or exemption, shall be based solely on:

(1) The review of the state agency conducted in accordance
with procedures and criteria in this article and in rules adopted
pursuant to section eight of this article; and

(2) The record established in administrative proceedings
held with respect to the certificate of need or exemption.

(d) Approval with conditions does not give the state agency
authority to mandate new institutional health services not
proposed by the health care facility or health maintenance organization. Issuance of a certificate of need or exemption may not be made subject to any condition unless the condition directly relates to criteria in this article or in rules adopted pursuant to section eight of this article. Conditions may be imposed upon the operations of the health care facility or health maintenance organization for no longer than a three-year period. Compliance with such conditions may be enforced through the mechanisms detailed in section thirteen of this article.

(e) (1) For each proposed new institutional health service it approves, the state agency shall, in addition to the written findings required in subsection (e), section six of this article, make a written finding, which shall take into account the current accessibility of the facility as a whole, on the extent to which the new institutional health service will meet the criteria in subdivisions (3), (11) and (22), subsection (a), section six of this article, regarding the needs of medically underserved population, except in the following cases:

(A) Where the proposed new institutional health service is one described in subsection (f) of this section to eliminate or prevent certain imminent safety hazards or to comply with certain licensure or accreditation standards; or

(B) Where the new institutional health service is a proposed capital expenditure not directly related to the provision of health services or to beds or major medical equipment.

(2) If the state agency disapproves a proposed new institutional health service for failure to meet the needs of medically underserved populations, it shall so state in a written finding.

(f) (1) Notwithstanding review criteria in section six of this article, an application for a certificate of need shall be approved, if the state agency finds that the facility or service with respect to which such capital expenditure is proposed to be made is needed and that the obligation of such capital expenditure is consistent with the state health plan, for a capital expenditure which is required:
(A) To eliminate or prevent imminent safety hazards as defined by federal, state or local fire, building or life safety codes, rules or regulations;

(B) To comply with state licensure standards; or

(C) To comply with accreditation or certification standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under the state plan for medical assistance approved under Title XIX of such act.

(2) An application for a certificate of need approved under this subsection shall be approved only to the extent that the capital expenditure is required to eliminate or prevent the hazards described in subparagraph (A), subdivision (1), subsection (f) of this section, or to comply with the standards described in either subparagraph (B) or (C), subdivision (1), subsection (f) of this section.

(g) The state agency shall send its decision along with written findings to the person proposing the new institutional health service or exemption and shall make it available to others upon request.

(h) In the case of a final decision to approve or approve with conditions a proposal for a new institutional health service, the state agency shall issue a certificate of need to the person proposing the new institutional health service.

(i) The state agency shall specify in the certificate the maximum amount of capital expenditures which may be obligated under such certificate. The state agency shall prescribe the method used to determine capital expenditure maximums and shall adopt rules pursuant to section eight of this article for the review of approved new institutional health services for which the capital expenditure maximum is exceeded or is expected to be exceeded.

(j) If the state agency fails to make a decision within the time period specified for the review, the applicant may, within one year following the expiration of such period, bring an
action, at the election of the applicant, in either the circuit court of Kanawha County, or with the judge thereof in vacation, or in the circuit court of the county in which the applicant or any one of the applicants resides or does business, or with the judge thereof in vacation to require the state agency to approve or disapprove the application. An application for a proposed new institutional health service or exemption may not be approved or denied by the circuit court solely because the state agency failed to reach a decision.

§16-2D-10. Appeal of certificate of need decisions.

(a) A final decision of the state agency, including a state agency decision issued after a reconsideration, if such reconsideration was requested and granted under subsection (r), section seven of this article, and the record upon which it was made, shall upon request of any affected persons be reviewed by an agency of the state (other than the state agency) designated by the governor. To be effective, such request shall be received within thirty days after the date the affected person received notice of the state agency decision, and the hearing shall commence within thirty days of receipt of the request.

(b) To the extent not inconsistent with this section, for the purpose of administrative reviews of state agency decisions, the review agency shall conduct its proceedings in conformance with the West Virginia rules of civil procedure for trial courts of record and the local rules for use in the civil courts of Kanawha County and shall review appeals in accordance with the provisions governing the judicial review of contested administrative cases in section four, article five, chapter twenty-nine-a of this code, notwithstanding the exceptions of section five, article five, chapter twenty-nine-a of this code.

(c) The decision of the reviewing agency shall be made in writing within forty-five days after the conclusion of such hearing.

(d) The written findings of the review agency shall be sent to the person who requested the review, to the person proposing the new institutional health service and to the state agency, and
shall be made available by the state agency to others upon request.

(e) The decision of the reviewing agency shall be considered the final decision of the state agency; however, the reviewing agency may remand the matter to the state agency for further action or consideration.

(f) Upon the entry of a final decision by the reviewing agency any "person adversely affected by the review" has standing in and may within thirty days after the date such person received notice of the decision of the review agency take an appeal at the election of the petitioner, in either the circuit court of Kanawha County, or in the circuit court of the county in which the petitioner or any of the petitioners resides or does business, from any decision of the state agency granting, with or without conditions, denying or withdrawing a certificate of need or exemption. The decision of the review agency shall be reviewed by such circuit court in accordance with the provisions for the judicial review of administrative decisions contained in section four, article five, chapter twenty-nine-a of this code. For the purposes of this subsection, "person adversely affected by the review" includes the state agency and any person who meets the definition of affected person in section two of this article.

§16-2D-11. Nontransference, time period compliance and withdrawal of certificate of need.

(a) A certificate of need is nontransferable and shall be valid for a maximum of one year from the date of issuance. A transfer includes the sale, lease, transfer of stock or partnership shares, or other comparable arrangement which has the effect of transferring the control of the owner of the certificate of need. Upon the expiration of the certificate or during the certification period, the person proposing the new institutional health service shall provide the state agency such information on the development of the project as the state agency may request. The state agency shall periodically monitor capital expenditures obligated under certificates, determine whether sufficient progress is being made in meeting the timetable
specified in the approved application for the certificate and whether there has been compliance with the application and any conditions of certification. The certificate of need may be extended by the state agency for additional periods of time as are reasonably necessary to expeditiously complete the project. A certificate of need may no longer be in effect, and may no longer be required, after written notice of substantial compliance with the approved application and any conditions of certification is issued to the applicant, after the activity is undertaken for which the certificate of need was issued, and after the state agency is provided written notice of such undertaking. The person proposing a new institutional health service may not be issued a license therefor until the state agency has issued a written notice of substantial compliance with the approved application and any conditions of certification, nor may a new institutional health service be used until such person has received such notice. A new institutional health service may not be found to be in substantial compliance with the approved application and any conditions of certification if there is a substantial change, as defined in rules adopted pursuant to subsection (b), subdivision (10), section three of this article, in the approved new institutional health service for which change a certificate of need has not been issued.

(b) (1) The certificate of need may be withdrawn by the state agency for:

(A) Insufficient progress in meeting the timetable specified in the approved application for the certificate and for not making a good faith effort to meet it in developing the project; or

(B) Noncompliance with any conditions of certification; or

(C) A substantial change, as defined in rules adopted pursuant to subdivision (10), subsection (b), section three of this article, in an approved new institutional health service for which change a certificate of need has not been issued; or

(D) Material misrepresentation by an applicant upon which the state agency relied in making its decision; or
(E) Other reasons that may be established by the state agency in rules adopted pursuant to section eight of this article.

(2) Any decision of the state agency to withdraw a certificate of need shall be based solely on:

(A) The provisions of this article and on rules adopted in accordance with section eight of this article; and

(B) The record established in administrative proceedings held with respect to the state agency's proposal to withdraw the certificate.

(3) In the case of a proposed withdrawal of a certificate of need:

(A) After commencement of a hearing on the state agency's proposal to withdraw a certificate of need and before a decision is made on withdrawal, there may be no ex parte contacts between: (i) The holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of the withdrawal; and (ii) any person in the state agency who exercises responsibility respecting withdrawal of the certificate;

(B) The state agency shall follow the notification of review provisions of subsections (g) and (h), the public hearing provisions of subsection (l), the notification of the status of review and findings provisions of subsection (o), the annual report provisions of subsection (p), and the reconsideration provisions of subsection (r), all of section seven of this article, and the conditional decision provisions of subsection (d), and the notification of decision and findings provisions of subsection (g), section nine of this article; and

(C) Appeals of withdrawals of certificates of need shall be made pursuant to section ten of this article.

(4) A new institutional health service may not be acquired, offered, or developed within this state if a certificate of need authorizing that new institutional health service has been withdrawn by the state agency and the acquisition, offering, or development of the new institutional health service is subject to review under this article.
§16-2D-13. Injunctive relief; civil penalty.

(a) In addition to all other remedies, and aside from various penalties provided by law, if any person acquires, offers or develops any new institutional health service for which a certificate of need is required under this article without first having a certificate of need therefor as herein provided, or violates any other provision of this article or any lawful rule promulgated thereunder, the state agency may maintain a civil action in the circuit court of the county wherein such violation has occurred, or wherein such person may be found, to enjoin, restrain or prevent such violation. No injunction bond shall be required to be filed in any such proceeding.

(b) The state agency may assess a civil penalty for violation of this article. Upon the state agency determining that there is probable cause to believe that any person is knowingly offering, developing, or has acquired any new institutional health service subject to certificate of need review without having first obtained a certificate of need therefor or that any person is otherwise in violation of the provisions of this article, or any lawful rule promulgated thereunder, the state agency shall provide such person with written notice which shall state the nature of the alleged violation and the time and place at which such person shall appear to show good cause why a civil penalty should not be imposed, at which time and place such person shall be afforded an opportunity to cross-examine the state agency's witnesses and afforded an opportunity to present testimony and other evidence in support of his position. The hearing shall be conducted in accordance with the administrative hearing provisions of section four, article five, chapter twenty-nine-a of this code. If, after reviewing the record of such hearing, the state agency director determines that such person is in violation of the certificate of need law, the state agency shall assess a civil penalty of not less than five hundred dollars nor more than twenty-five thousand dollars. In determining the amount of the penalty, the state agency shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. Any person assessed shall be notified of the assessment in writing, and the notice shall specify the
reasons for the assessment. If the person assessed fails to pay
the amount of the assessment to the state agency within thirty
days, the state agency may institute a civil action in the circuit
court of the county wherein such violation has occurred, or
wherein such person may be found to recover the amount of the
assessment. In any such civil action, the scope of the court's
review of the state agency's action, which shall include a
review of the amount of the assessment, shall be as provided in
section four, article five, chapter twenty-nine-a of this code for
the judicial review of contested administrative cases.


All rules previously promulgated to implement this article
shall continue in force following the amendments to this article;
except that, where such previous rules differ from the require-
ments of the amendments to this article, then such part of those
rules are hereby abrogated and shall have no further legal
effect. The state agency shall commence a review of such rules
and shall promulgate revised rules.

CHAPTER 136

(S. B. 550 — By Senators Helmick and Ross)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-d, chapter sixteen of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section five-a, relating
to the conversion of certain hospitals' acute care beds to nursing
beds certified by medicare and medicaid; providing the criteria
for such conversions; and providing an exception to agency rules
and certain statutory requirements.

Be it enacted by the Legislature of West Virginia:
That article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-a, to read as follows:

**ARTICLE 2D. CERTIFICATE OF NEED.**

§16-2D-5a. Exception permitting certain nursing beds.

(a) Notwithstanding any provision contained in this article and any rule issued by the state agency, on and after the first day of January, one thousand nine hundred ninety-nine, any critical access hospital, designated by the state as a critical access hospital after meeting all federal eligibility criteria, that was previously a for-profit organization and which has been certified as a not-for-profit organization within the five years prior to the first month in which this section becomes effective, may apply for a certificate of need to add up to twenty-five licensed distinct part nursing beds for certification by both medicare and medicaid for reimbursement purposes, if the hospital meets all federal and state licensing requirements for the provision of nursing services, and if the nursing beds created are located in distinct long-term care units in a previously constructed part of the hospital suitable for that purpose.

(b) Notwithstanding any provision of law to the contrary, and any rule issued by the state agency, any rural hospital that was formerly owned and operated by the county but now is owned by a nonprofit multi-hospital chain owning two or more rural hospitals, that is eligible in the rural health plan for, but not currently designated as, a critical access hospital and currently have one to twenty-five nursing beds, may apply for a certificate of need to convert up to sixteen beds of existing licensed acute care beds to nursing beds for certification by both medicare and medicaid for reimbursement purposes, provided that the following conditions are met:

(1) There is no overall increase in the bed capacity of the hospital; one acute care bed is converted to one dually certified medicare and medicaid nursing bed.
(2) All converted acute care beds shall be permanently deleted from the acute care bed compliment of the hospital, which may not thereafter add, by conversion or otherwise, acute care beds to its bed compliment without satisfying the requirements of subdivision (4), subsection (b), section three of this article, for which purposes the addition, whether by conversion or otherwise, shall be considered a substantial change to the bed capacity of the hospital notwithstanding the definition of that term as found in subsection (e), section two of this article.

(3) After the conversion, the hospital shall have no more than fifty licensed acute care beds.

(4) The hospital shall meet all federal and state licensing requirements for the provisions of skilled nursing services. Additionally, all skilled nursing beds created under this exemption shall be located in distinct long-term care units in a previously constructed part of the hospital that can be used for that purpose.

(5) Nothing in this section negatively affects the rights of inspection and certification which are elsewhere required by federal law or regulations.

CHAPTER 137

(S. B. 612 — By Senators Walker and Bowman)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and eight, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to emergency medical services personnel; clarifying the definition of "ambulance"; and specifying staffing and personnel requirements for specialized multipatient medical transports.

Be it enacted by the Legislature of West Virginia:
That sections three and eight, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§ 16-4C-3. Definitions.

§ 16-4C-8. Standards for emergency medical service personnel.

§ 16-4C-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(a) "Ambulance" means any privately or publicly-owned vehicle or aircraft which is designed, constructed or modified; equipped or maintained; and operated for the transportation of patients, including, but not limited to, emergency medical services vehicles; rotary and fixed wing air ambulances; gsa kkk-A-1822 federal standard type I, type II and type III vehicles; and specialized multipatient medical transport vehicles operated by an emergency medical services agency;

(b) "Commissioner" means the commissioner of the bureau of public health;

(c) "Council" means the emergency medical service advisory council created pursuant to section five of this article;

(d) "Emergency medical services" means all services which are set forth in Public Law 93-154 "The Emergency Medical Services Systems Act of 1973" and those included in and made a part of the emergency medical services plan of the department of health and human resources inclusive of, but not limited to, responding to the medical needs of an individual to prevent the loss of life or aggravation of illness or injury;

(e) "Emergency medical service agency" means any agency licensed under section six-a of this article to provide emergency medical services;

(f) "Emergency medical service attendant" means a person certified by the commissioner pursuant to the provisions of section eight of this article to render the services authorized pursuant to the provisions of section fourteen of this article;
(g) "Emergency medical service personnel" means any person certified by the commissioner to provide emergency medical services authorized in section eight of this article and includes, but is not limited to, emergency medical service attendant, emergency medical technician-basic and emergency medical technician-paramedic;

(h) "Emergency medical service provider" means any authority, person, corporation, partnership or other entity, public or private, which owns or operates a licensed emergency medical services agency providing emergency medical service in this state;

(i) "Emergency medical technician-basic" means a person certified by the commissioner pursuant to the provisions of section eight of this article to render the services authorized pursuant to the provisions of section fourteen of this article;

(j) "Emergency medical technician-paramedic" means a person certified by the commissioner pursuant to the provisions of section eight of this article to render services as authorized pursuant to the provisions of section fourteen of this article;

(k) "Governing body" has the meanings ascribed to it as applied to a municipality in subdivision (1), subsection (b), section two, article one, chapter eight of this code;

(l) "Line officer" means the emergency medical service personnel, present at the scene of an accident, injury or illness, who has taken the responsibility for patient care;

(m) "Medical command" means the issuing of orders by a physician from a medical facility to emergency medical service personnel for the purpose of providing appropriate patient care;

(n) "Municipality" has the meaning ascribed to it in subdivision (1), subsection (a), section two, article one, chapter eight of this code;

(o) "Patient" means any person who is a recipient of the services provided by emergency medical services;

(p) "Service reciprocity" means the provision of emergency medical services to citizens of this state by emergency medical
service personnel certified to render those services by a neighboring state;

(q) "Small emergency medical service provider" means any emergency medical service provider which is made up of less than twenty emergency medical service personnel; and

(r) "Specialized multipatient medical transport" means a type of ambulance transport provided for patients with medical needs greater than those of the average population, which may require the presence of a trained emergency medical technician during the transport of the patient: Provided, That the requirement of "greater medical need" may not prohibit the transport of a patient whose need is preventive in nature.

§16-4C-8. Standards for emergency medical service personnel.

(a) Every ambulance operated by an emergency medical service agency shall carry at least two personnel. At least one person shall be certified in cardiopulmonary resuscitation or first aid and the person in the patient-compartment shall be certified as an emergency medical technician-basic at a minimum, except that in the case of a specialized multipatient medical transport, only one staff person is required and that person shall be certified, at a minimum, at the level of an emergency medical technician-basic.

(b) As a minimum the training for each class of emergency medical service personnel shall include:

(1) Emergency medical service attendant: Shall have earned and possess valid certificates from the department or by authorities recognized and approved by the commissioner;

(2) Emergency medical technician-basic: Shall have successfully completed the course for certification as an emergency medical technician-basic as established by the commissioner or authorities recognized and approved by the commissioner; and

(3) Emergency medical technician-paramedic: Shall have successfully completed the course for certification as an emergency medical technician-paramedic established by the commissioner or authorities recognized and approved by the commissioner.
The foregoing may not be considered to limit the power of
the commissioner to prescribe training, certification and
recertification standards.

(c) Any person desiring emergency medical service
personnel certification shall apply to the commissioner using
forms and procedures prescribed by the commissioner. Upon
receipt of the application, the commissioner shall determine
whether the applicant meets the certification requirements and
may examine the applicant, if necessary to make that determi-
nation. If it is determined that the applicant meets all of the
requirements, the commissioner shall issue an appropriate
emergency medical service personnel certificate which shall be
valid for a period as determined by the commissioner.

State and county continuing education and recertification
programs for all levels of emergency medical service providers
shall be available to emergency medical service providers at a
convenient site within one hundred miles of the provider’s
primary place of operation at sites determined by the regional
emergency medical services offices. The continuing education
program shall be provided at a cost specified in a fee schedule
to be promulgated by legislative rule in accordance with the
provisions of article three, chapter twenty-nine-a of this code by
the division of health to all nonprofit emergency medical
service personnel.

(d) The commissioner may issue a temporary emergency
medical service personnel certificate to an applicant, with or
without examination of the applicant, when he or she finds that
issuance to be in the public interest. Unless suspended or
retracted, a temporary certificate shall be valid initially for a
period not exceeding one hundred twenty days and may not be
renewed unless the commissioner finds the renewal to be in the
public interest. The expiration date of a temporary certificate
shall be extended until the holder is afforded at least one
opportunity to take an emergency medical service personnel
training course within the general area where he or she serves
as an emergency medical service personnel, but the expiration
date may not be extended for any longer period of time or for
any other reason.
AN ACT to amend and reenact section twenty-three, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to directing the commissioner of the bureau of public health to propose for promulgation, legislative rules for licensure and inspection of certain fire department rapid response services.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-23. Authority of the commissioner to make rules.

(a) The commissioner shall propose for promulgation, legislative rules pursuant to article three, chapter twenty-nine-a of this code to carry out the purposes of this article.

(b) Notwithstanding the provisions of subsection (a), section six of this article, the commissioner shall propose for promulgation a legislative rule regulating fire department rapid response services, pursuant to article three, chapter twenty-nine-a of this code which: (1) Establishes licensure and certification requirements for fire department rapid response services who do not charge for their services or transport patients; (2) incorporates necessary applicable emergency medical services requirements for licensure for “emergency medical services” as the requirements apply to fire departments and as defined in subsection (d), section three of this article;
and (3) creates an exemption from license and inspection fees
for fire departments that do not charge fees for their services
and which authorizes such fire departments to conduct self
inspections of their emergency vehicles in accordance with any
applicable state or federal requirements for emergency medical
service vehicles. The commissioner shall file the rule required
by this subsection as an emergency rule on or before the first
day of July, one thousand nine hundred ninety-nine. The
Legislature hereby finds that an emergency exists compelling
promulgation of an emergency rule, consistent with the
provisions of this subsection.

CHAPTER 139

(Com. Sub. for H. B. 2269 — By Delegates Staton, Facemyer and Martin)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, by adding thereto
a new article, designated article four-d, relating to automated
external defibrillators; setting forth legislative purposes and
findings; defining terms; establishing certain criteria for entities
providing an early defibrillation program, including training for
designated operators within a defibrillation program; involving a
physician medical director in the medical protocols of a
defibrillation program; notifying emergency medical services
system when an entity establishes an early defibrillation program;
activating the emergency medical services system when an
automated external defibrillator is used by an operator; authoriz­
ing the development of guidelines for coordination of early
defibrillator programs by the office of emergency medical
services; and providing limitation of liability for compliance with
the statutory provisions except in instances of gross misconduct.

Be it enacted by the Legislature of West Virginia:
That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four-d, to read as follows:

ARTICLE 4D. AUTOMATED EXTERNAL DEFIBRILLATORS.

§16-4D-1. Purpose and findings.
§16-4D-2. Definitions.
§16-4D-3. Early defibrillation programs.
§16-4D-4. Limitation on liability.

§16-4D-1. Purpose and findings.

(a) The West Virginia Legislature hereby finds and declares that each year more than two hundred fifty thousand Americans die from out-of-hospital incidents of sudden cardiac arrest. More than ninety-five percent of these incidents result in death and, in many cases, death occurs because properly trained persons with life-saving automated external defibrillators arrive at the scene too late.

(b) The American Heart Association estimates that more than twenty thousand deaths could be prevented each year if early defibrillation were more widely available.

(c) Many communities around the country have invested in 911 emergency notification systems and emergency medical services, including well-trained emergency personnel and ambulance vehicles. However, in many communities, there are not enough strategically placed automated external defibrillators and persons trained to properly operate them.

(d) It is, therefore, the intent of this Legislature to improve access to early defibrillation by encouraging the establishment of automated external defibrillator programs in careful coordination with the emergency medical services system.

§16-4D-2. Definitions.

(a) "Automated external defibrillator", hereinafter referred to as AED, means a medical device heart monitor and defibrillator that: (1) Has undergone the premarket approval process pursuant to the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 360, as amended; (2) is capable of recognizing the
presence or absence of ventricular fibrillation; (3) is capable of
determining, without intervention by the operator, whether
defibrillation should be performed; and (4) upon determining
that defibrillation should be performed, automatically charges
and requests delivery of an electrical impulse to an individual’s
heart.

(b) “Early defibrillation program” means a coordinated
program that meets the requirements of section three of this
article and one that provides early public access to defibrillation
for individuals experiencing sudden cardiac arrest through the
use of an automated external defibrillator.

(c) “Emergency medical services (EMS)” means all
services established by the Emergency Medical Services Act of
1973 in article four-c of this chapter including, but not limited
to, the emergency medical services plan of the department of
health and human resources providing a response to the medical
needs of an individual to prevent the loss of life or aggravation
of illness or injury.

(d) “Entity” means a public or private group, organization,
business, association or agency that meets the requirements of
section three of this article. “Entity” does not include emer-
gency medical services operational programs or licensed
commercial ambulance services.

(e) “Medical director” means a duly licensed physician who
serves as the designated medical coordinator for an entity’s
early defibrillation program.

§16-4D-3. Early defibrillation programs.

(a) An entity providing an early defibrillation program
shall:

(1) Register the program with the office of emergency
medical services, pursuant to article four-c of this chapter,
identifying the placement of AEDs, training of AED operators,
preplanned EMS system coordination, designation of a medical
director, maintenance of AED equipment and reports of AED
utilization;
(2) Require the operator of an AED to receive appropriate training in cardiopulmonary resuscitation, referred to as "CPR", in the operation of an AED and in the determination of advance directives from the American Heart Association, American Red Cross, any other nationally recognized course in CPR and AED, or an AED and CPR training program approved by the office of emergency medical services;

(3) Maintain and test the AED in accordance with the manufacturer's guidelines, and keep written records of this maintenance and testing;

(4) Designate a medical director for the coordination of the program, which shall include, but not limited to, training, coordinating with EMS, creating AED deployment strategies and reviewing each operation of an AED;

(5) Notify the local EMS system and public safety answering point or other appropriate emergency dispatch center of the existence of an entity's early defibrillation program, the location of the program and the program's plan for coordination with the EMS system;

(6) Provide that an operator of an AED who renders emergency care or treatment on a person experiencing cardiac arrest shall activate the EMS system as soon as possible and shall report the use of an AED to the program medical director;

(7) Comply with the guidelines of the West Virginia office of emergency medical services regarding data collection and reporting.

§16-4D-4. Limitation on liability.

A person is not liable for civil damages as a result of any act or omission in rendering emergency medical care or treatment involving the use of an AED if the care or treatment does not amount to gross negligence and the following conditions are met:

(1) The person, entity, certified trainer or medical director of the early defibrillation program is in compliance with the provisions of section three of this article; and
(2) The person is an operator of an AED who gratuitously
and in good faith rendered emergency medical care, pursuant to
the requirements of section three of this article, other than in the
ordinary course of the person’s employment or profession.

CHAPTER 140

(Com. Sub. for S. B. 90 — By Senator Hunter)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-nine,
chapter sixteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to copying medical
records; permitting indigent persons and their authorized repre­
sentatives to obtain free copies of medical records to support
claims or appeals for social security benefits; defining terms; and
establishing limitations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29. HEALTH CARE RECORDS.

§16-29-2. Reasonable expenses to be reimbursed.

(a) The provider shall be reimbursed by the person request-
ing in writing a copy of the records at the time of delivery for
all reasonable expenses incurred in complying with this article:
Provided, That the cost may not exceed seventy-five cents per
page for the copying of any record or records which have
already been reduced to written form and a search fee may not
exceed ten dollars.

(b) Notwithstanding the provisions of subsection (a) of this
section, a provider shall not impose a charge on an indigent
person or his or her authorized representative if the medical
records are necessary for the purpose of supporting a claim or
appeal under any provisions of the Social Security Act, 42
U.S.C. § 301 et seq.

(c) For purposes of this section, a person is considered
indigent if he or she:

(1) Is represented by an organization or affiliated pro bono
program that provides legal assistance to indigents; or

(2) Verifies on a medical records request and release form
that the records are requested for purposes of supporting a
social security claim or appeal and submits with the release
form reasonable proof that the person is financially unable to
pay full copying charges by reason of unemployment, disability, income below the federal poverty level, or receipt of state
or federal income assistance.

(d) Any person requesting free copies of written medical
records pursuant to the provisions of subsection (b) of this
section is limited to one set of copies per provider. Any
additional requests for the same records from the same provider
shall be subject to the fee provisions of subsection (a).

CHAPTER 141

(S. B. 455 — By Senators Walker, Craigo, Jackson, Hunter, Helmick,
Bailey, Snyder, Mitchell, McCabe, Plymale, Prezioso, Edgell, Sharpe,
Bowman, Kessler, Redd, Unger, Ball, Ross, Oliverio, McKenzie,
Schoonover, Love and Dittmar)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]
of supplemental security income from benefit groups for purposes of determining financial eligibility for temporary assistance for needy families; requiring the department of health and human resources and all college and university systems to develop a plan utilizing available college programs for participants of the works program; and requiring the submission of the plan and other recommendations to the legislative oversight commission on health and human resources.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.


§9-9-6. Program participation.

§9-9-7. Work requirements.


In addition to the rules for the construction of statutes in section ten, article two, chapter two of this code and the words and terms defined in section two, article one of this chapter, unless a different meaning appears from the context:

(a) "At-risk family" means a group of persons living in the same household, living below the federally-designated poverty level, lacking the resources to become self-supporting, and consisting of a dependent minor child or children living with a parent, stepparent or caretaker-relative; an "at-risk family" may include an unmarried minor parent and his or her dependent child or children who live in an adult-supervised setting;

(b) "Beneficiary" or "participant" means any parent or caretaker-relative in an at-risk family who receives cash assistance for himself or herself and family members;

(c) "Cash assistance" means temporary assistance for needy families or diversionary assistance;

(d) "Challenge" means any fact, circumstance or situation that prevents a person from becoming self-sufficient or from
seeking, obtaining or maintaining employment of any kind, including physical or mental disabilities, lack of education, testing, training, counseling, child care arrangements, transportation, medical treatment or substance abuse treatment;

(e) "Community or personal development" means activities designed or intended to eliminate challenges to participation in self-sufficiency activities. These activities are to provide community benefit and enhance personal responsibility, including, but not limited to, classes or counseling for learning life skills or parenting, dependent care, job readiness, volunteer work, participation in sheltered workshops or substance abuse treatment;

(f) "Department" means the state department of health and human resources;

(g) "Division" means the division of human services;

(h) "Income" means money received by any member of an at-risk family which can be used at the discretion of the household to meet its basic needs: Provided, That "income" does not include:

   (1) Supplemental security income paid to any member or members of the at-risk family;

   (2) Earnings of minor children; or

   (3) Payments received from earned income tax credit or tax refunds;

(i) "Personal responsibility contract" means a written agreement entered into by the division and a beneficiary which establishes the responsibilities and obligations of the beneficiary;

(j) "Secretary" means the secretary of the state department of health and human resources;

(k) "Subsidized employment" means employment with earnings provided by an employer who receives a subsidy from the division for the creation and maintenance of the employment position;
(l) "Support services" includes, but is not limited to, the following services: Child care; medicaid; transportation assistance; information and referral; resource development services which includes assisting families to receive child support enforcement and supplemental security income; family support services which includes parenting, budgeting and family planning; relocation assistance; and mentoring services;

(m) "Unsubsidized employment" means employment with earnings provided by an employer who does not receive a subsidy from the division for the creation and maintenance of the employment position;

(n) "Work" means unsubsidized employment, subsidized employment, work experience or community or personal development; and

(o) "Work experience" means unpaid structured work activities that are provided in an environment where performance expectations are similar to those existing in unsubsidized employment and which provide training in occupational areas that can realistically be expected to lead to unsubsidized employment.

§9-9-6. Program participation.

(a) Unless otherwise noted in this article, all adult recipients of cash assistance shall be required to participate in the West Virginia works program in accordance with the provisions of this article. The level of participation, services to be delivered and work requirements shall be defined within the terms of the personal responsibility contract and through rules established by the secretary.

(b) To the extent funding permits, any individual exempt under the provisions of section eight of this article may participate in the activities and programs offered through the West Virginia works program.

(c) Support services other than cash assistance through the works program may be provided to at-risk families to eliminate the need for cash assistance.
(d) Cash assistance through the works program may be provided to an at-risk family if the combined family income, as defined in subsection (h), section three of this article, is below the income and asset test levels established by the division: Provided, That any adult member of an at-risk family who receives supplemental security income shall be excluded from the benefit group: Provided, however, That an at-risk family that includes a married man and woman and dependent children of either one or both may receive an additional cash assistance benefit in an amount ten percent greater than the cash assistance benefit provided to the same size household in which there are no married adults: Provided further, That an at-risk family shall receive an additional cash assistance benefit in an amount equal to the amount of child support collected in a month on behalf of a child or children of the at-risk family, not to exceed fifty dollars.

§9-9-7. Work requirements.

(a) Unless otherwise exempted by the provisions of section eight of this article, the West Virginia works program shall require that anyone who possesses a high school diploma, or its equivalent, or anyone who is of the age of twenty years or more, to work or attend an educational or training program for a minimum of twenty hours per week to receive any form of cash assistance. In accordance with federal law or regulation, the work, education and training requirements of this section are waived for any qualifying participant with a child under six years of age if the participant is unable to obtain appropriate and available child care services. In order for any participant to receive cash assistance, he or she shall enter into personal responsibility contracts pursuant to the provisions of section nine of this article.

(b) The department of health and human resources and representatives of all college and university systems of West Virginia shall develop a plan to utilize the programs available at the colleges and universities to assist beneficiaries or participants who are enrolled in two and four year programs to meet the work activity requirements of the federal government or the provisions of this article.
(c) On or before the first day of December, one thousand
nine hundred ninety-nine, the department shall submit the plan
and any findings, conclusions and recommendations, together
with drafts of any legislation necessary to effectuate its recom-
mendations, to the legislative oversight commission on health
and human resources for consideration pursuant to the provi-
sions of section nineteen of this article.

CHAPTER 142

(S. B. 214 — By Senator Helmick)

[Passed March 3, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter
thirty-three of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the reserve require­
ments for life insurance policies and annuities; authorizing rules
related thereto; and disapproving certain legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ASSETS AND LIABILITIES.


(a) Title. — This section shall be known as the standard
valuation law.

(b) Reserve valuation. — The commissioner shall annually
value, or cause to be valued, the reserve liabilities (hereinafter
called reserves) for all outstanding life insurance policies and
annuity and pure endowment contracts of every life insurance
company doing business in this state, and may certify the
amount of any such reserves specifying the mortality table or
tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. In calculating such reserves, he or she may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he or she may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and for all valid legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(c) Actuarial opinion of reserves. — This subsection shall become operative on the first day of January, one thousand nine hundred ninety-six.

(1) General. — Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The commissioner by regulation shall define the specifics of this opinion and add any other items considered to be necessary to its scope.

(2) Actuarial analysis of reserves and assets supporting such reserves.

(A) Every life insurance company, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by subdivision (1) of this subsection, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation, when
considered in light of the assets held by the company with
respect to the reserves and related actuarial items, including, but
not limited to, the investment earnings on the assets and the
considerations anticipated to be received and retained under the
policies and contracts, make adequate provision for the com-
pany’s obligations under the policies and contracts, including,
but not limited to, the benefits under and expenses associated
with the policies and contracts.

(B) The commissioner may provide by regulation for a
transition period for establishing any higher reserves which the
qualified actuary may consider necessary in order to render the
opinion required by this subsection.

(3) Requirement for opinion under subdivision (2). — Each
opinion required by subdivision (2) of this subsection shall be
governed by the following provisions:
(A) A memorandum in form and substance acceptable to
the commissioner as specified by regulation shall be prepared
to support each actuarial opinion.
(B) If the insurance company fails to provide a supporting
memorandum at the request of the commissioner within a
period specified by regulation or the commissioner determines
that the supporting memorandum provided by the insurance
company fails to meet the standards prescribed by the regula-
tions or is otherwise unacceptable to the commissioner, the
commissioner may engage a qualified actuary at the expense of
the company to review the opinion and the basis for the opinion
and prepare such supporting memorandum as is required by the
commissioner.

(4) Requirement for all opinions. — Every opinion shall be
governed by the following provisions:
(A) The opinion shall be submitted with the annual state-
ment reflecting the valuation of such reserve liabilities for each
year ending on or after the thirty-first day of December, one
thousand nine hundred ninety-five.
(B) The opinion shall apply to all business in force,
including individual and group health insurance plans, in form
and substance acceptable to the commissioner as specified by regulation.

(C) The opinion shall be based on standards adopted from time to time by the actuarial standards board and on such additional standards as the commissioner may by regulation prescribe.

(D) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(E) For the purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth in such regulations.

(F) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person (other than the insurance company and the commissioner) for any act, error, omission, decision or conduct with respect to the actuary's opinion.

(G) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in regulations by the commissioner.

(H) Any memorandum in support of the opinion and any other material provided by the company to the commissioner in connection therewith shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated hereunder: Provided, That the memorandum or other material may otherwise be released by the commissioner: (i) With the written consent of the company; or (ii) to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary
proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(d) Computation of minimum standards. — Except as otherwise provided in subsections (e), (f) and (m) of this section, the minimum standard for the valuation of all such policies and contracts issued prior to the effective date of this section shall be that provided by the laws in effect immediately prior to such date. Except as otherwise provided in subsections (e), (f) and (m) of this section, the minimum standard for the valuation of all such policies and contracts issued on or after the effective date of this section shall be the commissioners reserve valuation methods defined in subsections (g), (h), (k) and (m) of this section, three and one-half percent interest, or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after the first day of June, one thousand nine hundred seventy-four, four percent interest for such policies issued prior to the sixth day of April, one thousand nine hundred seventy-seven, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other such policies issued on and after the sixth day of April, one thousand nine hundred seventy-seven, and the following tables:

(1) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies: The commissioners 1941 standard ordinary mortality table for such policies issued prior to the operative date of subsection (4a), section thirty, article thirteen of this chapter, the commissioners 1958 standard ordinary mortality table for such policies issued on or after the operative date of said subsection and prior to the operative date of subsection (4c) of said section: Provided, That for any category of such policies issued on female risks, all modified net
premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and for such policies issued on or after the operative date of subsection (4c), section thirty, article thirteen of this chapter: (i) The commissioners 1980 standard ordinary mortality table; or (ii) at the election of the company for any one or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with ten-year select mortality factors; or (iii) any ordinary mortality table, adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(2) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies: The 1941 standard industrial mortality table for such policies issued prior to the operative date of subsection (4b), section thirty, article thirteen of this chapter, and for such policies issued on or after such operative date, the commissioners 1961 standard industrial mortality table or any industrial mortality table, adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies.

(3) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies: The 1937 standard annuity mortality table, or at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(4) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies: The group annuity mortality table for 1951, any modification of such table approved by the commissioner, or at the option of the company, any of the tables or modifications of
tables specified for individual annuity and pure endowment contracts.

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: For policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-six, the tables of period two disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after the year one thousand nine hundred eighty, by the national association of insurance commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-one, and prior to the first day of January, one thousand nine hundred sixty-six, either such tables or, at the option of the company, the Class (3) disability table (1926); and for policies issued prior to the first day of January, one thousand nine hundred sixty-one, the Class (3) disability table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(6) For accidental death benefits in or supplementary to policies issued on or after the first day of January, one thousand nine hundred sixty-six, the 1959 accidental death benefits table or any accidental death benefits table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners, that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such policies, for policies issued on or after the first day of January, one thousand nine hundred sixty-one, and prior to the first day of January, one thousand nine hundred sixty-six, either such table or, at the option of the company, the inter-company double indemnity mortality table; and for policies issued prior to the first day of January, one thousand nine hundred sixty-one, the inter-company double indemnity mortality table. Either table
shall be combined with a mortality table for calculating the reserves for life insurance policies.

(7) For group life insurance, life insurance issued on the substandard basis and other special benefits: Such tables as may be approved by the commissioner.

(e) Computation of minimum standard for annuities. — Except as provided in subsection (f) of this section, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this subsection, as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in subsections (g) and (h) of this section, and the following tables and interest rates:

(1) For individual annuity and pure endowment contracts issued prior to the sixth day of April, one thousand nine hundred seventy-seven, excluding any disability and accidental death benefits in such contracts: The 1971 individual annuity mortality table, or any modification of this table approved by the commissioner, and six percent interest for single premium immediate annuity contracts and four percent interest for all other individual annuity and pure endowment contracts;

(2) For individual single premium immediate annuity contracts issued on or after the sixth day of April, one thousand nine hundred seventy-seven, excluding any disability and accidental death benefits in such contracts: The 1971 individual annuity mortality table or any individual annuity mortality table, adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the commissioner, and seven and one-half percent interest;

(3) For individual annuity and pure endowment contracts issued on or after the sixth day of April, one thousand nine
267 hundred seventy-seven, other than single premium immediate
268 annuity contracts, excluding any disability and accidental death
269 benefits in such contracts: The 1971 individual annuity mortal-
270 ity table or any individual annuity mortality table adopted after
271 the year one thousand nine hundred eighty by the national
272 association of insurance commissioners, that is approved by
273 regulation promulgated by the commissioner for use in deter-
274 mining the minimum standard of valuation for such contracts,
275 or any modification of these tables approved by the commis-
276 sioner, and five and one-half percent interest for single pre-
277 mium deferred annuity and pure endowment contracts and four
278 and one-half percent interest for all other such individual
279 annuity and pure endowment contracts;

280 (4) For all annuities and pure endowments purchased prior
281 to the sixth day of April, one thousand nine hundred seventy-seven, under group annuity and pure endowment contracts,
282 excluding any disability and accidental death benefits pur-
283 chased under such contracts: The 1971 group annuity mortality
284 table, or any modification of this table approved by the com-
285 missioner, and six percent interest;

286 (5) For all annuities and pure endowments purchased on or
287 after the sixth day of April, one thousand nine hundred seventy-seven, under group annuity and pure endowment contracts,
288 excluding any disability and accidental death benefits pur-
289 chewed under such contracts: The 1971 group annuity mortality
290 table, or any group annuity mortality table adopted after the
291 year one thousand nine hundred eighty by the national associa-
292 tion of insurance commissioners, that is approved by regulation
293 promulgated by the commissioner for use in determining the
294 minimum standard of valuation for such annuities and pure
295 endowments, or any modification of these tables approved by
296 the commissioner, and seven and one-half percent interest.

297 After the third day of June, one thousand nine hundred
298 seventy-four, any company may file with the commissioner a
299 written notice of its election to comply with the provisions of
300 this subsection after a specified date before the first day of
301 January, one thousand nine hundred seventy-nine, which shall
be the operative date of this subsection for such company, provided, if a company makes no such election, the operative date of this section for such company shall be the first day of January, one thousand nine hundred seventy-nine.

(f) Computation of minimum standard by calendar year of issue.

(1) Applicability of this section. — The interest rates used in determining the minimum standard for the valuation of:

(A) All life insurance policies issued in a particular calendar year, on or after the operative date of subsection (4c), section thirty, article thirteen of this chapter as amended;

(B) All individual annuity and pure endowment contracts issued in a particular calendar year on or after the first day of January, one thousand nine hundred eighty-two;

(C) All annuities and pure endowments purchased in a particular calendar year on or after the first day of January, one thousand nine hundred eighty-two, under group annuity and pure endowment contracts; and

(D) The net increase, if any, in a particular calendar year after the first day of January, one thousand nine hundred eighty-two, in amounts held under guaranteed interest contracts, shall be the calendar year statutory valuation interest rates as defined in this subsection.

(2) Calendar year statutory valuation interest rates.

(A) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one-quarter of one percent:

(i) For life insurance,

\[ I = 0.03 + \frac{W(R_1 - 0.03) + W/2(R_2 - 0.09)}{ } \]

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,
\[ I = 0.03 + W(R - 0.03) \]

where \( R_1 \) is the lesser of \( R \) and 0.09,

\[ R_2 \] is the greater of \( R \) and 0.09,

\( R \) is the reference interest rate defined in this subsection and \( W \) is the weighting factor defined in this section;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in subparagraph (ii) of this paragraph, the formula for life insurance stated in subparagraph (i) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;

(iv) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply;

(v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply.

(B) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one half of one percent the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year
shall be determined for the year one thousand nine hundred eighty (using the reference interest rate defined for the year one thousand nine hundred seventy-nine) and shall be determined for each subsequent calendar year regardless of when subsection (4c), section thirty, article thirteen of this chapter, as amended, becomes operative.

(3) *Weighting factors.*

(A) The weighting factors referred to in the formulas stated above are given in the following tables:

(i) **Weighting Factors for Life Insurance:**

<table>
<thead>
<tr>
<th>Guarantee Duration (Years)</th>
<th>Weighting Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 or less</td>
<td>.50</td>
</tr>
<tr>
<td>More than 10, but not more than 20</td>
<td>.45</td>
</tr>
<tr>
<td>More than 20</td>
<td>.35</td>
</tr>
</tbody>
</table>

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(ii) **Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:** .80;

(iii) **Weighting factors for other annuities and for guaranteed interest contracts, except as stated in subparagraph (ii) of this paragraph, shall be as specified in clauses (I), (II) and (III) below, according to the rules and definitions in clauses (IV), (V) and (VI) below:**

(I) **For annuities and guaranteed interest contracts valued on an issue year basis:**
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404 Guarantee
405 Duration (Years)
406 5 or less: .80 .60 .50
407 More than 5, but not more than 10: .75 .60 .50
408 More than 10, but not more than 20: .65 .50 .45
409 More than 20: .45 .35 .35

410 (II) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in subparagraph (i) of this paragraph increased by:

411 Weighting Factor for Plan Type
412 A B C
413 .15 .25 .05

414 (III) For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in (I) or derived in (II) increased by:

415 Weighting Factor for Plan Type
416 A B C1
417 .05 .05 .05

418 (IV) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts
with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(V) Plan type as used in the above tables is defined as follows:

Plan Type A:

At any time policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) as an immediate life annuity; or (4) no withdrawal permitted;

Plan Type B:

Before expiration of the interest rate guarantee, policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years;

Plan Type C:

Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either: (1) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(VI) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation
basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(4) Reference interest rate.

(A) Reference interest rate referred to in subparagraph (ii), paragraph (A), subdivision (2) of this subsection shall be defined as follows:

(i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on the thirtieth day of June of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody's Investors Service, Inc.

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (ii) of this paragraph, with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on
seasoned corporate bonds, as published by Moody’s Investors Service, Inc.

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (ii) above, with guarantee duration of ten years or less, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody’s Investors Service, Inc.

(v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody’s Investors Service, Inc.

(vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subparagraph (ii) of this paragraph, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds, as published by Moody’s Investors Service, Inc.

(5) **Alternative method for determining reference interest rates.**

In the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody’s Investors Service, Inc., or in the event that the national association of insurance commissioners determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody’s Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the national association of
(g) **Reserve valuation method — life insurance and endowment benefits.**

Except as otherwise provided in subsections (h), (k) and (m) of this section, reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of subdivision (1) over subdivision (2), as follows:

1. **(1) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due:** *Provided,* That such net level annual premium shall not exceed the net level annual premium on the nineteen year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

2. **(2) A net one year term premium for such benefits provided for in the first policy year:** *Provided,* That for any life insurance policy issued on or after the first day of January, one thousand nine hundred eighty-five, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the com-
missioners' reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (k) of this section, be the greater of the reserve as of such policy anniversary calculated as described in the preceding paragraph and the reserve as of such policy anniversary calculated as described in that paragraph, but with: (i) The value defined in subdivision (1) of that paragraph being reduced by fifteen percent of the amount of such excess first year premium; (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; (iii) the policy being assumed to mature on such date as an endowment; and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison the mortality and interest bases stated in subsections (d) and (f) of this section shall be used.

Reserves according to the commissioners' reserve valuation method for: (i) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code (26 U.S.C. §408), as now or hereafter amended; (iii) disability and accidental death benefits in all policies and contracts; and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of the preceding paragraphs of this section.

(h) Reserve valuation method — annuity and pure endowment benefits.
This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code (26 U.S.C. §408), as now or hereafter amended.

Reserves according to the commissioners' annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(i) Minimum reserves.

(1) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the effective date of this section, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (g), (h), (k) and (l) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) In no event shall the aggregate reserves for all policies, contracts and benefits be less than the aggregate reserves
determined by the qualified actuary to be necessary to render
the opinion required by subsection (c) of this section.

(j) Optional reserve calculation.

Reserves for all policies and contracts issued prior to the
effective date of this section may be calculated, at the option of
the company, according to any standards which produce greater
aggregate reserves for all such policies and contracts than the
minimum reserves required by the laws in effect immediately
prior to such date.

Reserves for any category of policies, contracts or benefits
as established by the commissioner, issued on or after the
effective date of this section, may be calculated, at the option of
the company, according to any standards which produce greater
aggregate reserves for such category than those calculated
according to the minimum standard herein provided, but the
rate or rates of interest used for policies and contracts, other
than annuity and pure endowment contracts, shall not be higher
than the corresponding rate or rates of interest used in calculat-
ing any nonforfeiture benefits provided therein.

Any such company which at any time shall have adopted
any standard of valuation producing greater aggregate reserves
than those calculated according to the minimum standard herein
provided may, with the approval of the commissioner, adopt
any lower standard of valuation, but not lower than the mini-
um herein provided: Provided, That for the purposes of this
section, the holding of additional reserves previously deter-
mined by a qualified actuary to be necessary to render the
opinion required by subsection (c) of this section shall not be
considered to be the adoption of a higher standard of valuation.

(k) Reserve calculation — valuation net premium exceeding
the gross premium charged.

If in any contract year the gross premium charged by any
life insurance company on any policy or contract is less than the
valuation net premium for the policy or contract calculated by
the method used in calculating the reserve thereon but using the
minimum valuation standards of mortality and rate of interest,
the minimum reserve required for such policy or contract shall
be the greater of either the reserve calculated according to the mortality table, rate of interest and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in subsections (d) and (f) of this section: Provided, That for any life insurance policy issued on or after the first day of January, one thousand nine hundred eighty-five, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (g) of this section, ignoring the second paragraph of said subsection. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with said subsection, including the second paragraph of that section, and the minimum reserve calculated in accordance with this subsection.

(1) Reserve calculation — indeterminate premium plans.

In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsections (g), (h) and (k) of this section, the reserves which are held under any such plan must:

(1) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and
(2) Be computed by a method which is consistent with the
principles of this standard valuation law, as determined by
regulations promulgated by the commissioner.

(m) **Minimum standards for health (disability, accident and
sickness) plans.**

The commissioner shall promulgate a regulation containing
the minimum standards applicable to the valuation of health
(disability, sickness and accident) plans.

(n) The commissioner shall promulgate a rule on or before
the first day of November, one thousand nine hundred
ninety-five, prescribing the guidelines and standards for
statements of actuarial opinion which are to be submitted in
accordance with subsection (c) of this section and for memo-
randa in support thereof; guidelines and standards for state-
ments of actuarial opinion which are to be submitted when a
company is exempt from subdivision (2), subsection (c) of the
standard valuation law; and rules applicable to the appointment
of an appointed actuary.

(o) **Effective date.**

All acts and parts of acts inconsistent with the provision of
this section are hereby repealed as of the effective date of this
section. This section shall take effect the first day of January,
one thousand nine hundred ninety-six.

(p) **Modification of the standard valuation law for certain
types of contracts.**

(1) The commissioner may, by rule, establish alternative
methods of calculating reserve liabilities, which methods shall
be used to calculate reserve liabilities for the types of policies,
annuities or other contracts identified in the rule: *Provided,*
That the method specified in the rule shall be one which, in the
opinion of the commissioner and in light of the methods applied
to such contracts by the insurance regulators of other states, is
appropriate to such contracts. This power shall be in addition to,
and in no way diminish, rule-making power granted to the
commissioner elsewhere in this code.
(2) The legislative rule filed in the state register on the twentieth day of August, one thousand nine hundred ninety-six, (valuation of life insurance policies, 114 CSR 49) is hereby disapproved and is not authorized for promulgation: Provided, That for purposes of determining the legal effects of the aforementioned rule, this provision shall be considered to have taken effect on the thirty-first day of December, one thousand nine hundred ninety-seven. This disapproval shall in no way limit the commissioner’s power to promulgate in the future a rule similar or identical to the rule here disapproved.

CHAPTER 143

(H. B. 2836 — By Delegates Beane, Johnson, Amores, H. White, Facemyer and L. White)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and two-a, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to changing insurance agent education procedures by exempting from educational requirements persons who have been licensed in good standing in other states, and by authorizing the insurance commissioner to automatically suspend the insurance license of those persons who fail to meet continuing insurance education requirements.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-2. Qualifications.
§33-12-2a. Continuing education required.
§33-12-2. Qualifications.

1 For the protection of the people of West Virginia, the commissioner shall not issue, renew or permit to exist any agent's, broker's or solicitor's license except to an individual who:

5 (a) Is eighteen years of age or more.

6 (b) Is a resident of West Virginia, except that a broker's license shall be issued only to nonresidents, and except for nonresident life and accident and sickness agents as provided in section eight of this article.

10 Effective the first day of June, one thousand nine hundred ninety-one, brokers' licenses shall cease to exist. Licensing of nonresidents for property casualty will be made pursuant to section eight-a of this article.

14 (c) Is, in the case of an agent applicant, appointed as agent by a licensed insurer for the kind or kinds of insurance for which application is made, subject to issuance of license, or, in the case of a solicitor applicant, appointed as solicitor by a licensed resident agent, subject to issuance of license, except that on or after the first day of June, one thousand nine hundred ninety, no solicitor's license will be issued which is not a renewal of an existing license.

22 (d) Does not intend to use the license principally for the purpose, in the case of life or accident and sickness insurance, of procuring insurance on himself or herself, members of his or her family or his or her relatives; or, as to insurance other than life and accident and sickness, upon his or her property or insurable interests of those of his or her family or his or her relatives or those of his or her employer, employees or firm, or corporation in which he or she owns a substantial interest, or of the employees of such firm or corporation, or on property or insurable interests for which the applicant or any such relative, employer, firm or corporation is the trustee, bailee or receiver. For the purposes of this provision, a vendor's or lender's interest in property sold or being sold under contract or which
is the security for any loan, shall not be deemed to constitute
property or an insurable interest of such vendor or lender.

(e) Satisfies the commissioner that he or she is trustworthy
and competent. The commissioner may test the competency of
an applicant for a license under this section by examination.
Each examinee shall pay a twenty-five dollar examination fee
for each examination to the commissioner who shall deposit
said examination fee into the state treasury for the benefit of the
state fund, general revenue. The commissioner may, at his or
her discretion, designate an independent testing service to
prepare and administer such examination subject to direction
and approval by the commissioner, and examination fees
charged by such service shall be paid by the applicant.

(f) For new agents first licensed on or after the first day of
July, one thousand nine hundred eighty-nine, completes a
program of insurance education as established below: Provided,
That a written waiver from the insurance education require-
ments for life, accident and sickness, or property and casualty
insurance may be granted to any person who can demonstrate
to the satisfaction of the commissioner that he or she has been
licensed as a resident agent in good standing in another state
within the sixty-day period immediately preceding his or her
application for a resident license in West Virginia. The waiver,
if granted, does not exempt the applicant from an examination
pertaining to the laws of this state for each kind of insurance for
which application is made.

There is hereby created the board of insurance agent
education. The board of insurance agent education shall consist
of the commissioner of insurance and six members appointed
by the commissioner. The members appointed by the commis-
ioner shall be two licensed property and casualty insurance
agents, one licensed life insurance agent, one licensed health
and accident insurance agent, one representative of a domestic
insurance company, and one representative of a foreign
insurance company: Provided, That no board shall be appointed
that fails to include companies or agents for companies repre-
senting at least two thirds of the net written insurance premiums
in the state. Each member shall serve a term of three years and
shall be eligible for reappointment.

(1) The board of insurance agent education shall establish
the criteria for a program of insurance education and submit the
proposal for the approval of the commissioner on or before the
thirty-first day of December of each year.

(2) The commissioner and the board, under standards
established by the board, may approve any course or program
of instruction developed or sponsored by an authorized insurer,
accredited college or university, agents association, insurance
trade association, or independent program of instruction that
presents the criteria and the number of hours that the board and
commissioner determine appropriate for the purpose of this
article.

*§33-12-2a. Continuing education required.

The purpose of this provision is to provide continuing
education under guidelines set up under the insurance commis-
sioner's office effective the first day of July, one thousand nine
hundred ninety-two, with the guidelines to be set up under the
board of insurance agent education. Nothing in this section shall
prohibit an individual from receiving commissions which have
been vested and earned while that individual maintained an
approved insurance agent's license.

(a) This section applies to persons licensed to engage in the
sale of the following types of insurance:

(1) Life insurance, annuity contracts, variable annuity
contracts and variable life insurance;

(2) Sickness, accident and health insurance;

(3) All lines of property and casualty insurance; and

(4) All other lines of insurance for which an examination is
required for licensing.

(b) This section does not apply to:

* Clerk's Note: This section was also amended by HB 2043 (Chapter 144), which
passed prior to this act.
(1) Persons holding resident licenses for any kind or kinds of insurance offered in connection with loans or other credit transactions or insurance for which an examination is not required by the commissioner, nor does it apply to any such limited or restricted license as the commissioner may exempt;

(2) Individuals selling credit life or credit accident and health insurance.

(c)(1) The board of insurance agent education as established by section two of this article shall develop a program of continuing insurance education and submit the proposal for the approval of the commissioner on or before the thirty-first day of December of each year. Each year after the first day of July, one thousand nine hundred ninety-seven, the program shall contain a requirement that any person appointed to be an agent on behalf of a licensed health maintenance organization at any time during the relevant biennium must, as a component of his or her mandatory continuing insurance education, complete a minimum of six hours of continuing insurance education during the biennium which is on topics specific to health maintenance organizations.

No program shall be approved by the commissioner that includes a requirement that any agent complete more than thirty hours of continuing insurance education biennially. No program shall be approved by the commissioner that includes a requirement that any of the following individuals complete more than six hours of continuing insurance education biennially:

(A) Insurance agents who sell only preneed burial insurance contracts; and

(B) Insurance agents who engage solely in telemarketing insurance products by a scripted presentation which scripted presentation has been filed with and approved by the commissioner.

(2) The commissioner and the board, under standards established by the board, may approve any course or program of instruction developed or sponsored by an authorized insurer, accredited college or university, agents' association, insurance
trade association or independent program of instruction that presents the criteria and the number of hours that the board and commissioner determine appropriate for the purpose of this section.

(d) Persons licensed to sell insurance and who are not otherwise exempt shall satisfactorily complete the courses or programs of instructions the commissioner may prescribe.

(e) Every person, subject to the continuing education requirements shall furnish, at intervals and on forms as may be prescribed by the commissioner, written certification listing the courses, programs or seminars of instruction successfully completed by the person. The certification shall be executed by, or on behalf of, the organization sponsoring the courses, programs or seminars of instruction.

(f) Any person, failing to meet the requirements mandated in this section, and who has not been granted an extension of time, with respect to such requirements, or who has submitted to the commissioner a false or fraudulent certificate of compliance shall have his or her license automatically suspended and no further license may be issued to the person for any kind or kinds of insurance until such time as the person demonstrates to the satisfaction of the commissioner that he or she has complied with all of the requirements mandated by this section and all other applicable laws or rules.

(g) The commissioner shall notify the person of his or her suspension pursuant to subsection (f) of this section by certified mail, return receipt requested, to the last address on file with the commissioner pursuant to section twenty-nine of this article. Any person who has had a suspension order entered against him or her pursuant to this section may, within thirty calendar days of receipt of the order, file with the commissioner a request for a hearing for reconsideration of the matter.

(h) Any person who does not satisfactorily demonstrate compliance with this section and all other laws applicable thereto as of the last day of the biennium following his or her suspension shall have his or her license automatically canceled
and is subject to the education and examination requirements of section two of this article.

(i) The commissioner is authorized to hire personnel and make reasonable expenditures as deemed necessary for purposes of establishing and maintaining a system of continuing education for insurers.

CHAPTER 144

(Com. Sub. for H. B. 2043 — By Delegate Douglas)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section nineteen, article fifteen of said chapter; to amend and reenact section four, article fifteen-a of said chapter; and to further amend said chapter by adding thereto a new article, designated article twenty-five-d, all relating to prepaid limited health service organizations; establishing requirements for doing business; continuing education requirements for agents; coordination with medicaid; the relationship to long-term care insurance; conditions for and revocation of certificates of authority; providing minimum capital requirements; establishing powers of a prepaid limited health service organization; providing enrollee participation; setting requirements for provider contracts; setting requirements for premiums; requiring approval of approval forms; requiring financial statements; setting grievance procedures; regulating marketing; providing for financial examinations; establishing a quality assurance program; providing for civil and criminal penalties and enforcement; and dictating statutory construction and relationship to other laws.

Be it enacted by the Legislature of West Virginia:
That section two-a, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section nineteen, article fifteen of said chapter be amended and reenacted; that section four, article fifteen-a of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article twenty-five-d, all to read as follows:

Article

15. Accident and Sickness Insurance.
15A. West Virginia Long-term Care Insurance Act.

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

*§33-12-2a. Continuing education required.

(a) The purpose of this provision is to provide continuing education under guidelines set up under the insurance commissioner's office, with the guidelines to be set up under the board of insurance agent education. Nothing in this section prohibits an individual from receiving commissions which have been vested and earned while that individual maintained an approved insurance agent's license.

(b) This section applies to persons licensed to engage in the sale of the following types of insurance:

(1) Life insurance, annuity contracts, variable annuity contracts and variable life insurance;

(2) Sickness, accident and health insurance;

(3) All lines of property and casualty insurance; and

(4) All other lines of insurance for which an examination is required for licensing.

(c) This section does not apply to:

(1) Persons holding resident licenses for any kind or kinds of insurance offered in connection with loans or other credit transactions or insurance for which an examination is not

* Clerk's Note: This section was also amended by HB 2836 (Chapter 143), which passed subsequent to this act.
required by the commissioner, nor does it apply to any limited
or restricted license as the commissioner may exempt;

(2) Individuals selling credit life or credit accident and
health insurance.

d) (1) The board of insurance agent education as estab-
lished by section two of this article shall develop a program of
continuing insurance education and submit the proposal for the
approval of the commissioner on or before the thirty-first day
of December of each year. The program shall contain a require-
ment that any person appointed to be an agent on behalf of a
licensed health maintenance organization or prepaid limited
health service organization at any time during the relevant
biennium shall, as a component of his or her mandatory
continuing insurance education, complete a minimum of six
hours of continuing insurance education during the biennium
which is on topics specific to managed care organizations.

No program may be approved by the commissioner that
includes a requirement that any agent complete more than thirty
hours of continuing insurance education biennially. No program
may be approved by the commissioner that includes a require-
ment that any of the following individuals complete more than
six hours of continuing insurance education biennially:

(A) Insurance agents who sell only preneed burial insurance
contracts; and

(B) Insurance agents who engage solely in telemarketing
insurance products by a scripted presentation which scripted
presentation has been filed with and approved by the commis-

sioner.

(2) The commissioner and the board, under standards
established by the board, may approve any course or program
of instruction developed or sponsored by an authorized insurer,
accredited college or university, agents' association, insurance
trade association or independent program of instruction that
presents the criteria and the number of hours that the board and
commissioner determine appropriate for the purpose of this
section.
(e) Persons licensed to sell insurance and who are not otherwise exempt shall satisfactorily complete the courses or programs of instructions the commissioner may prescribe.

(f) Every person, subject to the continuing education requirements shall furnish, at intervals and on forms as may be prescribed by the commissioner, written certification listing the courses, programs or seminars of instruction successfully completed by the person. The certification shall be executed by, or on behalf of, the organization sponsoring the courses, programs or seminars of instruction.

(g) Any person, failing to meet the requirements mandated in this section, and who has not been granted an extension of time, with respect to such requirements, or who has submitted to the commissioner a false or fraudulent certificate of compliance shall have his or her license automatically suspended and no further license may be issued to the person for any kind or kinds of insurance until such time as the person demonstrates to the satisfaction of the commissioner that he or she has complied with all of the requirements mandated by this section and all other applicable laws or rules.

(h) The commissioner shall notify the person of his or her suspension pursuant to subsection (g) of this section by certified mail, return receipt requested, to the last address on file with the commissioner pursuant to section twenty-nine of this article. Any person who has had a suspension order entered against him or her pursuant to this section may, within thirty calendar days of receipt of the order, file with the commissioner a request for a hearing for reconsideration of the matter.

(i) Any person who does not satisfactorily demonstrate compliance with this section and all other laws applicable thereto as of the last day of the biennium following his or her suspension shall have his or her license automatically canceled and is subject to the education and examination requirements of section two of this article.

(j) The commissioner is authorized to hire personnel and make reasonable expenditures as deemed necessary for pur-
poses of establishing and maintaining a system of continuing
education for insurers.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.


1 Any health insurer, health maintenance organization as
defined in article twenty-five-a of this chapter, prepaid limited
health service organization as defined in article twenty-five-d
of this chapter or hospital and medical service corporations as
defined in article twenty-four of this chapter is prohibited from
considering the availability or eligibility for medical assistance
in this or any other state under 42 U.S.C. § 1396a, Section 1902
of the Social Security Act, referred to in this article as
medicaid, when considering eligibility for coverage or making
payments under its plan for eligible enrollees, subscribers,
policyholders or certificateholders.

ARTICLE 15A. WEST VIRGINIA LONG-TERM CARE INSURANCE ACT.


1 "Long-term care insurance" means any insurance policy
or rider advertised, marketed, offered or designed to provide
benefits for not less than twenty-four consecutive months for
each covered person on an expense incurred, indemnity, prepaid
or other basis; for one or more necessary or medically necessary
diagnostic, preventive, therapeutic, rehabilitative, maintenance
or personal care services, provided in a setting other than an
acute care unit of a hospital. The term includes group and
individual policies or riders whether issued by insurers;
fraternal benefit societies; nonprofit health, hospital, and
medical service corporations; prepaid health plans; health
maintenance organizations, prepaid limited health service
organizations or any similar organization. Any insurance policy
which is offered primarily to provide basic medicare supple-
ment coverage, basic hospital expense coverage, basic medi-
cal-surgical expense coverage, hospital confinement indemnity
coverage, major medical expense coverage, disability income
protection coverage, accident only coverage, specified disease
or specified accident coverage, or limited benefit health
coverage which also contains long-term care insurance benefits for at least six months shall comply with the provisions of this article.

(b) "Applicant" means:

(1) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(2) In the case of a group long-term care insurance policy, the proposed certificate holder.

(c) "Certificate" means, for the purposes of this article, any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this state.

(d) "Commissioner" means the insurance commissioner of this state.

(e) "Group long-term care insurance" means a long-term care insurance policy which is delivered or issued for delivery in this state and issued to:

(1) One or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations; or

(2) Any professional, trade or occupational association for its members or former or retired members, or combination thereof, if the association:

(A) Is composed of individuals all of whom are or were actively engaged in the same profession, trade or occupation; and

(B) Has been maintained in good faith for purposes other than obtaining insurance; or

(3) An association or a trust or the trustee or trustees of a fund established, created or maintained for the benefit of
members of one or more associations. Prior to advertising, marketing or offering the policy within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the commissioner that the association or associations have at the outset a minimum of one hundred persons and have been organized and maintained in good faith for the purposes other than that of obtaining insurance; have been in active existence for at least one year; and have a constitution and bylaws which provide that:

(A) The association or associations hold regular meetings not less than annually to further purposes of the members;

(B) Except for credit unions, the association or associations collect dues or solicit contributions from members; and

(C) The members have voting privileges and representation on the governing board and committees.

Thirty days after the filing the association or associations will be deemed to satisfy such organizational requirements, unless the commissioner makes a finding that the association or associations do not satisfy those organizational requirements.

(4) A group other than as described in subdivisions (1), (2) and (3), subsection (e) of this section, subject to a finding by the commissioner that:

(A) The issuance of the group policy is not contrary to the best interest of the public;

(B) The issuance of the group policy would result in economies of acquisition or administration;

(C) The benefits are reasonable in relation to the premiums charged.

(f) "Policy" means, for the purposes of this article, any policy, contract, subscriber agreement, rider or endorsement delivered or issued for delivery in this state by an insurer; fraternal benefit society; nonprofit health, hospital, or medical service corporation; prepaid health plan; health maintenance organization, prepaid limited health service organization or any similar organization.
ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION ACT.

§33-25D-3. Application for certificate of authority; addition of services.
§33-25D-4. Conditions precedent to issuance or maintenance of a certificate of authority; renewal of certificate of authority; effect of bankruptcy proceedings.
§33-25D-11. Evidence of coverage; review of enrollee records; charges for limited health services; cancellation of contract by enrollee.
§33-25D-16. Agent licensing and appointment required; regulation of marketing.
§33-25D-17. Powers of insurers, hospital service corporations, medical service corporations, dental service corporations, health service corporations and health maintenance organizations.
§33-25D-20. Suspension or revocation of certificate of authority.
§33-25D-21. Rehabilitation, liquidation or conservation of prepaid limited health service organization.
§33-25D-25. Penalties and enforcement.
§33-25D-27. Filing and reports as public documents.
§33-25D-29. Authority to contract with prepaid limited health service organizations under medicaid.
§33-25D-30. Authority of commissioner to propose rules regarding affiliate and subsidiary operating results.


1 This article may be cited as the “Prepaid Limited Health Service Organization Act.”

1. (a) “Capitation” means the fixed amount paid by a prepaid limited health service organization to a health care provider under contract with the prepaid limited health service organization in exchange for the rendering of no more than four limited health services.

2. (b) “Commissioner” means the commissioner of insurance.

3. (c) “Consumer” means any person who is not a provider of care or an employee, officer, director or stockholder of any provider of care.

4. (d) “Coordinating provider” means the provider of a particular limited health service who is chosen or designated for each subscriber and who will be responsible for coordinating the provision of that particular limited health service to the subscriber, including necessary referrals to other providers of the limited health service: Provided, That if a subscriber is also enrolled in a health maintenance organization, the coordinating provider shall send a written report at least annually to the subscriber’s primary care physician, as defined in article twenty-five-a of this chapter, describing the limited health service provided to the subscriber: Provided, however, That the coordinating provider may disclose data or information only as permitted under section twenty-eight of this article.

5. (e) “Copayment” means a specific dollar amount, except as otherwise provided for by statute, that the subscriber must pay upon receipt of covered limited health services and which is set at an amount consistent with allowing the subscriber access to covered limited health services.

6. (f) “Employee” means a person in some official employment or position working for a salary or wage continuously for no less than one calendar quarter and who is in such a relation to another person that the latter may control the work of the former and direct the manner in which the work is done.

7. (g) “Employer” means any individual, corporation, partnership, other private association, or state or local government that
employs the equivalent of at least two full-time employees during any four consecutive calendar quarters.

(h) "Enrollee," "subscriber," or "member" means an individual who has been voluntarily enrolled in a prepaid limited health service organization, including individuals on whose behalf a contractual arrangement has been entered into with a prepaid limited health service organization to receive no more than four limited health services.

(i) "Evidence of coverage" means any certificate, agreement or contract issued to an enrollee setting out the coverage and other rights to which the enrollee is entitled.

(j) "Group practice" means a professional corporation, partnership, association, or other organization composed solely of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals, including podiatrists, dentists, optometrists and chiropractors, as are necessary for the provision of limited health services for which the group is responsible:

(1) A majority of the members of which are licensed to practice medicine, osteopathy or chiropractic;

(2) Who as their principal professional activity engage in the coordinated practice of their profession;

(3) Who pool their income for practice as members of the group and distribute it among themselves according to a prearranged salary, drawing account or other plan; and

(4) Who share medical and other records and substantial portions of major equipment and professional, technical and administrative staff.

(k) "Impaired" means a financial situation in which, based upon the financial information which would be required by this chapter for the preparation of the prepaid limited health service organization's annual statement, the assets of the prepaid limited health service organization are less than the sum of all of its liabilities and required reserves including any minimum capital and surplus required of the prepaid limited health
service organization by this chapter so as to maintain its authority to transact the kinds of business or insurance it is authorized to transact.

(l) "Individual practice arrangement" means any agreement or arrangement to provide medical services on behalf of a prepaid limited health service organization among or between providers or between a prepaid limited health service organization and individual providers or groups of providers, where the providers are not employees or partners of the prepaid limited health service organization and are not members of or affiliated with a group practice.

(m) "Insolvent" or "insolvency" means a financial situation in which, based upon the financial information which would be required by this chapter for the preparation of the prepaid limited health service organization's annual statement, the assets of the prepaid limited health service organization are less than the sum of all of its liabilities and required reserves.

(n) "Limited health service" means mental or behavioral health services (including mental illness, mental retardation, developmental disabilities, substance abuse, and chemical dependency), together with any services or goods included in the furnishing to any individual of a limited health service. "Limited health service" does not include inpatient services, hospital surgical services or emergency services except as such services are provided incident to and directly related to a limited health service set forth in this subsection.

(o) "Premium" means a prepaid per capita or prepaid aggregate fixed sum unrelated to the actual or potential utilization of services of any particular person which is charged by the prepaid limited health service organization for health services provided to an enrollee.

(p) "Prepaid limited health service organization" means a public or private organization which provides, or otherwise makes available to enrollees, no more than four limited health services and which:
(1) Receives premiums for the provision of no more than four limited health services to enrollees on a prepaid per capita or prepaid aggregate fixed sum basis, excluding copayments;

(2) Provides no more than four limited health services primarily:

(A) Directly through an exclusive panel of physicians or other providers who are employees or partners of the organization;

(B) Through arrangements with individual physicians or other providers or one or more groups of physicians or other providers organized on a group practice or individual practice arrangement; or

(C) Some combination of paragraphs (A) and (B) of this subdivision;

(3) Assures the availability, accessibility and quality, including effective utilization, of the limited health service or services that it provides or makes available through clearly identifiable focal points of legal and administrative responsibility; and

(4) Offers services through an organized delivery system, in which a coordinating provider of a limited health service is designated for each subscriber to that limited health service. Prepaid limited health service organization does not include an entity otherwise authorized pursuant to the laws of this state to indemnify for any limited-health service, or a provider or entity when providing a limited health service pursuant to a contract with a prepaid limited health service organization, a health maintenance organization, a health insurer or a self-insurance plan.

(q) "Provider" means any physician or other person or organization licensed or otherwise authorized in this state to furnish a limited health service.

(r) "Qualified independent actuary" means an actuary who is a member of the American academy of actuaries or the society of actuaries and has experience in establishing rates for
prepaid limited health service organizations and who has no financial or employment interest in the prepaid limited health service organization.

(s) "Quality assurance" means an ongoing program designed to objectively and systematically monitor and evaluate the quality and appropriateness of the enrollee's care, pursue opportunities to improve the enrollee's care, and resolve identified problems at the prevailing professional standard of care.

(t) "Service area" means the county or counties approved by the commissioner within which the prepaid limited health service organization may provide or arrange for a limited health service to be available to its subscribers.

(u) "Statutory surplus" means the minimum amount of unencumbered surplus which a corporation must maintain pursuant to the requirements of this article.

(v) "Surplus" means the amount by which a corporation's assets exceed its liabilities and required reserves based upon the financial information which would be required by this chapter for the preparation of the corporation's annual statement except that assets pledged to secure debts not reflected on the books of the prepaid limited health service organization shall not be included in surplus.

(w) "Surplus notes" means debt which has been subordinated to all claims of subscribers and all creditors of the organization.

(x) "Uncovered expenses" means the cost of a limited health service covered by a prepaid limited health service organization, for which a subscriber would also be liable in the event of the insolvency of the organization.

(y) "Utilization management" means a system for the evaluation of the necessity, appropriateness, and efficiency of the use of health care services, procedures and facilities.

§33-25D-3. Application for certificate of authority; addition of services.
(a) Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish or operate a prepaid limited health service organization in compliance with this article: Provided, That the organization for which a certificate of authority to operate a prepaid limited health service organization is sought shall be incorporated under the provisions of article one, chapter thirty-one of this code. No person may sell prepaid limited health service organization enrollee contracts, nor may any prepaid limited health service organization commence services, prior to receipt of a certificate of authority from the commissioner. Any person may, however, establish the feasibility of a prepaid limited health service organization prior to receipt of a certificate of authority through funding drives and by receiving loans and grants.

(b) Every prepaid limited health service organization in operation as of the effective date of this article shall submit an application for a certificate of authority under this section within thirty days of the effective date of this article. Each applicant may continue to operate until the commissioner acts upon the application. In the event that an application is denied pursuant to section five of this article, the applicant shall be treated as a prepaid limited health service organization whose certificate of authority has been revoked.

(c) The commissioner may require any organization providing or arranging for one or more limited health services on a prepaid per capita or prepaid aggregate fixed sum basis to apply for a certificate of authority under this article. Any organization directed to apply for a certificate of authority is subject to the provisions of subsection (b) of this section.

(d) Each application for a certificate of authority shall be sworn to by an officer or authorized representative of the applicant before a notary public, shall be in a form prescribed by the commissioner and shall set forth or be accompanied by any and all information required by the commissioner, including:

(1) The basic organizational document;
(2) The bylaws or rules;

(3) A list of the names, addresses and official positions of each member of the governing body, which shall contain a full disclosure in the application of any financial interest by the officer or member of the governing body or any provider or any organization or corporation owned or controlled by that person and the prepaid limited health service organization and the extent and nature of any contract or financial arrangements between that person and the prepaid limited health service organization;

(4) A description of the prepaid limited health service organization and the limited health service or services to be offered;

(5) A copy of each evidence of coverage form and of each enrollee contract form;

(6) Financial statements which include the assets, liabilities and sources of financial support of the applicant and any corporation or organization owned or controlled by the applicant;

(7)(A) A description of the proposed method of marketing the plan;

(B) A schedule of proposed charges; and

(C) A financial plan which includes a three-year projection of the expenses and income and other sources of future capital;

(8) A power of attorney duly executed by the applicant, if not domiciled in this state, appointing the commissioner and his or her successors in office, and duly authorized deputies, as the true and lawful attorney of the applicant in and for this state upon whom all lawful process in any legal action or proceeding against the prepaid limited health service organization on a cause of action arising in this state may be served;

(9) A statement reasonably describing the service area or areas to be served and the type or types of enrollees to be served;
(10) A description of the complaint procedures to be utilized as required under section fourteen of this article;

(11) A description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under section eight of this article;

(12) A complete biographical statement on forms prescribed by the commissioner and an independent investigation report on all of the individuals referred to in subdivision (3) of this subsection and all officers, directors and persons holding five percent or more of the common stock of the organization;

(13) A comprehensive feasibility study, performed by a qualified independent actuary in conjunction with a certified public accountant which shall contain a certification by the qualified actuary and an opinion by the certified public accountant as to the feasibility of the proposed organization. The study shall be for the greater of three years or until the prepaid limited health service organization has been projected to be profitable for twelve consecutive months. The study shall show that the prepaid limited health service organization would not, at the end of any month of the projection period, have less than the minimum capital and surplus as required by section six of this article. The qualified independent actuary shall certify that:

(A) The rates for each limited health service offered are neither inadequate nor excessive nor unfairly discriminatory;

(B) The rates are appropriate for the classes of risks for which they have been computed;

(C) The rating methodology is appropriate: Provided, That the certification shall include an adequate description of the rating methodology showing that the methodology follows consistent and equitable actuarial principles;

(D) The prepaid limited health service organization is actuarially sound: Provided, That the certification shall consider the rates, benefits, and expenses of, and any other funds available for the payment of obligations of, the organization;
(E) The rates being charged or to be charged are actuarially adequate to the end of the period for which rates have been guaranteed; and

(F) Incurred but not reported claims and claims reported but not fully paid have been adequately provided for;

(14) A description of the prepaid limited health service organization's quality assurance program; and

(15) Such other information as the commissioner may require to be provided.

(e) A prepaid limited health service organization shall, unless otherwise provided for by rules promulgated by the commissioner, file notice prior to any modification of the operations or documents filed pursuant to this section or as the commissioner may require by rule. If the commissioner does not disapprove of the filing within ninety days of filing, it is considered approved and may be implemented by the prepaid limited health service organization: Provided, That an application to add one or more limited health services to those offered by the organization shall be submitted and reviewed in accordance with subsection (f) of this section.

(f) If a prepaid limited health service organization wishes to offer one or more additional limited health services to subscribers, the organization shall submit an application in accordance with the procedure set forth in subsection (d) of this section, with respect to the additional service or services: Provided, That the organization may not at any time offer more than four limited health services. The organization is not required to submit the information required by subdivisions (1), (2), (3), (8), (10), (11) or (12), subsection (d) of this section, if there has been no change in the information required by the respective subdivisions since the information was most recently filed with the commissioner.

§33-25D-4. Conditions precedent to issuance or maintenance of a certificate of authority; renewal of certificate of authority; effect of bankruptcy proceedings.
(a) As a condition precedent to the issuance or maintenance of a certificate of authority, a prepaid limited health service organization shall file or have on file with the commissioner:

(1) An acknowledgment that a delinquency proceeding pursuant to article ten of this chapter or supervision by the commissioner pursuant to article thirty-four of this chapter is the sole and exclusive method for the liquidation, rehabilitation, reorganization, or conservation of a prepaid limited health service organization;

(2) A waiver of any right to file or be subject to a bankruptcy proceeding;

(3) Within thirty days of any change in the membership of the governing body of the organization or in the officers or persons holding five percent or more of the common stock of the organization, or as otherwise required by the commissioner:

(A) An amended list of the names, addresses and official positions of each member of the governing body, and a full disclosure of any financial interest by a member of the governing body or any provider or any organization or corporation owned or controlled by that person and the prepaid limited health service organization and the extent and nature of any contract or financial arrangements between that person and the prepaid limited health service organization; and

(B) A complete biographical statement on forms prescribed by the commissioner and an independent investigation report on each such person for whom a biographical statement and independent investigation report have not previously been submitted.

(b) All certificates of authority issued to prepaid limited health service organizations expire at midnight on the thirty-first day of May of each year. The commissioner shall renew annually the certificates of authority of all prepaid limited health service organizations which continue to meet all requirements of this section and subsection (b), section five of this article, make application therefor upon a form prescribed by the commissioner and pay the renewal fee prescribed: Provided,
That a prepaid limited health service organization does not qualify for renewal of its certificate of authority if the organization has no subscribers in this state within twelve months after issuance of the certificate of authority: Provided, however, That an organization not qualifying for renewal may apply for a new certificate of authority under section three of this article.

(c) The commencement of a bankruptcy proceeding either by or against a prepaid limited health service organization, by operation of law:

(1) Terminates the prepaid limited health service organization's certificate of authority; and

(2) Vests in the commissioner for the use and benefit of the subscribers of the prepaid limited health service organization the title to any deposits of the prepaid limited health service organization held by the commissioner.

(d) If the bankruptcy proceeding is initiated by a party other than the prepaid limited health service organization, the operation of subsection (c) of this section is stayed for a period of sixty days following the date of commencement of the proceeding.


(a) Upon receipt of an application for a certificate of authority, the commissioner shall determine whether the application for a certificate of authority, with respect to limited health services to be furnished has demonstrated:

(1) The willingness and potential ability of the organization to assure that limited health services will be provided in such a manner as to enhance and assure both the availability and accessibility of adequate personnel and facilities;

(2) Arrangements for an ongoing evaluation of the quality of health care provided by the organization and utilization review which meet the minimum standards set forth in section nineteen of this article;

(3) That the organization has a procedure to develop, compile, evaluate and report statistics relating to the cost of its
operations, the pattern of utilization of its services, the quality,
availability and accessibility of its services, and other matters
as may be reasonably required by rule.

(b) The commissioner shall issue or deny a certificate of
authority to any person filing an application within one hundred
twenty days after receipt of the application. Issuance of a
certificate of authority shall be granted upon payment of the
application fee prescribed, if the commissioner is satisfied that
the following conditions are met:

(1) The prepaid limited health service organization's
proposed plan of operation meets the requirements of subsec-
tion (a) of this section;

(2) The prepaid limited health service organization will
effectively provide or arrange for the provision of no more than
four limited health services on a prepaid basis except for
copayments: Provided, That nothing in this section relieves a
prepaid limited health service organization from the obligations
to provide a limited health service because of the nonpayment
of copayments unless the enrollee fails to make payment in at
least three instances over any twelve-month period: Provided,
however, That nothing in this section permits a prepaid limited
health service organization to charge copayments to medicare
beneficiaries or medicaid recipients in excess of the
copayments permitted under those programs, nor is a prepaid
limited health service organization required to provide a limited
health service to medicare beneficiaries or medicaid recipients
in excess of the benefits compensated under those programs;

(3) The prepaid limited health service organization is
financially responsible and may reasonably be expected to meet
its obligations to enrollees and prospective enrollees. In making
this determination, the commissioner may consider:

(A) The financial soundness of the prepaid limited health
service organization's arrangements for no more than four
limited health services and the proposed schedule of charges
used in connection with each limited health service offered;

(B) Arrangements for maintenance of the minimum capital
and surplus required under section six of this article;
Any arrangements which will guarantee the continuation of benefits and payments to providers for services rendered both prior to and after insolvency for the duration of the contract period for which payment has been made, except that benefits to members who are confined on the date of insolvency in an inpatient facility shall be continued until their discharge; and

Any agreement with providers for the provision of limited health care services;

The enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to section eight of this article;

The prepaid limited health service organization has demonstrated that it will assume full financial risk on a prospective basis for the provision of no more than four limited health services: Provided, That notwithstanding the requirement of this subdivision, a prepaid limited health service organization may obtain reinsurance acceptable to the commissioner from an accredited reinsurer or make other arrangements:

For the cost of providing to any enrollee limited health services, the aggregate value of which exceeds four thousand dollars in any year;

For the cost of providing no more than four limited health services to its enrollees on a nonelective emergency basis; or

For not more than ninety-five percent of the amount by which the prepaid limited health service organization’s costs for any of its fiscal years exceed one hundred five percent of its income for those fiscal years;

The ownership, control and management of the prepaid limited health service organization is competent and trustworthy and possesses managerial experience that would make the proposed organization operation beneficial to the subscribers. The commissioner may, at his or her discretion, refuse to grant or continue authority to transact the business of a prepaid
limited health service organization in this state at any time
during which the commissioner has probable cause to believe
that the ownership, control or management of the organization
includes any person whose business operations are or have been
marked by business practices or conduct that is to the detriment
of the public, stockholders, investors or creditors; and

(7) The prepaid limited health service organization has
deposited and maintained in trust with the state treasurer, for
the protection of its subscribers or its subscribers and creditors,
cash or government securities eligible for the investment of
capital funds of domestic insurers as described in section seven,
article eight of this chapter in the amount of fifty thousand
dollars.

(c) A certificate of authority may be denied only after
compliance with the requirements of section twenty-three of
this article.

(d) No person who has not been issued a certificate of
authority may use the words “prepaid limited health service
organization” or the initials “PLHSO” in its name, contracts,
logo or literature: Provided, That persons who are operating
under a contract with, operating in association with, enrolling
enrollees for, or otherwise authorized by a prepaid limited
health service organization licensed under this article to act on
its behalf may use the terms “prepaid limited health service
organization” or “PLHSO” for the limited purpose of denoting
or explaining their association or relationship with the autho-
rized prepaid limited health service organization. No prepaid
limited health service organization which has a minority of
board members who are consumers may use the words “con-
sumer controlled” in its name or in any way represent to the
public that it is controlled by consumers.


(a) Each prepaid limited health service organization shall
have and maintain fully paid-in capital stock, if a for-profit
stock corporation, or statutory surplus funds, if a nonprofit
corporation, totaling at least:
(1) The greater of two hundred fifty thousand dollars or ten percent of its expenses for the previous twelve-month period as reported in its most recent financial statement filed pursuant to subsection (a), section twelve of this article, with respect to each limited health service for which the organization will not offer inpatient services up to a maximum total for all limited health services of the required capital and surplus for an insurer under article three, section five-b of this chapter; and

(2) The greater of one million dollars or ten percent of its expenses for the previous twelve-month period as reported in its most recent financial statement filed pursuant to subsection (a), section twelve of this article, with respect to each limited health service for which the organization will offer inpatient services up to a maximum total for all limited health services of the required capital and surplus for an insurer under article three, section five-b of this chapter.

(b) For purposes of this section, "expenses" means those costs set forth by the national association of insurance commissioners (NAIC) in the statement of revenues, expenses and net worth contained in the annual statement instruction—limited health service organization and the official NAIC annual statement blanks—limited health service organization.


(a) Upon obtaining a certificate of authority as required under this article, a prepaid limited health service organization may enter into limited health service contracts in this state and engage in any activities, consistent with the purposes and provisions of this article, which are necessary to the performance of its obligations under such contracts, subject to the limitations provided for in this article: Provided, That nothing in this article authorizes any prepaid limited health service organization to transact any insurance other than that for which the organization is granted a certificate of authority under this article.

(b) The commissioner may propose rules for legislative approval in accordance with the provisions of article three,
chapter twenty-nine-a of this code, limiting or regulating the powers of prepaid limited health service organizations which he or she finds to be in the public interest.


(a) The governing body of any prepaid limited health service organization may include enrollees, providers, or other individuals.

(b) The governing body shall establish a mechanism to afford the enrollees an opportunity to participate in matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decisions, or through the use of other mechanisms as may be prescribed by the commissioner.


(a) Any director, officer or other manager of a prepaid limited health service organization who receives, collects, disburse or invests funds in connection with the activities of the organization is responsible for the funds in a fiduciary relationship to the enrollees.

(b) A prepaid limited health service organization shall maintain a blanket fidelity bond covering all directors, officers, managers and employees of the organization who receive, collect, disburse or invest funds in connection with the activities of the organization, issued by an insurer licensed in this state or, if the fidelity bond required by this subdivision is not available from an insurer licensed in this state, a fidelity bond procured by an excess line broker licensed in this state, in an amount at least equal to the minimum amount of fidelity insurance as provided in the national association of insurance commissioners handbook, as amended, or as the commissioner may by rule, propose for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, require.


(a) A prepaid limited health service organization shall file with the commissioner any contracts made with providers of a
limited health service, enabling the prepaid limited health
service organization to provide limited health services autho-
rized under this article. The commissioner may require the
immediate cancellation of a contract or the immediate renegoti-
ation of a contract by the parties if he or she determines that a
contract provides for excessive payments, fails to include
reasonable incentives for cost control, or otherwise substan-
tially and unreasonably contributes to escalation of the costs of
providing a limited health service to enrollees.

(b) Whenever a contract exists between a prepaid limited
health service organization and a provider and the organization
fails to meet its obligations to pay fees for services already
rendered to a subscriber, the prepaid limited health service
organization is liable for the fee or fees rather than the sub-
scriber; and the contract shall state that liability.

(c) No enrollee of a prepaid limited health service organiza-
tion is liable to any provider of a limited health service for any
service covered by the prepaid limited health service organiza-
tion if at any time during the provision of the service, the
provider or its agents are aware the individual to whom the
service is provided is an enrollee of a prepaid limited health
service organization.

(d) If at any time during the provision of a limited health
service, a provider or its agents are aware that the subscriber is
a prepaid limited health service organization enrollee for the
service provided, the provider of services or any agent or
representative of the provider may not collect or attempt to
collect from a subscriber any money for services covered by a
prepaid limited health service organization, and no provider or
agent or representative of the provider may maintain any action
at law against a subscriber of a prepaid limited health service
organization to collect money owed to the provider by a prepaid
limited health service organization.

(e) Every contract between a prepaid limited health service
organization and a provider of a limited health service shall be
in writing and shall contain a provision that the subscriber is not
liable to the provider for any services covered by the sub-
scriber's contract with the prepaid limited health service organization.

(f) The provisions of this section do not apply to the amount of any deductible or copayment not payable by the prepaid limited health service organization pursuant to its contract with its subscriber.

(g) When a subscriber receives covered emergency health care services from a noncontracting provider, the prepaid limited health service organization is responsible for payment of the provider's normal charges for the health care services, exclusive of any applicable deductibles or copayments.

(h) For all provider contracts executed on or after the effective date of this article and within one hundred eighty days of that date for contracts in existence on that date:

1. The contracts shall provide that the provider provide sixty days advance written notice to the prepaid limited health service organization and the commissioner before canceling the contract with the prepaid limited health service organization for any reason; and

2. The contract shall provide that nonpayment for goods or services rendered by the provider to the prepaid limited health service organization is not a valid reason for avoiding the sixty-day advance notice of cancellation.

(i) Upon receipt by the prepaid limited health service organization of a sixty-day cancellation notice, the prepaid limited health service organization may, if requested by the provider, terminate the contract in less than sixty days if the prepaid limited health service organization is not financially impaired or insolvent.

§33-25D-11. Evidence of coverage; review of enrollee records; charges for limited health services; cancellation of contract by enrollee.

(a)(1) Every enrollee is entitled to evidence of coverage in accordance with this section. The prepaid limited health service
organization or its designated representative shall issue the evidence of coverage.

(2) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the form of the evidence of coverage, or amendment thereto, has been filed with and approved by the commissioner.

(3) An evidence of coverage shall contain a clear, concise and complete statement of:

(A) The limited health service and the insurance or other benefits, if any, to which the enrollee is entitled;

(B) Any exclusions or limitations on the service, kind of service, benefits, or kind of benefits, to be provided, including any copayments;

(C) Where and in what manner information is available as to how a service may be obtained: Provided, That with respect to any limited health service for which inpatient services, hospital surgical services or emergency services are provided, the evidence of coverage shall contain a definition of inpatient services, hospital surgical services or emergency services, respectively; describe procedures for determination by the prepaid limited health service organization of whether the services qualify for reimbursement as inpatient services, hospital surgical services or emergency services; and contain specific examples of situations in which the services would be made available;

(D) The total amount of payment and copayment, if any, for the limited health service and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or an indication whether the plan is contributory or noncontributory with respect to group certificates;

(E) A description of the prepaid limited health service organization's method for resolving enrollee grievances; and

(F) The following exact statement in bold print:
"Each subscriber or enrollee, by acceptance of the benefits described in this evidence of coverage, consents to the examination of his or her medical records for purposes of utilization review, quality assurance and peer review by the prepaid limited health service organization or its designee."

(4) Any subsequent approved change in an evidence of coverage shall be issued to each enrollee.

(5) A copy of the form of the evidence of coverage to be used in this state, and any amendment thereto, is subject to the filing and approval requirements of subdivision (2), subsection (a) of this section, unless the commissioner promulgates a rule dispensing with this requirement or unless it is subject to the jurisdiction of the commissioner under the laws governing health insurance or hospital, medical, dental or health service corporations, in which event the filing and approval provisions of those laws apply. To the extent, however, that those provisions do not apply the requirements in subdivision (3), subsection (a) of this section, are applicable.

(b)(1) Premiums for each limited health service offered may be established in accordance with actuarial principles: Provided, That premiums may not be excessive, inadequate, or unfairly discriminatory. A certification by a qualified independent actuary shall accompany a rate filing for each limited health service offered and shall certify that:

(A) The rates are neither inadequate nor excessive nor unfairly discriminatory;

(B) That the rates are appropriate for the classes of risks for which they have been computed;

(C) Provide an adequate description of the rating methodology showing that the methodology follows consistent and equitable actuarial principles; and

(D) The rates being charged are actuarially adequate to the end of the period for which rates have been guaranteed.

(2) In determining whether the charges are reasonable, the commissioner shall consider whether the prepaid limited health service organization has:
(A) Made a vigorous, good faith effort to control rates paid to limited health service providers;

(B) Established a premium schedule, including copayments, if any, which encourages enrollees to seek out preventive limited health services; and

(C) Made a good faith effort to secure arrangements whereby the limited health service can be obtained by subscribers from local providers to the extent that the providers offer the services.

(c) Rates for a particular limited health service are inadequate if the premiums derived from the rating structure, plus investment income, copayments, and revenues from coordination of benefits and subrogation, fees-for-service and reinsurance recoveries are not set at a level at least equal to the anticipated cost of benefits for the limited health service during the period for which the rates are to be effective and the other expenses which would be incurred if other expenses were at the level for the current or nearest future period during which the prepaid limited health service organization is projected to make a profit. For this analysis, total investment income added to premiums, copayments and revenues from coordination of benefits and subrogation, fees-for-service and reinsurance recoveries with respect to all limited health services offered may not exceed three percent of the prepaid limited health service organization's total projected revenues.

(d) The commissioner shall within a reasonable period approve any form if the requirements of subsection (a) of this section are met and any schedule of charges if the requirements of subsections (b) and (c) of this section are met. It is unlawful to issue the form or to use the schedule of charges until approved. If the commissioner disapproves of the filing, he or she shall notify the filer promptly. In the notice, the commissioner shall specify the reasons for his or her disapproval and the findings of fact and conclusions which support his or her reasons. A hearing will be granted by the commissioner within forty-five days after a request in writing, by the person filing, has been received by the commission. If the commissioner does
not disapprove any form or schedule of charges within sixty
days of the filing of the forms or charges, they are approved.

(e) The commissioner may require the submission of
whatever relevant information in addition to the schedule of
charges which he or she considers necessary in determining
whether to approve or disapprove a filing made pursuant to this
section.

(f) An individual enrollee may cancel a contract with a
prepaid limited health service organization at any time for any
reason: Provided, That a prepaid limited health service organi-
ization may require that the enrollee give thirty days advance
notice: Provided, however, That an individual enrollee whose
premium rate was determined pursuant to a group contract may
cancel a contract with a prepaid limited health service organiza-
tion pursuant to the terms of that contract.


(a) Every prepaid limited health service organization shall
comply with and is subject to the provisions of section fourteen,
article four of this chapter relating to filing of financial state-
ments with the commissioner and the national association of
insurance commissioners. The annual financial statement
required by that section shall include, but not be limited to, the
following:

(1) A statutory financial statement of the organization,
including its balance sheet and receipts and disbursements for
the preceding year certified by an independent certified public
accountant, reflecting at least:

(A) All prepayment and other payments received for
limited health services rendered;

(B) Expenditures to all providers, by classes or groups of
providers, and insurance companies or nonprofit health service
plan corporations engaged to fulfill obligations arising out of
the limited health service contract;

(C) Expenditures for capital improvements, or additions
thereto, including, but not limited to, construction, renovation
or purchase of facilities and capital equipment; and
(D) The organization's fidelity bond;

(2) The number of new enrollees enrolled during the year, the number of enrollees as of the end of the year and the number of enrollees terminated during the year on a form prescribed by the commissioner;

(3) A summary of information compiled pursuant to subdivision (3), subsection (a), section five of this article in such form as the commissioner requires;

(4) A report of the names and residence addresses of all persons set forth in subdivision (3), subsection (d), section three of this article who were associated with the prepaid limited health service organization during the preceding year, and the amount of wages, expense reimbursements, or other payments to those individuals for services to the prepaid limited health service organization, including a full disclosure of all financial arrangements during the preceding year required to be disclosed pursuant to subdivision (3), subsection (d), section three of this article; and

(5) Other information relating to the performance of the prepaid limited health service organization as is reasonably necessary to enable the commissioner to carry out his or her duties under this article.


Every prepaid limited health service organization or its representative shall annually, before the first day of April, provide to each enrollee a summary of: Its most recent annual financial statement, including a balance sheet and statement of receipts and disbursements; a description of the prepaid limited health service organization, each limited health service offered, its facilities and personnel for each limited health service offered, any material changes therein since the last report, the current evidence of coverage for each limited health service for which the enrollee is enrolled, and a clear and understandable description of the prepaid limited health service organization's method for resolving enrollee complaints: Provided, That with respect to enrollees who have been enrolled through contracts
between a prepaid limited health service organization and an employer, the prepaid limited health service organization satisfies the requirement of this section by providing the requisite summary to each enrolled employee: *Provided, however,* That with respect to medicaid recipients enrolled under a group contract between a prepaid limited health service organization and the governmental agency responsible for administering the medicaid program, the prepaid limited health service organization satisfies the requirement of this section by providing the requisite summary to each local office of the governmental agency responsible for administering the medicaid program for inspection by enrollees of the prepaid limited health service organization.


(a) A prepaid limited health service organization shall establish and maintain a grievance procedure, which has been approved by the commissioner, to provide adequate and reasonable procedures for the expeditious resolution of written grievances initiated by enrollees concerning any matter relating to any provisions of the organization's limited health service contracts, including, but not limited to, claims regarding the scope of coverage for health care services; denials, cancellations or nonrenewals of enrollee coverage; observance of an enrollee's rights as a patient; and the quality of the health care services rendered.

(b) A detailed description of the prepaid limited health service organization's subscriber grievance procedure shall be included in all group and individual contracts as well as any certificate or member handbook provided to subscribers. This procedure shall be administered at no cost to the subscriber. A prepaid limited health service organization subscriber grievance procedure shall include the following:

(1) Both informal and formal steps shall be available to resolve the grievance. A grievance is not considered formal until a written grievance is executed by the subscriber or completed on forms prescribed and received by the prepaid limited health service organization;
(2) Each prepaid limited health service organization shall designate at least one grievance coordinator who is responsible for the implementation of the prepaid limited health service organization's grievance procedure;

(3) Phone numbers shall be specified by the prepaid limited health service organization for the subscriber to call to present an informal grievance or to contact the grievance coordinator. Each phone number shall be toll free within the subscriber's geographic area and provide reasonable access to the prepaid limited health service organization without undue delays. There shall be an adequate number of phone lines to handle incoming grievances;

(4) An address shall be included for written grievances;

(5) Each level of the grievance procedure shall have some person with problem solving authority to participate in each step of the grievance procedure;

(6) The prepaid limited health service organization shall process the formal written subscriber grievance through all phases of the grievance procedure in a reasonable length of time not to exceed forty-five days, unless the subscriber and prepaid limited health service organization mutually agree to extend the time frame. If the complaint involves the collection of information outside the service area, the prepaid limited health service organization has thirty additional days to process the subscriber complaint through all phases of the grievance procedure. The time limitations prescribed in this subdivision requiring completion of the grievance process within sixty days are tolled after the prepaid limited health service organization has notified the subscriber, in writing, that additional information is required in order to properly complete review of the grievance. Upon receipt by the prepaid limited health service organization of the additional information requested, the time for completion of the grievance process set forth in this subdivision resumes;

(7) The subscriber grievance procedure shall state that the subscriber has the right to appeal to the commissioner within thirty days of receipt by the subscriber of a written ruling by the
prepaid limited health service organization which denies, in whole or in part, relief requested by the subscriber in a formal written subscriber grievance. There shall be the additional requirement that subscribers under a group contract between the prepaid limited health service organization and a department or division of the state shall first appeal to the state agency responsible for administering the relevant program, and if either party is not satisfied with the outcome of the appeal, the unsatisfied party may appeal to the commissioner. The prepaid limited health service organization shall provide the subscriber a written notice of the right to appeal upon completion of the full grievance procedure and supply the commissioner with a copy of the final decision letter. A subscriber has thirty days after receipt of the written notice to appeal to the commissioner if the prepaid limited health service organization's ruling denies the relief requested by the subscriber, in whole or in part;

(8) The prepaid limited health service organization shall have provider involvement in reviewing grievances related to a provider's services. Provider involvement in the grievance process may not be limited to the subscriber's coordinating provider, but shall include at least one other provider;

(9) The prepaid limited health service organization shall offer to meet with the subscriber during the formal grievance process. The location of the meeting shall be at the administrative offices of the prepaid limited health service organization within the service area or at a location within the service area which is convenient to the subscriber;

(10) The prepaid limited health service organization may not establish time limits of less than one year from the date of occurrence for the subscriber to file a formal grievance. The date of occurrence is the date upon which a claim, service or other matter sought by the subscriber was denied by the prepaid limited health service organization or date of occurrence of the event which gave rise to the grievance;

(11) Each prepaid limited health service organization shall maintain an accurate record of each formal grievance. Each record shall include the following:
(A) A complete description of the grievance, the subscriber's name and address, the provider's name and address and the prepaid limited health service organization's name and address;

(B) A complete description of the prepaid limited health service organization's factual findings and conclusions after completion of the full formal grievance procedure;

(C) A complete description of the prepaid limited health service organization's conclusions pertaining to the grievance as well as the prepaid limited health service organization's final disposition of the grievance; and

(D) A statement as to which levels of the grievance procedure the grievance has been processed and how many more levels of the grievance procedure are remaining before the grievance has been processed through the prepaid limited health service organization's entire grievance procedure.

(12) Copies of the grievances and the responses thereto shall be available to the commissioner and the public for inspection for three years.

(c) Any subscriber grievance in which time is of the essence shall be handled on an expedited basis, so that a reasonable person would believe that a prevailing subscriber would be able to realize the full benefit of a decision in his or her favor.

(d) Each prepaid limited health service organization shall submit to the commissioner an annual report in a form prescribed by the commissioner which describes the grievance procedure and contains a compilation and analysis of the grievances filed, their disposition, and their underlying causes.


(a) No prepaid limited health service organization, or representative thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. No advertising may be used until it has been approved by the commissioner. Advertising which has not been
disapproved by the commissioner within sixty days of filing is considered approved. For purposes of this article:

(1) A statement or item of information is untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment in, a prepaid limited health service organization;

(2) A statement or item of information is misleading, whether or not it may be literally untrue, if, in the total context in which the statement is made or the item of information is communicated, the statement or item of information may be reasonably understood by a reasonable person, not possessing special knowledge regarding health care coverage, as indicating any benefit or advantage or the absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of, or person considering enrollment in, a prepaid limited health service organization, if the benefit or advantage or absence of limitation, exclusion or disadvantage does not in fact exist;

(3) An evidence of coverage is deceptive if the evidence of coverage taken as a whole, and with consideration given to typography and format, as well as language, causes a reasonable person, not possessing special knowledge regarding prepaid limited health service organizations, and evidences of coverage therefor, to expect benefits, services or other advantages which the evidence of coverage does not provide or which the prepaid limited health service organization issuing the evidence of coverage does not regularly make available for enrollees covered under the evidence of coverage; and

(4) The commissioner may further define practices which are untrue, misleading or deceptive.

(b)(1) No prepaid limited health service organization may cancel or fail to renew the coverage of an enrollee except for:

(A) Failure to pay the charge for health care coverage;

(B) Termination of the prepaid limited health service organization;
(C) Termination of the group plan;
(D) Enrollee moving out of the area served;
(E) Enrollee moving out of an eligible group; or
(F) Other reasons established in rules promulgated by the commissioner.

(2) No prepaid limited health service organization may use any technique of rating or grouping to cancel or fail to renew the coverage of an enrollee. An enrollee shall be given thirty days' notice of any cancellation or nonrenewal and the notice shall include the reasons for the cancellation or nonrenewal: Provided, That each enrollee moving out of an eligible group shall be granted the opportunity to enroll in the prepaid limited health service organization on an individual basis. A prepaid limited health service organization may not disenroll an enrollee for nonpayment of copayments unless the enrollee has failed to make payment in at least three instances over any twelve-month period: Provided, however, That the enrollee may not be disenrolled if the disenrollment would constitute abandonment of a patient. Any enrollee wrongfully disenrolled shall be reenrolled.

(c)(1) No prepaid limited health service organization may use in its name, contracts, logo or literature any of the words "insurance," "casualty," "surety," "mutual" or any other words which are descriptive of the insurance, casualty or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state: Provided, That when a prepaid limited health service organization has contracted with another insurer for any coverage permitted by this article, it may so state; and

(2) No person who has not been issued a certificate of authority under this article may use the words "prepaid limited health service organization" or the initials "PLHSO" in its name, contracts, logo or literature to imply, directly or indirectly, that it is a prepaid limited health service organization or hold itself out to be a prepaid limited health service organization.
(d) The providers of a prepaid limited health service organization who provide limited health services and the prepaid limited health service organization do not have recourse against enrollees for amounts above those specified in the evidence of coverage as the periodic prepayment or copayment for health care services.

(e) No prepaid limited health service organization may discriminate in enrollment policies or quality of services against any person on the basis of race, sex, age, religion, place of residence, health status or source of payment: Provided, That differences in rates based on valid actuarial distinctions, including distinctions relating to age and sex, are not considered discrimination in enrollment policies.

(f) (1) No agent of a prepaid limited health service organization or person selling enrollments in a prepaid limited health service organization may sell an enrollment in a prepaid limited health service organization unless the agent or person first discloses in writing to the prospective purchaser the following information using the following exact terms in bold print:

(A) “Services offered,” including any exclusions or limitations;

(B) “Full cost,” including copayments;

(C) “Facilities available and hours of services”;

(D) “Transportation services”;

(E) “Disenrollment rate”; and

(F) “Staff,” including the names of all full-time staff physicians, consulting specialists and inpatient facilities, if any, associated with the prepaid limited health service organization.

(2) In any home solicitation, any three-day cooling-off period applicable to consumer transactions generally applies in the same manner as consumer transactions.

(3) The form disclosure statement may not be used in sales until it has been approved by the commissioner. Any person who fails to disclose the requisite information prior to the sale
of an enrollment may be held liable in an amount equivalent to
one year's subscription rate to the prepaid limited health service
organization, plus costs and a reasonable attorney's fee.

(g) No contract with an enrollee may prohibit an enrollee
from canceling his or her enrollment at any time for any reason
except that the contract may require thirty days' notice to the
prepaid limited health service organization.

(h) No contract with an enrollee may contain any provision
purporting to make any portion of the articles of incorporation,
charter, bylaws or other organizational document of the prepaid
limited health service organization a part of the contract unless
the provision is set forth in full in the contract.

(i) Any person who in connection with an enrollment
violates any subsection of this section may be held liable for an
amount equivalent to one year's subscription rate, plus costs
and a reasonable attorney's fee.

§33-25D-16. Agent licensing and appointment required; regula-
tion of marketing.

(a) Prepaid limited health service organizations are subject
to the provisions of article twelve of this chapter.

(b) With respect to individual or group contracts covering
fewer than twenty-five subscribers, after a subscriber signs a
prepaid limited health service organization enrollment applica-
tion and before the prepaid limited health service organization
may process the application changing or initiating the sub-
crimer coverage, each prepaid limited health service organiza-
tion shall verify in writing, in a form prescribed by the commis-
sioner, the intent and desire of the individual subscriber to join
the prepaid limited health service organization. The verification
shall be conducted by someone outside the prepaid limited
health service organization's marketing department and shall
show that:

(1) The subscriber intends and desires to join the prepaid
limited health service organization;

(2) If the subscriber is a medicare or medicaid recipient, the
subscriber understands that by joining the prepaid limited health service organization he or she will be limited to the benefits provided by the prepaid limited health service organization, and medicare or medicaid will pay the prepaid limited health service organization for the subscriber coverage;

(3) The subscriber understands the applicable restrictions of prepaid limited health service organizations, especially that he or she must use the prepaid limited health service organization providers and secure approval from the prepaid limited health service organization to use health care providers outside the plan; and

(4) If the subscriber is a member of a prepaid limited health service organization, the subscriber understands that he or she is transferring to another prepaid limited health service organization.

(c) The prepaid limited health service organization may not pay a commission, fee, money or any other form of scheduled compensation to any health insurance agent until the subscriber’s application has been processed and the prepaid limited health service organization has confirmed the subscriber’s enrollment by written notice in the form prescribed by the commissioner. The confirmation notice shall be accompanied by the evidence of coverage required by section eleven of this article and shall confirm:

(1) The subscriber’s transfer from his or her existing coverage, such as from medicare, medicaid, another prepaid limited health service organization, etc., to the new prepaid limited health service organization; and

(2) The date enrollment begins and when benefits will be available.

(d) The enrollment process is considered complete seven days after the prepaid limited health service organization mails the confirmation notice and evidence of coverage to the subscriber. Each prepaid limited health service organization is directly responsible for enrollment abuses.
(e) The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to regulate marketing of prepaid limited health service organizations by persons compensated directly or indirectly by the prepaid limited health service organization. The rules may prohibit door-to-door solicitations, may prohibit commission sales, and may provide for other proscriptions required to effectuate the purposes of this article.

§33-25D-17. Powers of insurers, hospital service corporations, medical service corporations, dental service corporations, health service corporations and health maintenance organizations.

(a) An insurance company licensed in this state, a hospital, medical, dental or health service corporation authorized to do business in this state or a health maintenance organization holding a certificate of authority under article twenty-five-a of this chapter, after applying for and receiving a certificate of authority as a prepaid limited health service organization, may through a subsidiary or affiliate organize and operate a prepaid limited health service organization under the provisions of this article. Notwithstanding any other law to the contrary, any two or more insurance companies, hospital, medical, dental or health service corporations, health maintenance organizations or subsidiaries or affiliates thereof, may jointly organize and operate a prepaid limited health service organization. The business of insurance is considered to include the providing of health care by a prepaid limited health service organization owned or operated by an insurer or a subsidiary of the insurer.

(b) Notwithstanding any provision of insurance, hospital, medical, dental or health service corporation or health maintenance organization laws, an insurer, a hospital, medical, dental or health service corporation or a health maintenance organization may contract with a prepaid limited health service organization to provide insurance or similar protection against the cost of care provided through prepaid limited health service organizations and to provide coverage in the event of the failure of the
prepaid limited health service organization to meet its obligations. The enrollees of a prepaid limited health service organization constitute a permissible group under those laws. Under the contracts, the insurer or hospital, medical, dental or health service corporation or health maintenance organization may make benefit payments to prepaid limited health service organizations for limited health services rendered by providers.

(c) Notwithstanding any provision of insurance, hospital, medical, dental or health service corporation or health maintenance organization laws, an insurer, a hospital, medical, dental or health service corporation or a health maintenance organization may exclude in any contract or policy issued to a group, any coverage which would duplicate the coverage of a prepaid limited health service organization, whether for services, supplies or reimbursement, to the extent that the coverage or service is provided in accordance with this chapter pursuant to a contract or policy issued to the same group or to a part of that group by a prepaid limited health service organization.


(a) The commissioner may make an examination of the affairs of any prepaid limited health service organization and providers with whom the organization has contracts, agreements or other arrangements as often as he or she considers it necessary for the protection of the interests of the people of this state but not less frequently than once every three years.

(b) The commissioner may contract with the department of health and human resources, any entity which has been accredited by a nationally recognized accrediting organization and has been approved by the commissioner to make examinations concerning the quality of health care services of any prepaid limited health service organization and providers with whom the organization has contracts, agreements or other arrangements, or any such entity contracted with by the department of health and human resources, as often as it considers necessary for the protection of the interests of the people of this state, but not less frequently than once every three years: Provided, That in making the examination, the department of health and human
resources or the accredited entity shall utilize the services of persons or organizations with demonstrable expertise in assessing quality of health care.

(c) Every prepaid limited health service organization and affiliated provider shall submit its books and records to the examinations and in every way facilitate them. For the purpose of examinations, the commissioner and the department of health and human resources have all powers necessary to conduct the examinations, including, but not limited to, the power to issue subpoenas, the power to administer oaths to and examine the officers and agents of the prepaid limited health service organization and the principals of the providers concerning their business.

(d) The prepaid limited health service organization is subject to the provisions of section nine, article two of this chapter in regard to the expense and conduct of examinations.

(e) In lieu of the examination, the commissioner may accept the report of an examination made by another state.

(f) The expenses of an examination assessing quality of health care under subsection (b) of this section and section nineteen of this article shall be reimbursed pursuant to subdivision (5), subsection (i), section nine, article two of this chapter.


(a) Each prepaid limited health service organization shall have in writing a quality assurance program approved by the commissioner which describes the program’s objectives, organization and problem solving activities.

(b) The scope of the quality assurance program shall include, at a minimum:

(1) Organizational arrangements and responsibilities for quality management and improvement processes;

(2) A documented utilization management program;

(3) Written policies and procedures for credentialing and recredentialing physicians and other licensed providers who fall
under the scope of authority of the prepaid limited health
service organization;

(4) A written policy that addresses enrollees' rights and
responsibilities;

(5) The adoption of practice guidelines for the use of
preventive health services; and

(6) Any other criteria considered necessary by the commis-
sioner.

c) This section becomes effective on the first day of May,
one thousand nine hundred ninety-nine.

§33-25D-20. Suspension or revocation of certificate of authority.

(a) The commissioner may suspend or revoke any certifi-
cate of authority issued to a prepaid limited health service
organization under this article if he or she finds that any of the
following conditions exist:

(1) The prepaid limited health service organization is
operating significantly in contravention of its basic organiza-
tional document, in any material breach of contract with an
enrollee, or in a manner contrary to that described in and
reasonably inferred from any other information submitted under
section three of this article unless amendments to the submis-
sions have been filed with an approval of the commissioner;

(2) The prepaid limited health service organization issues
an evidence of coverage or uses a schedule of premiums limited
health services which do not comply with the requirements of
section eleven of this article;

(3) The prepaid limited health service organization does not
provide or arrange for those limited health services which it has
contracted to provide to enrollees;

(4) The department of health and human resources or other
accredited entity certifies to the commissioner that:

(A) The prepaid limited health service organization is
unable to fulfill its obligations to furnish limited health services
as required under its contract with enrollees; or
(B) The prepaid limited health service organization does not meet the requirements of subsection (a), section five of this article;

(5) The prepaid limited health service organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees or is otherwise determined by the commissioner to be in a hazardous financial condition;

(6) The prepaid limited health service organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under section eight of this article;

(7) The prepaid limited health service organization has failed to implement the grievance procedure required by section fourteen of this article in a manner to reasonably resolve valid grievances;

(8) The prepaid limited health service organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner;

(9) The continued operation of the prepaid limited health service organization would be hazardous to its enrollees;

(10) The prepaid limited health service organization has otherwise failed to substantially comply with this article;

(11) The prepaid limited health service organization has violated a lawful order of the commissioner; or

(12) The prepaid limited health service organization has failed to implement or maintain a quality assurance program considered satisfactory by the commissioner which meets the minimum standards set forth in section nineteen of this article.

(b) A certificate of authority may be suspended or revoked only after compliance with the requirements of section twenty-three of this article.
(c) When the certificate of authority of a prepaid limited health service organization is suspended, the prepaid limited health service organization may not, during the period of the suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and may not engage in any advertising or solicitation.

(d) When the certificate of authority of a prepaid limited health service organization is revoked, the organization shall proceed, immediately following the effective date of the order of revocation, to terminate its affairs, and may conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It may engage in no further advertising or solicitation. The commissioner may, by written order, permit further operation of the organization as he or she may find to be in the best interests of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing limited health service coverage.

§33-25D-21. Rehabilitation, liquidation or conservation of prepaid limited health service organization.

Any rehabilitation, liquidation or conservation of a prepaid limited health service organization is considered to be the rehabilitation, liquidation or conservation of an insurance company, is the exclusive remedy for rehabilitation, liquidation and conservation of a prepaid limited health service organization as provided by this article and shall be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation or conservation of insurance companies. The commissioner may apply for an order directing him or her to rehabilitate, liquidate or conserve a prepaid limited health service organization upon any one or more grounds set out in the rehabilitation statutes or when, in his or her opinion, the continued operation of the prepaid limited health service organization would be hazardous either to the enrollees or to the people of this state.

The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code:

(1) To effectuate the purposes of this article and to prevent circumvention and evasion thereof; and

(2) To define the commissioner’s authority to consider the operating results of a prepaid limited health service organization’s affiliates and subsidiaries in the rate making and solvency determination of that prepaid limited health service organization.


(a) When the commissioner has cause to believe that grounds for the denial of an application for a certificate of authority exist, or that grounds for the suspension or revocation of a certificate of authority exist, he or she shall notify the prepaid limited health service organization in writing specifically stating the grounds for denial, suspension or revocation and fixing a time of at least twenty days thereafter for a hearing on the matter.

(b) After the hearing, or upon the failure of the prepaid limited health service organization to appear at the hearing, the commissioner shall take action as is considered advisable on written findings which shall be mailed to the prepaid limited health service organization. The action of the commissioner is subject to review. The court may modify, affirm or reverse the order of the commissioner, in whole or in part.

(c) Proceedings under this article are governed by the provisions of section thirteen, article two of this chapter.


Every prepaid limited health service organization subject to this article shall pay to the commissioner the following fees:

(1) For filing an application for a certificate of authority or amendment thereto, two hundred dollars;

(2) For each renewal of a certificate of authority, the annual fee as provided in section thirteen, article three of this chapter;
(3) For each form filing and for each rate filing, the fee as provided in section thirty-four, article six of this chapter; and
(4) For filing each annual report, twenty-five dollars.

Fees charged under this section are for the purposes set forth in section thirteen, article three of this chapter.

§33-25D-25. Penalties and enforcement.

(a) The commissioner may, in lieu of suspension or revocation of a certificate of authority under section twenty of this article, levy an administrative penalty in an amount not less than one hundred dollars nor more than five thousand dollars, if reasonable notice in writing is given of the intent to levy the penalty and the prepaid limited health service organization has a reasonable time within which to remedy the defect in its operations which gave rise to the penalty citation. The commissioner may augment this penalty by an amount equal to the sum that he or she calculates to be the damages suffered by enrollees or other members of the public.

(b) Any person who violates any provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars, or confined in the county jail not more than one year, or both fined and confined.

(c) If the commissioner, for any reason, has cause to believe that any violation of this article or rules promulgated pursuant thereto has occurred or is threatened, prior to the levy of a penalty or suspension or revocation of a certificate of authority, the commissioner may give notice to the prepaid limited health service organization and to the representatives, or other persons who appear to be involved in the suspected violation, to arrange a conference with the alleged violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to the suspected violation, and, in the event it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing the violation.
(2) Proceedings under this subsection are not governed by any formal procedural requirements, and may be conducted in a manner as the commissioner considers appropriate under the circumstances. Enrollees shall be afforded notice by publication of proceedings under this subsection and shall be afforded the opportunity to intervene.

(d)(1) The commissioner may issue an order directing a prepaid limited health service organization or a representative of a prepaid limited health service organization to cease and desist from engaging in any act or practice in violation of the provisions of this article or rules promulgated pursuant to this article.

(2) Within ten days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. The hearings shall be conducted pursuant to section thirteen, article two of this chapter.

(e) In the case of any violation of the provisions of this article or rules promulgated pursuant to this article, if the commissioner elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order issued pursuant to subsection (d) of this section, the commissioner may institute a proceeding to obtain injunctive relief, or seek other appropriate relief, in the circuit court of the county of the principal place of business of the prepaid limited health service organization.

(f) Any enrollee of or resident of this state may bring an action against the prepaid limited health service organization to enforce any provision, standard or rule enforceable by the commissioner: Provided, That this subsection does not authorize a civil action against the commissioner, his or her employees or any other agency or instrumentality of this state. In the case of any successful action to enforce this article, or accompanying standards or rules, the individual shall be awarded the costs of the action together with a reasonable attorney’s fee as determined by the court.

(a) Except as otherwise provided in this article, provisions of the insurance laws, provisions of hospital, medical, dental or health service corporation laws and provisions of health maintenance organization laws are not applicable to any prepaid limited health service organization granted a certificate of authority under this article. The provisions of this article do not apply to an insurer, hospital, medical, dental or health service corporation, or health maintenance organization licensed and regulated pursuant to the insurance laws, hospital, medical, dental or health service corporation laws or health maintenance organization laws of this state except with respect to its prepaid limited health service corporation activities authorized and regulated pursuant to this article. The provisions of this article do not apply to an entity properly licensed by a reciprocal state to provide a limited health care service to employer groups, where residents of West Virginia are members of an employer group, and the employer group contract is entered into in the reciprocal state. For purposes of this subsection, a "reciprocal state" means a state which physically borders West Virginia and which has subscriber or enrollee hold harmless requirements substantially similar to those set out in section ten of this article.

(b) Factually accurate advertising or solicitation regarding the range of services provided, the premiums and copayments charged, the sites of services and hours of operation, and any other quantifiable, nonprofessional aspects of its operation by a prepaid limited health service organization granted a certificate of authority, or its representative do not violate any provision of law relating to solicitation or advertising by health professions: Provided, That nothing contained in this subsection authorizes any solicitation or advertising which identifies or refers to any individual provider or makes any qualitative judgment concerning any provider.

(c) Any prepaid limited health service organization authorized under this article is not considered to be practicing
medicine and is exempt from the provision of chapter thirty of this code, relating to the practice of medicine.

(d) The provisions of section nine, article two, examinations; section thirteen, article two, hearings; sections fifteen and twenty, article four, general provisions; section twenty, article five, borrowing by insurers; section seventeen, article six, noncomplying forms; article six-c, guaranteed loss ratio; article seven, assets and liabilities; article eight, investments; article nine, administration of deposits; article ten, rehabilitation and liquidation; article twelve, agents, brokers, solicitors and excess line; section fourteen, article fifteen, individual accident and sickness insurance; section sixteen, article fifteen, coverage of children; section eighteen, article fifteen, equal treatment of state agency; section nineteen, article fifteen, coordination of benefits with medicaid; article fifteen-b, uniform health care administration act; section three, article sixteen, required policy provisions; section eleven, article sixteen, coverage of children; section thirteen, article sixteen, equal treatment of state agency; section fourteen, article sixteen, coordination of benefits with medicaid; article sixteen-a, group health insurance conversion; article sixteen-d, marketing and rate practices for small employers; article twenty-seven, insurance holding company systems; article thirty-three, annual audited financial report; article thirty-four, administrative supervision; article thirty-four-a, standards and commissioner's authority for companies deemed to be in hazardous financial condition; article thirty-five, criminal sanctions for failure to report impairment; article thirty-seven, managing general agents; article thirty-nine, disclosure of material transactions; and article forty-one, privileges and immunity, all of this chapter are applicable to any prepaid limited health service organization granted a certificate of authority under this article. In circumstances where the code provisions made applicable to prepaid limited health service organizations by this section refer to the "insurer," the "corporation" or words of similar import, the language includes prepaid limited health service organizations.

(e) Any long-term care insurance policy delivered or issued for delivery in this state by a prepaid limited health service
organization shall comply with the provisions of article fifteen-a of this chapter.

(f) A prepaid limited health service organization granted a certificate of authority under this article is exempt from paying municipal business and occupation taxes on gross income it receives from its enrollees, or from their employers or others on their behalf, for health care items or services provided directly or indirectly by the prepaid limited health service organization.

§33-25D-27. Filings and reports as public documents.

All applications, filings and reports required under this article are public documents: Provided, That where the provisions of other articles in this chapter are applicable to prepaid limited health service organizations, all applications, filings and reports required under those articles shall be afforded the level of confidentiality as provided in those articles.


(a) Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from that person or from any provider by any prepaid limited health service organization shall be held in confidence and may not be disclosed to any person except:

(1) To the extent that it may be necessary to facilitate an assessment of the quality of care delivered pursuant to section eighteen of this article or to review the grievance procedure pursuant to section fourteen of this article;

(2) Upon the express written consent of the enrollee or his or her legally authorized representative;

(3) Pursuant to statute or court order for the production of evidence or the discovery thereof;

(4) In the event of claim or litigation between that person and the prepaid limited health service organization where the data or information is pertinent;

(5) To a department or division of the state pursuant to the terms of a group contract for the provision of health care
services between the prepaid limited health service organization and the department or division of the state; or

(6) For a medicaid recipient enrolled under a group contract between a prepaid limited health service organization and the governmental agency responsible for administering the medicaid program, in accordance with confidentiality rules applicable to the medicaid program.

(b) A prepaid limited health service organization is entitled to claim any statutory privileges against the disclosure which the provider who furnished the information to the prepaid limited health service organization is entitled to claim.

(c) Any information provided to the division of insurance that is part of the division investigation or examination is confidential and exempt from disclosure under subsection (a) of this section or otherwise until the investigation is completed or ceases to be active. For purposes of this subsection, an investigation is considered "active" while the investigation is being conducted by the division with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the division is proceeding with reasonable dispatch and there is a good faith belief that action may be initiated by the division or other administrative or law-enforcement agency. After an investigation or examination is completed or ceases to be active, portions of the records relating to the investigation or examination remain confidential and are exempt from disclosure under subsection (a) of this section or otherwise if the disclosure would:

(1) Jeopardize the integrity of another active investigation;

(2) Impair the safety and financial soundness of the licensee or affiliated party;

(3) Reveal personal financial information;

(4) Reveal the identity of a confidential source;

(5) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
§33-25D-29. Authority to contract with prepaid limited health service organizations under medicaid.

The department of health and human resources is authorized to enter into contracts with prepaid limited health service organizations certified and permitted to market under the laws of this state, and to furnish to recipients of medical assistance under Title XIX of the Social Security Act, 42 U.S.C. § 1396, et seq., limited health services offered to such recipients under the medical assistance plan of West Virginia. The children's health policy board, the department of health and human resources, and the division of juvenile services within the department of military affairs and public safety are further authorized to enter into contracts with prepaid limited health service organizations to furnish behavioral health services to adults and children who are eligible to receive such services under chapter five, chapter sixteen, chapter twenty-seven or chapter forty-nine of this code.

§33-25D-30. Authority of commissioner to propose rules regarding affiliate and subsidiary operating results.

The commissioner may after notice and hearing propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to define the commissioner's authority to consider the operating results of an insurer's affiliates and subsidiaries in the rate making and solvency determination of that insurer.

CHAPTER 145

(H. B. 2757 — By Delegates Johnson, Capito and Beane)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section sixteen, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-
one, as amended; and to amend and reenact section sixteen-a of said article, relating to insurance excess line brokers, the fees they may charge and the taxation of insurance placed through an excess line broker.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section sixteen-a of said article be amended and reenacted to read as follows:

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-16a. Excess line brokers; additional premium tax.

(a) Every excess line broker shall make an annual return, under oath, on or before the first day of March to the commissioner of the gross amount of premiums charged by the insurers and of the gross amount of the fees charged by the excess line broker for the insurance procured by the excess line broker during the previous calendar year. Every excess line policyholder obtaining insurance from an excess line broker shall pay and every excess line broker shall collect from the policyholder and remit to the commissioner a sum equal to four percent of the gross premiums and fees received on the excess line policies procured by the excess line broker on subjects of insurance, resident, located or to be performed in this state, including any so-called dividends on participating policies applied in reduction of premiums, but less premiums returned to policyholders because of cancellation of policy. This tax is imposed for the purpose of providing additional revenue for municipal policemen’s and firemen’s pension and relief funds and additional revenue for volunteer and part volunteer fire companies and departments. This tax is required to be paid and remitted, on a calendar year basis and in quarterly estimated installments due and payable on or before the twenty-fifth day of the month succeeding the close of the quarter in which they accrued, except for the fourth quarter, in respect of which taxes shall be due and payable and final computation of actual total liability for the prior calendar year shall be made, less credit for the three quarterly estimated payments prior made, and filed with the annual return to be made on or before the first day of March.
of the succeeding year. Provisions of this chapter relating to the
levy, imposition and collection of the regular premium tax are
applicable to the levy, imposition and collection of this tax to
the extent that the provisions are not in conflict with this
section.

All such taxes remitted to the commissioner pursuant to this
section shall be paid by him into a special account in the state
treasury, designated "municipal pensions and protection fund,"
and after appropriation by the Legislature, shall be distributed
in accordance with the provisions of subsection (c), section
fourteen-d, article three of this chapter. The excess line broker
shall return to the policyholder the tax on any unearned portion
of the premium returned to the policyholder because of cancel-
lation of policy.

(b) The excess line broker may not:

(1) Pay directly or indirectly the tax or any portion thereof,
either as an inducement to the policyholder to purchase the
insurance or for any other reason; or

(2) Rebate all or part of the tax or the excess line broker's
commission, either as an inducement to the policyholder to
purchase the insurance or for any reason.

(c) The licensed excess line broker may charge the prospec-
tive policyholder a fee for the cost of underwriting, issuing,
processing, inspecting, service or auditing the policy for
placement with the excess line insurer if:

(1) The service is required by the excess line insurer;

(2) The service is actually provided by the excess line
broker or the cost of the service is actually incurred by the
excess line broker;

(3) The provision or cost of the service is reasonable,
documented and verifiable.

(d) The excess line broker shall make a clear and conspicu-
ous written disclosure to the policyholder of:

(1) The total amount of premium for the policy;
(2) Any fee charged;
(3) The total amount of any fee charged; and
(4) The total amount of tax on the premium and fee.
(e) The clear and conspicuous written disclosure required by subsection (d) of this section is subject to the record maintenance requirements of section fifteen of this article.

CHAPTER 146

(Com. Sub. for S. B. 653 — By Senator Bailey)

[Passed March 11, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-three, relating to providing limited agent licenses for automobile rental coverage.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-33. Limited license for rental companies.

(a) Purpose. This section authorizes the insurance commissioner to issue limited licenses for the sale of automobile rental coverage.

(b) Definitions. The following words when used in this section shall have the following meanings:

(1) "Authorized insurer" means an insurer that is licensed by the commissioner to transact insurance in West Virginia.
(2) "Automobile rental coverage" or "rental coverage" is insurance offered incidental to the rental of a vehicle as described in this section.

(3) "Limited license" means the authorization by the commissioner for a person to sell rental coverage as agent of an authorized insurer pursuant to the provisions of this section without the necessity of agent prelicensing education, examination, or continuing education.

(4) "Limited licensee" is an individual resident of this state who obtains a limited license.

(5) "Rental agreement" means any written agreement setting forth the terms and conditions governing the use of a vehicle provided by the rental company for rental or lease.

(6) "Rental company" means any person or entity in the business of providing private motor vehicles to the public under a rental agreement for a period not to exceed ninety days.

(7) "Renter" means any person obtaining the use of a vehicle from a rental company under the terms of a rental agreement for a period not to exceed ninety days.

(8) "Vehicle" or "rental vehicle" means a motor vehicle of the private passenger type including passenger vans, minivans and sport utility vehicles and of the cargo type, including cargo vans, pick-up trucks and trucks with a gross vehicle weight of twenty-six thousand pounds or less and which do not require the operator to possess a commercial driver's license.

(9) "Rental period" means the term of the rental agreement.

(c) The commissioner may issue a limited license for the sale of automobile rental coverage to an employee of a rental company, who has satisfied the requirements of this section.

(d) As a prerequisite for issuance of a limited license under this section, there shall be filed with the commissioner a written application for a limited license, signed by the applicant, in such form or forms and supplements thereto, and containing such information, as the commissioner may prescribe. The
limited licensee shall pay to the insurance commissioner an annual fee of twenty-five dollars.

(e) The limited licensee shall be appointed by the licensed insurer or insurers for the sale of automobile rental coverage. The employer of the limited licensee shall maintain at each insurance sales location a list of the names and addresses of employees which are selling insurance at the location.

(f) In the event that any provision of this section or applicable provisions of the insurance code is violated by a limited licensee or other employees operating under his or her direction, the commissioner may:

(1) After notice and a hearing, revoke or suspend a limited license issued under this section in accordance with the provisions of section thirteen, article two of this chapter, or

(2) After notice and hearing, impose such other penalties, including suspending the transaction of insurance at specific locations where applicable violations of the insurance code have occurred, as the commissioner deems to be necessary or convenient to carry out the purposes of this section.

(g) Any limited license issued under this section shall also authorize any other employee working for the same employer and at the same location as the limited licensee to act individually, on behalf, and under the supervision, of the limited licensee with respect to the kinds of coverage authorized in this section. In order to sell insurance products under this section at least one employee who has obtained a limited license must be present at each location where insurance is sold. All other employees working at that location may offer or sell insurance consistent with this section without obtaining a limited license. However, the limited licensee shall directly supervise and be responsible for the actions of all other employees at that location related to the offer or sale of insurance as authorized by this section. No limited licensee under this section shall advertise, represent, or otherwise hold himself or herself or any other employees out as licensed insurers, insurance agents or insurance brokers.
(h) No automobile rental coverage insurance may be issued by a limited license pursuant to this section unless:

(1) The rental period of the rental agreement does not exceed ninety consecutive days; and

(2) At every rental location where rental agreements are executed, brochures or other written material are readily available to the prospective renter that:

(i) Summarize clearly and correctly, the material terms of coverage offered to renters, including the identity of the insurer.

(ii) Disclose that the coverage offered by the rental company may provide a duplication of coverage provided by a renter’s personal automobile insurance policy, homeowner’s insurance policy, personal liability insurance policy, or other source of coverage.

(iii) State that the purchase by the renter of the kinds of coverage specified in this section is not required in order to rent a vehicle.

(iv) Describe the process for filing a claim in the event the renter elects to purchase coverage and in the event of a claim.

(3) An evidence of coverage on the face of the rental agreement is disclosed to every renter who elects to purchase such coverage.

(i) The limited licensee to sell automobile rental coverage may offer or sell insurance only in connection with and incidental to the rental of vehicles, whether at the rental office or by preselection of coverage in a master, corporate, group rental, or individual agreements in any of the following general categories:

(1) Personal accident insurance covering the risks of travel, including, but not limited to, accident and health insurance that provides coverage, as applicable, to renters and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses resulting from an accident that occurs during the rental period;
(2) Liability insurance (which may include uninsured and underinsured motorist coverage whether offered separately or in combination with other liability insurance) that provides coverage, as applicable, to renters and other authorized drivers of rental vehicles for liability arising from the operation of the rental vehicle;

(3) Personal effects insurance that provides coverage, applicable to renters and other vehicle occupants of the loss of, or damage to, personal effects that occurs during the rental period;

(4) Roadside assistance and emergency sickness protection programs; and

(5) Any other travel or auto-related coverage that a rental company offers in connection with and incidental to the rental of vehicles.

(j) Each rental company for which an employee has received a limited license pursuant to this section shall conduct a training program in which its employees being trained shall receive basic instruction about the kinds of coverage specified in this section and offered for purchase by prospective renters of rental vehicles: Provided, That limited licensees and employees working hereunder are not subject to the agent prelicensing education, examination or continuing education requirements of this article.

(k) Notwithstanding any other provision of this section, or any rule adopted by the commissioner neither the rental company, the limited licensee, nor the other employees working with the limited licensee at the rental company, shall be required to treat moneys collected from renters purchasing such insurance when renting vehicles as funds received in a fiduciary capacity, provided that the chargers for coverage shall be itemized and be ancillary to a rental transaction. The sale of insurance not in conjunction with a rental transaction shall not to be permitted.
AN ACT to amend and reenact sections three and nine-a, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia investment management board and adding references to the deputy sheriff retirement system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-3. West Virginia investment management board created; body corporate; board created; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; annual and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications.

§12-6-9a. Trust indenture.

§12-6-3. West Virginia investment management board created; body corporate; board created; trustees; nomination and appointment of trustees, qualifications and terms of appointment, advice and consent; annual and other meetings; designation of representatives and committees; board meetings with committees regarding investment policy statement required; open meetings, qualifications.

(a) There is hereby created the West Virginia investment management board. The board is created as a public body
corporate and established to provide prudent fiscal administra-
tion, investment and management for the pension funds,
workers’ compensation and coal-workers’ pneumoconiosis
funds and other state funds.

(b) The board shall be governed by a board of trustees,
consisting of thirteen members:

(1) Nominations made to the West Virginia trust fund board
and the West Virginia board of investments shall remain in
effect and are hereby specifically reauthorized and those
members shall be members of the investment management
board and shall serve out the remainder of their respective
terms subject to the advice and consent of the Senate: Provided,
That prior appointments which have been confirmed by the
Senate are hereby specifically reauthorized without further
action of the Senate.

(2) Any appointment is effective immediately upon
appointment by the governor with respect to voting, constitut-
ing a quorum, receiving compensation and expenses, and all
other rights and privileges of the trustee position. All appoint-
ees must have experience in pension management, institutional
management or financial markets, and one trustee must be an
attorney experienced in finance and investment matters, and
one trustee must be a certified public accountant.

(3) The governor, the state auditor and the state treasurer or
their designees shall serve as members of the board. They shall
serve by virtue of their office and are not entitled to compensa-
tion under the provisions of this article. The governor, the
auditor and the treasurer or their designees shall be subject to
all duties, responsibilities and requirements of the provisions of
this article, including, but not limited to, the provisions of
subsections (e) and (f), section four of this article.

(c) At the end of each trustee’s term, the governor may
reappoint or appoint a successor who shall serve for six-year
terms. No more than six of the ten appointed trustees may
belong to the same political party.
(d) In the event of a vacancy among the trustees, an appointment shall be made by the governor to fill the unexpired term.

(e) The governor may remove any trustee, other than trustees who serve by virtue of their elective office, in case of gross negligence or misfeasance and may declare that position vacant and may appoint a person for the vacancy as provided in subsection (d) of this section.

(f) Each trustee, other than those enumerated in subsection (b), subdivision (3) of this section, shall be entitled to receive, and, at the trustee’s option, the board shall pay to the trustee, compensation in the amount of five thousand dollars per year and additional compensation in the amount of five hundred dollars per meeting attended by the trustee in excess of the four quarterly meetings required by this section. In addition, all trustees shall receive reasonable and necessary expenses actually incurred in discharging trustee duties pursuant to this article.

(g) The board shall meet quarterly and may include in its bylaws procedures for the calling and holding of additional meetings. For any quarterly or additional meeting in which the board shall review or modify its securities list or its investment objectives pursuant to subsection (f), section twelve of this article, the board shall give ten days notice in writing to the designated representative of each participant plan selected pursuant to subdivision (1), subsection (i) of this section, and the meeting shall be open to the members and beneficiaries of the participant plans for that portion of the meeting in which the board undertakes the review or modification.

(h) The board shall hold an annual meeting within forty-five days after the issuance of the year-end financial report. The annual meeting may also serve as a quarterly meeting. The annual meeting shall be open to the public, and the board shall receive oral and written comments from representatives, members and beneficiaries of the participant plans and from other citizens of the state. At the annual meeting, the board
shall adopt a fee schedule and a budget reflecting fee structures for the year.

(i) Pursuant to subsection (j) of this section, the board shall meet with committees representing the participant plans to discuss the board’s drafting, reviewing or modifying the written investment policy of the trust with respect to that committee’s participant plan pursuant to section twelve of this article. Representatives and committees shall be designated as follows:

(1) The West Virginia consolidated public retirement board shall promulgate procedural rules by which each pension system named in paragraphs (1) through (6), inclusive, subsection (c), section nine-a of this article, shall designate an individual representative of each said pension system, and the West Virginia workers’ compensation commission shall promulgate procedural rules by which the pneumoconiosis fund and the workers’ compensation fund shall designate an individual representative of each said fund.

(2) On or before the first day of June of each year, the consolidated public retirement board shall submit in writing to the board the names of the six designated representatives, and the workers’ compensation commission shall so submit the names of the two representatives.

(3) Each designated representative shall provide to the board his or her current address, updated each year on or before the first day of July, to which address the board shall provide notice of meetings of the board pursuant to subsection (g) of this section.

(4) Each designated representative shall submit in writing to the board on or before the first day of July of each year, the names of no more than three persons comprising a committee representing the beneficiaries of that representative’s participant plan.

(j) At its annual meeting, the board shall meet with each of the seven committees, formed pursuant to subdivision (1), subsection (i) of this section, for the purpose of receiving input
from the committees regarding the board's drafting, reviewing or modifying its written investment policy statement for investment of the consolidated pension plan funds. In developing the investment policy statement, the trustees shall receive each committee's stated objectives and policies regarding the risk tolerances and return expectations of each participant plan, with attention to the factors enumerated in subsection (g), section twelve of this article, in order to provide for the continuing financial security of the trust and its participant plans. The board may meet with the committees or any of them at its quarterly and additional meetings for the same purpose.

(k) All meetings of the board shall be open to the representatives of the participant plans as appointed pursuant to subdivision (1), subsection (i) of this section. The representatives shall be subject to any rules, bylaws, guidelines, requirements and standards promulgated by the board. The representatives shall observe standards of decorum established by the board. The representatives shall be subject to the same code of conduct applicable to the trustees and shall be subject to all board rules and bylaws. The representatives shall also be subject to any requirements of confidentiality applicable to the trustees. Each representative shall be liable for any act which he or she undertakes which violates any rule, bylaw or statute governing ethical standards, confidentiality or other standard of conduct imposed upon the trustees or the representatives. Any meeting of the board may be closed, upon adoption of a motion by any trustee, when necessary to preserve the attorney-client privilege, to protect the privacy interests of individuals, to review personnel matters or to maintain confidentiality when confidentiality is in the best interest of the beneficiaries of the trust.

§12-6-9a. Trust indenture.

On the effective date of this section, all assets of the irrevocable trust entered into by the governor on the first day of July, one thousand nine hundred ninety-six, with the West Virginia trust fund, inc., acting as the trustee shall constitute the corpus of an irrevocable trust with the board as its trustee: Provided, That the trust shall continue to be subject to the following provisions:
(a) The Legislature hereby reserves the following rights and powers:

1. The right by supplemental agreement to amend, modify or alter the terms of this trust without consent of the trustee, or any beneficiary; and

2. The right to request and receive additional information from the trustee at any time.

(b) The trustee shall establish a trust for the participant plans specified by this article with the earnings and losses accounted for and charged individually to each participant plan, including, but not limited to, the following:

1. The public employees retirement system;

2. The teachers retirement system;

3. The West Virginia state police retirement system;

4. The death, disability and retirement fund of the department of public safety;

5. The judges' retirement system;

6. The deputy sheriff retirement system;

7. The pneumoconiosis fund; and

8. The workers' compensation fund.

(c) In the administration of the trust created by the trust indenture, the trustee has the following powers:

1. To purchase, retain, hold, transfer and exchange, and to sell, at public or private sale, the whole or any part of the trust estate upon such terms and conditions as it considers advisable;

2. To invest and reinvest the trust estate or any part thereof, in any kind of property, real or personal, including, but not limited to, mortgage or mortgage participations, common stocks, preferred stocks, common trust funds, bonds, notes or other securities, notwithstanding the provisions of articles five and six, chapter forty-four of this code: Provided, That notwithstanding the provisions of this article to the contrary, the board
shall not become a stockholder or owner of any company or
association for any purpose whatsoever unless and until the
provisions of section six, article X of the constitution of West
Virginia are amended to permit those investments;

(3) To carry the securities and other property held under the
trust indenture either in the name of the trustee or in the name
of its nominee;

(4) To vote, in person or by proxy, all securities held under
the trust indenture, to join in or to dissent from and oppose the
reorganization, recapitalization, consolidation, merger, liquida-
tion or sale of corporations or property; to exchange securities
for other securities issued in connection with or resulting from
any transaction; to pay any assessment or expense which the
trustee considers advisable for the protection of its interest as
holder of any such securities; to deposit securities in any voting
trust or with any protective or like committee, or with a trustee
depository; to exercise any option appurtenant to any securities
for the conversion of any securities into other securities; and to
exercise or sell any rights issued upon or with respect to the
securities of any corporation, all upon terms the trustee con sid-
ers advisable;

(5) To prosecute, defend, compromise, arbitrate or other-
wise adjust or settle claims in favor of or against the trustee or
other trust estate;

(6) To employ and pay from the trust estate legal and
investment counsel, brokers and such other assistants and
agents as the trustee considers advisable; and

(7) To develop, implement and modify an asset allocation
plan for each participant plan. The asset allocation plans shall
be implemented within the management and investment of the
trust fund.

(d) All trust income shall be free from anticipation,
alienation, assignment or pledge by, and free from attachment,
execution, appropriation or control by or on behalf of, any and
all creditors of any beneficiary by any proceeding at law, in
equity, in bankruptcy or insolvency.
(e) The trustee may receive any other property, real or personal, tangible or intangible, of any kind whatsoever, that may be granted, conveyed, assigned, transferred, devised, bequeathed or made payable to it by the state, or by any other person or entity, for the purposes of the trust created by the trust indenture, and all such properties shall be held, managed, invested and administered by the trustee as provided in the trust indenture and in the “West Virginia Investment Management Act”.

(f) The trustee shall promptly cause to be paid to the state the amounts certified by the governor as necessary for the monthly payment of benefits to the beneficiaries of the trust.

(g) The trustee shall render an annual accounting to the governor not more than one hundred twenty days following the close of the fiscal year of the trust.

(h) The trust will not be invalid by reason of any existing law or rule against perpetuities or against accumulations or against restraints upon the power of alienation, but the trust may continue for such time as necessary to accomplish the purposes for which it is established.

(i) If any provision of the trust indenture is void, invalid or unenforceable, the remaining provisions are nevertheless valid and shall be carried into effect.

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CHAPTER 148

(S. B. 564 — By Senator Tomblin, Mr. President)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the West Virginia investment management board to use a nationally recognized account-
ING firm or investment consulting firm to audit the performance returns of the retirement plans that are part of the consolidated pension fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-6. Annual audits; reports and information to constitutional and legislative officers, council of finance and administration, consolidated public retirement board, workers' compensation fund and coal-workers' pneumoconiosis fund; statements and reports open for inspection.

(a) The board shall cause an annual financial and compliance audit of the consolidated pension fund to be made by a certified public accounting firm having a minimum staff of ten certified public accountants and being a member of the American institute of certified public accountants, and, if doing business in West Virginia, being a member of the West Virginia society of certified public accountants. The financial and compliance audit shall be made of the board's books, accounts and records, with respect to its receipts, disbursements, investments, contracts and all other matters relating to its financial operations. Copies of the audit report shall be furnished to the governor, state treasurer, state auditor, president of the Senate, speaker of the House of Delegates, council of finance and administration and consolidated public retirement board.

(b) The board shall produce monthly financial statements for the consolidated pension fund and the consolidated fund and cause them to be delivered to each member of the board and the executive secretary of the consolidated public retirement board as established in sections one and two, article ten-d, chapter five of this code and to the commissioner of the bureau of employment programs as administrator of the workers' compensation fund and coal-workers' pneumoconiosis fund, as established in
section one, article one, chapter twenty-three of this code, and
section one, article three of said chapter and section seven,
article four-b of said chapter.

(c) The board shall deliver in each quarter to the council of
finance and administration and the consolidated public retire-
ment board a report detailing the investment performance of the
retirement plans.

(d) The board shall cause an annual audit of the reported
returns of the consolidated pension fund to be made by an
investment consulting or a certified public accounting firm
meeting the criteria set out in subsection (a) of this section. The
board shall furnish copies of the audit report to the governor,
state treasurer, state auditor, president of the Senate, speaker of
the House of Delegates, council of finance and administration
and consolidated public retirement board.

(e) The board shall provide any other information requested
in writing by the council of finance and administration.

(f) All statements and reports with respect to participant
plans required in this section shall be available for inspection
by the members and beneficiaries and designated representa-
tives of the participant plans.

CHAPTER 149

(H. B. 2841 — By Mr. Speaker, Mr. Kiss, and Delegates Martin,
Michael, Mezzatesta and Jenkins)

[Passed March 13, 1999; in effect July 1, 1999. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5Q. THE JAMES "TIGER" MORTON CATASTROPIC ILLNESS FUND.

§16-5Q-1. Creation of the James “Tiger” Morton catastrophic illness fund.

There is hereby created in the state treasury a fund, designated the “James ‘Tiger’ Morton Catastrophic Illness Fund”. Moneys in this fund shall be distributed in accordance with the provisions of this article. The purpose of this fund is to provide a source of economic assistance to the citizens of this state facing catastrophic illness. In addition to any funds appropriated by the Legislature, the Tiger Morton Fund may receive donations of cash or property from other sources, including gifts, grants, or donations from any source whatsoever: Provided, That expenditures may be made from this fund only upon appropriation by the Legislature.

§16-5Q-2. Catastrophic illness commission; composition; meetings.

There is hereby created the catastrophic illness commission. The catastrophic illness commission shall be composed of the ombudsman from the department of health and human resources, a medical doctor licensed to practice medicine in this state, an attorney licensed to practice law in this state, two members from the public at large who are active in community affairs, a nurse licensed to practice in this state, and a social worker licensed in this state. The governor shall appoint the members to the catastrophic illness commission no later than
the thirty-first day of August, one thousand nine hundred ninety-nine, and the commission shall hold its first meeting no later than the last day of September, one thousand nine hundred ninety-nine. The term of office for each member of the catastrophic illness commission is five years, except for the first appointments to the catastrophic illness commission shall be as follows: The medical doctor and attorney shall be appointed for an initial term of three years; the initial term of the nurse appointee and the licensed social worker appointee shall be four years; the initial term of the remaining members of the commission shall be five years. No more than five of the members may be from the same political party. Members of the catastrophic illness commission may receive expenses only up to one hundred twenty-five dollars per day, not to exceed fifteen thousand dollars in the aggregate per year, and shall meet at least quarterly. Special meetings may be called. The purpose of the catastrophic illness commission is to make an annual recommendation to the Legislature regarding appropriations from the catastrophic illness fund. This recommendation shall be made in writing to the Legislature no later than the second Wednesday of January, two thousand, and the second Wednesday of each year thereafter.

CHAPTER 150

(Com. Sub. for H. B. 2985 — By Delegates Fleischauer, Staton, Doyle and Linch)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty, relating to limiting the use of electronic surveillance devices by employers; and providing criminal penalties.

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

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-20. Use of video and other electronic surveillance devices by employers prohibited.

(a) It is unlawful for any employer or the agent or representative of an employer, whether public or private, to operate any electronic surveillance device or system, including, but not limited to, the use of a closed circuit television system, a video-recording device, or any combination of those or other electronic devices for the purpose of recording or monitoring the activities of the employees in areas designed for the health or personal comfort of the employees or for safeguarding of their possessions, such as rest rooms, shower rooms, locker rooms, dressing rooms and employee lounges.

(b) Any employer or agent thereof who violates any provision of this section is guilty of a misdemeanor and, if convicted, shall be fined five hundred dollars for the first offense. An employer or agent thereof convicted a second time under this provision shall be fined one thousand dollars. For the third and any subsequent offense, the penalty shall be two thousand dollars.

CHAPTER 151

(Com. Sub. for S. B. 166 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed March 9, 1999; in effect July 1, 1999. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. AMUSEMENT RIDES AND AMUSEMENT ATTRACTIONS SAFETY ACT.

§21-10-2. Definitions.

As used in this article:

(a) "Amusement ride" means a mechanical device which carries or conveys passengers along, around or over a fixed or
restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills or excitement. The term includes carnival rides and fair rides of a temporary or portable nature which are assembled and reassembled or rides which are relocated from place to place. "Amusement ride" may not be construed to mean any mechanical device which is coin operated and does not include the operation of a ski lift, the operation of tramways at state parks, the operation of vehicles of husbandry incidental to any agricultural operations or the operation of amusement devices of a permanent nature which are subject to building regulations issued by cities or counties and existing applicable safety orders;

(b) "Amusement attraction" means any building or structure around, over or through which people may move or walk without the aid of any moving device integral to the building or structure that provides amusement, pleasure, thrills or excitement, including those of a temporary or portable nature which are assembled and reassembled or which are relocated from place to place. The term does not include any enterprise principally devoted to the exhibition of products of agriculture, industry, education, science, religion or the arts and shall not be construed to include any concession stand or booth for the selling of food or drink or souvenirs;

(c) "Mobile amusement ride or mobile amusement attraction" means an amusement ride or amusement attraction which is erected in a single physical location for a period of less than twelve consecutive months;

(d) "Stationary amusement ride or stationary amusement attraction" means an amusement ride or amusement attraction which is erected in a single physical location for a period of more than twelve consecutive months.

§21-10-3. Rules.

The division of labor shall propose legislative rules for promulgation for the safe installation, repair, maintenance, use, operation and inspection of all amusement rides and amusement attractions as the division finds necessary for the protection of
the general public using amusement rides and amusement attractions. The rules shall be in addition to the existing applicable safety orders and shall be concerned with engineering force stresses, safety devices and preventative maintenance. All such rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§21-10-4. Inspection and permit fees.

(a) The division shall charge inspection and permit fees. The annual permit fee is twenty-five dollars for each ride or attraction. The annual inspection fee is one hundred dollars for each ride or attraction. The annual inspection fee is due at the time of application for the annual permit. The division shall waive the inspection fee for any ride or attraction whose owner provides proof of nonprofit business status.

(b) The division may charge additional inspection fees equal to the annual inspection fee for additional inspections required as the result of the condemnation of a device for safety standards violations and for inspections required as a result of accidents involving serious or fatal injury. If any owner or operator requires an inspection as the result of a violation of the permitting requirements of section six of this article, the division shall charge the owner or operator seventy-five dollars per hour in addition to the established inspection fee, including travel time.

(c) All fees received shall be deposited in a special revenue account in the state treasury known as the “Amusement Rides and Amusement Attractions Safety Fund”. The division may use moneys from the fund for the purpose of enforcement of the provisions of this article. Expenditures are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code.

(d) No inspection fee may be charged public agencies.

(e) The division shall issue, and the owner, operator or both
of the amusement rides and amusement attractions shall visibly
display to the public, inspection stickers denoting and signifying
that the inspection and permit fee authorized by this section
has been paid.

§21-10-5. Inspectors.

The division may hire or contract with inspectors to inspect
amusement rides and amusement attractions.

§21-10-6. Permits; application; annual inspection.

No operator or owner may knowingly permit the operation
of an amusement ride or amusement attraction without a permit
issued by the division. Each year and at least fifteen days
before the first time the amusement ride or amusement attraction
is made available in this state for public use, an operator or
owner shall apply for a permit to the division on a form
furnished by the division and containing any information the
division may require. The division shall, upon application and
within ten days of the first time the ride or attraction is made
available in this state for public use, inspect all amusement
rides and amusement attractions. The division shall inspect all
stationary rides and attractions at least once every year. The
division may inspect all mobile amusement rides and amuse-
ment attractions each time they are disassembled and reassem-
bled for use in this state. The division may conduct inspections
at any reasonable time without prior notice.

§21-10-7. Issuance of permit; certificate of inspection; availability
to public.

If, after inspection, an amusement ride or amusement
attraction is found to comply with the rules of the division, the
division shall issue a permit to operate. The permit shall be in
the form of a certificate of inspection and shall be kept in the
records of any operator or owner for a three-year period and
shall be readily accessible to the public for inspection at any
reasonable time at the carnival, fair or event where the amuse-
ment ride or attraction is located. A copy of the certificate,
showing the last date of inspection, shall be affixed to the
amusement ride or amusement attraction upon issuance.
§21-10-8. Notice of intention to erect new ride or attraction or add to or alter existing ride or attraction.

1 Before a new amusement ride or amusement attraction is erected, or whenever any additions or alterations are made which change the structure, mechanism, classification or capacity of any amusement ride or amusement attraction, the operator shall file with the division a notice of his or her intention and any plans or diagrams requested by the division for purposes of determining the applicability of section six of this article.

§21-10-9. Notice of serious physical injury or fatality; investigations; records available to public.

1 An owner or operator of an amusement ride or amusement attraction shall notify the division not later than twenty-four hours after any fatality or accident occurring as a result of the operation of the amusement ride or amusement attraction that results in a serious physical injury to any person requiring medical treatment or results in a loss of consciousness to any person. The notice may be oral or written. The division shall investigate each fatality or accident and any safety-related complaint involving an amusement ride or amusement attraction in this state about which the division receives notice. Every owner or operator of an amusement ride or amusement attraction shall keep a record of each accident or fatality and the record shall be kept with the certificate of inspection required by this article and shall be readily accessible to the public for inspection at any reasonable time at the carnival, fair or event where the amusement ride or amusement attraction is located.

§21-10-11. Temporary cessation of operation of ride or attraction determined to be unsafe.

1 The division may order, in writing, a temporary cessation of operation of an amusement ride or amusement attraction if it has been determined after inspection to be hazardous or unsafe. Operation of the amusement ride or amusement attraction shall not resume until the conditions are corrected to the satisfaction of the division.
§21-10-12. Insurance; bond.

No person may operate an amusement ride or amusement attraction unless at the time there is in existence: (a) A policy of insurance approved by the division and obtained from an insurer authorized to do business in this state in an amount of not less than three hundred thousand dollars per person and one million dollars in the aggregate for each amusement ride or attraction location insuring the owner or operator against liability for injury suffered by persons riding the amusement ride or by persons in, on, under or near the amusement attraction; or (b) a bond in a like amount, as approved by the division: Provided, That the aggregate liability of the surety under any bond shall not exceed the face amount of the bond; or (c) cash or other security acceptable to the division. Satisfactory evidence of the insurance, bond or other security shall accompany the permit application.


Any operator or owner who knowingly permits the operation of an amusement ride or amusement attraction in violation of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than one thousand dollars, imprisoned in the county jail not more than twelve months, or both fined and imprisoned. Each day that a violation continues shall be considered a separate violation.

CHAPTER 152

(H. B. 2774 — By Delegates Martin, Sparks, Butcher, Willis, Prunty, H. White and Willison)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to clarifying that certain
licensed pest control operators are not contractors subject to
contractor licensure.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.


(a) "Commissioner" means the commissioner of the
division of labor.
(b) "Board" means the West Virginia contractor licensing
board.
(c) "Contractor" means a person who in any capacity for
compensation, other than as an employee of another, under-
takes, offers to undertake, purports to have the capacity to
undertake, or submits a bid to construct, alter, repair, add to,
subtract from, improve, move, wreck or demolish any building,
highway, road, railroad, structure or excavation associated with
a project, development or improvement, or to do any part
thereof, including the erection of scaffolding or other structures
or works in connection therewith, where the cost of the under-
taking is one thousand dollars or more.

Contractor includes a construction manager who performs
management and counseling services for a construction project
for a professional fee.
Contractor does not include:

(1) One who merely furnishes materials or supplies without
fabricating or consuming them in the construction project;
(2) A person who personally performs construction work on
the site of real property which the person owns or leases
whether for commercial or residential purposes;
(3) A person who is licensed or registered as a professional
and who functions under the control of any other licensing or
regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work;

(4) A pest control operator licensed under the provisions of section seven, article sixteen-a, chapter nineteen of this code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or

(5) A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in subsection (c) of this section and who employs full time a registered architect licensed to practice in this state or a registered professional engineer licensed to practice in this state. Employees of such corporation, partnership or sole proprietorship shall also be exempt from the requirements of this article.

(d) "Electrical contractor" means a person who engages in the business of contracting to install, erect, repair or alter electrical equipment for the generation, transmission or utilization of electrical energy.

(e) "General building contractor" means a person whose principal business is in connection with any structures built, being built or to be built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in the construction the use of more than two contractor classifications, or a person who supervises the whole or any part of such construction.

(f) "General engineering contractor" means a person whose principal business is in connection with public or private works projects, including, but not limited to, one or more of the following: Irrigation, drainage and water supply projects; electrical generation projects; swimming pools; flood control; harbors; railroads; highways; tunnels; airports and airways; sewers and sewage disposal systems; bridges; inland water-
ways; pipelines for transmission of petroleum and other liquid
or gaseous substances; refineries; chemical plants and other
industrial plants requiring a specialized engineering knowledge
and skill; piers and foundations; and structures or work inciden-
tal thereto.

(g) "Heating, ventilating and cooling contractor" means a
person who engages in the business of contracting to install,
erect, repair, service or alter heating, ventilating and air
conditioning equipment or systems to heat, cool or ventilate
residential and commercial structures.

(h) "License" means a license to engage in business in this
state as a contractor in one of the classifications set out in this
article.

(i) "Multifamily contractor" means a person who is
engaged in construction, repair or improvement of a multifam-
ily residential structure.

(j) "Person" includes an individual, firm, sole proprietor-
ship, partnership, corporation, association or other entity
engaged in the undertaking of construction projects or any
combination thereof.

(k) "Piping contractor" means a person whose principal
business is the installation of process, power plant, air, oil,
gasoline, chemical or other kinds of piping; and boilers and
pressure vessels using joining methods of thread, weld, solvent
weld or mechanical methods.

(l) "Plumbing contractor" means a person whose principal
business is the installation, maintenance, extension and alter-
ation of piping, plumbing fixtures, plumbing appliances and
plumbing appurtenances, venting systems and public or private
water supply systems within or adjacent to any building or
structure; included in this definition is installation of gas piping,
chilled water piping in connection with refrigeration processes
and comfort cooling, hot water piping in connection with
building heating, and piping for stand pipes.

(m) "Residential contractor" means a person whose
principal business is in connection with construction, repair or
improvement of real property used as, or intended to be used for, residential occupancy.

(n) "Specialty contractor" means a person who engages in specialty contracting services which do not substantially fall within the scope of any contractor classification as set out herein.

(o) "Residential occupancy" means occupancy of a structure for residential purposes for periods greater than thirty consecutive calendar days.

(p) "Residential structure" means a building or structure used or intended to be used for residential occupancy, together with related facilities appurtenant to the premises as an adjunct of residential occupancy, which contains not more than three distinct floors which are above grade in any structural unit regardless of whether the building or structure is designed and constructed for one or more living units. Dormitories, hotels, motels or other transient lodging units are not residential structures.

(q) "Subcontractor" means a person who performs a portion of a project undertaken by a principal or general contractor or another subcontractor.

(r) "Division" means the division of labor.

(s) "Cease and desist order" means an order issued by the commissioner pursuant to the provisions of this article.

CHAPTER 153

(S. B. 406 — By Senators Love, Ball, Hunter, Fanning, Schoonover, Mitchell, Deem and Sharpe)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty,
relating to authorizing the contractor licensing board to provide public education services through vocational schools to assist applicants in obtaining a contractor's license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-20. Board authorized to provide training.

(a) The West Virginia contractor licensing board may enter into work-sharing agreements with state vocational and technical training schools to provide classroom training to students who desire to obtain a West Virginia contractor license. The purpose of the training is limited to instruction applicable to the contractor license examinations required by the board. The terms of the work-sharing agreements shall be determined by the West Virginia contractor licensing board and county boards of education.

(b) For the purposes of this section, the board is authorized to expend funds from its special revenue account, known as the contractor licensing fund, to support this activity. Funding is to be limited to the availability of funds and may not exceed fifty thousand dollars annually.

CHAPTER 154


[Passed March 21, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article six, chapter thirty-seven of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; and to amend and reenact section three, article three-a, chapter fifty-five of said code, all relating to tenants' personal property left on leased property; allowing for entry and repossession of leased property by landlord or housing authority; allowing the landlord or housing authority to dispose of abandoned personal property upon repossession; requiring notice to the tenant of the disposal of personal property; allowing holders of security interests and tenants to claim valuable abandoned personal property under certain circumstances; proceedings in court for wrongful occupation of residential rental property; allowing for the disposal of abandoned personal property after an order of possession; and requiring landlord to store personal property left on property for thirty days after order of possession under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That section six, article six, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article three-a, chapter fifty-five of said code be amended and reenacted, all to read as follows:

Chapter

37. Real Property.

55. Actions, Suits and Arbitration; Judicial Sale.

CHAPTER 37. REAL PROPERTY.

ARTICLE 6. LANDLORD AND TENANT.

§37-6-6. Desertion of leased property; entry; recovery of rent, disposition of abandoned personal property; notice.

(a) If any tenant from whom rent is in arrears and unpaid abandons the leased property, the landlord or his or her agent shall post a notice in writing in a conspicuous part of the property, requiring the tenant to pay the rent within one month. If the rent is not paid within that time, the landlord shall be entitled to possession of the property, and may enter thereon, and the right of the tenant to the leased property shall end. The landlord may recover the rent owed up to the time when he or she became entitled to possession.
(b) If any tenant of a housing development operated by a housing authority abandons the leased property when rent is not a condition of the lease agreement, the housing authority shall post a notice in writing in a conspicuous part of the property, requiring the tenant to respond in writing within one month stating that he or she has not abandoned the leased property. If the tenant does not respond in writing within one month, stating that he or she has not abandoned the leased property, the housing authority shall be entitled to possession of the property, and may enter thereon, and the right of the tenant to the leased property shall end.

(c) Upon regaining possession of the property, the landlord or his or her agent or housing authority may take, dispose of or otherwise remove the tenant's personal property without incurring any liability to the tenant or any other person. To dispose of the tenant's property under this section, the landlord or housing authority shall give a written notice to the tenant that shall be:

(1) Posted in a conspicuous place on the property; and

(2) Sent by first-class mail with a certificate of mailing, which provides a receipt of the date of mailing, in an envelope endorsed “Please Forward”, addressed and mailed to the tenant at:

(A) The leased property;

(B) Any post office box held by the tenant and known to the landlord or housing authority; and

(C) The most recent forwarding address if provided by the tenant or known to the landlord or housing authority.

(d) The written notice required under subsection (c) of this section shall state that:

(1) The leased property is considered abandoned;

(2) Any personal property left by the tenant must be removed from the property or from the place of safekeeping, if the landlord or housing authority has stored the property, by a date specified in the written notice that is:
(A) Not less than thirty days after the date the written notice was mailed; or

(B) Not less than sixty days after the date the written notice was mailed if the tenant has notified the landlord or housing authority that he or she is on active duty in the armed forces of the United States.

(3) If the personal property is not removed within the time provided for in this section, then the tenant forfeits his or her ownership rights to the personal property, and the personal property becomes the property of the landlord or housing authority.

(e) Notwithstanding the provisions of subsection (c) of this section, if the abandoned personal property is worth more than three hundred dollars and was not removed from the property or from the place of safekeeping within the time period stated in the notice required in subsection (d) of this section, the landlord shall store the personal property for up to thirty additional days if the tenant or any person holding a security interest in the abandoned personal property informs the landlord of their intent to remove the property: Provided, That the tenant or person holding a security interest in the abandoned personal property pays the landlord the reasonable costs of storage and removal.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 3A. REMEDIES FOR WRONGFUL OCCUPATION OF RESIDENTIAL RENTAL PROPERTY.

§55-3A-3. Proceedings in court; final order; disposition of abandoned personal property.

(a) If at the time of the hearing there has been no appearance, answer or other responsive pleading filed by the tenant, the court shall make and enter an order granting immediate possession of the property to the landlord.

(b) In the case of a petition alleging arrearage in rent, if the tenant files an answer raising the defense of breach by the landlord of a material covenant upon which the duty to pay rent depends, the court shall proceed to a hearing on such issues.
(c) In the case of a petition alleging a breach by the tenant or damage to the property, if the tenant files an answer raising defenses to the claim or claims set forth in the petition, the court shall proceed to a hearing on such issues.

(d) Continuances of the hearing provided for in this section shall be for cause only and the judge or magistrate shall not grant a continuance to either party as a matter of right. If a continuance is granted upon request by a tenant, the tenant shall be required to pay into court any periodic rent becoming due during the period of such continuance.

(e) At the conclusion of a hearing held under the provisions of subsection (b) or (c) of this section, if the court finds that the tenant is in wrongful occupation of the rental property, the court shall make and enter an order granting immediate possession of the property to the landlord. In the case of a proceeding under subsection (a) of this section, the court may also make a written finding and include in its order such relief on the issue of arrearage in the payment of rent as the evidence may require. The court may disburse any moneys paid into court by the tenant in accordance with the provisions of this section.

(f) The court order shall specify the time when the tenant shall vacate the property, taking into consideration such factors as the nature of the property (i.e., furnished or unfurnished), the possibility of relative harm to the parties, and other material facts deemed relevant by the court in considering when the tenant might reasonably be expected to vacate the property. The order shall further provide that if the tenant continues to wrongfully occupy the property beyond such time, the sheriff shall forthwith remove the tenant, taking precautions to guard against damage to the property of the landlord and the tenant.

(g) In the event an appeal is taken and the tenant prevails upon appeal, the relief ordered by the appellate court shall be for monetary damages only and shall not restore the tenant to possession if the term of the lease has expired, absent an issue of title, retaliatory eviction, or breach of warranty. During the pendency of any such appeal, the tenant is not entitled to remain in possession of the property if the period of the tenancy has otherwise expired.
(h) When an order is issued pursuant to this section granting possession of the property to the landlord, and the tenant fails to remove all personal property by the date and time specified by the order issued pursuant to subsection (f) of this section, the landlord may:

(1) Dispose of the tenant’s personal property without incurring any liability or responsibility to the tenant or any other person if the tenant informs the landlord in writing that the personal property is abandoned or if the property is garbage;

(2) Remove and store the personal property after the date and time by which the court ordered the tenant to vacate the property. The landlord may dispose of the stored personal property after thirty days without incurring any liability or responsibility to the tenant or any other person if: (i) The tenant has not paid the reasonable costs of storage and removal to the landlord and has not taken possession of the stored personal property; or (ii) the costs of storage equal the value of the personal property being stored; or

(3) Leave the personal property on the property. The landlord may dispose of personal property left on the property after thirty days without incurring any liability or responsibility to the tenant or any other person if the tenant has not paid the landlord the reasonable costs of leaving the personal property on the landlord’s property and has not taken possession of the personal property.

(i) Notwithstanding the provisions of subsection (h) of this section, if the personal property is worth more than three hundred dollars and was not removed from the property or place of storage within thirty days with the required fees paid as provided in subsection (h) of this section, the landlord shall store the personal property for up to thirty additional days if the tenant or any person holding a security interest in the abandoned personal property informs the landlord of their intent to remove the property: Provided, That the tenant or person holding a security interest in the personal property pays the landlord the reasonable costs of storage and removal.
AN ACT to amend article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three, relating to awarding a deputy his or her service pistol upon retirement subject to certain conditions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-23. Awarding service pistol upon retirement.

(a) Upon the retirement of a deputy from the sheriff’s department, the county commission shall authorize the sheriff to award to the retiring deputy his or her service pistol upon determining:

(1) That the retiring deputy is retiring honorably with at least twenty years of service; or

(2) The retiring deputy is retiring with less than twenty years of service based upon a determination that the deputy is totally physically disabled.

(b) Notwithstanding the provisions of subsection (a) of this section, a sheriff shall not award his or her service pistol to any retiring deputy medically determined to be mentally incapacitated or to constitute a danger to self or others.
AN ACT to amend and reenact section four, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the appointments of commissioned, noncommissioned officers, other members; temporary and permanent positions of the state police.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

(a) The superintendent shall appoint, from the enlisted membership of the state police, a deputy superintendent who shall hold the rank of lieutenant colonel and be next in authority to the superintendent. The superintendent shall appoint, from the enlisted membership of the state police, the number of other officers and members he or she considers necessary to operate and maintain the executive offices, training school, and forensic laboratory; and to keep records relating to crimes and criminals, coordinate traffic safety activities, maintain a system of supplies and accounting and perform other necessary services.

(b) The ranks within the membership of the state police shall be colonel, lieutenant colonel, major, captain, first lieutenant, second lieutenant, first sergeant, sergeant, corporal,
trooper first class, senior trooper, trooper or cadet trooper. Each
member while in uniform shall wear the insignia of rank as
provided by law and written state police policies. Members
assigned to the forensic laboratory shall hold the title of trooper,
be classified as criminalists and wear the insignia of classifica-
tion as provided by written state police policies.

The superintendent may appoint from the membership of
the state police seventeen principal supervisors who shall
receive the compensation and hold the temporary rank of
lieutenant colonel, major or captain at the will and pleasure of
the superintendent. Appointments are exempt from any eligibil-
ity requirements established by the career progression system.
Any person appointed to a temporary rank under the provi-
sions of this article remains eligible for promotion or reclassifica-
tion under the provisions of the career progression system if his or
her permanent rank is below that of first lieutenant. Upon the
termination of a temporary appointment by the superintendent,
the member may not be reduced to a rank or classification
below his or her permanent rank or classification, unless the
reduction results from disciplinary action, and remains eligible
for subsequent appointment to a temporary rank.

CHAPTER 157

(S. B. 704 — By Senators Hunter, Oliverio, Wooton, Ball, Dittmar, McCabe,
Minard, Mitchell, Redd, Ross, Snyder, Deem and McKenzie)

[Passed March 10, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter
fifteen of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to requiring the state police and
other state law-enforcement agencies to immediately investigate
and search for missing persons who have a significant mental
impairment.

Be it enacted by the Legislature of West Virginia:
That section twelve, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-12. Mission of the state police; powers of superintendent, officers and members; patrol of turnpike.

(a) The West Virginia state police shall have the mission of statewide enforcement of criminal and traffic laws with emphasis on providing basic enforcement and citizen protection from criminal depredation throughout the state and maintaining the safety of the state’s public streets, roads and highways.

(b) The superintendent and each of the officers and members of the division are hereby empowered:

(1) To make arrests anywhere within the state of any persons charged with the violation of any law of this state, or of the United States, and when a witness to the perpetration of any offense or crime, or to the violation of any law of this state, or of the United States, to make arrests without warrant; to arrest and detain any persons suspected of the commission of any felony or misdemeanor whenever a complaint is made and a warrant is issued thereon for the arrest, and the person arrested shall be immediately brought before the proper tribunal for examination and trial in the county where the offense for which the arrest has been made was committed;

(2) To serve criminal process issued by any court or magistrate anywhere within this state: Provided, That they may not serve civil process; and

(3) To cooperate with local authorities in detecting crime and in apprehending any person or persons engaged in or suspected of the commission of any crime, misdemeanor or offense against the law of this state, or of the United States, or of any ordinance of any municipality in this state; and to take affidavits in connection with any application to the division of highways, division of motor vehicles and of West Virginia state police for any license, permit or certificate that may be lawfully issued by these divisions of state government.
(c) Members of the West Virginia state police are hereby designated as forest patrolmen and game and fish wardens throughout the state to do and perform any duties and exercise any powers of forest patrolmen and game and fish wardens, and may apprehend and bring before any court or magistrate having jurisdiction of these matters, anyone violating any of the provisions of chapters twenty, sixty and sixty-one of this code. The West Virginia state police is at any time subject to the call of the West Virginia alcohol beverage control commissioner to aid in apprehending any person violating any of the provisions of chapter sixty of this code. They shall serve and execute warrants for the arrest of any person and warrants for the search of any premises issued by any properly constituted authority, and shall exercise all of the powers conferred by law upon a sheriff. They may not serve any civil process or exercise any of the powers of such officer in civil matters.

(d) Any member of the West Virginia state police knowing or having reason to believe that any person has violated the law may make complaint in writing before any court or officer having jurisdiction and procure a warrant for the offender, execute the warrant and bring the person before the proper tribunal having jurisdiction. The member shall make return on all warrants to the tribunals and his or her official title shall be "member of the West Virginia state police". Members of the West Virginia state police may execute any summons or process issued by any tribunal having jurisdiction requiring the attendance of any person as a witness before the tribunal and make return thereon as provided by law. Any return by a member of the West Virginia state police showing the manner of executing the warrant or process has the same force and effect as if made by a sheriff.

(e) Each member of the West Virginia state police, when called by the sheriff of any county, or when directed by the governor by proclamation, has full power and authority within the county, or within the territory defined by the governor, to direct and command absolutely the assistance of any sheriff, deputy sheriff, chief of police, policeman, game and fish warden and peace officer of the state, or of any county or
municipality therein, or of any able-bodied citizen of the United States, to assist and aid in accomplishing the purposes expressed in this article. When called, any officer or person is, during the time his or her assistance is required, for all purposes a member of the West Virginia state police and subject to all the provisions of this article.

(f) The superintendent may also assign members of the division to perform police duties on any turnpike or toll road, or any section of any turnpike or toll road, operated by the West Virginia parkways, economic development and tourism authority: Provided, That the authority shall reimburse the West Virginia state police for salaries paid to the members and shall either pay directly or reimburse the division for all other expenses of the group of members in accordance with actual or estimated costs determined by the superintendent.

(g) The West Virginia state police may develop proposals for a comprehensive county or multicounty plan on the implementation of an enhanced emergency service telephone system and may cause a public meeting on the proposals, all as set forth in section six-a, article six, chapter twenty-four of this code.

(h) The superintendent may also assign members of the division to administer tests for the issuance of commercial drivers' licenses, operator and junior operator licenses as provided for in section seven, article two, chapter seventeen-b of this code: Provided, That the division of motor vehicles shall reimburse the West Virginia state police for salaries and employee benefits paid to the members, and shall either pay directly or reimburse the division for all other expenses of the group of members in accordance with actual costs determined by the superintendent.

(i) The superintendent shall be reimbursed by the division of motor vehicles for salaries and employee benefits paid to members of the West Virginia state police and shall either be paid directly or reimbursed by the division of motor vehicles for all other expenses of the group of members in accordance with actual costs determined by the superintendent, for services
performed by the members relating to the duties and obligations of the division of motor vehicles set forth in chapters seventeen, seventeen-a, seventeen-b, seventeen-c and seventeen-d of this code.

(j) By the first day of July, one thousand nine hundred ninety-three, the superintendent shall establish a network to implement reports of the disappearance of children by local law-enforcement agencies to local school division superintendents and the state registrar of vital statistics. The network shall be designed to establish cooperative arrangements between local law-enforcement agencies and local school divisions concerning reports of missing children and notices to law-enforcement agencies of requests for copies of the cumulative records and birth certificates of missing children. The network shall also establish a mechanism for reporting the identities of all missing children to the state registrar of vital statistics.

(k) The superintendent may at his or her discretion and upon the written request of the West Virginia alcohol beverage control commissioner assist the commissioner in the coordination and enforcement of article sixteen, chapter eleven of this code and chapter sixty of this code.

(l) Notwithstanding the provisions of article one-a, chapter twenty of this code, the superintendent of the West Virginia state police may sell any surplus real property to which the West Virginia state police or its predecessors retain title, and deposit the net proceeds into a special revenue account to be utilized for the purchase of additional real property and for repairs to or construction of detachment offices or other facilities required by the West Virginia state police. There is hereby created a special revolving fund in the state treasury which shall be designated as the "surplus real property proceeds fund". The fund shall consist of all money received from the sale of surplus real property owned by the West Virginia state police. Moneys deposited in the fund shall only be available for expenditure upon appropriation by the Legislature: Provided, That amounts collected which are found from time to time to
exceed the funds needed for the purposes set forth in this
subsection may be transferred to other accounts or funds and
redesignated for other purposes by appropriation of the Legisla-
ture.

(m) Notwithstanding any other provision of this code, the
agency for surplus property is hereby empowered to transfer
funds generated from the sale of vehicles, other equipment and
commodities belonging to the West Virginia state police to a
special revenue account within the West Virginia state police
entitled the West Virginia state police surplus transfer account.
Moneys deposited in the fund shall only be available for
expenditure upon appropriation by the Legislature: Provided,
That amounts collected which are found from time to time to
exceed the funds needed for the purposes set forth in this
subsection may be transferred to other accounts or funds and
redesignated for other purposes by appropriation of the Legisla-
ture. Any funds transferred to this account may be utilized by
the superintendent to defray the cost of normal operating needs
of the division.

(n) If the state police or any other law-enforcement agency
in this state receives a report that a person who has Alzheimer’s
disease and related dementia is missing, the state police or any
other law-enforcement agency shall immediately open an
investigation for the purpose of determining the whereabouts of
that missing person. Any policy of the state police or any other
law-enforcement agency relating to a waiting period prior to
initiation of an investigation of a missing person shall not apply
in the case of a person who has Alzheimer’s disease or other
related dementia of the type referred to in this subsection.

CHAPTER 158

(Com. Sub. for H. B. 2392 — By Mr. Speaker, Mr. Kiss, and Delegates Martin,
Stemple, Michael, Hunt, Mezzatesta and Varner)

[Passed March 13, 1999; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven, relating to payment of funeral expenses of certain law-enforcement, safety and emergency workers killed while performing their duties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. PAYMENT OF FUNERAL EXPENSES.

§15-11-1. Law-enforcement, safety and emergency worker funeral expense fund created.

§15-11-2. Payment of funeral expenses of law-enforcement, safety and emergency workers killed in the line of duty.

§15-11-1. Law-enforcement, safety and emergency worker funeral expense fund created.

There is created within the state treasury a special fund known as the "law-enforcement, safety and emergency worker funeral expense payment fund", into which shall be deposited such moneys as from time to time may be appropriated by the Legislature or received from other sources as may be donated or otherwise provided for the fund. The fund shall be administered by the secretary of military affairs and public safety for the sole purpose of effecting the provisions of this article.

§15-11-2. Payment of funeral expenses of law-enforcement, safety and emergency workers killed in the line of duty.

(a) The secretary of military affairs and public safety shall, upon written request, direct payment from the fund in the form of a draft as provided in this article up to and including an amount not exceeding eight thousand dollars for the reasonable funeral expenses, including burial expenses, of a law-enforcement, safety or emergency worker killed on or after the first day of January, one thousand nine hundred ninety-nine, while carrying out official duties: Provided, That no such funds shall
be expended for any funeral expense that is otherwise payable pursuant to the provisions of article four, chapter twenty-three of this code, as amended, or other benefit programs established by a provision of this code which does not involve employee participation: Provided, however, That where other funds for funeral expenses are provided pursuant to the laws of this state, from whatever source, which amount to less than eight thousand dollars, funds provided by the provisions of this section shall be expended so as to assure that at least eight thousand dollars is available for reasonable funeral expenses. The secretary shall direct payment of such funeral expenses upon written request of an employer or head of a volunteer organization, as is appropriate pursuant to this article, certifying that the individual for whom funeral expenses are requested was killed while performing official duties.

(b) The secretary shall supply the draft in the name of the person contracting for the funeral services and, if known, the service provider to the employer or agency head making the request who shall tender the draft to the person who contracted for the services.

(c) For the purposes of this section, "law-enforcement, safety or emergency worker" means:

(1) Any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and including those persons employed as security officers at municipal, county, regional or state offices, authorities or institutions, although their employers may not be public law-enforcement agencies, employed by the Hatfield-McCoy regional recreation authority and members of the West Virginia national guard while engaged in active duty service: Provided, That this section does not apply to those persons employed by private security firms or agencies.

(2) Any state, regional, county or municipal correctional officer.
(3) Any firefighter employed by the state or any political subdivision of the state and any volunteer firefighter performing as a member of a volunteer fire department.

(4) Any "emergency medical services personnel", as defined in section three, article four-c, chapter sixteen of this code, employed by or volunteering for any state agency or institution or political subdivision of the state.

CHAPTER 159

(H. B. 2759 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)

[Passed March 12, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article four, chapter twelve of said code; to amend and reenact section three, article five of said chapter; to amend and reenact section nineteen, article twenty-two, chapter twenty-nine of said code; and to amend and reenact section twenty-one, article two, chapter sixty of said code, all relating to the legislative auditor; and specifying the frequency with which the legislative auditor is to conduct certain audits.

Be it enacted by the Legislature of West Virginia:

That section six, article twenty-six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section twelve, article four, chapter twelve of said code be amended and reenacted; that section three, article five of said chapter be amended and reenacted; that section nineteen, article twenty-two, chapter twenty-nine of said code be amended and reenacted; and that section twenty-one, article two, chapter sixty of said code be amended and reenacted, all to read as follows:
CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

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

§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 child abuse and neglect prevention activities. Gifts, bequests or donations for this purpose, 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.

(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. 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. The legislative...
auditor shall conduct an audit of the fund before the first day of
July, two thousand three and at least every three fiscal years
thereafter.

(d) Grants, loans and loan guaranties may be awarded from
the children’s fund by the cabinet for child abuse and neglect
prevention activities.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article
5. Public Securities.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-12. Treasurer authorized to provide check-cashing service;
establishment and audit of cash funds.

1 The treasurer may provide a check-cashing service at his or
2 her office in the capitol building and may charge fees for the
3 service for each check cashed and for each check returned for
4 insufficient funds. For this purpose, he or she may establish
5 from receipts in the treasury not more than two cash funds each
6 in an initial amount not to exceed one hundred thousand dollars.
7 The treasurer shall designate certain employees in his or her
8 office who are to provide the service and have charge of the
9 funds, and may require the employees to be bonded either
10 individually or by blanket bonds. The cost of the bond or bonds
11 shall be paid out of the treasurer’s current expense appropria-
12 tion.

13 The fees received for the service shall be deposited in the
14 cash funds and itemized accounts of the receipts shall be
15 maintained. Any check determined by the treasurer to be
16 uncollectible shall be charged against the fund from which it
17 was cashed. Before the first day of July, two thousand one, and
18 at least every three fiscal years thereafter, the legislative auditor
19 shall audit the cash funds and all accounts and records relating
20 to the service provided pursuant to this section. If the amount
21 of either cash fund, after charges for uncollectible checks,
22 exceeds one hundred thousand dollars at the conclusion of any
23 audit, the treasurer shall transfer the excess to the general
24 revenue fund.

ARTICLE 5. PUBLIC SECURITIES.

§12-5-3. Legislative auditor to examine and list securities.

1 Before the first day of July, two thousand one, and at least
2 every two fiscal years thereafter, the legislative auditor shall
3 examine and list all of the securities in the custody of the state
4 treasurer. A copy of the list so examined and certified shall be
5 transmitted to the state treasurer and the department of adminis-
6 tration.

CHAPTER 29. MISCELLANEOUS BOARDS
AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.


1 Before the first day of July, two thousand one, and at least
2 every two fiscal years thereafter, the legislative auditor shall
3 conduct a post audit of all accounts and transactions of the state
4 lottery office. The cost of the audit shall be paid out of the state
5 lottery fund moneys designated for payment of operating
6 expenses. The commission shall have an annual audit per-
7 formed by an independent certified public accountant, and the
8 audits may be accepted by the legislative auditor in lieu of
9 performance of its post audit.

CHAPTER 60. STATE CONTROL OF
ALCOHOLIC LIQUORS.

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.


1 Before the first day of July, two thousand one, and at least
2 every two fiscal years thereafter, the legislative auditor shall
3 audit the affairs of the West Virginia alcohol beverage control
4 commissioner and report the results of the audit to the governor.
5 The cost of the audit shall be paid from the operating fund.
AN ACT to amend and reenact section thirteen-b, article nine-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating a special revenue fund, designated the legislative reserve fund; and requiring moneys from decreases in net and adjusted enrollment be deposited into the fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-13b. Allowance for legislative reserve fund, current expense and substitute costs.

1 Commencing with the school year beginning on the first day of July, two thousand, funds which accrue from allocations due to decreases in net and adjusted enrollment from the preceding school year shall be deposited in a special revenue fund which is hereby created in the state treasury, designated the “legislative reserve fund”. The fund shall be an interest bearing account and shall be appropriated by the Legislature.
CHAPTER 161

(H. B. 2637 — By Delegates Staton, Amores, Hunt, Linch, Stemple, Schadler and Faircloth)

[Passed March 9, 1999; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen, relating to establishing a severability clause for legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. RULE MAKING.


1 Unless there is a provision in a legislative rule specifying that the provisions thereof shall not be severable, the provisions of every legislative rule, whether enacted before or subsequent to the effective date of this section, shall be severable so that if any provision of any rule section or amendment thereto is held to be unconstitutional or void, the remaining provisions of the rule shall remain valid, unless the court finds the valid provisions are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that the court cannot presume the Legislature would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent: Provided,

That if any legislative rule has its own severability clause, then that severability clause shall govern and control with respect to
that section, in lieu of the provisions of this section. The provisions of this section shall be fully applicable to all future amendments to legislative rules, with like effect as if the provisions of this section were set forth in extenso and every such amendment were reenacted as a part thereof, unless such amendment to the legislative rule contains its own severability clause.

CHAPTER 162

(Com. Sub. for S. B. 272 — By Senators Ross, Anderson, Bowman and Boley)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two of said chapter, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; continuing rules previously promulgated by state agencies; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain agencies to promulgate legislative rules as amended by the Legislature; authorizing certain legislative rules as filed with the secretary of state; with authorizing department of administration and the auditor to promulgate legislative rules relating to purchasing card program; and authorizing the department of administration to promulgate legislative rules relating to purchasing.

Be it enacted by the Legislature of West Virginia:

That section one, article one, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article two of said chapter be amended and reenacted, all to read as follows:
ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

Article
2. Authorization for Department of Administration to Promulgate Legislative Rules.

§64-1-1. Legislative authorization.

Under the provisions of article three, chapter twenty-nine-a of the code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in articles two through eleven of this chapter, subject only to the limitations set forth with respect to each such rule in the section or sections of this chapter authorizing its promulgation. The Legislature declares that all rules now or hereafter authorized under articles two through eleven of this chapter are within the legislative intent of the statute which the rule is intended to implement, extend, apply or interpret. Legislative rules promulgated pursuant to the provisions of articles one through eleven of this chapter in effect at the effective date of this section shall continue in full force and effect until reauthorized in this chapter by legislative enactment, or until amended by emergency rule pursuant to the provisions of article three, chapter twenty-nine-a of this code.

All proposed legislative rules for which bills of authorization have been introduced in the Legislature not specifically authorized under articles two through eleven of this chapter are disapproved by the Legislature.

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of administration and the auditor.

(a) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, under the authority of section ten-a, article three, chapter twelve of this code, modified by the department of administration and the auditor to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of October, one thousand nine hundred ninety-eight, relating to the department of administration and the auditor
9 (state purchasing card program, 148 CSR 7), is authorized, with
10 the amendments set forth below:
11
12 On page two after subsection 2.15 by adding a new subsec-
13 tion 2.16 to read as follows:
14
2.16. "Statewide Contract" means a legally binding
15 instrument competitively bid, awarded and maintained by the
16 Purchasing Division to provide services or tangible goods to all
17 state spending units at a specified price. Statewide contract
18 usage is mandatory for all agencies under the jurisdiction of the
19 Purchasing Division and available (upon mutual consent) to
20 agencies not under the jurisdiction of the Purchasing Division.;
21
22 On page three, subsection 2.17 by striking out the words
23 "except for maintenance which cannot" and inserting in lieu
24 thereof the words "except for purchases including maintenance
25 foreseen to";
26
27 On page seven, subsection 6.3 by striking out the words
28 "blanket orders and price agreements" and inserting in lieu
29 thereof the words "in accordance with the transaction limit as
30 set forth in subsection 2.18 of this rule, excluding those
31 requiring advance approval of the Purchasing Division. There
32 is no annual limit for payments against state-wide contracts."
33
34 And,
35
36 On page seven, after subsection 6.3 by adding a new
37 subsection 6.4 to read as follows:
38
6.4 With the exception of orders against statewide con-
39 tracts, the card cannot be used as a payment method for
40 purchases foreseen to exceed $15,000 annually for all colleges
41 and universities and $10,000 annually for all other spending
42 units in accordance with state purchasing guidelines.
43
44 (b) The legislative rule filed in the office of the secretary of
45 state on the sixteenth day of February, one thousand nine
46 hundred ninety-nine, authorized under the authority of section
47 four, article three, chapter five-a of this code, relating to the
48 department of administration (purchasing, 148 CSR 1), is
49 authorized.
AN ACT to amend and reenact sections one and two, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies; authorizing various executive or administrative agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing the various executive or administrative agencies to promulgate legislative rules as amended by the Legislature; authorizing various executive or administrative agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of environmental protection to promulgate a legislative rule relating to carbon monoxide and ozone; authorizing the division of environmental protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of emissions from hospital, medical, and infectious waste incinerators; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; authorizing the division of environmental protection to promulgate a legislative rule relating to acid rain provisions and permits; authorizing the division of environmental protection to promulgate a legislative rule relating to ambient air
quality standards for sulfur oxides and particulate matter; authorizing the division of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 63; authorizing the division of environmental protection to promulgate a legislative rule relating to the awarding of West Virginia stream partners program grants; authorizing the division of environmental protection to promulgate a legislative rule relating to West Virginia surface mining and reclamation; authorizing the division of environmental protection to promulgate a legislative rule relating to solid waste management; authorizing the division of environmental protection to promulgate a legislative rule relating to sewage sludge management; authorizing the division of environmental protection to promulgate a legislative rule relating to hazardous waste management; authorizing the division of environmental protection to promulgate a legislative rule relating to the state construction grants program; authorizing the division of environmental protection to promulgate a legislative rule relating to the pollution prevention and compliance assistance rule; authorizing the division of environmental protection to promulgate a legislative rule relating to the state water pollution control revolving fund program; and authorizing the environmental quality board to promulgate a legislative rule relating to the requirements governing water quality standards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Division of environmental protection.
§64-3-2. Environmental quality board.

§64-3-1. Division of environmental protection.

(a) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of
environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of January, one thousand nine hundred ninety-nine, relating to the division of environmental protection (ambient air quality standards for carbon monoxide and ozone, 45 CSR 9), is authorized.

(b) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of January, one thousand nine hundred ninety-nine, relating to the division of environmental protection (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(c) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of January, one thousand nine hundred ninety-nine, relating to the division of environmental protection (to prevent and control emissions from hospital, medical, and infectious waste incinerators, 45 CSR 24), is authorized.

(d) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of January, one thousand nine hundred ninety-nine, relating to the division of environmental protection (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), is authorized.
(e) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the division of environmental protection (acid rain provisions and permits, 45 CSR 33), is authorized.

(f) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred ninety-nine, relating to the division of environmental protection (ambient air quality standards for sulfur oxides and particulate matter, 45 CSR 8), is authorized.

(g) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of January, one thousand nine hundred ninety-nine, relating to the division of environmental protection (emission standards for hazardous air pollutants pursuant to 40 CFR Part 63, 45 CSR 34), is authorized.

(h) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section fourteen, article thirteen, chapter twenty of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of November, one thousand nine hundred ninety-eight, relating to the division of environmental protection (awarding of West Virginia stream partners program grants, 60 CSR 4) is authorized.
(i) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section three, article one, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred ninety-nine, relating to the division of environmental protection (surface mining and reclamation regulations, 38 CSR 2), is authorized.

(j) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section five, article fifteen, chapter twenty-two of this code modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of October, one thousand nine hundred ninety-eight, relating to the division of environmental protection (solid waste management, 33 CSR 1), is authorized.

(k) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section twenty, article fifteen, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of November, one thousand nine hundred ninety-eight, relating to the division of environmental protection (sewage sludge management, 33 CSR 2), is authorized.

(l) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of October, one thousand nine hundred ninety-eight, relating to the division of environmental
(m) The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-eight, authorized under the authority of section six, article two, chapter twenty-two-c of this code, relating to the division of environmental protection (state construction grants program, 47 CSR 33), is authorized.

(n) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section six, article one, chapter twenty-two of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred ninety-nine, relating to the division of environmental protection (pollution prevention and compliance assistance rule, 47 CSR 3), is authorized.

(o) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section three, article two, chapter twenty-two-c of this code, modified by the division of environmental protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of November, one thousand nine hundred ninety-eight, relating to the division of environmental protection (state water pollution control revolving fund program, 47 CSR 31), is authorized.

(p) The legislative rules filed in the state register on the seventh day of October, one thousand nine hundred ninety-eight, relating to the division of environmental protection (underground storage tank insurance trust fund, 33 CSR 32), are authorized.

§64-3-2. Environmental quality board.

The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight,
authorized under the authority of section four, article three, chapter twenty-two-b of this code, relating to the environmental quality board (requirements governing water quality standards, 46 CSR 1), is authorized until the thirtieth day of October, 1999: Provided, That the environmental quality board shall review, revise and propose, within this statutory deadline, and in accordance with the provisions of chapter twenty-nine-a of this code, emergency and legislative rules to address the interpretive differences regarding the designation of category A waters and analyze the need for distance prohibitors for the policies of public drinking water intake, with the amendments set forth below:

On page fourteen, subsection 7.2.b., by following the words “contrary provision,” by striking the word “numeric”;

And, on page twenty, by striking out all of subsection 8.5.

On page 14, at the end of paragraph 7.2.a.2 after the word “headwaters.)” by inserting the following:

“Until June 30, 2003, the one-half mile zone described in this section shall not apply to the Ohio River main channel (between Brown’s Island and the left descending bank) between river mile points 61.0 and 63.5.”

CHAPTER 164

(Com. Sub. for S. B. 284 — By Senators Ross, Anderson, Bowman and Boley)

[Passed March 11, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by
various executive and administrative agencies of the state; authorizing certain agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain agencies to promulgate legislative rules as amended by the Legislature; authorizing certain agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the department of education and the arts, division of culture and history to promulgate a legislative rule relating to the certified local government program; and authorizing the department of education and the arts, division of culture and history to promulgate a legislative rule relating to standards and procedures for administering state historic preservation programs.

Be it enacted by the Legislature of West Virginia:

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

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

§64-4-1. Division of culture and history.

(a) The legislative rule filed in the state register on the twenty-eighth day of October, one thousand nine hundred ninety-seven, under the authority of section eight-d, article one, chapter twenty-nine of this code, modified by the division of culture and history to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of December, one thousand nine hundred ninety-eight, relating to the division of culture and history (certified local government program, 82 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-eighth day of October, one thousand nine hundred ninety-seven, under the authority of section eight-d, article one, chapter twenty-nine of this code, modified by the division of culture and history to meet the objections of the legislative rule-
making review committee and refiled in the state register on the
eighteenth day of December, one thousand nine hundred ninety-
eight, relating to the division of culture and history (standards
and procedures for administering state historic preservation
programs, 82 CSR 2), is authorized.

CHAPTER 165

(Com. Sub. for S. B. 305 — By Senators Ross, Anderson, Bowman and Boley)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article five, chapter sixty-
four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by
adding thereto a new section, designated section four, all relating
generally to the promulgation of administrative rules by the
various executive or administrative agencies and the procedures
relating thereto; legislative mandate or authorization for the
promulgation of certain legislative rules by various executive and
administrative agencies of the state; authorizing certain of the
agencies to promulgate certain legislative rules in the form that
the rules were filed in the state register; authorizing certain of the
agencies to promulgate legislative rules as amended by the
Legislature; authorizing certain of the agencies to promulgate
legislative rules with various modifications presented to and
recommended by the legislative rule-making review committee;
directing certain of the agencies to propose and promulgate
certain legislative rules; authorizing the department of health and
human resources health care authority to promulgate a legislative
rule relating to bench-marking and discount contracts; authorizing
the department of health and human resources division of health
to promulgate a legislative rule relating to public water systems;
authorizing the department of health and human resources
division of health to promulgate a legislative rule relating to
reportable diseases, events and conditions; authorizing the
department of health and human resources division of health to promulgate a legislative rule relating to sanitation; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to lead abatement licensing; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to legally unlicensed health care homes; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to infectious medical waste; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to medication administration by unlicensed personnel; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to public water systems capacity development; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to the interstate compact on mental health; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to licensed behavioral health service responsibilities and consumer rights; directing the department of health and human resources division of health to promulgate an emergency and legislative rule relating to residential care communities; authorizing the department of health and human resources division of health to promulgate a legislative rule relating to tuberculosis control; and authorizing the department of health and human resources division of health to promulgate a legislative rule relating to radon licensure.

Be it enacted by the Legislature of West Virginia:

That section one, article five, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section four, all to read as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Health care authority.
§64-5-4. State board of health; division of health.
§64-5-1. Health care authority.

The legislative rule filed in the state register on the eighteenth day of December, one thousand nine hundred ninety-eight, under the authority of sections eight and twenty, article twenty-nine-b, chapter sixteen of this code, modified by the health care authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of January, one thousand nine hundred ninety-nine, relating to the health care authority (bench-marking and discount contracts, 65 CSR 26), is authorized, with the amendment set forth below:

On page 11, subsection 23.4.c after the word “Authority” by striking out the comma and the words “minus depreciation and interest”.

§64-5-4. State board of health; division of health.

(a) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section nine-a, article one, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of December, one thousand nine hundred ninety-eight, relating to the division of health (public water systems, 64 CSR 3), is authorized.

(b) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section one, article three, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred ninety-nine, relating to the division of health (reportable diseases, events and conditions, 64 CSR 7), is authorized with the amendments set forth below:

On page four, section 3.3.b., by striking out everything after the words “Category I.A diseases and conditions reportable by
health care providers and health care facilities are:" and inserting in lieu thereof the following:

3.3.b.1. Anthrax;
3.3.b.2. Botulism;
3.3.b.3. Brucellosis;
3.3.b.4. Cholera;
3.3.b.5. Dengue Fever;
3.3.b.6. Diphtheria;
3.3.b.7. E. Coli O157:H7 Disease;
3.3.b.8. Foodborne Disease;
3.3.b.9. Haemophilus influenzae, Invasive Disease;
3.3.b.10. Hemolytic Uremic Syndrome, postdiarrheal;
3.3.b.11. Hepatitis A, Acute;
3.3.b.12. Hepatitis B, Acute or perinatal;
3.3.b.13. Hepatitis D;
3.3.b.14. Meningococcal Disease, Invasive;
3.3.b.15. An outbreak or cluster of any illness or condition - suspect or confirmed;
3.3.b.16. Pertussis (Whooping Cough);
3.3.b.17. Plague;
3.3.b.18. Poliomyelitis;
3.3.b.19. Rabies in Animals or in Humans;
3.3.b.20. Rubella (German Measles);
3.3.b.21. Rubeola (Measles);
3.3.b.22. Tuberculosis (All Forms, include antibiotic susceptibility patterns)*;
3.3.b.23. Tularemia;
3.3.b.24. Typhoid Fever;
3.3.b.25. Waterborne Disease; and
3.3.b.26. Yellow Fever.

On page five, section 3.3.d., by striking out everything after the words "Category I.B diseases and conditions reportable by laboratories are:" and inserting in lieu thereof the following:

3.3.d.1. Bacillus anthracis;
3.3.d.2. Bordatella pertussis, microbiologic evidence;
3.3.d.3. Brucellosis, microbiologic or serologic evidence;
3.3.d.4. Clostridium botulinum, microbiologic or toxicologic evidence;
3.3.d.5. Corynebacterium diphtheriae, microbiologic or histopathologic evidence;
3.3.d.6. Dengue Fever, serologic evidence;
3.3.d.7. E. Coli O157:H7 from any site;
3.3.d.8. E. Coli O157:NM, Shiga-like toxin-producing, from any clinical specimen;
3.3.d.9. Haemophilus influenzae from any normally sterile body site;
3.3.d.10. Hepatitis A, positive IgM;
3.3.d.11. Hepatitis B, positive anti-HBc IgM or HBsAg;
3.3.d.12. Hepatitis D, positive serology;
3.3.d.13. Neisseria meningitidis from a normally sterile site;
3.3.d.14. Outbreak or cluster of any illness or condition - suspect or confirmed;
3.3.d.15. Poliomyelitis, virologic or serologic evidence;
3.3.d.16. Rabies, animal or human;
3.3.d.17. Rubella, virologic or serologic evidence;
3.3.d.18. Rubeola, virologic or serologic evidence;
3.3.d.19. Salmonella typhi from any site;
3.3.d.20. Tularemia, culture, antigen or serologic evidence;
3.3.d.21. Vibrio cholerae, microbiologic or serologic evidence;
3.3.d.22. Yellow Fever, virologic or serologic evidence;
3.3.d.23. Yersinia pestis, microbiologic or serologic evidence; and
3.3.d.24 Other laboratory evidence suggestive of current infection with any of the diseases or conditions listed in Category I.A.

On page 6, section 3.4.b., by striking out everything after the words “Category II.A diseases reportable by health care providers and health care facilities are:” and inserting in lieu thereof the following:

3.4.b.1. Amebiasis;
3.4.b.2. Campylobacteriosis;
3.4.b.3. Chickenpox (numerical totals only);
3.4.b.4. Cryptosporidiosis;
3.4.b.5. Cyclospora;
3.4.b.6. Encephalitis, Arboviral;
3.4.b.7. Encephalitis, Other primary and unspecified;
3.4.b.8. Giardiasis;
3.4.b.9. Hantavirus Disease;
3.4.b.10. Hepatitis C / Other non-A or non-B, acute;
3.4.b.11. Influenza-like Illness (numerical totals only);
3.4.b.12. Leptospirosis;
3.4.b.13. Listeria;
3.4.b.14. Lyme Disease;
3.4.b.15. Malaria;
3.4.b.16. Meningitis, Other Bacterial (cases not reported as other specific disease types);
3.4.b.17. Meningitis, Viral or Aseptic;
3.4.b.18. Mumps;
3.4.b.19. Psittacosis;
3.4.b.20. Rheumatic Fever;
3.4.b.21. Rocky Mountain Spotted Fever;
3.4.b.22. Rubella, Congenital Syndrome;
3.4.b.23. Salmonellosis (except Typhoid Fever);
3.4.b.24. Shigellosis;
3.4.b.25. Streptococcal Disease, Invasive Group A, (Streptococcus pyogenes);
3.4.b.26. Streptococcal Toxic Shock Syndrome;
3.4.b.27. Streptococcus pneumoniae, drug resistant invasive disease, (include antibiotic susceptibility patterns);
3.4.b.28. Tetanus;
3.4.b.29. Trichinosis; and
3.4.b.30. Unexplained or ill-defined illness, condition, or health occurrence of potential public health significance.

On page 7, section 3.4.d., by striking everything after the words "Category II.B condition reportable by laboratories are:" and inserting in lieu thereof the following:

3.4.d.1. Borrelia burgdorferi from culture, or diagnostic levels of IgG or IgM, (preferably followed by a western blot);
3.4.d.2. Campylobacter;
3.4.d.3. Cryptosporidium;
3.4.d.4. Cyclospora;
3.4.d.5. Encephalitis, virologic, serologic, or other evidence of arboviral or other encephalitides;
3.4.d.6. Entamoeba histolytica;
3.4.d.7. Giardia lamblia, microscopic or immunodiagnostic evidence;
3.4.d.8. Hantavirus infection, serologic, PCR, immunohistochemistry, or other evidence;
3.4.d.9. Hepatitis C, positive HCV antibody confirmed with approved supplemental test (e.g. RIBA);
3.4.d.10. Leptospirosis, virologic or serologic evidence;
3.4.d.11. Listeria monocytogenes;
3.4.d.12. Malaria organisms on smear of blood;
3.4.d.13. Meningitis, as indicated by bacterium in spinal fluid;
3.4.d.14. Meningitis, Viral, virologic or serologic evidence;
3.4.d.15. Mumps, virologic or serologic evidence;
3.4.d.16. Psittacosis, microbiologic or serologic evidence;
3.4.d.17. Rocky Mountain Spotted Fever, serologic evidence;
3.4.d.18. Salmonella (any species, excluding Salmonella typhi);
3.4.d.19. Shigella (any species);
3.4.d.20. Streptococcus pyogenes (Group A Streptococcus) from a normally sterile site;
3.4.d.21. Streptococcus pneumoniae, from a normally sterile site (include antibiotic susceptibility patterns on all isolates);
3.4.d.22. Trichinosis, demonstration of cysts or serologic evidence;
3.4.d.23. Tularemia, culture, antigen or serologic evidence;

3.4.d.24. Unexplained or ill-defined illness, condition, or health occurrence of potential public health significance; and

3.4.d.25. Other laboratory evidence suggestive of current infection with any of the diseases or conditions listed in Category II.A.

And,

On page 15, section 9.1, by adding the following after the first sentence: “Local health departments may copy and distribute this rule to local health care providers at no cost.”.

(c) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section seven, article one, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of November, one thousand nine hundred ninety-eight, relating to the division of health (general sanitation, 64 CSR 18), is authorized.

(d) The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-eight, authorized under the authority of section four, article thirty-five, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of November, one thousand nine hundred ninety-eight, relating to the division of health (lead abatement licensing, 64 CSR 45), is authorized.

(e) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section seven, article one, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-eighth day of December, one thousand nine hundred ninety-eight,
relating to the division of health (legally unlicensed health care homes, 64 CSR 50), is authorized.

(f) The legislative rule filed in the state register on the tenth day of September, one thousand nine hundred ninety-eight, authorized under the authority of section six-a, article five-j, chapter twenty of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fifth day of January, one thousand nine hundred ninety-nine, relating to the division of health (infectious medical waste, 64 CSR 56), is authorized.

(g) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section eleven, article five-o, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, one thousand nine hundred ninety-nine, relating to the division of health (medication administration by unlicensed personnel, 64 CSR 60), is authorized.

(h) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section two, article thirteen-c, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of January, one thousand nine hundred ninety-nine, relating to the division of health (public water systems capacity development, 64 CSR 61), is authorized.

(i) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section two, article fourteen, chapter twenty-seven of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of November, one thousand nine hundred ninety-eight, relating to the division of health (interstate compact on mental health, 64 CSR 72), is authorized.
(j) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section nine, article five, chapter twenty-seven of this code, modified by the division of health to meet the objections of the legislative rule-making review committee, refiled in the state register on the twenty-fifth day of January, one thousand nine hundred ninety-nine, and withdrawn by the division on the eleventh day of February, one thousand nine hundred ninety-nine, relating to the division of health (licensed behavioral health service responsibilities and consumer rights, 64 CSR 74), is not authorized. The division of health is directed to refile the rule, with necessary modifications and in accordance with the memorandum of understanding between the division and various affected parties, as an emergency rule by the first day of July, one thousand nine hundred ninety-nine, and propose said rule for legislative promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code.

(k) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of sections three and five, article five-n, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixth day of January, one thousand nine hundred ninety-nine, relating to the division of health (residential care communities, 64 CSR 75), is authorized.

(l) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section seven, article five-a, chapter twenty-six of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of November, one thousand nine hundred ninety-eight, relating to the division of health (tuberculosis control, 64 CSR 76), is authorized.

(m) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight,
authorized under the authority of section six, article thirty-four, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of November, one thousand nine hundred ninety-eight, relating to the division of health (radon licensure, 64 CSR 78), is authorized.

CHAPTER 166

(Com. Sub. for H. B. 2565 — By Delegates Hunt, Linch, Compton, Jenkins, Faircloth and Riggs)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the state police to promulgate a legislative rule relating to supplemental pay; and authorizing the state police to promulgate a legislative rule relating to a written directive system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.
§64-6-2. State police.

(a) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section five, article two, chapter fifteen of this code, modified by the state police to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of September, one thousand nine hundred ninety-eight, relating to the state police (supplemental pay, 81 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section twenty-five, article two, chapter fifteen of this code, modified by the state police to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of September, one thousand nine hundred ninety-eight, relating to the state police (written directive system, 81 CSR 12), is authorized.

CHAPTER 167

(Com. Sub. for H. B. 2570 — By Delegates Hunt, Compton, Jenkins, Linch, Faircloth and Riggs)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that
the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the division of banking to promulgate a legislative rule relating to permissible additional charges in connection with a consumer credit sale; authorizing the division of banking to promulgate a legislative rule relating to the sale of insurance products by state-chartered banks; authorizing the insurance commissioner to promulgate a legislative rule relating to individual accident and sickness insurance minimum standards; authorizing insurance commissioner to promulgate a legislative rule relating to AIDS; authorizing the insurance commissioner to promulgate a legislative rule relating to individual and employer group minimum benefits accident and sickness insurance policies; insurance commissioner to promulgate a legislative rule relating to group accident and sickness insurance minimum policy coverage standards; authorizing insurance commissioner to promulgate a legislative rule relating to recognizing annuity mortality tables for use in determining reserve liabilities for annuities; authorizing the insurance commissioner to promulgate a legislative rule relating to group accident and sickness insurance issuance, portability and marketing requirements; insurance commissioner to promulgate a legislative rule relating to the guaranteed issue of individual accident and sickness insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to quality assurance; authorizing the state tax commissioner to promulgate a legislative rule relating to the valuation of active and reserve coal property for ad valorem property tax purposes; authorizing the state tax commissioner to promulgate a legislative rule relating to the valuation of producing and reserve oil and natural gas for ad valorem property tax purposes; authorizing the state tax commissioner to promulgate a legislative rule relating to the valuation of natural resources property other than coal, oil or natural gas for ad valorem property tax purposes; authorizing the tax commissioner to promulgate a legislative rule relating to the electronic data processing system network for property tax administration;
authorizing the state tax commissioner to promulgate a legislative rule relating to the property tax valuation of certain manufacturing property; authorizing the state tax commission to promulgate a legislative rule relating to tax credits for new value-added wood manufacturing facilities; authorizing the state tax commissioner to promulgate a legislative rule relating to tax credits for new steel, aluminum or polymer manufacturing operations; authorizing the state tax commissioner to promulgate a legislative rule relating to the value of timberland and managed timberland; authorizing the state tax commissioner to promulgate a legislative rule relating to the valuation of public utility property for ad valorem property tax purposes; and authorizing the department of tax and revenue to promulgate a legislative rule relating to the registration of telemarketers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Division of banking.

§64-7-2. Department of tax and revenue; and state tax commissioner.

§64-7-3. Insurance commissioner.

§64-7-1. Division of banking.

(a) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section four, article two, chapter thirty-one-a of this code, relating to the division of banking (permissible additional charges in connection with a consumer credit sale, 106 CSR 11), is authorized.

(b) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section thirteen, article four, chapter thirty-one-a of this code, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of October, one thousand nine hundred ninety-eight,
14 relating to the division of banking (sale of insurance products
15 by state-chartered banks, 106 CSR 2), is authorized.

§64-7-2. Department of tax and revenue; and state tax commis-
sioner.

(a) The legislative rule filed in the state register on the
thirtieth day of July, one thousand nine hundred ninety-eight,
authorized under the authority of section five, article one-c,
chapter eleven of this code, modified by the state tax commis-
ioner to meet the objections of the legislative rule-making
review committee and refiled in the state register on the seventh
day of January, one thousand nine hundred ninety-nine, relating
to the state tax commissioner (valuation of active and reserve
coal property for ad valorem property tax purposes, 110 CSR
11), is authorized with the amendment set forth below:

"On page twelve, section 4.1.7.1.e, line seven, following the
words "Tax Commissioner" and the period, by inserting the
following words: "Beginning in Tax Year 2003, the inflation
rate shall be estimated through analysis of the most recent three
calendar years of an appropriate United States Department of
Labor, Bureau of Labor Statistics price index, as determined by
the Tax Commissioner."

(b) The legislative rule filed in the state register on the
thirtieth day of July, one thousand nine hundred ninety-eight,
authorized under the authority of section five, article one-c,
chapter eleven of this code, modified by the state tax commis-
ioner to meet the objections of the legislative rule-making
review committee and refiled in the state register on the
thirtieth day of October, one thousand nine hundred ninety-
eight, relating to the state tax commissioner (valuation of
producing and reserve oil and natural gas for ad valorem
property tax purposes, 110 CSR 11), is authorized.

(c) The legislative rule filed in the state register on the
twenty-ninth day of July, one thousand nine hundred ninety-
eight, authorized under the authority of sections five and five-a,
article one-c, chapter eleven of this code, modified by the state
tax commissioner to meet the objections of the legislative rule-
making review committee and refiled in the state register on the thirtieth day of October, one thousand nine hundred ninety-eight, relating to the state tax commissioner (valuation of natural resources property other than coal, oil or natural gas for ad valorem property tax purposes, 110 CSR 1K), is authorized.

(d) The legislative rule filed in the state register on the twenty-ninth day of July, one thousand nine hundred ninety-eight, authorized under the authority of section twenty-one, article one-a, and section four, article one-c, chapter eleven of this code, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, one thousand nine hundred ninety-eight, relating to the state tax commissioner (electronic data processing system network for property tax administration, 110 CSR 2), is authorized.

(e) The legislative rule filed in the state register on the twenty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section five, article six-f, chapter eleven of this code, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventh day of January, one thousand nine hundred ninety-nine, relating to the state tax commissioner (property tax valuation of certain manufacturing property, 110 CSR 6F), is authorized.

(f) The legislative rule filed in the state register on the twenty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of sections seven, eight and ten, article thirteen-m, chapter eleven of this code, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, one thousand nine hundred ninety-eight, relating to the state tax commissioner (tax credits for new value-added wood manufacturing facilities, 110 CSR 13M), is authorized.

(g) The legislative rule filed in the state register on the twenty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of sections seven, eight
and ten, article thirteen-n, and sections seven, eight and ten, article thirteen-o, chapter eleven of this code, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, one thousand nine hundred ninety-eight, relating to the state tax commissioner (tax credits for new steel, aluminum or polymer manufacturing operations, 110 CSR 13N), is authorized with the amendment set forth below:

"On page 2, section 2.3 by striking out the entire section and inserting in lieu thereof the words “2.3 “Full-time employee” means a permanent hourly employee of an eligible taxpayer, who is a West Virginia domiciled resident, and works in a new value-added steel product manufacturing facility in this state, or in a new value-added steel product line of an existing manufacturing facility in this state, more than eighteen hundred hours during the entire twelve-month period ending on the last day of the taxable year of the eligible employer, whether these hours are hours worked at the manufacturing facility, or include hours of employer paid vacation leave or other employer paid leave. Full-time employee does not include an employee who is a part-time, seasonal or temporary employee.”.

And,

On page four, section 5.1, following the word “Code” by striking out “§11-13M-7” and inserting in lieu thereof “§11-13N-7”.”

(h) The legislative rule filed in the state register on the twenty-ninth day of July, one thousand nine hundred ninety-eight, authorized under the authority of section eleven-b, article one-c, chapter eleven of this code, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, one thousand nine hundred ninety-eight, relating to the state tax commissioner (value of timberland and managed timberland, 110 CSR 1H), is authorized with the amendment set forth below:
on page 7, section 10, by inserting the following sentence at the end of the section:

"In no case may managed timberland values for Class III and IV property be lower than $225 per acre for Grade 1; $150 per acre for Grade 2; $75 per acre for Grade 3, and Class II properties may not be lower than $200 per acre for Grade 1; $140 per acre for Grade 2; and $50 per acre for Grade 3."

(i) The legislative rule filed in the state register on the twenty-ninth day of July, one thousand nine hundred ninety-eight, authorized under the authority of section seven-b, article six, section one, article six-g, and section five, article one-c, chapter eleven of this code, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifteenth day of January, one thousand nine hundred ninety-nine, relating to the state tax commissioner (valuation of public utility property for ad valorem property tax purposes, 110 CSR 1M), is authorized with the amendment set forth below:

On page two, by striking-out all of subsection 2.5;

On page two, by striking-out all of subsection 2.7 and inserting in lieu thereof a new subsection 2.7 to read as follows:

"§2.7 “Fair market value” means the highest price in terms of money that a property will bring in a competitive and open market, assuming that the buyer and seller are acting prudently and knowledgeably, allowing sufficient time for the sale and assuming that the price is not affected by undue stimulations.”;

On page four, subsection 3.1, after the word “generally,” by inserting the words “when the cost approach is used,”;

On page four, subsection 3.1, after the word “purposes,” by striking-out the period and inserting in lieu thereof a colon and the word “however,”;

On page four, by striking-out all of subdivision 3.1.1, and inserting in lieu thereof new subdivision 3.1.1 to read as follows:
"3.1.1 When the income approach is used, the unit of value shall be allocated to the state of West Virginia using operating plant data after which;"

On page five, subdivision 3.1.2, by striking out the word "property" and inserting in lieu thereof the words "physical plant";

On page five, by striking out all of subdivision 4.2.1 and inserting in lieu thereof a new subdivision 4.2.1 to read as follows:

"4.2.1 Cost approach. — Recognizing that public service corporations are predominantly cost regulated, when the cost approach is used in the valuation process, original cost less applicable depreciation shall be employed. In applying the cost approach, the tax commissioner shall consider three (3) types of depreciation; (a) physical deterioration, (b) functional obsolescence, and (c) economic obsolescence."

On page five, subdivision 4.2.2 after the word "interest" by striking out the word "expense" and inserting in lieu thereof "on long-term debt";

On page six, by striking out all of subdivision 4.2.4;

On page six, subdivision 4.2.5 after the word "process" by changing the colon to a period and by striking out the remainder of the subdivision;

On page eight, by striking out all of subdivision 4.3.13;

And,

On page ten, by adding the new subsection 6.5 to read as follows:

"The tax commissioner, for good cause shown, may grant an extension of filing deadlines."

(j) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of sections three hundred one and three hundred three, article six-f, chapter forty-six-a of this
code, modified by the department of tax and revenue to meet
the objections of the legislative rule-making review committee
and refiled in the state register on the twelfth day of January,
one thousand nine hundred ninety-nine, relating to the depart-
ment of tax and revenue (registration of telemarketers, 119 CSR
301), is authorized.

§64-7-3. Insurance commissioner.

(a) The legislative rule filed in the state register on the
thirtieth day of July, one thousand nine hundred ninety-eight,
authorized under the authority of section ten, article two,
chapter thirty-three of this code, relating to the insurance
commissioner (individual accident and sickness insurance
minimum standards, 114 CSR 12), is authorized.

(b) The legislative rule filed in the state register on the
thirtieth day of July, one thousand nine hundred ninety-eight,
authorized under the authority of section ten, article two,
chapter thirty-three of this code, relating to the insurance
commissioner (AIDS, 114 CSR 27), is authorized.

(c) The legislative rule filed in the state register on the
thirtieth day of July, one thousand nine hundred ninety-eight,
authorized under the authority of section ten, article two,
chapter thirty-three of this code, relating to the insurance
commissioner (individual and employer group minimum
benefits accident and sickness insurance policies, 114 CSR 33),
is authorized.

(d) The legislative rule filed in the state register on the
thirtieth day of July, one thousand nine hundred ninety-eight,
authorized under the authority of section seventeen, article
sixteen, chapter thirty-three of this code, relating to the insur-
ance commissioner (group accident and sickness insurance
minimum policy coverage standards, 114 CSR 39), is author-
ized.

(e) The legislative rule filed in the state register on the
thirtieth day of July, one thousand nine hundred ninety-eight,
authorized under the authority of section nine-a, article seven,
chapter thirty-three of this code, relating to the insurance
30 commissioner (recognizing annuity mortality tables for use in
31 determining reserve liabilities for annuities, 114 CSR 45), is
32 authorized.

33 (f) The legislative rule filed in the state register on the
34 thirtieth day of July, one thousand nine hundred ninety-eight,
35 authorized under the authority of section ten, article two,
36 chapter thirty-three of this code, relating to the insurance
37 commissioner (group accident and sickness insurance issuance,
38 portability and marketing requirements, 114 CSR 54), is
39 authorized.

40 (g) The legislative rule filed in the state register on the
41 thirtieth day of July, one thousand nine hundred ninety-eight,
42 authorized under the authority of section ten, article two,
43 chapter thirty-three of this code, relating to the insurance
44 commissioner (guaranteed issue of individual accident and
45 sickness insurance, 114 CSR 55), is authorized.

46 (h) The legislative rule filed in the state register on the
47 thirtieth day of July, one thousand nine hundred ninety-eight,
48 authorized under the authority of section ten, article two,
49 chapter thirty-three of this code, modified by the insurance
50 commissioner to meet the objections of the legislative rule-
51 making review committee and refiled in the state register on the
52 eighteenth day of December, one thousand nine hundred ninety-
53 eight, relating to the insurance commissioner (quality assurance, 114 CSR 53), is authorized.

CHAPTER 168

(Com. Sub. for S. B. 269 — By Senators Ross, Anderson, Bowman and Boley)

[Passed March 12, 1999; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article nine, chapter sixty-four of the
code of West Virginia, one thousand nine hundred thirty-one, as
amended, relating generally to the promulgation of administrative
rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing the commissioner of agriculture to promulgate a legislative rule relating to animal disease control; authorizing the commissioner of agriculture to promulgate a legislative rule relating to the marketing of eggs; authorizing the commissioner of agriculture to promulgate a legislative rule relating to the West Virginia seed law; authorizing the commissioner of agriculture to promulgate a legislative rule relating to the fee structure for the pesticide control act of 1990; authorizing the secretary of state to promulgate a legislative rule relating to agencies designated to provide voter registration services; authorizing the secretary of state to promulgate a legislative rule relating to electronic records; authorizing the secretary of state to promulgate a legislative rule relating to the use of electronic signatures by state agencies; authorizing the secretary of state to promulgate a legislative rule relating to the use of digital signatures, the state certification authority and the state repository; authorizing the governor’s committee on crime, delinquency and correction to promulgate a legislative rule relating to law-enforcement training standards; authorizing the governor’s committee on crime, delinquency and correction to promulgate a legislative rule relating to the protocol for law-enforcement response to domestic violence; authorizing the board of acupuncture to promulgate a legislative rule relating to applications for licensure to practice acupuncture; authorizing the board of acupuncture to promulgate a legislative rule relating to fees of the board; authorizing the board of acupuncture to promulgate a legislative rule relating to advertising by licensed acupuncturists; authorizing the board of acupuncture to promulgate a legislative rule relating to the standards of practice of acupuncture by licensed acupuncturists; authorizing the board of
acupuncture to promulgate a legislative rule relating to disciplinary and complaint procedures for acupuncturists; authorizing the board of acupuncture to promulgate a legislative rule relating to continuing education requirements; authorizing the board of acupuncture to promulgate a legislative rule relating to a code of ethics for licensed acupuncturists; authorizing the board of acupuncture to promulgate a legislative rule relating to education requirements; authorizing the board of acupuncture to promulgate a legislative rule relating to tutorial education requirements; authorizing the board of acupuncture to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the board of chiropractic examiners to promulgate a legislative rule relating to regulation of the board; authorizing the board of chiropractic examiners to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the contractor licensing board to promulgate a legislative rule relating to the West Virginia contractor licensing act; authorizing the board of dieticians to promulgate a legislative rule relating to a code of professional ethics, continuing education and examination, licensure and renewal requirements; authorizing the massage therapy licensure board to promulgate a legislative rule relating to massage therapy licensure; authorizing the board of medicine to promulgate a legislative rule relating to licensing, disciplinary and complaint procedures, continuing education and physician assistants; authorizing the board of osteopathy to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the board of osteopathy to promulgate a legislative rule relating to fees for services rendered by the board; authorizing the board of pharmacy to promulgate a legislative rule relating to the board; authorizing the board of accountancy to promulgate a legislative rule relating to the board and rules of professional conduct; authorizing the board of barbers and cosmetologists to promulgate a legislative rule relating to procedures, criteria and curricula for examination and licensure of barbers, cosmetologists, manicurists and aestheticians; authorizing the board of barbers and cosmetologists to promulgate a legislative rule relating to a schedule of fines; authorizing the family protection services board to promulgate a
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Commissioner of agriculture.
§64-9-2. Secretary of state.
§64-9-3. Governor’s committee on crime, delinquency and correction.
§64-9-4. Board of acupuncture.
§64-9-5. Board of chiropractic examiners.
§64-9-6. Contractor licensing board.
§64-9-7. Board of dietitians.
§64-9-12. Board of accountancy.
§64-9-14. Board of veterinary medicine.
§64-9-17. West Virginia infrastructure and jobs development council.

§64-9-1. Commissioner of agriculture.
(a) The legislative rule filed in the state register on the eighteenth day of June, one thousand nine hundred ninety-eight, authorized under the authority of section two, article nine, chapter nineteen of this code, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of July, one thousand nine hundred ninety-eight, relating to the commissioner of agriculture (animal disease control, 61 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the fourteenth day of July, one thousand nine hundred ninety-eight, authorized under the authority of section ten, article ten-a, chapter nineteen of this code, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of September, one thousand nine hundred ninety-eight, relating to the commissioner of agriculture (remarketing of eggs, 61 CSR 7A), is authorized.

(c) The legislative rule filed in the state register on the fourteenth day of July, one thousand nine hundred ninety-eight, authorized under the authority of section six, article sixteen, chapter nineteen of this code, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of September, one thousand nine hundred ninety-eight, relating to the commissioner of agriculture (West Virginia seed law, 61 CSR 9), is authorized.

(d) The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-eight, authorized under the authority of section four, article sixteen-a, chapter nineteen of this code, modified by the commissioner of agriculture to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of September, one thousand nine hundred ninety-eight, relating to the commissioner of agriculture (fee structure for the pesticide control act of 1990, 61 CSR 12), is authorized.
§64-9-2. Secretary of state.

(a) The legislative rule filed in the state register on the fourteenth day of July, one thousand nine hundred ninety-eight, authorized under the authority of section six, article one-a, chapter three, and section thirteen, article two, chapter three of this code, relating to the secretary of state (agencies designated to provide voter registration services, 153 CSR 28), is authorized.

(b) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section two, article one, chapter fifty-nine of this code, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred ninety-eight, relating to the secretary of state (fees relating to electronic records, 153 CSR 2), is authorized.

(c) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section four, article five, chapter thirty-nine of this code, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred ninety-eight, relating to the secretary of state (use of electronic signatures by state agencies, 153 CSR 30), is authorized.

(d) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section four, article five, chapter thirty-nine of this code, modified by the secretary of state to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of September, one thousand nine hundred ninety-eight, relating to the secretary of state (use of digital signatures, state certification authority and state repository, 153 CSR 31), is authorized.
§64-9-3. Governor's committee on crime, delinquency and correction.

(a) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, authorized under the authority of section three, article twenty-nine, chapter thirty of this code, modified by the governor's committee on crime, delinquency and correction to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of November, one thousand nine hundred ninety-eight, relating to the governor's committee on crime, delinquency and correction (law enforcement training standards, 149 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the twenty-eighth day of July, one thousand nine hundred ninety-eight, authorized under the authority of section nine, article two-a, chapter forty-eight of this code, modified by the governor's committee on crime, delinquency and correction to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of November, one thousand nine hundred ninety-eight, relating to the governor's committee on crime, delinquency and correction (protocol for law enforcement response to domestic violence, 149 CSR 3), is authorized with the amendments set forth below:

On page six, by adding a new subsection 5.2 to read as follows:

"5.2 A dispatcher, who receives a domestic call for an incident which occurred or is occurring outside the jurisdiction of the police department or police departments which supervise the dispatcher, shall immediately notify a police department in the appropriate jurisdiction."

And,

On pages six and seven, by renumbering the remaining subsections.

§64-9-4. Board of acupuncture.
(a) The legislative rule filed in the state register on the third
day of August, one thousand nine hundred ninety-eight, under
the authority of section seven, article thirty-six, chapter thirty
of this code, modified by the board of acupuncture to meet the
objections of the legislative rule-making review committee and
refiled in the state register on the eighth day of January, one
thousand nine hundred ninety-nine, relating to the board of
acupuncture (applications for licensure to practice acupuncture,
32 CSR 3), is authorized.

(b) The legislative rule filed in the state register on the third
day of August, one thousand nine hundred ninety-eight, under
the authority of section seven, article thirty-six, chapter thirty
of this code, modified by the board of acupuncture to meet the
objections of the legislative rule-making review committee and
refiled in the state register on the eighth day of January, one
thousand nine hundred ninety-nine, relating to the board of
acupuncture (fees of the board of acupuncture, 32 CSR 4), is
authorized with the following amendments:

On page 1, section 3 by striking out subsection 3.2 and
inserting in lieu thereof the following:

"3.2. License fee. — The biennial license fee is four
hundred and twenty-five dollars ($425.00).";

And,

On page 1, section 3 by striking out subsection 3.3 and
inserting in lieu thereof the following:

"3.3. Renewal fee. — The renewal fee is four hundred and
twenty-five dollars ($425.00)."

(c) The legislative rule filed in the state register on the third
day of August, one thousand nine hundred ninety-eight, under
the authority of section seven, article thirty-six, chapter thirty
of this code, modified by the board of acupuncture to meet the
objections of the legislative rule-making review committee and
refiled in the state register on the eighth day of January, one
thousand nine hundred ninety-nine, relating to the board of
acupuncture (advertising by licensed acupuncturists, 32 CSR 5),
is authorized.
(d) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, under the authority of section seven, article thirty-six, chapter thirty of this code, modified by the board of acupuncture to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred ninety-nine, relating to the board of acupuncture (standards of practice of acupuncture by licensed acupuncturists, 32 CSR 6), is authorized.

(e) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, under the authority of section seven, article thirty-six, chapter thirty of this code, modified by the board of acupuncture to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred ninety-nine, relating to the board of acupuncture (disciplinary and complaint procedures for acupuncturists, 32 CSR 7), is authorized with the following amendment:

On page four, subsection 4.1.18, after the word "activity" by inserting the following:

"Provided, That upon termination of a patient-practitioner relationship nothing in this rule shall be construed to prohibit a personal relationship between a former patient and a practitioner."

(f) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, under the authority of section seven, article thirty-six, chapter thirty of this code, modified by the board of acupuncture to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of December, one thousand nine hundred ninety-eight, relating to the board of acupuncture (continuing education requirements, 32 CSR 9), is authorized.

(g) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, under the authority of section seven, article thirty-six, chapter thirty
of this code, modified by the board of acupuncture to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred ninety-nine, relating to the board of acupuncture (code of ethics for licensed acupuncturists, 32 CSR 10), is authorized.

(h) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, under the authority of section seven, article thirty-six, chapter thirty of this code, modified by the board of acupuncture to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred ninety-nine, relating to the board of acupuncture (education requirements, 32 CSR 11), is authorized.

(i) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, under the authority of section seven, article thirty-six, chapter thirty of this code, modified by the board of acupuncture to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred ninety-nine, relating to the board of acupuncture (tutorial education requirements, 32 CSR 12), is authorized.

(j) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, under the authority of section one thousand three hundred four, article thirteen, chapter thirty-one-b of this code, modified by the board of acupuncture to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of January, one thousand nine hundred ninety-nine, relating to the board of acupuncture (formation and approval of professional limited liability companies, 32 CSR 13), is authorized.

§64-9-5. Board of chiropractic examiners.

(a) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-seven, under
the authority of sections five and fifteen, article sixteen, chapter thirty of this code, modified by the board of chiropractic examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of November, one thousand nine hundred ninety-eight, relating to the board of chiropractic examiners (regulation of the West Virginia board of chiropractic examiners, 4 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the sixth day of August, one thousand nine hundred ninety-seven, under the authority of section one thousand three hundred four, modified by the board of chiropractic examiners to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of July, one thousand nine hundred ninety-eight, relating to the board of chiropractic examiners (formation and approval of professional limited liability companies, 4 CSR 4), is authorized.

§64-9-6. Contractor licensing board.

The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-eight, under the authority of section sixteen, article eleven, chapter twenty-one of this code, modified by the contractor licensing board to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of October, one thousand nine hundred ninety-eight, relating to the contractor licensing board (West Virginia contractor licensing act, 28 CSR 2), is authorized.

§64-9-7. Board of dietitians.

The legislative rule filed in the state register on the twenty-ninth day of July, one thousand nine hundred ninety-eight, under the authority of section four, article thirty-five, chapter thirty of this code, modified by the board of dietitians to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of October, one thousand nine hundred ninety-eight, relating to the board of dietitians (code of professional ethics; continuing education;

The legislative rule filed in the state register on the seventh day of May, one thousand nine hundred ninety-eight, under the authority of section six, article thirty-seven, chapter thirty of this code, modified by the massage therapy licensure board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of July, one thousand nine hundred ninety-eight, relating to the massage therapy licensure board (massage therapy licensure, 194 CSR 1), is authorized, with the following amendment:

'On page two, subdivision 3.2(b), after the word "Board," by inserting the word "and",

And,

By striking out subdivision 3.2(c) in its entirety and relettering the remaining subdivision.'


The legislative rule filed in the state register on the fifteenth day of April, one thousand nine hundred ninety-eight, authorized under the authority of section sixteen, article three, chapter thirty of this code relating to the board of medicine (licensing, disciplinary and complaint procedures, continuing education and physician assistants, 11 CSR 1B), is reauthorized with the following amendments:

On page three, subsection 2.6.1, after the words 'more than' by striking the words 'two (2) physicians assistants' and inserting in lieu thereof the words 'three (3) physicians assistants or their equivalent'; and

On page eight, subsection 2.12.13, after the words 'more than' by striking out the words 'two (2) physicians assistants' and inserting in lieu thereof the words 'three (3) physicians assistants or their equivalent'.

(a) The legislative rule filed in the state register on the eleventh day of September, one thousand nine hundred ninety-seven, under the authority of section one thousand three hundred and four, article thirteen, chapter thirty-one-b of this code, modified by the board of osteopathy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of July, one thousand nine hundred ninety-eight, relating to the board of osteopathy (formation and approval of professional limited liability companies, 24 CSR 4), is authorized.

(b) The legislative rule filed in the state register on the ninth day of July, one thousand nine hundred ninety-eight, under the authority of sections four and six, article one, chapter thirty of this code, modified by the board of osteopathy to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of September, one thousand nine hundred ninety-eight, relating to the board of osteopathy (fees for services rendered by the board of osteopathy, 24 CSR 5), is authorized.


The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of sections three and nineteen, article five, chapter thirty of this code, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of January, one thousand nine hundred ninety-nine, relating to the board of pharmacy (rules and regulations of the board of pharmacy, 15 CSR 1), is authorized.

§64-9-12. Board of accountancy.

The legislative rule filed in the state register on the fifth day of August, one thousand nine hundred ninety-eight, under the authority of section three, article nine, chapter thirty of this code, modified by the board of accountancy to meet the objections of the legislative rule-making review committee and
refiled in the state register on the fifteenth day of January, one thousand nine hundred ninety-nine, relating to the board of accountancy (board rules and rules of professional conduct, 1 CSR 1), is authorized.


(a) The legislative rule filed in the state register on the twenty-ninth day of July, one thousand nine hundred ninety-eight, under the authority of section one, article twenty-seven, chapter thirty of this code, modified by the board of barbers and cosmetologists to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of October, one thousand nine hundred ninety-eight, relating to the board of barbers and cosmetologists (procedures, criteria and curricula for examination and licensure of barbers, cosmetologists, manicurists and aestheticians, 3 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the seventeenth day of July, one thousand nine hundred ninety-eight, under the authority of section eight, article one, chapter thirty of this code, modified by the board of barbers and cosmetologists to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of December, one thousand nine hundred ninety-eight, relating to the board of barbers and cosmetologists (schedule of fines, 3 CSR 7), is authorized, with the following amendment:

‘On page eight, subsection 2.49, after the words “other than” by inserting the words “tropical birds as allowed by law, animals employed to assist individuals with disabilities, or’.

§64-9-14. Board of veterinary medicine.

(a) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, under the authority of section nine, article ten-a, chapter thirty of this code, modified by the board of veterinary medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of
October, one thousand nine hundred ninety-eight, relating to the board of veterinary medicine (certified euthanasia technicians, 26 CSR 5), is authorized.

(b) The legislative rule filed in the state register on the third day of August, one thousand nine hundred ninety-eight, under the authority of section four, article ten, chapter thirty of this code, modified by the board of veterinary medicine to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of October, one thousand nine hundred ninety-eight, relating to the board of veterinary medicine (schedule of fees, 26 CSR 6), is authorized.


The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section five, article thirty-one, chapter thirty of this code, relating to the board of examiners in counseling (licensing, 27 CSR 1), is authorized.


The legislative rule filed in the state register on the first day of July, one thousand nine hundred ninety-eight, authorized under the authority of section twenty-eight, article eight, chapter thirty-six of this code, modified by the office of the treasurer to meet the objections of the legislative rule-making review committee and refiled in the state register on the nineteenth day of November, one thousand nine hundred ninety-eight, relating to the office of the treasurer (the enforcement of the uniform unclaimed property act, 112 CSR 5), is authorized.

§64-9-17. West Virginia infrastructure and jobs development council.

The legislative rule filed in the state register on the ninth day of September, one thousand nine hundred ninety-eight, authorized under the authority of section four, article fifteen, chapter thirty-one of this code relating to the West Virginia infrastructure and jobs development council (infrastructure and

The legislative rule filed in the state register on the ninth day of February, one thousand nine hundred ninety-eight, under the authority of section five, article twenty-four, chapter twenty-nine of this code, modified by the technology-related assistance revolving loan fund for individuals with disabilities board to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of July, one thousand nine hundred ninety-eight (relating to the technology-related assistance revolving loan fund for individuals with disabilities board technology-related assistance revolving loan fund for individuals with disabilities, 193 CSR 1), is authorized.

CHAPTER 169

(Com. Sub. for H. B. 2535 — By Delegates Hunt, Linch, Compton, Faircloth, Jenkins and Riggs)

[Passed March 10, 1999; in effect from passage. Approved by the Governor.]
recycling assistance fund grant program; authorizing division of natural resources to promulgate a legislative rule relating to general trapping regulations; authorizing the manufactured housing construction and safety standards board to promulgate a legislative rule relating to the board; authorizing the division of labor to promulgate a legislative rule relating to the crane operator certification act; and authorizing the economic development authority to promulgate a legislative rule relating to the general administration of the application procedures of the West Virginia capital company act.

Be it enacted by the Legislature of West Virginia:

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

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

§64-10-1. Division of natural resources.
§64-10-3. Division of labor.

§64-10-1. Division of natural resources.

(a) The legislative rule filed in the state register on the thirty-first day of July, one thousand nine hundred ninety-eight, authorized by section five, article eleven, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth of November, one thousand nine hundred ninety-eight, relating to the division of natural resources (recycling assistance fund grant program, 58 CSR 5) is authorized.

(b) The legislative rule filed in the state register on the second day of July, one thousand nine hundred ninety-eight, authorized by section seven, article one, chapter twenty of this code, modified by the division of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of July, one thousand nine hundred ninety-eight, relating to the division of
natural resources (general trapping regulations, 58 CSR 53), is authorized.


The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-eight, under the authority of section four, article nine, chapter twenty-one of this code, modified by the manufactured housing construction and safety standards board to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of October, one thousand nine hundred ninety-eight, relating to the manufactured housing construction and safety standards board (manufactured housing construction and safety standards board, 42 CSR 19), is disapproved and not authorized.

§64-10-3. Division of labor.

The legislative rule filed in the state register on the thirtieth day of July, one thousand nine hundred ninety-eight, authorized under the authority of section three, article three-d, chapter twenty-one of this code, modified by the division of labor to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of October, one thousand nine hundred ninety-eight, relating to the division of labor (crane operator certification act, 42 CSR 24), is authorized.


The legislative rule filed in the state register on the twentieth day of July, one thousand nine hundred ninety-eight, under the authority of section five, article one, chapter five-e of this code, modified by the economic development authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of November, one thousand nine hundred ninety-eight, relating to the economic development authority (general administration of the West Virginia capital company act; establishment of the application procedures to implement the act, 117 CSR 1), is authorized.